

1989 (37(2)) BLJR 478

IN THE HIGH COURT OF PATNA

FULL BENCH

Cri.W.J.C. No. (sic) of 1989

Decided On: 19.05.1989

Appellants:**Ram Deo Rai**

Vs.

Respondent:State of Bihar

Constitution of India – Article 226

Judicial notice of the newspaper report dated 19/05/1989

An old man of 56 years after he was shot through his head by some miscreants was in coma for the last 45 days. As per reports, police have put him in chains in Indira Gandhi Central casualty ward of PMCH under the cares of neurosurgeons.--- he was under police custody and was chained to the foot of the bed.

Held that in a social welfare state, there is no room for any barbaric strength wielding the sceptre of right-- Held further that if **he has been kept in fetters in the hospital without there being any order of remand either to police custody or to judicial custody, the custody itself is unconstitutional.** Held further that fetters either in Judicial custody or in police custody are deprecated, more so when they are with respect to a person who is suffering from serious ailment and is said to be in coma.

[Decision dated 28-1-1988 in Cr.W.J.C No. 14 of 1988 was relied on]

Detenue was ordered to be released from the fetters forthwith.

[Para 1, 2, 3, 4 and 6]

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Hon'ble Judges/Coram:

S.K. Jha , Actg. C.J., P.S. Mishra and S.H.S. Abidi , JJ.

JUDGMENT

S.K. Jha, Ag. C.J., P.S. Mishra and S.H.S. Abidi, JJ.

1. The Chief Justice and some other Judges of this Court read a news item in the Hindustan Times published from Patna in the morning edition of May 19, 1989 captioned "In the chains even in coma" Having regard to the contents of the news item as published, which shall be stated hereinafter, judicial notice was taken of the matter and a Special Bench was constituted at 10.30 A.M. this morning for taking proper steps and issuing proper directions to the State and/or its officials concerned in the matter and this Criminal Writ Jurisdiction Case under Article 226 of the Constitution was duly initiated. When the learned Advocate General was noticed and he was being impressed upon by the Bench with regard to the gravity and urgency of the situation, Mr. Ashok Priyadarshi came with a petition, which has been kept as a part of the proceedings of this Court (although that has been described as a Criminal Writ Jurisdiction Case) and shall form a part of the record of this case. Mr. Shyama Prasad Mukherjee, a senior Advocate of this Court, appeared amicus curiae to assist this Court and to see that the justice be delivered to the deserving party.

2. Shortly stated the facts are these. One Sri Ram Deo Rai aged about 56 years is said to have been in coma for the last 45 days after he was shot through his head by some miscreants in his native village in Chapra. The report further states, which is also borne out by the petition filed by Mr. Priyadarshi, that the police have now put him in chains in Indira Gandhi Central Casualty Ward of the Patna Medical College Hospital under the cares of neurosurgeons. Ram Deo Rai is said to be unaware of what is going around him. His bed head ticket shows that he is suffering from "Hemiplegia and aphasia and sub-conjuncional haemorrhage". He had been lodged in the hospital under the police guard according to one Professor Arun Kumar Agrawal and he has been chained to the foot of the bed there. It was against the rules, only more so when a patient was in coma. The policemen who should have been on guard, the newspaper further shows, according to the doctor, were also absent. Dr. Narendra Prasad, head of the department of the Surgery, Patna Medical College Hospital refused to treat the patient with handcuffs on. The police guard was not traced even after an hour of search. The Chief Casualty Officer was informed by the doctors to take immediate steps to release the patient from the extra torture on May, 16, Dr. Narendra Prasad is quoted to have said "It is a serious matter. We have

to decide in principle whether we can give our patients the minimum degree of care and comfort I have expressed my serious concern in such matters several times". Dr. Prasad further stated that "if the patient has to be guarded, it was the duty of the police and the hospital administration to do so. It would be too much to expect from me to treat him with fetters on. I refuse to treat him in this condition". A letter is said to have been sent to the police station in this matter but the response was that since it was under the directive of the Chapra police that the patient had been fettered, the police here could not do anything. At the moment of writing, the newspaper further says, the matter was referred to the Senior Superintendent of Police, Patna. The patient under coma is quite old and not in a position to either run away or get treatment elsewhere.

3. In this state of affairs it is our firm conviction that in a social welfare State there is no room for any barbaric strength wielding the sceptre of right. Therefore, we are constrained to take notice of it and we sought the assistance of the learned Advocate General to see that the justice is delivered at the spot and we are beholden to Mr. Shyama Prasad Mukherjee who has appeared amicus curiae for this purpose.

4. It is, however, not clear whether Ram Deo Rai had ever been produced before a Magistrate on any remand to police custody or judicial custody has been obtained under the orders of the Court. If he has been kept in fetters in the hospital without there being any order of remand either to police custody or to judicial custody, the custody itself is unconstitutional. If he has been remanded to judicial custody under the orders of the Court, the Superintendent, Bankipore Central Jail alone is competent to decide to hospitalise Ram Deo Rai who, for all practical purposes, is described as petitioner in this case. Fetters either in judicial custody or in police custody are deprecated, more so when they are with respect to a person who is suffering from serious ailment and is said to be in coma.

5. A Bench of this Court as far back as on 28-1-1988 in Cr.W.J.C. No. 14 of 1988 while dealing with a case from Sasaram, issued specific direction that:--

In view of the fact that such prisoners as Mohan Mushahar are lodged in custody in such inhuman condition, it is high time that the alleged inhuman condition of the prisoners be obliterated as soon as possible. It goes without saying that if Mohan Mushahar and other undertrial prisoners similarly situate as Mohan Mushahar are hand cuffed or chained in Sasaram Jail, the hand cuff or chain be removed from the body of such under-trial prisoners as are in Sasaram Jail or, for that matter, in any of the jails in the whole of Bihar.

In that case the Bench was seized with the matter when the undertrial prisoners were still lodged in Sasaram Jail. But the instant case stands on a much higher footing as Ram Deo Rai is lodged not in the jail but in Indira Gandhi Central Casualty Ward of the Patna Medical College Hospital. A jail and hospital for specialised treatment or, for that matter, even general treatment cannot be equated, we fail to appreciate as to how this bare minimum human treatment is not being meted out to the prisoner or under-trial prisoner in hospital wards. Are we to suppose that the police machinery in this State is so weak and so apprehensive of a prisoner in coma as would impel him to be kept in the hospital ward in chain. It is baffling indeed.

6. We, accordingly, hereby order for releasing Ram Deo Rai from fetters forthwith. Custody, if any, for the present shall be of the Superintendent, Patna Medical College Hospital who shall be responsible for the safe custody of Ram Deo Rai and his

treatment at the hands of expert available in the hospital. Police guard, if any, may be posted outside the hospital wards to watch any movement of Ram Deo Rai and/or any other person connected with his affairs.

7. Issue notice to the respondents to show cause as to why this application be not allowed and a direction be not issued to release Ram Deo Rai from custody.

8. Rule is made returnable within one week. Let notice issue through special messenger at the cost of the Court to be delivered direct to the respondents and service thereof reported to the Court.

9. Put up this case on 26th May, 1989. Let a copy of this order be handed over each to the learned Advocate General and Mr. Shyama Prasad Mukherjee.

Let a copy of this order be also delivered forthwith to the Superintendent of Police, Patna and to the Superintendent of Patna Medical College Hospital for compliance.