

# SUPREME COURT OF INDIA

Upendra Baxi

Vs

State of Uttar Pradesh

(P.N.Bhagwati and V.B. Eradi JJ.)

12.10.1981

## ORDER

**P.N.Bhagwati, J.**

1. The petitioners have preferred an application to this Court for certain directions. This application is not supported by an affidavit. An objection is raised by Mr. R. K. Bhatt appearing on behalf of the respondents that in the absence of an affidavit, the application is not maintainable. In view of this objection, the petitioners state that an affidavit in support of the averments made in the applications will be filed on or before October 15, 1981 and having regard to this statement made by petitioners we proceed to dispose of the application. The petitioners have averred in the application that 21 out of 50 inmates undergoing medical treatment under the Order of this Court dated July 31, 1981 have been discharged from the Agra Protective Home in breach of the terms of that Order and they have also expressed an apprehension, that more inmates are likely to be discharged in the near future in the same manner. When this application came up for hearing before us on October 1, 1981 Mr. Bhardwaj, learned Advocate then appearing for the respondents, fairly assured the Court that no more inmates will be discharged from the Agra Protective Home until October 12, 1981 when the application would be next taken up for hearing. The respondents have also not been able to file an affidavit in reply to this application setting out, what according to them is the correct position regarding the discharge of these 21 inmates. We would therefore like to give an opportunity to the respondents to file an affidavit stating whether in fact 21 inmates were discharged from the Agra Protective Home from and after the making of our Order dated July 31, 1981 and if so, under what circumstances. We should also like to know whether the Superintendent of Agra Protective Home gave five days' advance notice of the intended discharge as effected in accordance with Rule 37 as required by our order dated May 8, 1981. If five days' advance notice was given to the Chief Judicial Magistrate about the intended discharge of any of the inmates, we should like to know from the Chief Judicial Magistrate whether he satisfied himself that there was sufficient justification for the discharge of the inmates and whether such discharge was being effected in accordance with Rule 37 and whether any care was taken to see if the discharged inmates had any alternative place to go and what would happen to them if they were sent out of the Agra Protective Home. The whole object of making the Order dated May 8, 1981 providing for giving five

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days' advance notice to the Chief Judicial Magistrate was that the Chief Judicial Magistrate should be able to satisfy himself that the inmates in the Agra Protective Home were not being sent out without any justification and without complying the requirement of Rule 37 and taking care to see whether they had any alternative place where they could go. We would therefore require the Chief Judicial Magistrate to submit a report to the Court stating whether he satisfied himself in regard to the various matters relating to the discharge of those inmates from the Agra Protective Home with respect to whom five days' advance notice was given to him by the Superintendent. The affidavit required by us shall be filed on behalf of the respondents and the report called for by us shall be submitted by the Chief Judicial Magistrate on or before October 29, 1981. In the meanwhile, we direct that no inmate from the Agra Protective Home shall be discharged without the prior permission of the Court.

2. Mr. Bhardwaj, learned Advocate for the respondents, also stated fairly before us on October 1, 1983 that if any inmates were discharged from the Agra Protective Home after July 31, 1981, the state Government will take all necessary steps to trace out the discharged inmates and try to bring them back to the Agra Protective Homes, if possible. We hope and trust that the necessary steps have been taken by the state Government in this behalf.

3. The writ petition will come up for hearing on November 6, 1981.