

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.11853 of 2018

ORDER :

The petitioner-Sri P.Varavara Rao S/o.Kodanda Rama Rao, Aged about 78 years, R/o.Flat No.419, Hima Sai Heights, Road No.6, Jawahar Nagar, Gandhinagar, Hyderabad, is before the Court under Section 482 Cr.P.C. with the main prayer reads as follows:

“It is therefore prayed that this Hon’ble Court may be pleased to quash the Transit Remand Warrant issued by The Chief Metropolitan Magistrate of Hyderabad on 28.08.2018 in CrI.MP.No.6543/2018 vide proceedings in Dis.No. 1837/2018/CMM/HYD dated 28.8.2018 thereby seeking Petitioners to release from the subsequent proceedings of house arrest and custody of the 2nd Respondent Maharashtra Police with the active help of 1st Respondent Telangana Police and pass such other order or orders may deem fit and proper in the circumstances of the case.”

It is therefore prayed under the circumstances of the case. The respondents shown are the State of Telangana, represented by its Public Prosecutor, for the Station House Officer, Chikkadapalli Police Station, Hyderabad, as respondent No.1 and State of Maharashtra, representing the Station House Officer, Vishrambag Police Station, Pune, Maharashtra as respondent No.2.

2. The sum and substance of the impugment from the very prayer referred supra is to quash the Transit Remand Warrant of the learned Chief Metropolitan Magistrate, Hyderabad, dated 28.08.2018.

Undisputedly, from the material papers filed the order of the learned Magistrate is at Para 19, which reads as follows:

“The accused person Sri Varavara Rao, S/o.Pandalya, Aged 78 years, R/o.F.No.419, 4th Floor, Hima Sai Heights, Lane No.6, Jawahar Nagar, Kavadiguda, Hyderabad, who is involved in Crime No.04/2018 of Viushram Bagh Police Station, under section 153A, 505(1)(b), 117, 120B, 34 IPC & Sec.13, 16, 17, 18, 18(b), 20, 38, 39, 40 of UAPA Act, 1967 is produced before this court on 28-08-2018 at 04.00 PM through Escort party ACP Sri S.P. Pawar, ID Card No.P-6171, PC H.K. Badade and PC No.10182. The accused duly got examined by the Medical Officer and filed Medical Certificate. No ill treatment reported by the accused. The said Escort shall produce the accused before the Court of the learned The Hon’ble District Judge No.3, Sessions Court, Shivaji Nagar, Pune, Maharashtra State, before on 29-08-2018, 05.00 PM. The Escort party shall take medical care of the accused during journey.”

3. Undisputedly consequent to it, the petitioner/accused Sri P.Varavara Rao/A.16 was produced physically before the learned Special Judge, District Judge-03, Pune, by name, Sri K.D. Vadane, on 29.08.2018. The page 23 of the material papers is crystal clear in this regard, which reads:

“The accused No16-Mr. P. Varavara Rao, accused No.17-Mr.Varhnan Stanislos Gonsalves and accused No.18-Mr. Arun Thomas Parera are produced before me at 03 p.m.. They have no complaint of ill-treatment at the hands of Police.

Learned counsels for the accused persons have filed copy of order in WRIT PETITION (CRIMINAL) Diary No.32319/2018, and submitted that Hon’ble Apex Court has directed to keep the above accused under house arrest at their

own homes. Learned DGP submitted that Hon'ble Apex Court has passed impugned order for keeping the accused under house arrest at their own homes. Hence, Investigating officer is directed to follow the order of Hon'ble Apex Court in WRIT PETITION (CRIMINAL) Diary No.32319/2018.”

4. The learned counsel for the petitioner has drawn attention of the Court to Section 167 (1) and (2) Cr.P.C. and also the Division Bench expression of the Delhi High Court in W.P.(CRL) 2559/2018 filed by one Gautam Navlakha against State (NCT of Delhi) and others, dated 01.10.2018, particularly para 16 on the scope of the Transit Warrant contemplated by Section 167 Cr.P.C. The same reads as follows:

“16. Thus it is clear that even Magistrate before whom a transit application is filed is not required to merely satisfy himself that an offence has been committed and that the police officer seeking a remand is properly authorized. Such Magistrate is required to apply his mind to ensure that there exists material in the form of entries in the case diary that justifies the prayer for transit remand. The scope of this exercise has been explained by the Supreme Court in *Manubhai Ratilal Patel v. State of Gujarat* (*supra*) in the following words:

“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.”

(emphasis supplied)”

5. There is no dispute on the proposition of the judicial application of mind required not only for regular remand from the Magistrate having jurisdiction, but also for a transit remand for the Magistrate having no jurisdiction even for the maximum period can be kept in judicial custody as contemplated under Section 167(2) Cr.P.C.

6. However, the fact remains from what is referred supra of the order of the learned District Judge, Pune, dated 29.08.2018, that the order of the Magistrate impugned herein, dated 28.08.2018, was implemented and acted upon as the said Sri P.Varavara Rao as A.16 was physically produced before the District Judge, Pune. Thereby, the impugment of the said Transit Order of the Magistrate, dated 18.08.2018, once the implementation was there, now no way survives, but for if at all to impugn the order of the learned Special Judge-cum-District Judge, Pune, dated 29.08.2018.

7. Having regard to the above, in the present quash petition there is nothing to adjudicate, that too from the medical report called for by

the interim order of this Court, dated 14.11.2018, from which the Superintendent, Gandhi Hospital, Hyderabad, constituted committee of Doctors and submitted the report that the health condition of said P. Varavara Rao is normal with no abnormalities to permit to the Transit, if any.

8. The submission that against the above referred Division Bench writ order of the Delhi High Court matter pending with Supreme Court or the matter from today posted to 03.12.2018 no way gives any scope for the petitioner to seek indulgence of this Court in this matter, much less to suspend the so-called order of the learned Magistrate, dated 28.08.2018, when it is no longer survives as already merged with the order of the learned District Judge, Pune, dated 29.08.2018, if not the purpose served from the very physical production consequent to that. It is needless to say if at all the petitioner is to be taken from the house arrest in Hyderabad, it is only by fresh Transit Warrant, if any.

9. Accordingly, the criminal petition is disposed of for nothing to adjudicate. The interim order ceases its force as the main matter is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

16th November 2018.

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