IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2417 of 2024

Arising out of PS. Case No.-21 Year-2024 Thana- Haraiya District- East Champaran

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Anand Kumar Thakur, Male, aged about 29 Years, S/o- Anil Kumar Thakur Resident of College road Shivpuri, Ps-Raxaul Dist- East Champaran

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Dept. of Home Govt. of Bihar, Patna Bihar
2. The Directorate General of Police, Govt. of Bihar, Patna Bihar
3. The Deputy Inspector General, East Champaran, Motihari, Bihar
4. The Superintendent of Police, East Champaran Bihar
5. The Sub Divisional Police Officer, Raxaul East Champaran Bihar
6. The SHO Haraiya East Champaran Bihar
7. The Investigating Officer, in Haraiya P.S. Case No. 21/24

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mrs. Nivedita Nirvikar, S. Advocate
Mrs. Shashi Priya, Advocate
For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-12-2024

In the instant writ petition, petitioner has sought for the following relief(s):-

> *"(i) In the nature of Habeas Corpus directing the Respondents to produce the Petitioner before this Hon'ble Court who is illegally detained beyond 24 hours in connection with Haraiya P.S. Case No. 21/24 by the Respondent no. 7 and free him from illegal custody.*

(ii) In the nature of Certiorari for setting aside the arrest memo issued against the Petitioner in connection with Haraiya P.S. Case No. 21/24, as the same is devoid of the constitutional mandate enshrined under Article 22(2) of the Constitution of India; and/or

(iii) In the nature of Mandamus directing/commanding the Respondents to the release the Petitioner forthwith in connection with Haraiya P.S. Case No. 21/24, as the Petitioner has illegally been detained and kept in police custody for more than 24 hrs without the authority of the concerned magistrate; and/or

(iv) In the nature of Mandamus directing/commanding the Respondents to compensate the Petitioner for the hardships suffered by him on account of illegal detention undergone violating the constitutional mandate; and/or

(v) For the grant of any relief for which the Petitioner is entitled in the fact and circumstances of the case."

2. The petitioner is in the business of sale and purchase of building materials under the name and style of Anand Enterprises located at Singhpur, Haraiya, Near-ICP, Bypass, Raxaul, Bihar with GST No. 10ASDPT5945Q1Z6.

3. The allegation is that the petitioner's GST number has been misutilized on 30.08.2024 to the extent of 'Vinzai Chemical Industries Pvt. Ltd.'. Such company has been booked for some materials through 'Sugam Parivahan Pvt. Ltd.' and it was required

to be sent to the petitioner's firm and a person namely Ajay Singh was mentioned in the column of firm of the petitioner and petitioner was not aware of such person. Copy of the invoice dated 30.08.2024 is placed on record as Annexure-P-1.

4. The above alleged transaction was made known to the petitioner on 14.10.2024 and uncle of the petitioner approached Sugam Parivahan Pvt. Ltd. on e-mail to the extent that they are unable to approach the petitioner who has received delivery of goods and also raised query regarding fake booking of GST number of the petitioner.

5. On 23.10.2024, Haraiya P.S. Case No. 21/24 was registered under Section 318(4), 338, 336(3), 340(2), 61(2) of B.N.S. and Section 30(a), 41(1), 31, 33, 38 and 47 of Bihar Prohibition and Excise Act on the basis of typed statement of informant namely 'Anjan Kumar'. Resultantly, FIR was registered against the petitioner and nineteen others co-accused persons insofar alleged transportation, collected or stored and distributed prohibited spirit to make illegal wine and total 4,000 litres of spirit like liquid material which was stated to have been recovered from the open field situated in front of the Godown of the I.P. Road Lines and within the premises of I.P. Road Line on 22.10.2024 during the time of 10.03 P.M. to 11.20 P.M.

6. Petitioner uncle stated to have approached Superintendent of Police, East Champaran, Mothihari through e-mail on 24.10.2024 relating to misutilization of GST number of the petitioner and he is facing atrocity. He has also filed one complaint on 24.10.2024 before S.H.O. Haraiya Police Station, East Champaran. He has also approached Deputy Commissioner of Sales Tax, Raxaul Circle, Bihar relating to misutilization of GST number on the same day.

7. The petitioner was arrested by the police on 24.10.2024 from his residence at about 1.10 A.M. but he was remanded to judicial custody on 26.10.2024. Thus, there is an delay of more than 24 hours insofar as producing the petitioner before the jurisdictional Magistrate and it is in violation of Section 87 and 187 of Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023').

8. In this backdrop, the present petition is filed to direct the respondents to produce the petitioner and to quash the arrest memo in Haraiya P.S. Case No. 21/24 to the extent that it is in violation of Article 22 of the Constitution read with Section 87 and 187 of BNSS, 2023.

9. Mrs. Nivedita Nirvikar, learned Senior Counsel for the petitioner vehemently contended that petitioner grievance is

supported by a number of judicial pronouncements. In this regard, she has cited the following decisions:-

(i) **Manoj Gupta @ Manoj Kumar Gupta vs. State of U.P. and Anr.** decided on 28.03.2023 of the High Court of Judicature at Allahabad, Para 22, 31 and 32 reads as under:-

> *"22. Ratio laid down in both the judgments is to the effect that in case an accused, who has been taken into custody but has not been produced before remand Magistrate within 24 hours of his arrest as required under the constitutional mandate i.e. Article 22(1) of the Constitution of India, then the detention of such an accused beyond the period of 24 hours from the time of his arrest shall be rendered illegal and the same cannot get cured as legal with the passing of an order of remand by the remand Magistrate in exercise of power under Section 167(2) Cr.P.C.*
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> *31. The scope of Article 22(1) of the Constitution of India and the nature and scope of the right which flows in favour of a detenue by reason of the said Article came to be examined by the Supreme Court in the case of **Madhu Limaye** (Supra). The Apex Court examined the said question in the light of the provisions of the Constitution the Code i.e. (Cr.P.C.) and the submissions urged before it. The Court ultimately delineated its views in paragraphs 11 and 14 of the report, which read as under:*
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> > *"11 Article 22(1) embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the rule of law prevails. For example, the 6th*

amendment to the Constitution of the United States of America contains similar provisions and so does Article XXXIV of the Japanese Constitution of 1946. In England whenever an arrest is made without a warrant, the arrested person has a right to be informed not only that he is being arrested but also of the reasons or grounds for the arrest. The House of Lords in Christie *v.* Leachinsky ((1947) 1 All ER 567) *went into the origin and development of this rule. In the words of Viscount Simon if a policeman who entertained a reasonable suspicion that X had committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. Viscount Simon laid down several propositions which were not meant to be exhaustive. For our purposes we may refer to the first and the third*:

"1. If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

2. XXXX

3. The requirement that the person arrested should be informed of the reason why he is seized naturally

does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained."

Lord Simonds gave an illustration of the circumstances where the accused must know why he is being arrested.

"*There is no need to explain the reasons of arrest if the arrested man is caught red-handed and the crime is patent to high Heaven*."

The two requirements of clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Clause (2) of Article 22 provides the next and most material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may without delay apply is mind to his case. The Criminal Procedure Code contains analogous provisions in Section 60 and 340 but out Constitution-makers were anxious to make these safeguards an integral part of fundamental rights. This is what Dr. B.R. Ambedkar said while moving for insertion of Article 15-A (as numbered in the Draft Bill of the Constitution) which corresponded to present Article 22:

"*Article 15-A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the Criminal Procedure Code and thereby probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of Article 15-A is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate the two provisions, because they are now introduced in our Constitution itself*."

"*14. Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State has failed to do. The remand orders are patently routine and appear to have been made mechanically. All that Mr. Chagla has said is that if the arrested persons wanted to challenge their legality the High Court should have been moved under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this court under Art. 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions. If their detention in*

custody could not continue after their arrest because of the violation of Art. 22(1) of the Constitution they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities. This disposes of the third contention of Madhu Limaye."

32. The same issue came up for consideration again before the Supreme Court in ***Manoj*** *(supra), weherein Court concluded in paragraph 9 of the report, as follows:-*

"*Here the prayer for bail is opposed on the ground that detention is without such authorisation. Can the benefit of bail be denied on such a ground? Section 167(1) of the Code is relevant in this context as it enjoins on the police officer concerned a legal obligation to forward the arrested accused to the nearest magistrate. That sub-section reads thus*.

"*Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of subb-inspector, shall forthwith transmit to the nearest judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.".*

(ii) **Smt. T. Ramadevi vs. The State of Telangana (Writ Petition No. 21912 of 2024)** decided on 26.09.2024, Para 2, 12 and 28 reads as under:-

> *"2. The present is a second writ petition seeking for issuance of a Writ of Habeas Corpus by the same petitioner, and by way of the present writ petition the petitioner herein seeks for production of the four detenus viz., Thallapally Srinivas Goud,Thallapally Sai Sharath, Thallapally Sai Rohith and Palavalasa Siva Saran. This writ petition has been filed substantially on two questions of law, which are:-*
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> *a) Whether the period of apprehension by the police authorities before the official arrest being shown is also to be considered for the purpose of fulfilling the requirement of producing the so-called apprehended person before the Judicial Magistrate within 24 hours?*
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> *b) Whether an accused under the Telangana Protection of Depositors of Financial Establishments Act, 1996 (for short 'TSPDFE Act') can be produced for the first remand before the nearest Judicial Magistrate or he needs to be presented only before the concerned notified Special Court?*
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> *12. Accordingly, this Bench has no hesitation in reaching to the conclusion that question No.1 as regards the commencement of the period of apprehension is concerned, it is held that the period of apprehension is also to be taken into consideration for the purpose of calculating the period of 24 hours as is envisaged under Section 57 of Cr.P.C. In other words, 24 hours is not to be calculated from the time of the official*

arrest being shown by the police personnel in the arrest memo, but from the time he was initially apprehended or taken into custody. In view of the same, accused Nos.3 and 4 have been produced before the Judicial Magistrate only after completion of 24 hours from the time they were apprehended.Accused Nos.1, 2 and 6 were produced before the Judicial Magistrate before completion of 24 hours. Therefore, there is clear violation of the statutory requirement under Section 57 of Cr.P.C so far as accused Nos.3 and 4 are concerned, and they are accordingly liable to be given the benefit for the illegal act which the respondent-authorities have committed.

28. In the result, the instant Habeas Corpus petition to the aforesaid extent so far as accused Nos.3 and 4 stands allowed, and so far as accused Nos.1, 2 and 6 are concerned, stands dismissed. No costs."

(iii) **In the matter of detention of Sri Arbind Kumar, on the letter of his wife Smt. Rita Singh vs. The State of Bihar & Ors.** reported in **2005(1) PLJR 117**, Para 3 and 8 reads as under:-

"3. The court will confine itself to the technicality of detention so that on the merits either of the case, the inquiry or the investigation there is no reflection.

8. There is only one question which the court has to ask. This is when the Sub Inspector of Police, Kotwali Police Station, required Arvind Kumar to present himself at the police station for questioning, it was 10.30 P.M. on the night of 15 July 2004. Hereinafter, the right of a

citizen under the Constitution takes over whether it is Article 22 or the substantive law of the land as has been spelt out in section 167 of the Code of Criminal Procedure, 1973. There was an obligation cast on the police by law to confer the right to the citizen given to him by the Constitution. This person who had been called to the police station at 10.30 P.M. in the night had to be produced within 24 hours before the Magistrate concerned. If the concerned Magistrate was not available then the police had an option to produce him before the nearest Magistrate whether he had the jurisdiction or did not have the jurisdiction. This was not done. Instead, Arvind Kumar was remanded on 17 July 2004. Twenty four hours had been crossed. The journey from the police station to the Magistrate is local. A five minute drive. The detention beyond 24 hours without a remand from the Magistrate is clearly illegal and unconstitutional. There is one thing on record on which there is no issue that when Arvind Kumar was called by the Sub Inspector of Police he complied with the oral direction to present himself with the police station. It is accepted by the State Counsel and even the police officers present he was not running away."

(iv) **Serious Fraud Investigation Office vs. Rahul Modi and Anr.** reported in **(2019) 5 SCC 266**, Para 11, 12, 18. 23, 24 and 35 reads as under:-

"11. While considering the matter from the perspective of grant of ad interim relief, as prayed for in applications, Crl. MA No. 50033 of 2018 in Writ Petition (Criminal) No. 3842 of 2018 and Criminal MA No. 50035 of 2018 in Writ Petition

(Criminal) No. 3843 of 2018, the following points were framed:

"15. In view of the submissions made on behalf of the parties, the issues that arise for consideration in the present applications are:

(a) Whether this Court can in a proceeding for habeas corpus under Article 226 of the Constitution of India, test the correctness, legality and validity of an order of remand, passed by a competent Magistrate?; and

(b) Whether this Court has the territorial jurisdiction to adjudicate the present habeas corpus proceedings, in view of the circumstance that the remand orders were rendered by a competent Magistrate at Gurugram, which have not been specifically assailed in these proceedings?"

12. The High Court by its order dated 20-12-2018 [Rahul Modi v. Union of India, 2018 SCC OnLine Del 13119] directed release of the said Rahul Modi and Mukesh Modi on interim bail, during the pendency of the writ petitions, on their furnishing personal bond in the sum of Rs 5 lakhs each with 2 local sureties in the like amount subject to conditions stipulated in the order. During the course of its order the following observations were made by the High Court in paras 31 to 39: (SCC OnLine Del)

"31. On a conspectus of the above decisions and in the light of the arguments advanced on behalf of the parties, what we are called upon to determine at this stage is whether the arrest of the applicants was illegal and without the authority of law; and whether the subsequent remand orders, which are cited to sanctify the arrest, are beyond the pale of examination by this Court in the present applications.

32. There is no denying the fact that, the competent authority vide its order dated 20-6-2018 directed SFIO to conduct an investigation into the affairs of the subject entities, in public interest. There is also no quarrel with the circumstance that, the period specified by the competent authority in the said order dated 20-6-2018 lapsed on 19-9-2018. There is also no dispute with regard to the fact that, SFIO sought an extension of time, from the competent authority, to carry out further investigation under the mandate of the provisions of Section 212 of the said Act, only on 13-12-2018, admittedly two-and-a-half months after the period granted to them by the competent authority for the said purpose, had come to an end by efflux of time.

33. There is also no quarrel with the circumstance that, the ex post facto extension granted by the competent authority, retrospectively, was granted only on 14-12-2018. It is, therefore, prima facie axiomatic that, when the applicants were arrested by SFIO on 10-12-2018, the period specified in the said order dated 20-6-2018 for the submission of the report, post investigation, had already elapsed. It is further relevant to state that, at that juncture SFIO had neither applied nor obtained the ex post facto extension of the period specified in the said order dated 20-6-2018.

34. It is, in these circumstances, read in conjunction with the norms set out by SFIO itself, warranting investigation to be completed within the time-frame, stipulated by the Central Government, that we are of the considered view that the order of arrest suffers from the vice of lack of jurisdiction, unlawful and illegal.

35. A statutory body must be strictly held to the standards by which it professes its conduct to be judged.

36. Illegal detention of the applicants, in our considered view, cannot be sanctified by the subsequent remand orders, passed by the Magistrate concerned. The right of the applicants to insist upon the strict and scrupulous discharge of their duty by SFIO and observe the forms and rules of law, is absolute. The arrest of the applicants on 10-12-2018 in the light of the circumstances antecedent and attendant was an absolute illegality and patently suffers from the vice of lack of legal sanction and jurisdiction.

37. This Court in a petition for habeas corpus cannot justify the continued illegal detention of the applicants merely on account of the circumstance that the Magistrate concerned has rendered remand orders. The further custody of the applicants would, in our considered view, violate the principles of personal liberty, enshrined in Article 21 of the Constitution of India. The continued detention of the applicants does not admit of lawful sanction.

38. Even otherwise, the remand order dated 14-12-2018, insofar as it observes as follows:

'6. ... And in this case all, after investigations when the team submitted report to competent authority, which is the Director of SFIO, he permitted the team to arrest the accused and go for further investigations, which in the given facts and circumstances amount to extension.'

is wrong, incorrect and patently contrary to law and the official record.

39. This is quite apart from the circumstance that the applicants were arrested at SFIO office at New Delhi on 10-

12-2018, thereby rendering the remand orders passed by the Magistrate concerned in Gurugram, wholly without jurisdiction."

18. Similar questions arose for consideration in Naranjan Singh Nathawan v. State of Punjab [Naranjan Singh Nathawan v. State of Punjab, (1952) 1 SCC 118 : 1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] , Ram Narayan Singh v. State of Delhi [Ram Narayan Singh v. State of Delhi, (1953) 1 SCC 389 : 1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] , A.K. Gopalan v. Union of India [A.K. Gopalan v. Union of India, (1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] , Pranab Chatterjee v. State of Bihar [Pranab Chatterjee v. State of Bihar, (1970) 3 SCC 926 : 1971 SCC (Cri) 170] , Talib Hussain v. State of J&K [Talib Hussain v. State of J&K, (1971) 3 SCC 118] , B. Ramachandra Rao v. State of Orissa [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] . These decisions were considered in Kanu Sanyal v. Distt. Magistrate, Darjeeling [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , 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 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. Union of India [A.K. Gopalan v. Union of India, (1966) 2 SCR 427

: AIR 1966 SC 816 : 1966 Cri LJ 602] : (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 [Naranjan Singh Nathawan v. State of Punjab, (1952) 1 SCC 118 : 1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] and Ram Narayan Singh v. State of Delhi [Ram Narayan Singh v. State of Delhi, (1953) 1 SCC 389 : 1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] a slightly different view was expressed and that view was reiterated by this Court in B. Ramachandra Rao v. State of Orissa [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] where it was said (at p. 259, para 7):

(Underline Supplied)

'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 J&K [Talib Hussain v. State of J&K, (1971) 3 SCC 118] . 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 application for habeas corpus would be 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 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 [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] , "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 6-1-1973 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 [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] .) 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."

(Underline Supplied)

23. The first order dated 20-6-2018 itself indicated that the registered office of the principal company was in Gurugram, Haryana. Section 435 of the 2013 Act contemplates establishment of Special Courts for the purpose of providing speedy trial of offences under the said Act. Section 436 then provides that"offences specified under sub-section (1) of Section 435 shall be triable only by Special Court established or designated for the area in which the registered office of the Company, in relation to which the offence is committed ..."

(emphasis supplied)

Soon after the arrest, the accused were produced before the Judicial Magistrate, Gurugram on 11-12-2018, who remanded them to custody till 14-12-2018 and directed that they be produced before the Special Court, Gurugram on 14-12-2018. Accordingly, the accused were produced before the Special Court, Gurugram, which thereafter remanded them to custody first till 18-12-2018 and later till 21-12-2018. The Special Court, Gurugram would be competent to deal with the matter in terms of Section 436. The learned counsel for the writ petitioners, however, contend that since the accused were arrested in Delhi, were kept in custody in Delhi, and SFIO office being in Delhi, the High Court of Delhi was

competent to entertain and consider the writ petitions so preferred by the writ petitioners. Reliance was placed by them on the decision of this Court in Navinchandra N. Majithia v. State of Maharashtra.

24. In Navinchandra N. Majithia [Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640 : 2001 SCC (Cri) 215] , all the transactions between the parties had occurred within the jurisdiction of the High Court of Bombay. However, a complaint was filed against the petitioner at Shillong pursuant to which investigation was taken up by Shillong Police. It was submitted that such investigation was wholly incorrect and unjustified and a writ petition was preferred in the High Court of Bombay seeking quashing of the complaint so filed at Shillong or in the alternative to transfer the investigation to an appropriate investigating agency of Mumbai Police. Para 29 of the decision shows that in the peculiar fact situation of the case, this Court directed that further investigation in relation to the complaints filed at Shillong be conducted by Mumbai Police. Thomas, J. who agreed with the leading judgment authored by D.P. Mohapatra, J. observed in his concurrent opinion as under: (SCC p. 655, paras 44 and 45)

"44. In the present case, a large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong. If the averments in the writ petition are correct then the major portion of the facts which led to the registering of the FIR have taken place at Bombay. It is unnecessary to repeat those events over again as Mohapatra, J. has adverted to them with precision and the needed details.

45. In the aforesaid situation it is almost impossible to hold that not even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the petitioner. Even the very fact that a major portion of the investigation of the case under the FIR has to be conducted at Bombay itself, shows that the cause of action cannot escape from the territorial limits of the Bombay High Court."

35. These appeals, therefore, deserve to be allowed and the order under appeal must be set aside. Since the writ petitioners were directed to be released on bail, by way of interim relief, we direct as under:

35.1. The order dated 20-12-2018 passed by the High Court in Rahul Modi v. Union of India [Rahul Modi v. Union of India, 2018 SCC OnLine Del 13119] is set aside.

35.2. The writ petitioners, namely, Rahul Modi and Mukesh Modi are directed to surrender and remain present on 1-4-2019 at 11.00 a.m. before the Special Court, Gurugram. The Special Court may then consider the matter on merits and whether the accused are required to be remanded to custody.

35.3. In case the said writ petitioners do not appear on the day and at the time stipulated above, the personal bonds executed by them and the surety bonds shall stand forfeited and the appellant shall be at liberty to arrest the said writ petitioners.

35.4. The writ petitioners shall file affidavits of compliance in this Court by 8-4-2019."

10. Mrs. Nivedita Nirvikar, learned senior counsel for the petitioner submitted that in the light of aforementioned judicial pronouncements even in the case of remand Cr.W.J.C. for habeas corpus is maintainable for illegal detention for more than 24 hours. Petitioner is entitled for release as well as quashing of Haraiya P.S. Case No. 21/24.

11. *Per contra*, Mr. Prabhu Narayan Sharma, learned counsel for the respondents-State submitted that the present Cr.W.J.C. No. 2417 of 2024 for habeas corpus is not maintainable. It is submitted that no doubt *prima facie* there may be a delay in producing the petitioner before the jurisdictional Magistrate beyond 24 hours. However, he was remanded on 26.10.2024 by the jurisdictional Magistrate in Haraiya P.S. Case No. 21/24. It is further submitted that once the remand has been ordered by the jurisdictional Magistrate, criterias of *habeas corpus* would disappear, therefore, the petitioner has a remedy of seeking bail or in the alternative he has to assail the FIR in appropriate proceedings either filing bail petition under Section 439 Cr.P.C, 1973 corresponding Section 483, BNSS, 2023 or he has a remedy of filing petition under Section 482 C.P.C., 1973 corresponding Section 528 of BNSS, 2023 or filing a writ petition under Article 226 of the Constitution. Scope of *habeas corpus* is limited to the

extent that if a person is illegally detained by any officials or any independent person/s in such circumstances only for production of such person who has been illegally detained or not. Therefore, there is no scope of quashing of Haraiya P.S. Case No. 21/24 and direction for release of the petitioner is not warranted in the present Cr.W.J.C. for habeas corpus.

12. Learned counsel for the respondents-State relied on Full Bench decision of this Court in the case of **Shikha Kumari vs. State of Bihar** reported in **2020(2) PLJR 15**, Para 25 and 68 reads as under:-

> *"25. While referring the case to Hon'ble the Chief Justice to constitute a larger Bench, the Division Bench framed the following issues to be decided by larger Bench:-*
>
> *"(1) Whether, in a petition for issuance of writ of habeas corpus, an order passed by a Magistrate could be assailed and set-aside;*
>
> *(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;*
>
> *(3) Whether an improper order could be termed/viewed as an illegal detention;*
>
> *(4) Whether under Section 483 Cr.P.C., a Division Bench of this Court, exercising constitutional powers of issuing prerogative writs, especially writ of habeas*

corpus, could issue general directions to all the Magistrates/Chief Judicial Magistrates of the State of Bihar for releasing such women and permitting them to go along with the people of their choice, who are minors and are brought before them (Magistrates) with the charge of their having married somebody of their own volition."

(Underline Supplied)

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 or a court of 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."*

13. Para 25 relates to issues framed and Para 68 is the finding. The Full Bench decision is almost identical to that of the present case. In para 68, it is held that judicial remand by the Magistrate cannot be assailed and set aside in habeas corpus petition. Even though if the judicial remand is improper and even in such circumstances habeas corpus petition cannot be invoked.

14. Learned counsel for the respondents-State is relying on Supreme Court decision in the case of **Serious Fraud Investigation Office vs. Rahul Modi and Anr.** reported in **(2019) 5 SCC 266**, Para 20.1, 21 and 22 reads as under:-

> *"20.1. In Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013)*

1 SCC 314 : (2013) 1 SCC (Cri) 475] a Division Bench of this Court extensively considered earlier decisions in the point including cases referred to above. It also dealt with an issue whether habeas corpus petition could be entertained against an order of remand passed by a Judicial Magistrate. The observations of this Court in paras 20 to 24 and para 31 were as under: (SCC pp. 323-324 and 326)

"20. After so stating, the Bench in Kanu Sanyal case [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] opined that for adjudication in the said case, it was immaterial which of the three views was accepted as correct but eventually referred to para 7 in B. Ramachandra Rao [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] wherein the Court had expressed the view in the following manner: (SCC p. 259)

'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.'

Eventually, the Bench ruled thus: (Kanu Sanyal case [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , SCC p. 148, para 5)

'5. ... The production of the petitioner before the Special Judge, Visakhapatnam, could not, therefore, be said to be illegal and his subsequent detention in the Central Jail, Visakhapatnam, pursuant to the orders made by the Special Judge, Visakhapatnam, pending trial must be

held to be valid. This Court pointed out in B. Ramachandra Rao v. State of Orissa [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] (SCC p. 258, para 5) that a writ of habeas corpus cannot be granted

"5. ... where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal".'

21. The principle laid down in Kanu Sanyal [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , 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.

22. At this juncture, we may profitably refer to the Constitution Bench decision in Sanjay Dutt v. State [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] wherein it has been opined thus: (SCC p. 442, para 48)

'48. ... It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.'

23. Keeping in view the aforesaid concepts with regard to the writ of habeas corpus, especially

pertaining to an order passed by the learned Magistrate at the time of production of the accused, it is necessary to advert to the schematic postulates under the Code relating to remand. There are two provisions in the Code which provide for remand i.e. Sections 167 and 309. The Magistrate has the authority under Section 167(2) of the Code to direct for detention of the accused in such custody i.e. police or judicial, if he thinks that further detention is necessary.

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

***

31. Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of the order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order of the High Court regarding stay of investigation could only have a bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court [Manubhai Ratilal Patel v. State of Gujarat, 2012 SCC OnLine Guj 4541 : (2012) 117 AIC 810] as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order of remand cannot be regarded as untenable in law. It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramachandra Rao [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] and Kanu Sanyal [Kanu Sanyal v.

Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear-cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law."

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. The first question posed by the High Court, thus, stands answered. In the present case, as on the date when the matter was considered by the High Court and the order was passed by it, not only were there orders of remand passed by the Judicial Magistrate as well as the Special Court, Gurugram but there was also an order of extension passed by the Central Government on 14-12-2018. The legality, validity and correctness of the order or remand

could have been challenged by the original writ petitioners by filing appropriate proceedings. However, they did not raise such challenge before the competent appellate or revisional forum. The orders of remand passed by the Judicial Magistrate and the Special Court, Gurugram had dealt with merits of the matter and whether continued detention of the accused was justified or not. After going into the relevant issues on merits, the accused were remanded to further police custody. These orders were not put in challenge before the High Court. It was, therefore, not open to the High Court to entertain challenge with regard to correctness of those orders. The High Court, however, considered the matter from the standpoint whether the initial order of arrest itself was valid or not and found that such legality could not be sanctified by subsequent order of remand. Principally, the issue which was raised before the High Court was whether the arrest could be effected after period of investigation, as stipulated in the said order dated 20-6-2018 had come to an end. The supplementary issue was the effect of extension of time as granted on 14-12-2018. It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on 14-12-2018. Additionally, there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpus

> *petition, the High Court was not justified in entertaining the petition and passing the order.*
>
> *22. We must, however, deal with the submission advanced on behalf of the original writ petitioners that the relief as regards habeas corpus was a secondary prayer while the principal submissions were with regard to the first three prayers in the petition. It was submitted that with the expiry of period, the entire mandate came to an end and as such, there could be no arrest and that illegality in that behalf would continue regardless of whether there was a subsequent order of extension. In the submission of the learned counsel for the writ petitioner, such an extension could not cure the inherent defect and as such, the High Court was justified in entertaining the petition. We may deal with this issue after considering the second question posed by the High Court in the said para 15."*

15. Learned counsel for the respondents-State submitted that in the light of the above two decisions the cited decision on behalf of the petitioner are distinguishable. Ultimately, scope of habeas corpus is limited to the extent that if a person is illegally detained by the officials of the State or by any independent person/persons. If a person is involved in a criminal case and when it was registered and, thereafter, he has been remanded in such circumstances, concerned person has remedy of filing of bail

petition or quashing petition before the jurisdictional Court and not habeas corpus.

16. Heard learned counsels for the respective parties.

17. The allegations made by the petitioner is that he has a GST No. 10ASDPT5945Q1Z6 is stated to have been misutilized by some persons. In this regard, petitioner came to know that on 14.10.2024 and his uncle was making various correspondence to the different authorities like jurisdictional SP, Deputy Commissioner of Commercial Taxes and others. When things stood thus, Haraiya P.S. Case No. 21/24 was registered on 23.10.2024 for the offences under Section 318(4), 338, 336(3), 340(2), 61(2) of B.N.S. and Section 30(a), 41(1), 31, 33, 38 and 47 of Bihar Prohibition and Excise Act. Thereafter, petitioner and nineteen other co-accused persons were arrested for the alleged illegal transportation and distribution of 4000 litres of spirit like liquid material which was seized by the police authorities on 22.10.2024. Petitioner was arrested on 24.10.2024 at about 1.10 A.M. he should have been produced before the jurisdictional Magistrate within 24 hours on the other hand he was produced before the jurisdictional Judicial Magistrate on 26.10.2024 and he was remanded. In this backdrop, petitioner's grievance is that it is violation of Section 87 and 187 of BNSS, 2023 read with Article

22 of the Constitution. The present habeas corpus petition could have been examined if the petitioner had approached this Court before his remand to judicial custody by jurisdictional Magistrate. If an illegality committed by the police officials in not producing the petitioner before the jurisdictional Judicial Magistrate within 24 hours from the date and time of arrest. On the other hand in view of later development that he has been remanded to judicial custody on 26.10.2024 the petitioner cannot invoke habeas corpus petition. In this regard, learned senior counsel for the petitioner has relied on the aforementioned decisions (cited supra). Learned counsel for the respondents-State has resisted the aforementioned contention and submitted that the cited decisions on behalf of the petitioner is not assisting the petitioner to set aside Haraiya P.S. Case No. 21/24 and grant of release sought in the present petition.

18. At threshold, reading of the reliefs sought in the present petition and the fact that petitioner has been sent to judicial custody by remand on 26.10.2024 the petitioner cannot invoke habeas corpus petition.

19. On perusal of the pleadings, no doubt there may be violation of Section 87 and 187 and BNSS, 2023 read with Article 22 of the Constitution. On the other hand, it is a condition precedent that there must be an illegal detention or at least there

must be some substantiated grounds regarding suspicion. Non-production of petitioner before the jurisdictional Magistrate within 24 hours and, thereafter, if petitioner was illegally detained in that event there may be a scope of habeas corpus on the other hand pursuant to FIR registered on 23.08.2024 for various offences and further remand by the jurisdictional Magistrate on 26.10.2024 would suffice that habeas corpus petition cannot be entertained under Article 226 of the Constitution. Habeas corpus is a writ in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court know on what ground he has been confined and to set him free if there is no illegal jurisdiction for the imprisonment. The special nature of a *habeas corpus* petition is to produce the body or person, for that purpose it must be established that a person is in illegal detention as on the date of filing petition and on the date of hearing of the petition. This issue has been dealt by the Constitution Bench in the case of **Sanjay Dutt vs. State** reported in **(1994) 5 SCC 410**, Para 48 reads as under:-

> *"48. .....It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the the date of return of rule, the custody or detention is on the basis of a valid order"*

20. The aforementioned judicial pronouncements suffice to dismiss the present Cr.W.J.C. for habeas corpus. The cited decisions on behalf of the petitioner do not assist petitioner's case in the light of Full Bench decision of this Court in the case of **Shika Kumari** (cited supra). In Para 25, issues have been framed which quoted above. Issue Nos. 1, 2 and 3 are applicable to the case in hand read with Para 68 where the conclusion in respect of first three issues have been drawn. So also Constitution Bench has held in the case of **Sanjay Dutt** (cited supra). In fact, in the case of **Serious Fraud Investigation Office** (cited supra), Constitution Bench in the case of **Sanjay Dutt** (cited supra) has been extracted in para 22. Further, it is to be taken note of the principle laid down in **Kanu Sanyal vs. District Magistrate, Darjeeling and Ors.** reported in **(1973) 2 SCC 674** in which it is held that if any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the same has to be adjudged on its own merit.

21. Learned senior counsel for the petitioner relied on four judgments namely (i) **Manoj Gupta @ Manoj Kumar Gupta vs. State of U.P. and Anr.** decided on 28.03.2023 of the High Court of Judicature at Allahabad, (ii) **Smt. T. Ramadevi vs. The State of Telangana (Writ Petition No. 21912 of 2024)**

decided on 26.09.2024 of the High for the State of Telangana, (iii) **In the matter of detention of Sri Arbind Kumar, on the letter of his wife Smt. Rita Singh vs. The State of Bihar & Ors.** of the High Court of Judicature at Patna reported in **2005(1) PLJR 117** and (iv) **Serious Fraud Investigation Office vs. Rahul Modi and Anr.** of the Supreme Court reported in **(2019) 5 SCC 266**. The first three decisions are of the High Court and they are not assisting the petitioner's case in view of the fact that **Serious Fraud Investigation Office vs. Rahul Modi and Anr.** reported in **(2019) 5 SCC 266** in which number of earlier decisions have been cited which are not assisting the petitioner. On the other hand some of the observations of the earlier judgments including Constitution Bench judgment supports the case of respondents. Therefore, the aforesaid four citations on behalf of the petitioner are not applicable to the facts of the present case. On the other hand, **Serious Fraud Investigation Office** (cited supra) read with Full Bench decision of the Patna High Court in the case of **In the matter of detention of Sri Arbind Kumar, on the letter of his wife Smt. Rita Singh** (cited supra) is against the petitioner insofar as maintainability of the *habeas corpus*.

22. In the light of above analysis on facts and legal issues the petitioner has not made out a case to invoke *habeas*

corpus petition. The writ is a prerogative one obtainable by its own procedure. In our country, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Be that as it may, scope of *habeas corpus* is limited to the extent securing production of a person who has been illegally detained at the initial stage like in the present case non-production of petitioner before the jurisdictional Magistrate within 24 hours. Thereafter, he was remanded to judicial custody, therefore, cause of action is in respect of judicial remand. Accordingly, petitioner has not made out a case to initiate *habeas corpus* proceedings. Dismissal of the present Habeas Corpus Petition would not be a hurdle to invoke other remedies.

23. Accordingly, the present Cr.W.J.C. 2417 of 2024 stands dismissed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Vikash/-

AFR/NAFR	
CAV DATE	27.11.2024
Uploading Date	
Transmission Date	