

S Y N O P S I S

1.	<p>That the petitioner is moving the present petition in Public Interest to bring to light a case of custodial torture of one Kulwant Singh who was kept in illegal custody of the Amritsar Police from 21.7.2010 till evening of 25.7.2010 when he was produced before a Duty Magistrate at Amritsar, after the court times and the police took a police remand of Kulwant Singh till 30.7.2010 and later the remand was increased till 31.7.2010.</p>
2.	<p>That unfortunately Kulwant Singh was never provided any legal aid, which is essential as per the judgments of the Hon'ble Supreme Court and in the police remand as well as in illegal custody Kulwant Singh was tortured by giving electric shocks on his private parts and other parts of his body and due to receiving of stick blows on his body, Kulwant Singh suffered renal failure and is at present admitted in Guru Nanak Dev Hospital, Amritsar and as per the doctor report which was published in Times of</p>

	India dated 6.8.2010 he had suffered renal failure.
3.	That the petitioner organisation came into action after reading the news report and the President of the organisation of visited Kulwant Singh in Amritsar Hospital and found him in bad physical condition with no family members by his side to attend to him. Kulwnat Singh is being kept in heavy police custody and is not being allowed to be met by anyone.
4.	That the petitioner organisation contacted the mother and brother of Kulwant Singh who informed the organisation that they are not being permitted to go near Kulwant Singh.
5.	That it is settled proposition of law that when a person received injuries in police custody and it is an admitted custody, then it is for the police to prove their innocence and the onus shifts on the police to prove their innocence. The interview of the relatives of Kulwant Singh and the orders of the learned JMJC which have been reproduced in the petition reveal that Kulwant Singh has

	received injuries while he was in illegally initially and thereafter in legal custody of the Amritsar police.
6.	That the relatives of Kulwant Singh are too poor and ignorant and are prone to pressure and threat and so the petition is being filed by the petitioner organisation, since the matter relating to custodial torture is not only a matter of interest of the family of Kulwant Singh but the whole of Indian Nation and since custodial torture is increasing day by day, so it is required that the matter be got inquired into from a Judicial Authority and action be taken against the guilty police officials and Kulwant Singh or his family members should be suitable compensated for the loss suffered by them. Hence the present petition in public interest.

(NAVKIRAN SINGH)

(RUBINA N. SINGH) (SANJEEV BANGA) (HARISH MEHLA)

CHANDIGARH:

A D V O C A T E S

DATED:11.08.2010 COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No._____/2010

(Public Interest Litigation)

Lawyers for Human Rights International (Regd),
Office at Kothi No.516, Sector 11-B, Chandigarh
through its Member Gursimran Singh Advocate.

. Petitioner

Versus

- 1.State of Punjab through Home Secretary,
Civil Secretariat, Chandigarh.
- 2.Senior Superintendent of Police, Amritsar.
- 3.Inspector Harvinder Pal Singh,
Police Station State Special Operation Cell,
Amritsar.
- 4.Superintendent, Central Jail, Amritsar.

. Respondents

Public Interest Litigation
petition under Articles 226/227 of
Constitution of India for issuance
of a writ of Mandamus or any other
writ, order or directions, with
the prayer that this Hon'ble Court

may mark an fact finding judicial enquiry from learned District and Sessions Judge (Vigilance) Chandigarh or any other judicial authority into the case of abduction and torture in illegal and legal custody by the respondent No.3 of Kulwant Singh @ Raju @ Sewa Singh son of late Sadha Singh, who is at present admitted in Guru Nanak Dev Hospital Amritsar and as per the allegations dude to the third degree torture both his kidneys have stop functioning.

ii) With a further prayer that since the physical state of Kulwant Singh is precarious and he needs best medical help, this Hon'ble Court may direct the State of Punjab to make arrangements for transfer of Kulwant Singh(victim) to P.G.I. Chandigarh and the State of Punjab should be directed bear

the medical expenses for his treatment.

iii) That since the victim of custodial torture has suffered the injuries at the hands of the police officials who had arrested him in case FIR No. 24 dated 25.7.2010 relating to Police Station State Special Operation Cell Amritsar and also while he was in illegal custody, the case of custodial torture be got enquired into and thereafter action be purposed to be taken against the police officials who are found responsible for the said illegal act and the family of the victim be compensated by granting appropriate compensation under the writ jurisdiction.

. . .

Respectfully showeth:-

1. That the petitioner organization is comprised of Lawyers who are practicing in this Hon'ble Court as well as the Districts Courts

of Punjab, Haryana and Chandigarh. Though the organization has membership throughout the world, however the units of Punjab, Haryana and Chandigarh are actively involved in upholding of Human Rights and rule of law through Public Interest Litigations and by providing free legal aid to the persons who are unable to afford litigation. The organization also trains and disseminates Human Rights knowledge through seminars and workshops. The organization does not accept any grants nationally or internationally and the members of the organization make expenditure from their own earnings. The petitioner organization is also part of the International Campaign against Death Penalty and ratification of the treaty for formation of International Criminal Court at Hague. So the petitioner No.1 organization is competent to invoke the extra ordinary jurisdiction of this Hon'ble Court by way of the **Public Interest Litigation** under Articles 226/227 of Constitution of India in the present matter of public importance.

2. That a news item appeared in Times of India dated 6.8.2010, which disclosed that one

Kulwant Singh was admitted in Guru Nanak Dev Hospital Amritsar and he had suffered electric shocks on his ears and private parts and due to the injuries suffered by him in his stomach with severe beatings with batons, Kulwant Singh had suffered a renal failure. The said news item is reproduced as under:-

“Cops ‘Torture’ suspected terrorist

Amritsar: One of the five alleged terrorists caught with weapons and RDX, and accused of planning strikes in Punjab, has been hospitalized with grievous injuries. Doctors said the victim sustained injuries as he was subjected to electric shocks.

Dr. Saurabh Dhanda of Guru Nanak Dev Hospital (GNDH) said the alleged terrorist, Kulwant Singh, was brought with injuries, which could have led to renal failure. “There were electric shock injuries on his ear and private parts. Kulwant’s stomach also had injuries owing to severe beating with batons,” he said.

Dhanda said his condition was still critical and there were no signs of recovery. He went on state there was a need to put him on dialysis.”

3. That the petitioner organisation came into action and the President of the Organisation who is a practicing lawyer at

Amritsar paid a visit to hospital and visited the 4th Surgical Ward headed by Dr. Mrs. Kapur and found Kulwant Singh sleeping and was not allowed to talk to him by the policemen who were found on duty. The attending nurse disclosed to the President that Kulwant Singh was suffering from kidney problem and he was not passing his urine. The report dated 10.8.2010 made by the President is being appended herewith as **Annexure P-1.**

4. That the petitioner organisation arranged for a message being sent to the family of Kulwant Singh and Surjit Kaur the 80 years old mother of Kulwant Singh who is unmarried and his brother Karamjit Singh who is also unmarried and doing the job a labour visited the law of the President at Amritsar and they disclosed that Kulwant Singh had been abducted by five policemen on the night of 21.7.2010 at around 10 PM, who caught hold of Kulwant Singh and took him away in the police vehicle which was an Innova Toyota vehicle. The family members went to Police Station but the police failed to disclose the whereabouts of Kulwant Singh.

5. That the police again brought Kulwant Singh to his house on 23.7.2010 and he was given severe beatings with sticks in the presence of the family members and took some clothes alongwith them and when the people of the area started collecting the police left the place without disclosing their identities. However nothing was recovered from the house.

6. That the President of the organisation also arranged for the documents which disclosed that on 25.7.2010 Kulwant Singh @ Raju and another accused was produced in FIR No.24 dated 25.7.2010 relating to Police Station State Special Operation Cell Amritsar and the accused were produced by Sub Inspector Bhupinder Singh, before the Duty Magistrate Shri Bagicha Singh JMIC(D) at 5.45 PM and Kulwant Singh and another accused were remanded to police custody till 30.7.2010. The order is reproduced as under:-

“Present: SI Bhupinder Singh, in person, for State.
Both accused in custody.

Accused produced before me being the Duty

Magistrate at 5.45 PM.

Heard. In order to facilitate the further investigation of this case, accused are remanded to police custody till 30.7.2010.

Sd/-Bagicha Singh

JMIC(D): 25.7.2010”

7. That on 30.7.2010 four accused were produced before JMIC(D) and the same were produced by Inspector Harvinder Pal Singh and a further police remand for 7 days asked by the police, however only one day police custody was granted, the said order is reproduced as under:-

“Present: APP for the State alongwith Inspector
Harvinder Pal Singh.

All accused in custody.

Sh.V.P.Bhatia counsel for accused Pal Singh

All accused produced before me being duty magistrate. A request is made for 7 days or police remand of all the accused. Heard. All the accused are remanded to police custody for 1 day for further investigation.

Sd/-JMIC(D) 30.07.10”

On 31.7.2010 all the accused were sent to judicial custody till 13.8.2010 and the said order is also reproduced as below:-

“Present: APP for the State.

Accused in custody.

Heard. As prayed accused are remanded to Judicial Custody till 13.08.10. Be produced before Id. Special Court for date fixed.

Sd/-JMIC/31.07.10”

8. That as it transpire the victim Kulwant Singh was admitted to Amritsar Jail from where he was referred to Guru Nanak Dev Hospital Amritsar and now he is admitted over there suffering from renal failure as per the report of Dr. Saurabh Dhanda, which has been reproduced in the above news item.

9. That the facts reveal that Kulwant Singh was abducted from his house on 21.7.2010 and he was kept in illegal detention till 25.7.2010 and thereafter he was in police custody till 31.7.2010 and the injuries which are on the body of victim Kulwant Singh who has suffered custodial torture have been suffered by him either in illegal custody or in legal custody and fall within the definition of custodial torture.

10. That the custodial torture has become a routine affair with the Indian police and the police instead of learning to investigate crimes with scientific methods have been indulging in third degree torture which have condemned by the Hon'ble Supreme Court of India and this Hon'ble Court in various judgments. The Hon'ble Supreme Court has held in the landmark judgment titled "**State of M.P. versus Shyamsunder Trivedi**" reported in 1995(4) SCC page 262, that whenever any injury is suffered by a person in custody, the onus of proving the innocence is upon the police and so police has to prove its innocence.

11. That the facts of Kulwant Singh's police torture are very serious and admittedly he was hale and hearty when he was taken in custody by the police and so the injuries suffered by him can be best explained by the police officials who had kept him in custody. The Hon'ble Supreme Court in such matters like **Nilabati Behara's** case and **D.K.Basu's** case had got enquired into the matters from judicial officers, so that the truth could come to

light. So the present petition is being filed for the same.

12. That the petitioner organisation has also issued a fact finding report which would be helpful for the Hon'ble Court to get a prima facie picture of the whole incident and would also show that the petitioner organisation is seriously interested that rule of law should be upheld at all costs and since the organisation committed to ensure that there is no human rights violation and violation of fundamental rights as enshrined under Article 21 of Constitution of India, so the present Public Interest Litigation.

13. That the main law points involved in the writ petition are:-

- i) As to whether the facts and circumstances warrant a fact finding enquiry from a Judicial Authority.
- ii) As to whether the facts and circumstances give a cause of action for a case in which human

rights violation have taken place and also violation of Article 21 of Constitution of India.

iii) As to whether the facts and circumstances warrant recommendation of criminal action against the police officials and compensation to the victim or his family for the custodial torture.

14. That there is no other remedy either by appeal or revision is available with the petitioners except to approach this Hon'ble Court by way of filing the present writ petition.

15. That no such or similar petition has earlier been filed by the petitioners in this Hon'ble Court or in the Hon'ble Supreme Court of India.

16. That the documents attached with the writ petition are true copies of the originals as required under Rule 22 of the Writ Jurisdiction Rules.

In the light of the above given circumstances of the case, it is, therefore, respectfully prayed that this Hon'ble Court may be pleased to issue a writ of Mandamus or any other writ order or directions in the below terms:-

- i) that this Hon'ble Court may mark an fact finding judicial enquiry from learned District and Sessions Judge (Vigilance) Chandigarh or any other judicial authority into the case of abduction and torture in illegal and legal custody by the respondent No.3 of Kulwant Singh @ Raju @ Sewa Singh son of late Sadha Singh, who is at present admitted in Guru Nanak Dev Hospital Amritsar and as per the allegations due to the third degree torture both his kidneys have stop functioning.
- ii) With a further prayer that since the physical state of Kulwant Singh is precarious and he needs best medical help, this Hon'ble Court may direct the State of

Punjab to make arrangements for transfer of Kulwant Singh(victim) to P.G.I. Chandigarh and the State of Punjab should be directed bear the medical expenses for his treatment.

iii) That since the victim of custodial torture has suffered the injuries at the hands of the police officials who had arrested him in case FIR No. 24 dated 25.7.2010 relating to Police Station State Special Operation Cell Amritsar and also while he was in illegal custody, the case of custodial torture be got enquired into and thereafter action be purposed to be taken against the police officials who are found responsible for the said illegal act and the family of the victim be compensated by granting appropriate compensation under the writ jurisdiction.

- iv) advance notice of the writ petition to the respondents may kindly be dispensed with;
- v) filing of certified copy of the Annexure P-1 may kindly be exempted in the interest of justice.
- i) the writ petition may be accepted as prayed for;

(P E T I T I O N E R)

T H R O U G H

(NAVKIRAN SINGH)

(RUBINA N. SINGH) (SANJEEV BANGA) (HARISH MEHLA)
CHANDIGARH: A D V O C A T E S
DATED: 11.08.2010 COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No._____/2010

Lawyers for Human Rights International

... Petitioners

Versus

State of Punjab and others Respondents

Affidavit of Gursimran Singh

Advocate Member, Lawyers for

Human Rights International

(Regd). office 516, Sector

11-B, Chandigarh.

I, the above named deponent do hereby
solemnly affirm and declare as under:-

1. That the contents of paras 1 to 12 and
14 to 16 of the writ petition are true and
correct to my knowledge and that of para 13 is
believed to be true as per advice of the
counsel. No part of it is false and nothing
has been kept concealed therein.

Chandigarh

Dated:11.08.2010

(DEPONENT)

VERIFICATION:-

Verified that the contents of
above affidavit are true and correct to my
knowledge. No part of it is false and nothing
has been concealed therein.

Chandigarh:

Dated:11.08.2010

(DEPONENT)

‘A’
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No._____/2010

(Public Interest Litigation)

Lawyers for Human Rights International

... Petitioners

Versus

State of Punjab and others ...

Respondents

I N D E X

S.No	P a r t i c u l a r s	D a t e s	P a g e s	C o u r t f e e
1.	S y n o p s i s	11.08.2010	01 – 03	
2.	Civil Writ Petition	11.08.2010	04 – 18	50.00
3.	A f f i d a v i t	11.08.2010	19	
4.	Annexure P-1, Report	10.08.2010	20 – 26	04.55
5.	Power of attorney alongwith resolution of petitioner	10.08.2010	27 – 28	02.65

Total court fee : 57.20

I) The main law points are in mentioned in para No.13 at pages 14 & 15 of the writ petition.

II) Relevant statutes/Rules: Article 21 of
Constitution of India

III) Similar case: NIL

IV) No caveat has been received.

(NAVKIRAN SINGH)

P/786/1986

(RUBINA N.SINGH) (SANJEEV BANGA) (HARISH MEHLA)

P/71/1988

P/490/2008

P/2901/2009

CHANDIGARH:

A D V O C A T E S

DATED:11.08.2010 COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No._____/2010

(Public Interest Litigation)

Lawyers for Human Rights International

... Petitioners

Versus

State of Punjab and others ...

Respondents

Total amount of court fee affixed Rs.58/-

(NAVKIRAN SINGH)

P/786/1986

(RUBINA N.SINGH) (SANJEEV BANGA) (HARISH MEHLA)

P/71/1988

P/490/2008

P/2901/2009

CHANDIGARH:

A D V O C A T E S

DATED:11.08.2010

COUNSEL FOR THE PETITIONER