

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 755 of 2023

Petitioner :- Shamim Khan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Praveen Shrivastav, Ray Sahab Yadav

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Praveen Shrivastav, learned counsel for the petitioner and learned A.G.A. for the State.

2. This habeas corpus petition has been filed by the petitioner with following prayer--

(i) Issue a writ, order or direction in the nature of habeas corpus directing respondent no.02 to release the petitioner on default bail in case crime no. 506 of 2022 dated 26.12.2022, under Section 420, 386, 342, 308, 323, 504, 506 and 3(2)(V) of Sc/St Act 1989 at Police Station- Kotwali, District- Jhansi.

(ii) To issue writ order or direction in nature of mandamus commanding/directing respondent State to adequately compensate petitioner for such long illegal detention, loss of repute and character assassination being an Advocate as his professional career has also suffered.

(iii) To direct Ld. Special Court Jhansi to ensure that all evidences has been included and just & fair investigation has been done which is the remedy available with the any aggrieved person as per settled preposition of law.

3. The relevant facts are as below:

(i). An F.I.R. Crime No. 506 of 2022 was lodged against four named persons under sections 420, 386, 342, 308, 323, 504, 506 I.P.C. and section 3(2)(V) SC/ST Act, including the petitioner, Shamim Khan. He moved an application dated 03.01.2023 with the submissions in nutshell that he was not involved in the incident and that he was not present on the spot, a fact which can be verified from CCTV footage and that he has been falsely implicated in this case. Further it was submitted that as the I.O. has been seeking remand in the case, therefore it is requested that his remand be refused and that the evidence/points given by him be included in the investigation. The remand court heard the matter and dismissed the application the same day.

(ii) On 19.04.2023, the trial court passed another order in Criminal Misc. Case No. 187 of 2023 which is as below:

"Heard the counsel on previous date.

Perused the record/App.

Praying to include particular papers/documents during investigation. Buttressed his arguments with several judgements/order etc. In opinion of this court, inclusion of particular papers/documents during investigation would amount to direct the investigation in

specific direction and transgresses the very purpose of just monitoring as propounded through the judgements/orders/rulings.

Investigation is still continuing.

At this stage, inclusion would tantamount to interference.

Hence, present application is rejected and disposed accordingly."

(i) The accused moved yet another application titled as an application under 156 (3) Cr.P.C. with the prayer that papers/evidence given on his behalf may be considered in the investigation.

(ii) The learned trial court heard the matter and found that the charge sheet had already been submitted and dismissed the aforesaid application moved on behalf of accused.

(iii) The charge sheet against the petitioner-accused and a co-accused-Farid Ahmad was submitted on 14.02.2023. The investigation against rest of the two continued.

(iv) The accused-petitioner moved an application on 05.07.2023 for grant of default bail under section 167(2) Cr.P.C. The learned trial court rejected the application mainly observing that the charge sheet has been submitted within prescribed period of sixty days.

4. The main contentions of the petitioner are that the investigation cannot be deemed as complete as the same is continuing against rest of the accused persons; the investigation is not construable as having been completed because the evidence/his points have not been considered/included in investigation; because the investigation is incomplete therefore, he is not disentitled from grant of default bail; he has enough evidence to show that he has been falsely implicated but those evidences have not deliberately been considered by the I.O., hence, even if the charge sheet has been submitted, the investigation cannot be taken as having been completed.

Following cases have been referred to by the petitioner:

- **Enforcement Directorate, Government of India Vs. Kapil Wadhwan LAWS(SC)-2023-3-143**, Criminal Appeal Nos. 701-702 of 2020 decided on March 27,2023.
- **Central Bureau of Investigation Vs. Kapil Wadhwan and Anr. (CRL.M.C. 6544/2022, CRL.M.A. 25503/2022)** Delhi High Court judgment for default bail and meaning of piecemeal charge sheet.
- **Avinash Jain Vs. Central Bureau of Investigation (BAIL APPLN. 583/2023 and CRL.M. (BAIL) 274/2023**, Delhi High Court judgment for complete investigation and default Bail.
- **Luckose Zachariah @ Zak Appellants Nedumchira Luke and others Vs. Joseph Joseph and Others, 2022 LiveLaw (SC) 230 in Criminal Appeal No. 256 of 2022 (Arising out of SLP (Crl) No. 9556 of 2021)** decided on February 18, 2022.
- **Ritu Chhabaria Vs. Union of India, LAWS(SC)-2023-4-109, Writ Petition (Criminal) No. 60 of 2023**, decided on April 26, 2023

5. Heard and perused the papers on record-

(i) This is indisputable that the accused-petitioner was first remanded to custody on 03.01.2023. This is also indisputable that charge sheet against him was submitted on 14.02.2023. The investigation against rest of the

two continued. The petitioner has mainly relied upon a judgment given by the Delhi High Court. A single Judge of Delhi High Court in **Central Bureau of Investigation Vs. Kapil Wadhwan and Anr.** referred to a judgment of Supreme Court given in **State of Maharashtra Vs. Sharad Vinayak Dogre & Ors., AIR 1995 SC 231.** Explaining the meaning, the Court observed that the material on the basis of which charge sheet has been given, must be sufficient so as to enable the Magistrate to take cognizance. In my view, as far as facts and circumstances of instant case are concerned there is nothing to show, on the basis of which it can be said that an incomplete charge sheet has been submitted against the petitioner-accused or that the sufficient material was not collected/produced in support of charge sheet to enable the court to take cognizance. Admittedly, this is not a case where any permission for further investigation under section 173 (8) had been sought.

(ii). This is not a case where there is any requirement of calculations because indisputedly, the charge sheet was submitted a number of days before, the period of sixty days could have been said to have elapsed.

6. I went through all the contentions of the petitioner but do not find merit in any of them. Further, I find difficult to understand how the petitioner seeks to take advantage from any of the judgments referred by him.

7. It may be noted that on the question of maintainability, the contention of the petitioner is that because his detention after sixty days period is illegal therefore, the writ of habeas corpus lies. On the other hand, the learned A.G.A. submitted that the petitioner has ignored all norms and principles of law while moving this writ petition and that the writ of habeas corpus is not maintainable. Learned A.G.A. contends that there was no occasion at all to file a habeas corpus petition as the petitioner is in judicial custody by orders of the court. It is argued that in case, he deemed himself aggrieved by any of the orders remanding him to judicial custody or declining default bail, he should have challenged those orders but he has not challenged any of those orders.

8. In my opinion, where a detention has been ordered by a court of law even if it is erroneous, the remedy in habeas corpus petition does not lie. It may also be noted that admittedly, the petitioner's application for bail has been rejected by the court concerned and the same is now pending before the High Court. Admittedly, he has not challenged the order of rejection of default bail before any superior court. Further, he has not challenged the orders by which he was remanded to judicial custody before this Court. In this view of the matter, this habeas corpus petition is nothing but a veiled attempt to circumvent the orders of the court. The petition is wholly misconceived and is liable to be rejected.

9. In view of the above, the habeas corpus petition is hereby **dismissed**.

10. Let a copy of the order be notified to the court concerned.

Order Date :- 6.11.2023

Sumit Kumar