Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 4692 of 2025

Petitioner :- Budhiram And 2 Others
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Anil Kumar Tripathi,Manish Kumar Pandey
Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioners and Sri Paritosh Malviya, learned AGA-I for the State-respondents.

2. The instant writ petition has been preferred with following principal reliefs.

"A) Issue a writ, order or direction in the nature of certiorari quashing the proceeding in Case No. 517/25 (State v. Budhiram and other), under Sections 170, 126, 135 of Bhartiya Nagrik Suraksha Sanhita (B.N.S.S.), P.S. Lalganj, District Basti pending before the court of Sub Divisional Magistrate, Sadar, District Basti.

B) Issue a writ, order or direction in the nature of mandamus directing the respondent no. 1 to pay appropriate compensation for the illegal detention of petitioner no. 1 in jain from 07.02.2025 to 08.02.2025 by the respondent no. 2/4 in Case No. 517/25 (State v. Budhiram and other), under Sections 170, 126, 135 of Bhartiya Nagrik Suraksha Sanhita (B.N.S.S.), P.S. Lalganj, District Basti pending before the court of Sub Divisional Magistrate, Sadar, District Basti."

3. At the very outset, learned AGA-I raised an objection qua maintainability of the writ petition on the ground of efficacious statutory remedy under Section 123 Cr.P.C. (now 181 B.N.S.S.). He submits that in case an appropriate application is moved by petitioners before the District Magistrate ventilating their grievances, the same would be considered and decided expeditiously and the instant writ petition is liable to be dismissed on the ground of statutory alternative remedy.

4. We have occasion to peruse the record in question. Section 123 Cr.P.C. reads as under.

"123. Power to release persons imprisoned for failing to give security

1. *Whenever the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.*
2. *Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case, may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.*
3. *An order under Sub-Section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts; Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.*
4. *The State Government may prescribe the conditions upon which a conditional discharge may be made.*
5. *If any condition upon which any person has been discharged is, in the opinion of the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.*
6. *When a conditional order of discharge has been cancelled under Sub-Section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case.*
7. *Unless such person gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case may remand such person to prison to undergo such unexpired portion.*
8. *A person remanded to prison under Sub-Section (7) shall, subject to the provisions of section 122, be released at any lime on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.*
9. *The High Court or Court of Sessions may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by it, and the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case may make such cancellation where such bond was executed under his order or under the order of any other Court in his district.*

10.*Any surety for the peaceable conduct or good behaviour of another person, ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it."*

5. Learned counsel for the petitioners is permitted to implead District Magistrate Basti as necessary party forthwith.

6. In the facts and circumstances and in view of the aforesaid provisions, no useful purpose would be served in keeping the writ petition pending consideration and with the consent of the parties, the same stands **disposed of** finally with the direction that in case any appropriate application is moved by the petitioners before the newly impleaded respondent within a week's time from today, the same would be considered decided strictly in accordance with law, as expeditiously as possible but certainly after affording opportunity to all stakeholders in the matter.

(Prashant Kumar,J.) (Mahesh Chandra Tripathi,J.)

Order Date :- 24.3.2025
A.K.Srivastava

Digitally signed by :-
ARUN KUMAR SRIVASTAVA
High Court of Judicature at Allahabad