

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (HABEAS CORPUS) No. 26 OF 2015**

Nasibuddin S/o Salimuddin Musalman, aged about 42 years, through Son Sonu Malik S/o. Nasibuddin, aged about 22 years, Occupation labour work, R/o Ghosiyani Mohalla, Sarghana, Police Station Sarghana, District Raipur (Uttar Pradesh)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Home, Secretariat, Mahanadi Bhawan, New Raipur, Police Station Rakhi, Post Office Rakhi, District Raipur, Chhattisgarh, Pin 492002
2. Superintendent of Jail, Central Jail, Bilaspur, District Bilaspur, Chhattisgarh
3. High Court of Chhattisgarh, Bilaspur through Additional Registrar Judicial

---- Respondents

For Petitioner	:	Shri Y. C. Sharma, Advocate
For Respondents	:	Shri Prafull Bharat, Additional Advocate General with Shri Vivek Sharma, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice P. Sam Koshy

C A V Order**Per P. Sam Koshy, J.****29/04/2016**

1. The petitioner in the instant case is a history sheeter involved in many criminal cases in the State. After trial conducted against him in those cases, he has been found guilty in five different independent cases before different Courts in the State of Chhattisgarh ranging from life imprisonment to RI for a minimum period of six months.

2. The petitioner herein is seeking a writ of habeas corpus for his alleged illegal detention substantially on the ground that though he is a convict in five different crimes committed by him in the the State of Chhattisgarh, so far as the case in which he has been sentenced to undergo life imprisonment is concerned, he has already got bail by the

High Court and in the other four cases he has either completed the period of sentence or the sentence part has been reduced by the High Court in different appeals to the period already undergone. Therefore, any further detention of his in jail will amount to illegal detention. Hence, the petitioner deserves to be freed. However, the Respondent Authorities, it is alleged of overlooking the judgments of the Court and without any justification, explanation or rhyme or reason, have not released the Petitioner.

3. According to the counsel for the Petitioner, since the conviction and sentence in four out of five criminal cases has been either completed or reduced to the period already undergone and in the fifth case, the petitioner has already got bail, there is no need whatsoever for further detention of the petitioner. Thus, the detention part without any reason can be termed to be an illegal detention requiring intervention of this Court by issuance of a writ of habeas corpus.

4. Learned Additional Advocate General at the outset raised an objection as regards the maintainability of the writ petition pointing towards the reply filed by the State Government specifically mentioning the reasons for not releasing the Petitioner from jail. According to the Additional Advocate General, in a petition for habeas corpus, the person who has detained the detainee is called upon to explain and justify the detention. In other words, if there is an allegation of illegal detention, the person who has detained or the person under whose authority the person has been confined has to give an explanation to the Court; firstly, his authority and, secondly that the detention/ confinement is by virtue of an administrative decision or for that matter a judicial pronouncement. It was submitted on behalf of the State that

the detention of the Petitioner cannot be said to be illegal for the reason that the Petitioner in one case i.e. Sessions Trial No. 78 of 2007 out of five criminal cases in which he has been convicted has not completed the jail sentence of seven years. In the said case, he has been convicted for the offence under Sections 224, 328 and 120-B of IPC and the date of conviction is only 15.7.2011. Thereafter he had preferred an appeal i.e. Criminal Appeal No. 999 of 2015 against the said judgment of conviction which was also dismissed by the High Court on 2.9.2015.

5. Learned Counsel for the State submitted that the observations made by the High Court in Criminal Appeal No. 999 of 2015 so far as the Petitioner is concerned, the same would not come to his aid for the reason that the Petitioner would have to establish before this Court by showing that in Sessions Trial No. 78 of 2007 he, in fact, has undergone the entire period of seven years. Learned State Counsel submitted that the Petitioner cannot take advantage of his jail sentence that he has undergone in other criminal cases for computing the sentence part in Sessions Trial No. 78 of 2007 wherein he has been convicted on 15.7.2011.

6. For ready reference, the Petitioner's conviction and sentence that he has undergone in respect of all the five sessions cases in which he has been convicted as per the State is reproduced below:-

Sl. No	Case /Sessions Trial No.	Offence u/s	Date of conviction / judgment	Period of conviction	Fine	Court	Remarks
1.	235 / 2004	412 IPC	28.03. 2006	10 Years RI	5000 in default RI for 1 year	ASJ, Bhatapara	The Applicant is in jail since 27.01.04 to 30.09.12. After completion of RI on 30.09.12 he has been released and on

							account of order dated 29.08.08 in ST No. 189/04 the conviction of the petitioner for life has been started.
02.	189/2004	395 IPC	29.08.2008	Life Imprisonment	5000, in default further RI for six months	12th ASJ (FTC), Raipur	The petitioner is in jail since 01.10.12 to 21.05.15. That on account of bail on 21.05.2015 he was released and on account of other case he has been detained in jail.
03.	78 / 2007	224, 328/120B IPC	15.07.2011	7 Years RI	500, in default further RI for 2 months	4th ASJ, Durg	That as he was already in jail from the date of order i.e. 15.07.11 up to 30.09.12 in respect to ST No. 235/04 and therefore he is detained in jail for remaining period of conviction.
04.	----	294, 506, 323, 353 IPC	30.07.2012	6 months RI	---	Special Railway Magistrate, Bilaspur	The period of conviction is already completed and therefore he was released but is in detained in respect to ST No.189/04.
05.	166 / 2011	328, 120B, 224 IPC	26.06.2013	7 Years RI	1500, in default further RI for 6 months	7th ASJ, Raipur	That in Cr. A. No. 63/14 (supra) the appeal of the appellant has been partly allowed and on account of the sentence period already undergone he was released on bail if not required in any other case subject to deposit of fine and therefore the appellant was released but is further detained on account of ST No.78/07. It is pertinent to mention here that the petitioner has suppressed material fact before this Hon'ble Court in Cr. A. No.63/14 that some of the period in which he was undergone in jail since 14.05.11 to the date of judgment i.e. 4 years is in respect to the another case i.e. ST No.235/04 in which he was convicted for 10 years and was detained in jail for a period of 10 years vide judgment dated 28.03.06, which was completed on 30.09.12 whereas in the ST No.166/11 the petitioner has been convicted for a period of 7 years.

7. According to the State Counsel once when the State has been able to give reasons for the detention of the Petitioner and able to show before the Court that the detention of the Petitioner was because of an order of conviction and the Petitioner having not completed the sentence against the said conviction, it cannot under any circumstances be held to be an illegal detention or for that matter illegal confinement. According to the State, so far as the conviction of the Petitioner in Sessions Trial No. 78 of 2007 dated 15.7.2011 and the rejection of the Criminal Appeal No.999 of 2015 against the said conviction on 2.9.2015 is concerned, the Petitioner would have to file a petition under Section 482 of CrPC for clarification/modification of the order. So far as the period undergone is to be considered for setting off purpose or for taking advantage of the provisions of Section 428 is concerned, writ of habeas corpus is not the remedy for this. The Petitioner would have to file a substantive petition before this Court under Section 482 of CrPC or for that matter he would have to challenge the order passed by the High Court in Criminal Appeal No. 999 of 2015 decided on 2.9.2015 before the Supreme Court and get an appropriate relief. According to the State Counsel, the Petitioner's case does not fall in the category of Section 428 of CrPC. Rather, it is a case where the Petitioner would fall within the ambit of Sections 427 or 429 of CrPC and that in none of the judgments of conviction passed against the petitioner it has been ordered by the Sessions Court or the Appellate Court holding the sentences imposed upon the Petitioner in different Sessions Trial to run concurrently.

8. The State Counsel referring to AIR 1964 SC 1006 (State of Madhya Pradesh & Anr. Vs. Bhailal Bhai) and quoting paragraph 17

stressed upon the fact that in the given facts and circumstances of the case, the Petitioner's case seeking a relief for issuance of habeas corpus would not be maintainable and prayed for its rejection.

9. Having considered the rival contentions put forth by the either side and on perusal of the records would show that the Petitioner admittedly has a strong criminal background with five criminal cases wherein he has been convicted for the offences as can be seen from the chart depicted in the preceding paragraph. It is also an admitted fact that in the first case i.e. Sessions Trial No. 235 of 2004, he stands convicted and sentenced to undergo rigorous imprisonment for 10 years vide judgment dated 28.3.2006 and the Petitioner had preferred a criminal appeal i.e. Criminal Appeal No. 788 of 2008.

10. Considering the law of habeas corpus, it is a settled position of law that a writ petition seeking relief of habeas corpus is a petition which is generally filed for the production of a person who has been detained, confined or imprisoned illegally to be brought before the Court physically so that in the event if it is found that the imprisonment or confinement was illegal the detainee can be set free. Habeas corpus petition is meant to examine the reason of detention whether it is legal or illegal and if it is illegal detention, it can be ordered for releasing the detainee or can be ordered to set free. However, if the authorities can establish before the Court that the detention or confinement was legal, a relief of habeas corpus would not come into play. Habeas corpus can be invoked in order to determine whether the detention itself is valid. However, when application seeks to attack underlying administrative decision which was the cause of detention, then judicial review should be used rather than habeas corpus.

11. A writ of habeas corpus is usually sought for alleged violation of the liberty guaranteed under Article 21 of the Constitution of India wherein it is constitutionally mandated under Article 21 that no person shall be deprived to its liberty except in accordance with the procedure established in law. It is a nature of writ which is exercised for the safeguard of the individual liberty of a citizen. It is known to be exercised as an efficacious writ in a case of illegal confinement. While exercising the writ of habeas corpus, the Court has to ascertain and ensure from the custodian of the detainee to show the authority of the custodian to detain the person. If the custodian is acting in excess of its power and authority, a writ of habeas corpus can be issued invoking the powers of issuance of writ and the detainee can be ordered to be set free or released.

12. Habeas corpus is a writ of right and is not a writ of course. It is a power conferred upon the writ Court against any sort of detention that is forbidden by law. However, the Court exercising the writ jurisdiction particularly the writ of habeas corpus has its own limitations. In case if the detention is for a justified reason and has been after proper exercise of powers conferred upon the authority who has ordered to detain the person exercising a statutory right, the writ of habeas corpus may not be a useful remedy.

13. Habeas corpus cannot be used as a means of appeal but only of review. In other words, the Court is concerned only with the question whether order of detention is made within jurisdiction or not requiring quashment of the same. The writ Court while hearing a habeas corpus petition would not go into the question of whether the authority who has got the power to detain the person having issued an order of detention

has properly appreciated the facts of the case thereby assessing the order of detention on its merits. A writ of habeas corpus cannot be used as a means of an appeal or for that matter it cannot be exercised so as to provide an appropriate interpretation of a judicial pronouncement made by a competent Court of law for the purpose of issuance of a writ of habeas corpus. In the factual background of the present case, the Jailer or the person detaining the Petitioner has only to justify the detention. All that the Respondents have to submit before the Court is to explain, justify and show to the Court the authority of law by virtue of which the Petitioner has been detained in jail and in the instant case the State has submitted a reply giving details of the judgments of conviction and the order on the basis of which he is not being released from jail. A perusal of the record would show that in none of the judgments of conviction passed against the Petitioner has the Trial Court or for that matter the appellate Court directed for the period of imprisonment to run concurrently and therefore in our view, it would not be open for us to exercise the habeas corpus jurisdiction; firstly, to hold that all the sentences should run concurrently or secondly for ordering to release the Petitioner from jail where he has been detained on his being convicted in more than one criminal cases.

14. Relying upon its judgment reported in (1972) 3 SCC 256 (Col. Dr. B. Ramachandra Rao Vs. The State of Orissa and others) the Supreme Court in the case of Kanu Sanyal Vs. District Magistrate, Darjeeling & Ors. reported in (1974) 4 SCC 141 has held that a writ of habeas corpus cannot be granted “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.”

15. It has been made clear more than once that power to give relief under Article 226 is a discretionary power. It is also to be noted that the special remedy provided under Article 226 is not intended to supersede completely the modes of obtaining the relief under statutory provisions of law.

16. Recently the Supreme Court in the case of *Manubhai Ratilal Patel v. State of Gujarat and Others* reported in (2013) 1 SCC 314 has in very categorical terms in paragraph 31 held as under:

“....It is a well-accepted principle that a habeas corpus petition cannot 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. 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.”

17. Applying the said principle laid down by the Supreme Court in *Manubhai* (Supra) case to the facts of the present case it would clearly reveal that the State Govt. in its reply has come up specifically giving details each of the cases where the petitioner has been convicted and also given details of the period of sentence that he was supposed to undergo against each of the conviction. The State Govt. in very specific terms has come out holding that so far as the sentence of the petitioner in Sessions Trial No. 78 of 2007 is concerned, he has been convicted only on 15.07.2011 and the appeal against the said judgment of conviction has been rejected on 02.09.2015. Thus, in the opinion of

this Court, the present petition seeking for a writ of habeas corpus would not be sustainable and that the petitioner would have to approach the High Court in an appropriate proceeding seeking for clarification, modification and also the benefit of Section 428 of Cr.P.C. Writ of habeas corpus was devised for protection of an individual in case if he has been illegally restrained or put in confinement whereas in the instant case, State Govt. relies upon a judgment passed by the Court of law and as such, it cannot be said to be illegal detention or confinement.

18. In view of the foregoing reasons, the writ petition in its present form seeking a writ of habeas corpus being not sustainable in the given facts and circumstances of the case, the same deserves to be and is accordingly dismissed.

19. Needless to mention that our reluctance to entertain the petition seeking for a writ of habeas corpus should not come in the way of the petitioner while availing any other remedies available to him for redressal of his grievance under the provisions of Cr.P.C.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(P. Sam Koshy)
Judge