

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3070 OF 2018

Supriya Maheshwari

.... Petitioner

Vs.

Union of India & Anr.

.... Respondents

Ms Yogita V. Gogar i/by P.D. Jain & Co. for the Petitioner.

Ms Ameeta Kuttikrishnan for Respondent No.1.

Mr. J.P. Yagnik, APP, for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : AUGUST 06, 2018

P.C:

1. After hearing both sides, we do not see how a petition seeking a writ of habeas corpus can be entertained for the petitioner is really aggrieved by the action of a Court.

2. The Court of Additional Chief Metropolitan Magistrate, Esplanade, Mumbai passed an order on Remand Application No.4 of 2018. While passing the order on this remand application and directing that certain accused are

remanded to police custody, the petitioner says that though this application was vehemently opposed, that order has been passed. Then, the petitioner says that her husband and brother in-law were detained. They were produced before this very Court. They were shown to be arrested on 9-7-2018. When the petitioner's husband and brother in-law were picked up, neither they nor their Advocate was informed/communicated about the grounds of arrest. Though the learned Additional Chief Metropolitan Magistrate was informed about the arrest of the petitioner's husband and brother-in-law by their Advocate, the order of remand was passed mechanically and this flouts the order, direction and the guidelines laid down by the Hon'ble Supreme Court in the case of **D.K. Basu v. State of West Bengal**, reported in AIR 1997 SC 610 and **Lalita Kumari v. Government of U.P. & Others**, reported in AIR 2012 SC 1515. Thus, this order violates the fundamental rights guaranteed by the Constitution.

3. Upon perusal of such a petition, we do not see how the petitioner can seek a writ of habeas corpus for the detention

in custody is pursuant to a criminal case registered against both of them and naming them as accused. Thereafter, they were arrested and produced before the competent Criminal Court. If that Court was not competent, or if competent but its orders are not in accordance with law, then, the remedy is to challenge those orders and not seek a writ of habeas corpus. The distinction of the order of the Court resulting in detention in custody and the detention in custody without any compliance with law, has to be maintained. While in the former case, the order of detention in custody has to be challenged, in the latter one can allege that the detention is illegal as the law or the constitutional safeguards have not been complied with totally. In the circumstances, leaving open all the remedies in law to challenge the order of the Additional Chief Metropolitan Magistrate, this petition is disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)

**Suresh
Jagdish
Sajnawat**
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