IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1100 of 2022

Arising Out of PS. Case No.-175 Year-2022 Thana- DIDARGANJ District- Patna

==========

Param Kumar Son of Arjun Ravidas, Resident of village - Nisarpura, P.S.- Parsabazar, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Patna, Bihar.
2. Home Secretary, Government of Bihar, Patna, Bihar.
3. Director General of Police, Bihar, Patna, Bihar.
4. Inspector General of Police, Patna Zone, Patna, Bihar.
5. Senior Superintendent of Police, Patna, Bihar.
6. Superintendent of Police Patna, Rural East, Bihar.
7. Sub-Divisional Police Officer, Patna City, Bihar.
8. S.H.O., Didarganj Police Station, Patna, Bihar.

... ... Respondent/s

==========

Appearance:
For the Petitioner/s : Mr. Indradeo Prasad, Advocate
For the Respondent/s : Mr. Prabhu Naraian Sharma, AC to AG

==========

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 19-09-2023

This petition is filed under Article 226 and 227 of the Constitution of India in which the petitioner has challenged the order dated 09.07.2022 passed by the concerned Magistrate whereby the petitioner has been sent to judicial custody. Thereafter, by filing I.A. No. 01 of 2022, the petitioner has prayed for the amendment in the prayer portion of the writ petition to the extent to quash any further order of remand

which extends the custody of the petitioner after 22.07.2022.

2. Heard learned Advocate Mr. Indradeo Prasad for the petitioner and learned AC to AG, Mr. Prabhu Naraian Sharma for the respondents.

3. Learned Advocate for the petitioner has mainly submitted that petitioner has been arrested in connection with Didarganj P.S. Case No. 175 of 2022, registered under Sections 307, 324 and 34 of the Indian Penal Code and under Section 27 of Arms Act. Thereafter, the petitioner was arrested on 08.07.2022 and produced before the learned Magistrate Court on 09.07.2022. On 09.07.2022, the learned Magistrate sent the petitioner to Model Central Jail, Beur, Patna till 22.07.2022 and thereafter the concerned learned Magistrate has directed to produce the petitioner on the next date.

4. Learned Advocate for the petitioner has referred to the averments made in the memo of the petition and submitted that the petitioner was not produced before the concerned Magistrate Court within stipulated time and the learned Magistrate has passed the order mechanically and, therefore, custody of the petitioner is illegal and, therefore, this Court may issue writ of *habeas corpus* and thereby direct the respondent authorities to produce the petitioner before this

Court. Learned Advocate also urged that the Impugned Order passed by learned Magistrate be quashed and set aside. Learned Advocate for the petitioner has referred many provisions contained in Criminal Procedure Code and also placed reliance upon the following decisions:-

I. ***Mahesh Kumar v. The State of Bihar & Ors.*** reported in ***2008 (2) BLJ PHC - 135***

II. ***Arbind Kumar v. State of Bihar*** reported in ***2004 SCC OnLine Pat 638***

III. ***Gautam Navlakha v. National Investigation Agency*** reported in ***2021 (3) CCSC 1378 (SC)***

5. On the other hand, learned AC to AG for the respondent authorities has vehemently opposed this petition. Learned counsel for the respondents has referred the averments made in the counter affidavit and supplementary counter affidavits filed by the concerned respondents. He submitted that after registration of the formal FIR, the Investigating Officer commenced the investigation and petitioner has been formally arrested at 05:00 PM on 08.07.2022 and at 05:15 PM arrest memo has been prepared mentioning the date and time of the arrest. Since the investigation has not been completed within 24

hours in terms of Section 57 of the Code of Criminal Procedure, 1973 (hereafter referred to as 'Code'), the Investigating Officer forwarded the accused before the concerned Magistrate on 09.07.2022 in terms of provisions contained in Section 157 of the Code within 24 hours of his formal arrest. The learned Magistrate satisfied with the compliance of Section 157 of Code vide order dated 09.07.2022 remanded the petitioner to the Model Central Jail till 22.07.2022. Thereafter, from time to time, the petitioner has been produced before the concerned Magistrate Court and after investigation the Investigating Officer has filed the charge-sheet on 28.09.2022.

6. Learned counsel for the respondents has also pointed out the relevant date when the petitioner was produced before the concerned Magistrate. Thereafter, the case was committed for trial to the Court of Sessions under the order dated 14.12.2022 passed by the concerned Magistrate and after receiving the record, the case was registered as Sessions Trial No. 177 of 2023 before the concerned Sessions Court. It is further submitted by learned counsel that on 31.03.2023, petitioner was produced before the Court and on 15.04.2023, the regular bail application filed by the petitioner was rejected by the 1st Additional District and Sessions Judge. It is also pointed

out by learned counsel for respondents that on 20.07.2022 due to non-availability of space, the petitioner could not be sent to the learned Court below. Thereafter, on various occasions, petitioner has been produced before the learned Magistrate Court from time to time and when the bail application filed by the petitioner has already been rejected by the concerned Court and further when the case is committed to the concerned Sessions Court, wherein the case is pending for trial, the present petition is misconceived and there is no illegality committed by the respondent authorities or the concerned Magistrate as alleged by the petitioner.

7. At this stage, learned counsel for the respondents has submitted that the date of hearing is the relevant date for issuing the writ of *habeas corpu*s and the date of hearing is the appropriate date to consider the legality of the detention of the corpus. In case of judicial remand, passed by the competent Court, the writ of *habeas corpus* is not maintainable. In support of the said contention, learned counsel for the respondents has placed reliance upon the following decisions:-

i. ***Talib Hussain v. State of Jammu &Kashmir*** reported in ***(1971) 3 SCC 118***

ii. ***Kanu Sanyal v. Distt. Magistrate*** reported in

(1974) 4 SCC 141

iii. ***Serious Fraud Investigation Office v. Rahul Modi*** reported in ***(2019) 5 SCC 266***

iv. ***Shikha Kumari v. State of Bihar*** reported in ***2020 SCC OnLine Pat 362***

8. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also perused the materials placed on record and the decisions upon which the reliance is placed by learned counsel appearing for the parties and from the record it would emerge that it is the case of the petitioner that he was arrested in connection with Didarganj P.S. Case No. 175 of 2022, registered under Sections 307, 324 and 34 of the Indian Penal Code and under Section 27 of Arms Act on 08.07.2022. Thereafter, he was produced before the learned Magistrate after 24 hours on 09.07.2022. The learned Magistrate sent the petitioner to judicial remand and it was directed to produce the petitioner on 22.07.2022. However, petitioner was not produced by the concerned respondent authority before the learned Magistrate and thereby his subsequent custody is illegal and, therefore, it is prayed by the petitioner that order dated 09.07.2022 passed by the concerned learned Magistrate be quashed and set aside. Copy of the said

order is placed on pg. 20 of the compilation.

9. We have perused the order (Impugned Order) passed by the learned Magistrate and thereafter, the various orders also passed by the learned Magistrate. It cannot be said that the learned Magistrate passed the order in mechanical manner. The respondent has given an explanation that on 22.07.2022, because of shortage of vehicle petitioner and certain other prisoners could not be produced before the learned Magistrate. It is relevant to note that thereafter, the investigating agency has already filed the charge-sheet against the petitioner and the concerned learned Magistrate has already committed the case to the learned Sessions Court. Further, the bail application filed by the petitioner before the Sessions Court was also dismissed.

10. At this stage, we would like to refer the decisions upon which the reliance is placed by learned Advocate for the petitioner. In the case of ***Mahesh Kumar (supra)***, the division Bench of this Court has observed in para 8 to 11 as under:

> ***viii***. *Other witnesses who are relatives and interested witnesses have supported the version of the informant.*

ix. *The definite case of the prosecution is that the informant and other injured were brought to Sherghati State Dispensary for treatment but there is nothing on the record from which any inference could be drawn that the injured were treated at Sherghati State Dispensary. The doctor has not been examined and there is no explanation as to why he has not been examined.*

x. *Another factual aspect of the case is that the Investigating Officer has also not been examined and in absense of non-examination of Investigating Officer, no contradiction could be taken out by the defence and due to non-examination of the Investigating Officer, adverse has to be taken against the prosecution and there is no explanation as to why Investigating Officer has not been examined. Any objective evidence could not be brought on the record due to non-examination of the Investigating Officer.*

xi. *The defence of the appellants is that plot in question is in their exclusive possession and the informant has nothing to do with the same and they have taken the law in*

> *their hands as they wanted to take the possession of the said land forcibly. The defence witnesses have proved some documents to show that the land was of the appellants. The documents produced by the defence have been exhibited.*

In the case of Shri ***Arvind Kumar (supra)***, the division Bench of this Court has observed in para 11 to 13 as under:

> ***xi.*** *This Court will always stand by a citizen's constitutional guarentee that upon arrest he has to be produced before the Magistrate within 24 hours. This constitutional guraentee cannot be compromised. These are bad. Whenever a citizen is taken into custody he must have an opportunity to make a submission before the Magistrate face to face when produced for being remanded to custody.*
>
> ***xii.*** *We also send a caution to the Magistrates that when they are passing orders on remand they must see the face of the man or the woman who has been produced and ask him or her a question if there is anything they have to say before being put to*

> *custody again. Signing a remand order, when the accused is in the 'verandah' of the Court is routine but violates the constitutional guarentee to be produced before the Magistrate. The presence before the Magistrate is physical, not just a sign and a rubber stamp seal on the remand order.*
>
> ***xiii.*** *In the circumstances, in the present case, the State Counsel have been good enough to be fair and accept on this habeas corpus petition that Arvind Kumar be set at liberty forthwith.*

11. However, it is pertinent to note at this stage that recently the Full Bench of this Court in the case of **Shikha Kumari** (supra) has observed in para 68 as under:

> ***68.*** *We, accordingly, sum up our conclusions in respect of the first three issues for determination as follows:-*
>
> *Question No. 1: "Whether, in a petition for issuance of writ of habeas corpus, an order passed by a Magistrate could be assailed and set-aside?"*
>
> *Answer: Our irresistible conclusion in view of the ratio laid down by the Supreme Court in the aforementioned cases is that a writ of habeas corpus would not be maintainable, if the detention in custody is as per judicial*

orders passed by a Judicial Magistrate having competent jurisdiction. Consequently, an order of remand passed by a Judicial Magistrate having competent jurisdiction cannot be assailed or set aside in a writ of habeas corpus.

Question No. 2: "Whether an order of remand passed by a Judicial Magistrate could be reviewed in a petition seeking the writ of habeas corpus, holding such order of remand to be an illegal detention?"

Answer: An illegal or irregular exercise of jurisdiction by a Magistrate passing an order of remand can be cured by way of challenging the legality, validity and correctness of the order by filing appropriate proceedings before the competent revisional or appellate Court under the statutory provisions of law. Such an order of remand passed by a Judicial Magistrate of competent jurisdiction cannot be reviewed in a petition seeking the writ of habeas corpus.

Question No. 3: "Whether an improper order could be termed/viewed as an illegal detention?"

Answer: In view of the clear, unambiguous and consistent view of the Supreme Court in the aforediscussed cases, we unhesitatingly conclude and hold that an illegal order of judicial remand cannot be termed/viewed as

an illegal detention.

12. Thus, from the aforesaid recent decision rendered by the Full Bench of this Court, it is clear that writ of *habeas corpus* would not be maintainable if the detention in custody is as per the judicial orders passed by Judicial Magistrate or a Court of competent jurisdiction. Consequently, an order of remand passed by Judicial Magistrate having competent jurisdiction cannot be assailed or set aside in a writ of *habeas corpus*.

13. It is further held by the Full Bench that an illegal or irregular exercise of jurisdiction by Magistrate passing an order of remand can be cured by way of challenging the legality, validity and correctness of the order by filing appropriate proceeding before the competent revisional or appellate Court under the statutory provision of law and such type of order cannot be reviewed in a petition seeking the writ of *habeas corpus*. Further, it has been held that illegal order of judicial remand cannot be termed/viewed as an illegal detention.

14. Thus, in view of the aforesaid decision rendered by the Hon'ble Full Bench of this Court, the two decisions of this Court upon which reliance is placed by learned Advocate for the petitioner is misconceived.

15. At this stage, we would also like to refer the

decision rendered by the Hon'ble Supreme Court in the case of ***Talib Hussain (supra)***, wherein the Hon'ble Supreme Court observed in para 6 as under:

> ***vi.*** *In regard to the submission that the petitioner was arrested and deprived of his personal liberty long before the order of his arrest and this invalidated his detention, it is sufficient to point out that in habeas corpus proceedings the Court has to consider the legality of the detention on the date of hearing. If on the date of hearing it cannot be said that the aggrieved party has been wrongfully deprived of his personal liberty and his detention in contrary to law, a writ of habeas corpus cannot issue.*

In the case of ***Kanu Sanyal (Supra)***, Hon'ble Supreme Court has observed in para 4 as under:

> ***iv.*** *These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling. We think it unnecessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court. This Court speaking through Wanchoo, J., (as he then was) said in* ***A. K.***

Gopalan v. Government of India:

> *"It is well settled that in dealing with the petition for habeas corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the hearing."*

In two early decisions of this Court, however, namely, ***Naranjan Singh v. State of Punjab****, and* ***Ram Narayan Singh v. State of Delhi,*** *a slightely different view was expressed and that view was reiterated by this Court in* ***B. R. Rao v. State of Orissa,*** *where it was said (at page 259, para 7):*

> *"in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings."*

and yet in another decision of this Court in ***Talib Hussain v. State of Jammu & Kashmir****, Mr. Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at page 121, para 6):*

> *"in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the*

hearing."

Of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having receivd the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus. But, for the purpose of the present case, it is immeterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and the Court is not, to quote the words of ***Mr. Justice Dua in B. R. Rao v. State of Orissa (supra),*** *"concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus". Now the writ petition in the present case was filed on January 6, 1973 and on that date the petitioner was in detention in the Central Jail,*

Vizakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the petitioner in the Central Jail, Vizakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate teh subsequent detention of the petitioner in the Central Jail, Vizakhapatnam. See para 7 of the judgment of this Court in ***B. R. Rao v. State of Orissa (supra).*** *The legality of the detention of the petitioner in the Central Jail, Vizakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them.*

In the case of ***Rahul Modi (supra),*** the Hon'ble Supreme Court has observed in para 18, 19 and 21 as under:

xviii. *Similar questions arose for consideration in* ***Naranjan Singh Nathawan v. State of Punjab****,* ***Ram Narayan Singh v.***

State of Delhi, ***A. K. Gopalan v. Union of India***, ***Pranab Chatterjee v. State of Bihar***, ***Talib Hussain v. State of J&K***, ***B. Ramachandra Rao v. State of Orissa***. *These decisions were considred in* ***Kanu Sanyal v. Distt. Magistrate, Darjeeling***, *as under: (SCC pp. 145-46, para 4)*

"Re: Grounds A and B

> *4. These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling. We think it unneessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court. This Court speaking through Wanchoo, J., (as he then was) said in* ***A. K. Gopalan v. Union of India****: (AIR p. 818, para 5)*
>
> *'5. It is well settled that in dealing with a petition for habeas corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the*

hearing.'

In two early decisions of this Court, however, namely, ***Naranjan Singh Nathawan v. State of Punjab*** *and* ***Ram Narayan Singh v. State of Delhi*** *a slightely different view was expressed and that view was reiterated by this Court in* ***B. Ramachandra Rao v. State of Orissa*** *where it was said (at p. 259, para 7):*

> *'7. ... in habeas corpus proceeding the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to teh institution of the proceedings'.*

and yet in another decision of this Court in ***Talib Hussain v. State of J&K****. Mr. Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at p. 121, para 6):*

> *'6. ... in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing.'*

Of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also

cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of hearing of the appliation for habeas corpus would be quite irrelevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus. But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and the Court is not, to quote the words of Mr. Justice Dua in ***B. Ramachandra Rao v. State of Orissa****, "concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus". Now the writ petition in the present case was filed on 06.01.1973 and on that date the petitioner was in detention in the Central Jail, Visakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls*

for consideration is whether the detention of the petitioner in the Central Jail, Visakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Visakhapatnam. (See para 7 of the judgment of this Court in ***B. Ramachandra Rao v. State of Orissa****.) The legality of the detention of the petitioner in the Central Jail, Visakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of Grounds A and B and decline to decide them."*

xix. *The law is thus clear that "in habeas corpus proceedings a Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings". In Kanu Sanyal (supra) the validity of the detention of the petitioner in District Jail, Darjeeling was therefore not considered by this Court and it was observed that the infirmity in the detention of the petitioner therein in District Jail, Darjeeling could not invalidate subsequent detention of the petitioner in Central Jail,*

Visakhapatnam.

xxi. *The principal laid down in* ***Kanu Sanyal (supra)****, thus, is that any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the same has to be judged on its own merits.*

16. Thus, from the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that in *habeas corpus* proceedings, a Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. It is further noted that the act of directing remand of an accused is held to be judicial function and the challenge to the order of remand is not to be entertained in a *habeas corpus* petition.

17. The petitioner has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of ***Gautam Navlakha (supra),*** wherein the Hon'ble Supreme Court has observed in para 63 as under:

63. *Thus, we would hold as follows:*

If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a habeas corpus petition would indeed lie. Equally, if an order of remand is

passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situation, a Habeas Courpus petition will not lie.

17.1 At this stage, it is relevant to note that the learned counsel for the petitioner has only placed reliance upon para 63 of the aforesaid decision. However, in the said decision the Hon'ble Supreme Court has observed in para 62 as under:

> ***62.*** *One of us (U.U. Lalit, J.) speaking for a Bench of two, followed the aforesaid line of though in the decision of Serious Fraud Investigation Office and others v. Rahul Modi and others, (2019) 5 SCC 266, and held as follows:*
>
> > *"(21) The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition."*
> >
> > *"(19) The law is thus clear that "in habeas corpus proceedings a Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceeding".*

18. Thus, from the aforesaid

observations made by Hon'ble Supreme Court in para 62 and 63 of the decision rendered in the case of ***Gautam Navlakha (supra),*** it can be said that the act of directing remand of accused is a judicial function and the challenge to the order of remand is not to be entertained in a *habeas corpus* petition and in a *habeas corpus* proceeding, a Court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceedings.

18.1 Thus, keeping in view of the aforesaid observations, if the facts of the present case are examined, it is clear that the concerned Magistrate who has passed the order of remand of petitioner on 09.07.2022 was having jurisdiction and was competent to pass such order and therefore the said order cannot be challenged by filing *habeas corpus* petition before this Court. Further, even the detention of the petitioner at the time of the return is to be examined in the *habeas corpus* proceedings and not with reference to the institution of the proceedings.

19. Thus, we are of the view that the reliance placed by learned counsel for the petitioner on observation made in para 63 of the decision in the case of ***Gautam Navlakha (supra),*** is also misconceived. Even otherwise, in the

said paragraph, the Hon'ble Supreme Court has observed that if the remand is absolutely illegal or remand is afflicted with the vice of lack of jurisdiction, *habeas corpus* petition would lie. In the present case, it cannot be said that the remand is absolutely illegal or the said remand is afflicted with the vice of lack of jurisdiction.

20. In view of the aforesaid facts and circumstances of the present case, we are of the view that the present petition challenging the orders passed by learned Magistrate is misconceived and writ of *habeas corpus* is not required to be issued as prayed for by the petitioner in the facts of the present case.

21. Accordingly, this petition is dismissed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

Shahnawaz/Sanjay

AFR/NAFR	NAFR
CAV DATE	05.09.2023
Uploading Date	19.09.2023
Transmission Date	19.09.2023