



MOOT COURT SOCIETY | SYMBIOSIS LAW SCHOOL, NOIDA
Symbiosis International University

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Compromis

1. Diwan, a migrant from Eastern Uttar Pradesh shifted to New Tolly, the capital city of the Republic of India in May 2012. Diwan left his family, comprising of his wife, two kids and an ailing mother, back in *Siroka* village. He sends INR 25000/- monthly to his family for their daily expenditure, school fee, health care and medicines. But this was not the case always. Diwan initially worked as a rickshaw puller receiving only 30 percent of the total earnings after owner's cut. Diwan then learnt vehicular repair work where his employer would pay a monthly salary of INR 5000/-. Viewing the amount as insufficient for sustenance, Diwan ventured to learn mobile repair work and was now able to fetch satisfactory income. An honest, helpful and hardworking man, Diwan had come to be recognized as a local in the sub-urban village of *Karma* in New Tolly.
2. On October 22, 2017 at about 9 PM, police personnel from PS *Karma* barged into Diwan's house in *Karma* and conducted a vehement search of the premises. The forcible entry to the premises was met with protest from neighbours, one of whom tried to stop the Constable attempting to open Diwan's almirah locker. Keys were forcibly snatched from Diwan, however, to no avail. The police then broke open the locker and recovered two kilograms of powdered substance that was later determined to be cannabis. Diwan was immediately arrested and was sent to police remand for three days by Additional Chief Metropolitan Magistrate on October 23, 2017. The community was shocked at Diwan's arrest. What was more surprising was recovery of cannabis from his house. In their investigation, police found that Diwan and his associates had links with the narcotics giant of the State, Lord Kripa. Investigation also revealed that Diwan had

been dealing in drugs since 2012. The local daily covered the events rigorously and the entire community was now vehemently opposed to Diwan. Some believed that Diwan's bluff had been called up.

3. Bail was denied to Diwan on October 25, 2017. The ACMM, however, also denied further police custody upon observing severe bruises and cuts on Diwan's face and arms. Consequently, ACMM ordered Diwan to be sent to Central *Kihar* Prison, New Telly. The SHO/IO protested denial of Diwan's police custody and maintained that Diwan's custodial interrogation was required. The Prosecutor too informed the court of general practice in criminal courts whereby police officers' requests of police custody in serious offences were allowed to aid speedy and fair investigation in the matter, however, to no avail.
4. At the end of fourteen days, Diwan was again produced before the Magistrate for continuation of his judicial custody. Citing instances of severe beatings by the jail authorities and exhibiting injury marks from *lathis* and belts on Diwan's body, his lawyer requested the court to provide him protection in the prison. His lawyer also demanded access to the Prison CCTV footage, and the same was said to be unavailable due to technical reasons by the Prosecution. Meanwhile, Diwan's two associates, Akbar and Ram, who were absconding, were arrested in an undercover operation of police and sent to police custody. Both of them confessed to their involvement in the drug racket in New Telly. They confirmed that Diwan was leader of the operation in *Karma* and frequently gave them instructions for movement of powder and fulfillment of orders. Diwan was very careful not to use his house premises for any meeting or possession. However, the last consignment delivery was delayed due to security breach and hence, Diwan was scooped in the mess. Akbar and Ram demanded to be kept in a separate prison from Diwan for fear of their life.
5. On November 10, 2017, a national newspaper, *Truth Daily*, published a report on the torture meted out to the prisoners in *Kihar* Prison and highlighted the proceedings of the Magistrate's court in Diwan's case the day before which were also covered in the local daily. Following the report in media, the New Telly High Court took *suo moto* cognizance of the matter and appointed a Committee comprising of a retired Judge

of the court, a retired ACP and a media house executive, to inquire into the truth of the allegations of prison torture and current situation in *Kihar* Prison.

6. The Committee in its report dated November 22, 2017 stated two instances where Diwan was beaten up by fellow inmates whereupon the authorities gave proper medical attention to Diwan. The Committee gave evasive findings on the safety and security of *Kihar* inmates. However, it did mention that station house officers of many police stations regularly visited the Prison and *inter alia* interacted with inmates. Consequently, the High Court could not conclude on the responsibility of Prison Authorities and as such dismissed the matter with caution to *Kihar* Officials.
7. Meanwhile, on December 12, 2017, *Voice Against Violence in Prison* (VAP), an NGO, with intention to get justice for Diwan for the torture committed on him which was serious human rights violation, intervened through a Public Interest Litigation petition in the matter. Besides seeking justice for Diwan, the NGO also wants the court to rule the inactions of the State government as well as Prison Authorities of *Kihar* as violative of Diwan's rights protected under India's Constitution and those under international instruments India has signed and ratified. Outside of court, VAP is also reminding the central government to ratify the Convention Against Torture fulfilling its promise in the election manifesto.
8. During the pendency of the PIL, Diwan was found in dilapidated condition a kilometer away from *Kihar* on January 17, 2018. He was severely injured and also had internal bleeding and was admitted as such to City Hospital. Diagnosis revealed him to be suffering from severe breathing distress. The doctors also found his lungs to be punctured, ribs broken and multiple fractures in the body. The injuries pointed towards severe and repeated beatings with blunt objects, including *lathis* and rifle stock and absence of medical attention. Consequently, VAP has sought a direction for registration of FIR against the SHO and Jail Superintendent and investigation into Diwan's grievous injuries, by way of a separate writ petition. The State has

opposed the same. Diwan continues to remain in care and supervision of doctors at City Hospital.

9. Since both matters are intricately related to each other, the court intends to hear the PIL and the aforesaid petition together and the same are listed for final arguments on April 8, 2018.

10. Note:

- a) The constitution and laws of the Republic of Intia are *pari materia* to the Constitution and laws of India.
- b) Matters of jurisdiction should be argued as preliminary issue.
- c) All facts, including names of persons and places, in the above mock legal problem are fictitious and bear no resemblance with anyone. Any similarity with any person living or dead is purely coincidental. This problem is strictly for *bonafide* academic purpose.

***** ALL THE BEST! *****