

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.1435 of 2022**

Arising Out of PS. Case No.-49 Year-2022 Thana- NARDIGANJ District- Nawada

Lallan Chouhan Son of Badri Chouhan ,Resident of Village - Charna Chatar,  
P.S.- Nardiganj, District - Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Nawada.
2. Home Secretary, Government of Bihar, Patna.
3. Director General of Police, Bihar, Patna.
4. Superintendent of Police, Nawada.
5. Sub-Divisional Police Officer, Sadar Nawada.
6. Station House Officer, Nardiganj, Nawada.
7. Rambhajan Singh, Sub-Inspector of Police, Nardiganj, Nawada.
8. Sunil Kumar Singh, Assistant Sub-Inspector of Police Nardiganj, Nawada.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Indradeo Prasad, Advocate  
For the Respondent/s : Mr.Lalit Kishore (A.G.)

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

2      13-12-2022                      The petitioner in the present habeas corpus writ  
application prays for the following reliefs:-

- “(i) नारदीगंज थाना काण्ड संख्या— 49/2022/P.T.N. - 705/2022, धारा—8(b) (c), 20(9)(b) N.D.P.S. एक्ट 1985 में पारित माननीय सत्र न्यायधीश नवादा का आदेश दिनांक 04.11.2022 को अवैद्य घोषित किया जाय, जिसके द्वारा आवेदक की गिरफ्तारी को दिनांक— 17.11.2022 तक आगे बढ़ायी गई है।
- (ii) तदनुसार, नारदीगंज थाना काण्ड संख्या 49/2022



P.T.N.- 705/2022 में आवेदक को कारागार के निरोध से स्वतंत्र करने का आदेश पारित किया जाय।

- (iii) कोई अन्य आदेश/निदेश/रिट जो आवेदक के मौलिक अधिकारों का प्रत्यावर्तित करने के लिए आवश्यक हो, उसे पारित किया जाय।

From perusal of the aforesaid reliefs sought for in the present habeas corpus writ application, it appears that the petitioner intends to challenge the order dated 04.11.2022 passed by the Court of Sessions Judge, Nawada in connection with Nardiganj P.S. Case No.49 of 2022 and declare the same to be illegal, by virtue of which the petitioner has been remanded to judicial custody till 17.11.2022. The petitioner, in consequence of the aforesaid relief, further prays for his release from the undergoing detention in connection with the present case.

The facts leading to filing of the present application is that a written report was filed by A.S.I. Mr. Sunil Kumar Singh, who happens to be the informant of the present case stating therein that on 04.03.2022 around 10 in the morning he received a secret information that six named accused persons including this petitioner are indulged in farming and trade of *ganja*. After informing his senior officials, the informant went to the channa-chatar village and saw that five to six persons were running trying to escape from their respective houses. The



informant along with other police officials tried to apprehend them. However, by taking advantage of the dense population, the accused persons fled away.

The local residents of the village and the local chowkidar disclosed the name and other details of the persons, who were seen to be fleeing away. It is relevant to point out here that the name of the petitioner was also revealed by the local residents and chowkidar of the village. When the police requested the people who gathered at the spot, for becoming independent witnesses, nobody came forward and, as such, two chowkidars, who were part of the raiding party, were made witnesses. Thereafter the police searched the houses of the accused persons. During the search, two big plants of ganja were recovered from the land adjacent to the wall situated to the northern side of the house of the present petitioner. After uprooting the said ganja plants, its weight was found to be 7 kgs. From the property of other accused persons also, ganja plants were recovered. Consequently, Nardiganj P.S. case No.49/2022 was registered against the petitioner and five other accused persons under Sections 8(b)(c), 20(a)(b) of the N.D.P.S. Act.

In connection with the aforesaid P.S. case, the petitioner



got arrested on 03.11.2022 from his house. From perusal of Annexure 3, it appears that a request was made to the District & Sessions Judge, Nawada by the Sub Inspector of Police, Nardiganj, P.S., Nawada to send the petitioner into judicial custody for a fortnight.

The petitioner was sent into judicial custody till 17.11.2022 by order dated 04.11.2022 passed by the Sessions Judge, Nawada, which is under challenge in the present habeas corpus writ application.

Learned counsel for the petitioner submits that the petitioner is in illegal custody, as the order by virtue of which he has been sent into judicial custody, has been passed in a mechanical manner and suffers from the vice of non-application of judicial mind. It has been argued that no reason has been assigned for sending the petitioner into judicial custody and, therefore, the order under challenge is nullity in the eye of law. Learned counsel for the petitioner has drawn our attention to the judgment rendered by the Hon'ble Supreme Court in the case of ***Gautam Navlakha vs. National Investigation Agency*** reported in ***2021 SCC OnLine SC 382***. Learned counsel has argued that in view of the law laid down by the Hon'ble Supreme Court in ***Gautam Navlakha (supra)*** the writ of habeas corpus is



maintainable when the corpus is in custody by virtue of a judicial order. He has further relied upon the order passed by a Co-ordinate Bench of this Court in the case of ***Kundan Kumar vs. State of Bihar and others*** reported in ***2020(1) BLJ 648*** in support of his aforesaid contention.

Learned counsel for the State has submitted that the present writ application is not maintainable in light of the law settled by Full Bench of Patna High Court in the case of ***Shikha Kumari vs. The State of Bihar through Principal Secretary, Home (Police) Deptt. & Ors*** reported in ***2020(2) PLJR 15***. It has further been argued that an order of remand cannot be challenged in the writ of habeas corpus. The petitioner has been sent into judicial custody by an order passed by an appropriate court having competent jurisdiction. Therefore, the present writ application is not maintainable. Additionally it has been argued that the petitioner is not remediless and the legality of the order under challenge can be tested by taking recourse to appropriate remedy as may be permissible in law.

Before delving into the merit of the present case, it would be appropriate to consider the issue of maintainability upon which lies the soul of the present habeas corpus writ application. The matter with regard to maintainability of writ of habeas



corpus in case of detention by virtue of judicial order is no longer *res integra* and has been settled by the Full Bench decision of this Court in ***Shikha Kumari (supra)*** wherein one of the issues formulated by the court was whether, in a petition for issuance of writ of habeas corpus, an order of remand passed by a competent court could be assailed and set-aside. The Full Bench has answered this question in negative and has observed that no writ of habeas corpus lies against an order of remand made by a competent court of jurisdiction. The reliance of learned counsel on the order passed in ***Kundan Kumar (supra)*** is misconceived as subsequent to the said order a Full Bench decision on the same issue has been rendered and hence the same will be binding upon us.

Further the Hon'ble Supreme Court in ***Gautam Navlakha (supra)*** has expounded the law in relation to maintainability of habeas corpus petition by referring to its earlier settled decision by observing that :

*“WHETHER A WRIT OF HABEAS CORPUS LIES AGAINST AN ORDER OF REMAND UNDER SECTION (167) OF CODE OF CRIMINAL PROCEDURE*

*61. A Habeas Corpus petition is one seeking redress in the case of illegal detention. It is intended to be a most expeditious remedy as liberty is at stake. Whether a Habeas Corpus petition lies when a person is remanded to judicial custody or police custody is not res*



*integra. We may notice only two judgments of this Court. In Manubhai Ratilal Patel v. State of Gujarat and Ors. (2013) 1 SCC 314. We may notice paragraph 24.*

*(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.*

However, the Court also held as follows:

*31. 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 (1972) 3 SCC 256 and Kanu Sanyal (1974) 4 SCC 141 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.*

62. *One of us (U.U. Lalit, J.) speaking for a Bench of two, followed the aforesaid line of thought in the decision of Serious Fraud Investigation Office and Ors. v. Rahul Modi and Ors. (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.*

*We may also notice paragraph 19 from the same judgment.*

*(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 proceedings".*

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 situations, a Habeas Corpus petition will not lie.”

(emphasis supplied)

Therefore, in light of the aforesaid decision of the Hon'ble Supreme Court, the writ of habeas corpus will lie only when the order of remand is absolutely illegal suffers from the lack of jurisdiction or has been passed in an absolutely mechanical manner. Now, in order to test the legality of the order of remand, under challenge, on the touchstone of the law laid down in ***Gautam Navlakha (supra)***, we deem it appropriate to reproduce the order dated 04.11.2022 passed by the Court of Sessions Judge, Nawada.

“04.11.22 अनुसंधानकर्ता अग्रसारण प्रतिवेदन गिरफ्तारी ज्ञापांक चेक लिस्ट, चिकित्सकों एवं साक्ष्य दैनकी की छायाप्रति के साथ गिरफ्तार प्राथमिकी अभियुक्त ललन चौहान उम्र 42 वर्ष पे० बट्टी चौहान सा० चनना चातर थाना नारदीगंज जिला नवादा एवं प्राथमिकी अभियुक्त ललन चौहान उम्र 40 वर्ष पे० यदु चौहान सा० चनना चातर थाना नारदीगंज जिला नवादा को मार्गरक्षी दल के साथ न्यायालय में प्रस्तुत करते है। अभियुक्तगण मार्गरक्षी दल के विरुद्ध किसी प्रकार के दुर्यव्यवहार की उपयुक्त नहीं करते है। तथा अपना अपना अधिवक्ता स्वयं रखने की बात कहते है। उनका यह भी कथन है कि उनकी गिरफ्तारी की सूचना उनके परिवार को है। अभिलेख एवं काण्ड दैनकी के अवलोकनोपरांत उक्त अभियुक्तगण को न्यायिक



अभिरक्षा में भेजने का प्रयाप्त आधार उपलब्ध है। अतः उक्त अभियुक्तगण को रिमांड अधिवक्ता की उपस्थिति में दिनांक 17.11.22 तक के लिए न्यायिक अभिरक्षा में मंडल कारा नवादा भेजा जाता है। अभियुक्त ललन चौहान पे० बट्टी चौहान की ओर से एक आवेदन दाखिल किया गया इसे अभिलेख पर रखें तथा सम्प्रति करके प्रस्तुत करें ।

ह०/— अस्पष्ट  
सत्र न्या० ”

From perusal of the order reproduced hereinabove, it is evident that while passing the order of remand, the court below has applied its judicial mind by taking into consideration the records of the case as well as the case diary and has arrived at the finding that there is sufficient reason for sending the accused persons including the petitioner into judicial custody. It is evident from the order of remand that the court below after being satisfied has issued the order of remand and, as such, the order is not mechanical and does not suffer from vice of illegality. Hence, in our considered opinion, in view of the aforesaid discussion the present habeas corpus writ application is not maintainable.

However, if the petitioner is aggrieved on account of the said order of remand being improper in the eye of law, the petitioner is granted liberty to change the subject matter of the present writ application.

In case the petitioner makes necessary correction in the



subject matter of the present writ application, Office is directed to list this case before the appropriate Bench as per roster after seeking necessary permission of Hon'ble the Chief Justice.

**(Sudhir Singh, J)**

**( Shailendra Singh, J)**

Narendra/A.F.R.

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