

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (Cril.) No. 30 of 2023

Md. Abdul Zabbar, aged about 64 years, S/o (L) Haji Mufijuddin, a resident of Lilong Haoreibi Mayai Leikai, P.O. & P.S. Lilong, Thoubal District, Manipur

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Special Secretary (Home), Govt. of Manipur, Old Secretariat Building, Babupara, Imphal West District, Government of Manipur – 795001.
2. The Officer-In-Charge, Lilong Police Station, Lilong, P.O. & P.S. Lilong, Thoubal District, Manipur-795130.

.....Respondent/s

B E F O R E

**HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Petitioner	::	Mr. N. Jotendro, Sr. Adv. & Mr. Jankinath Sharma, Adv.
For the Respondents	::	Mr. RK. Umakanta, PP
Date of hearing	::	01.03.2023
Date of Judgment and Order	::	02.03.2023

JUDGMENT & ORDER **(CAV)**

A. Guneshwar Sharma, (J)

[1] The petitioner has filed the present writ petition under Article 226 of the Constitution of India for issuing a writ in the nature of Habeas Corpus. The petitioner was arrested on 31.01.2023 in connected with FIR No. 75(12)2022 LIL-PS U/S- 420/34 IPC. Vide order dated 01.02.2023, the Ld. Judicial Magistrate First Class, Thoubal, the accused person was remanded into police custody only for 3 days', i.e. 03.02.2023. On 03.02.2023, the accused was remanded till 06.02.2023. After hearing the learned PP for the State and the learned counsel for the petitioner, on 06.02.2023 the Ld. JMFC, Thoubal, treated the remand objection filed under Section 437 Cr.P.C. treated as bail application and called for objection from the concerned I.O. and remanded the petitioner to judicial custody for 15 days on the ground that the investigation was at initial stage and the document with respect to the land in dispute has been sent to the concerned Officer for verification.

[2] In the order dated 06.02.2023, the learned JMFC Thoubal recorded the statement of the learned counsel for the petitioner herein that the authorities have defied the guidelines for arrest as given in the case of **Arnesh Kumar vs. State of Bihar reported in (2014) 8 SCC 274** and provision Section 41 CrPC has not been complied with and the accused is entitled to be released on bail.

[3] The State respondents have filed counter affidavit raising the question of maintainability of a writ of Habeas Corpus challenging the order of remand passed by the Magistrate under Cr.PC. It is stated that the present writ petition seeking a writ of Habeas Corpus is not maintainable and prayed for its dismissal being devoid of merit.

[4] The petitioner filed rejoinder affidavit to the counter affidavit filed by the State respondents. It is stated that the Ld. JMFC, Thoubal while passing the impugned orders dated 01.02.2023, 03.02.2023 and 06.02.2023 without satisfying the requirements of Section 41 Cr.P.C. and as per the judgment of **Satendra Kumar Antil vs. CBI** reported in (2022) 10 SCC 51 where it is stated that the petitioner is entitled to bail.

[5] Mr. N. Jotendro, learned senior counsel for the petitioner, submits that the learned JMFC, Thoubal has not considered the law laid down by the Hon'ble Supreme Court in the case of **Arnesh Kumar vs. State of Bihar** (supra) and **Satendra Kumar Antil vs. CBI** (supra). It is stated that in the arrest memo in the column for reason for arrest, the reason of arrest is not given and simply in connection with FIR No. 75(12)2022 LIL PS U/S 420/34 IPC is cleared. He submits that the arrest of the petitioner is in clear violation of the direction passed by the Hon'ble Apex Court in the case of **Arnesh Kumar vs. State of Bihar** (supra) and **Satendra Kumar Antil vs. CBI** (supra). He further submits that check list which is mandated by the Hon'ble Supreme Court in the case of **Arnesh Kumar vs. State of Bihar** (supra) has also not furnished and as such, the petitioner is entitled to be released on bail for violation of the mandatory direction issued by the Hon'ble Supreme court.

Regarding the non-recording of reason for arrest, Mr. N. Jotendro, learned senior counsel for the petitioner, refers to the order dated 09.01.2023 passed by the Division Bench of Bombay High Court in Criminal Writ Petition (Stamp) No. 2294 of 2022 where proper non-mentioning of ground of arrest in the arrest memo was in violation of the direction of the Hon'ble Supreme Court in the case of **Arnesh Kumar vs. State of Bihar** (supra) and **Satendra Kumar Antil vs. CBI** (supra).

The learned senior counsel also draws the attention of this Court to the notification dated 19.10.2022 issued by the High Court of Manipur informing all criminal courts to comply with the directions of the

Hon'ble Supreme Court in the case of **Satendra Kumar Antil vs. CBI** (supra). Mr. N. Jotendro, learned senior counsel submits that since there is clear violation of mandatory directions issued by the Hon'ble Supreme Court in the above cited case, the accused is entitled to bail and the impugned order be set aside and the petitioner be released.

[6] Mr. RK. Umakanta, learned PP for the State, raises the maintainability of the present writ petition invoking the writ of Habeas Corpus in a case where the petitioner was detained by virtue of the order passed by the Ld. JMFC in a criminal proceedings. He submits that the custody of the petitioner cannot be construed as illegal detention so as to maintain a writ of Habeas Corpus. He relies on the judgment of the Hon'ble Supreme Court in the Case of **State of Maharashtra v. Tasneem Rizwan Siddiquee** reported in **(2018) 9 SCC 745**, at para 10 where it was held that a writ of Habeas Corpus does not lie challenging an order of remand by the Magistrate. The relevant para 10 is reproduced herein below:

“10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail and Manubhai Ratilal Patel v. State of Gujarat. It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. 1-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force,

granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued."

He further relies on the judgment of the Hon'ble Supreme Court in the case of **Saurabh Kumar v. Jailor, Koneila Jail** reported in **(2014) 13 SCC 436**, at para 13, it was held that judicial custody by virtue of an order passed by a judicial magistrate cannot be termed as illegal detention. The relevant para 13 is reproduced herein below:

"13. It is clear from the said narration of facts that the petitioner is in judicial custody by virtue of an order passed by the Judicial Magistrate. The same is further ensured from the original record which this Court has, by order dated 09.04.2014, called for from the Court of the Additional Chief Judicial Magistrate, Dalsingsarai, District Samastipur, Bihar. Hence, the contention of the learned counsel for the petitioner that there was illegal detention without any case is incorrect. Therefore, the relief sought for by the petitioner cannot be granted. Even though there are several other issues raised in the writ petition, in view of the facts narrated above, there is no need for us to go into those issues. However, the petitioner is at liberty to make an application for his release in Criminal Case No. 129 of 2013 pending before the Court of the learned Additional Chief Judicial Magistrate, Dalsingsarai."

Mr. RK. Umakanta, learned PP, further submits that he relies upon another judgment dated 20.03.2020 in Criminal Appeal No. 102 of 2011 of the Hon'ble Supreme court in the case of **M. Subramaniam & Anr. Vs. S. Janaki & Anr.** reported in **(2020) 16 SCC 728**, it was held that if remedy is provided under a statute, a person cannot invoke a writ jurisdiction to challenge the order. He further submits that the petitioner could have raised these grounds before the remand Court in the pending bail application and he prays for dismissal of the present appeal.

[7] We have considered the rival submissions and perused the judgments cited at the bar. We find force in the submission of Mr. RK. Umakanta, learned PP, where a person is taken into custody by an order of

Magistrate and such order cannot be challenged by a writ of Habeas Corpus as the detention cannot be termed as illegal. [kindly see **State of Maharashtra v. Tasneem Rizwan Siddiquee** reported in (2018) 9 SCC 745 and **Saurabh Kumar v. Jailor, Koneila Jail** reported in (2014) 13 SCC 436]. Even if we accept for the sake of arguments the submission made by Mr. N. Jotendro, learned senior counsel for the petitioner that there was a violation of the provision of Section 41A of Cr.P.C. and the directions issued by the Hon'ble Supreme court in the case of **Arnesh Kumar vs. State of Bihar** (supra) and **Satendra Kumar Antil vs. CBI** (supra) have been violated, the same can be raised before the remand court in the bail application and if such allegations are true by a necessary corollary, the petitioner would be entitled in bail as held in para 25 of **Satendra Kumar Antil vs. CBI** (supra) case.

[8] Accordingly, we disposed of the present writ petition as not maintainable in the present form.

[9] However, the petitioner is free to raise all the grounds taken in the present writ petition before the Ld. Trial Court in the pending bail application. It is made clear that this Court does not express any opinion on the merit of the case and nothing stated herein shall be binding while deciding the bail application of the petitioner.

[10] Send a copy of this order to the Court of Ld. JMFC, Thoubal for information and to the learned counsel for the parties.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

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KH. JOSHUA
MARING

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