

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

WRIT PETITION (CRL) NO. _____ OF 2016

(Petition under Article 32 of the Constitution of India)

IN THE MATTER OF:

KANHAIYA KUMAR
(incarcerated in Tihar Jail)
Through Prof. Himanshu
S/o Bishwanath Pandey,
Resident Warden 3,
Jhelum Hostel,
Jawaharlal Nehru University,
Delhi-110067

... PETITIONER

VERSUS

STATE OF NCT OF DELHI,
Through SHO P.S. Vasant Kunj
Delhi

... RESPONDENT

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA,SEEKING GRANT OF BAIL AND
RELEASE FROM CUSTODY, IN LIGHT OF THE HIGHLY
VIOLENT AND SURCHARGED ATMOSPHERE AT THE
PATIALA HOUSE COURTS, POSING A GRAVE THREAT
TO THE LIFE OF THE PETITIONER, HIS COUNSELS AND
POSSIBLE SURETIES**

TO,
THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE SUPREME COURT OF INDIA
THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. This Writ Petition is being filed under Article 32 of the Constitution of India by the Petitioner for grant of bail and release from custody. The immediate cause for the filing of this Writ Petition is that due to the surcharged atmosphere of violence at the Patiala House Courts, New Delhi, within whose jurisdiction the present case is pending, and the physical violence and intimidation faced by the Petitioner and a large number of students, teachers and journalists while attending a judicial proceeding before the Court of Sh. Loveleen, Metropolitan Magistrate, Patiala House Courts, Delhi, as well as in the court complex.
2. During the aforesaid proceedings, the Petitioner and other students belonging to JNU, as well as journalists, were physically assaulted by a group of lawyers. The Petitioner believes the manner in which physical harassment of the Petitioner was allowed to take place, was in clear violation of the fundamental right to access to the justice system. This Petition therefore raises issues regarding the violation of rights under Article 21.
3. The Petitioner is a citizen of India and a student of Jawaharlal Nehru University, Delhi ("JNU"), and the President of the JNU Students Union.
4. Respondent No. 1 is the State of the NCT of Delhi.

BRIEF FACTS

5. FIR No. 110/2016, under Sections 124A/120B of the Indian Penal Code was registered against the Petitioner, Kanhaiya

Kumar, and other unknown persons. The same day, the Petitioner was arrested by the police.

6. On 12.02.2016, the Petitioner was remanded to police custody for 3 days, by the order of Shri Loveleen, Metropolitan Magistrate, Patiala House Courts, Delhi.
7. On 15.02.2016, the Petitioner was sought to be produced before the Learned Metropolitan Magistrate. However, due to the incidents of violence that took place at the court premises, carried out by members of the legal fraternity, in which journalists, students and senior faculty members of the Jawaharlal Nehru University were physically assaulted, the Petitioner was produced before the Learned Metropolitan Magistrate, at another location, and was remanded to two days' police custody.
8. That on 16.02.2016, Writ Petition Criminal No. 25/2016, titled as 'N.D. Jayaprakash v. Union of India &Anr.', was filed before this Hon'ble Court, seeking appropriate directions to the Respondents to ensure a proper and decorous conduct of the remand proceedings, in light of the incidents that took place on 15.02.2016.
9. That on 17.02.2016, after hearing the counsels for the Petitioner in the abovementioned Writ Petition, this Hon'ble Court passed directions instructing the Commissioner of the Delhi Police to ensure the safety of the Petitioner herein, at the time of the remand proceedings to be held that day.
10. That However, despite the specific directions by this Hon'ble Court, the Delhi Police failed to adequately protect the Petitioner

at the time of his production for remand proceedings, and he was violently assaulted by the gathered crowd of lawyers, while being taken for remand proceedings, and later by one person inside the courtroom. Following the incidents of the assault, as well as the observable threat to the life and security of the Petitioner, his counsels, and the journalists present inside the court. Therefore, an urgent mentioning was made before this Hon'ble Court at 2:15 pm, following which this Hon'ble Court deputed five senior members of the Bar to observe the situation at Patiala House and report to this Hon'ble Court. However, it was widely reported by the media that even at the time when the senior members of the Bar visited the Patiala House Court premises, the atmosphere of violence and intimidation continued unabated, and that the visiting team was also attacked by a group of lawyers and other persons while returning to this Hon'ble Court. Thereafter, the Learned Metropolitan Magistrate remanded the Petitioner to judicial custody for a period of 14 days.

GROUND

The Petitioner relies on the following amongst other grounds which are without prejudice to each other:

A. On Art. 32 Petition:

- A.1. That the environment at the Patiala House Courts complex is not conducive- not for a hearing, much less for a fair trial. In these circumstances, the Petitioner, his next friend (pairokar) as well as his lawyers fear the safety of

their life and limb and are unable to present his case before the concerned court of law.

A.2 That there are elements bent upon intimidating the lawyers and next friend of the Petitioner and preventing them from doing their duty. It was for this reason that while the Petitioner was brought to the Patiala Court house, he was thrashed inside the court room (adjacent to Court room no. 4) as well as in the Court premises. This also shows a grave dereliction on part of those who are generally responsible for ensuring free access to justice and fair trial, and specifically those who were under the writ of this Hon'ble Court to obey, comply and carry out the orders of this Hon'ble Court.

A.3 The failure on part of these authorities in their peremptory and most sacrosanct duty to carry out the orders of this Hon'ble Court is a clear violation of the fundamental rights of the Petitioner as well as Art. 144 of the Constitution of India (which mandates and enjoins all authorities civil and judicial to act in aid of the Supreme Court of India).

A.4 The situation prevailing yesterday in the Patiala House Courts, is an affront to a citizen's fundamental and human right of access to justice. It is also clearly a violation of the

fundamental rights of lawyers to represent their client.

A.5 The Petitioner is an innocent person, and his presumption of innocence is sacrosanct. However, the mob at the Court complex was ready to lynch the Petitioner as if the Petitioner is guilty, which erodes a citizen's faith in the justice delivery mechanism established under the laws by our Constitution. It is incumbent on this Hon'ble Court as the Guardian of the rights of we the people, to safeguard these rights and to reinstate such faith of a citizen of India.

A.6 That since the security granted by this Hon'ble Court was limited to Court room no. 4, and given the prevailing situation; the lawyers representing the Petitioner were in no position to move the Sessions Court for his bail. His lawyers remained under seize till 7 pm, as the Delhi Police was not able to provide security to them for safe exit and kept saying that they are waiting for "enough force" before they could provide a safe exit to lawyers.

A.7. That there has been a repeated break down of law and order machinery at the Patiala House Court complex, both before and after the order of this Hon'ble Court. It is most serious and egregious that such breakdown does not cease even after the writ of this Hon'ble Court. The

situation as it prevails, does not inspire any confidence in the Petitioner and violates his right and aspiration of *Justice not only be done, but seem to have been done*. The Petitioner's right of access to justice is gravely and severely impeded.

A.8 That therefore the present circumstances are exceptional and call for an exceptional remedy. No other remedy virtually remains for the Petitioner, for the fear of the safety of his life and limb, and therefore the Petitioner craves leave to directly approach the Hon'ble Supreme Court of India for a writ under Art. 32 of the Constitution of India.

B. On Petitioner's release:

B.1 That the Petitioner is an innocent person and has been falsely implicated.

B.2 The police does not require the custody of the accused for any further investigation and he has been presently been sent to judicial custody.

B.3 There are reports in public by the Delhi Police which state that no concrete evidence has been found against the Petitioner.

B.4 Under these circumstances, the Petitioner prays for his release by the order of this Hon'ble Court by its extraordinary and most exceptional writ under Art. 32 of the Constitution of India.

- B.5 That the Petitioner had moved application before the Court concerned intimating the threat to his life and limb. The situation of dire threat to life of the Petitioner still prevails and further incarceration of the Petitioner in these circumstances is a constant threat to his life. The Petitioner perceives a threat to his life in the prison where there is a great likelihood of an attack on him by his co-prisoners.
- B.6 That the Petitioner is a student of the Jawaharlal Nehru University, Delhi and not some hardened criminal. No prejudice would be caused to any one, much less the prosecution if the Petitioner is released on bail.
- B.7 That the Petitioner is willing to abide by all conditions as may be imposed in the interest of justice, for his release on bail.

PRAYER

The Petitioner therefore most respectfully prays as follows:

- A. That this Hon'ble Court be pleased to grant bail to the Petitioner to the satisfaction of the Registrar of this Hon'ble Court;
- B. Pending the present writ, this Hon'ble Court may be pleased to pass necessary directions to safeguard the life and limb of the Petitioner;
- C. That this Hon'ble Court be pleased to pass any other and further orders in the interest of justice.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN
DUTY BOUND SHALL EVER PRAY.**

Drawn by

Rishabh Sancheti/ Harsh Bora

Filed by

Anindita Pujari

Counsel for the Petitioner