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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 27th November, 2018

W.P.(CRL) 1387/2018

RAVI DEV YADAV THR. AVINASH YADAV (PAROKAR)

..... Petitioner

versus

STATE OF NCT DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.Ajay Khanna, Adv

For the Respondents : Mr.Rahul Mehra, SC with Mr.Chaitanya Gosain, Advocate for State with Insp. Sanjeev Mandal, PS Cannaught Place. Mr.P.Venkat Reddy and Mr.Prashant Tyagi, Advs for R-2 & 3

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present writ petition under Article 226 of the Constitution of India has been instituted praying for the following reliefs:-

a. "Issue a writ of habeas corpus or any other direction directing the respondent to produce the petitioner in this Hon'ble court;

b. Issue a writ of mandamus or any other direction directing the

respondent to initiate appropriate action against Telangana Police Officials responsible for above stated non-compliance of Section 41 B of Criminal Procedure Code and directions issued by Apex Court in the matter of D.K. Basu vs. State of West Bengal;

- c. Issue Directions/Orders to release the petitioner from the custody;*
- d. Issue a writ of mandamus for setting aside of orders dated 20.04.2018 passed by the court of Ms.Gurmohina Kaur, Id ACMM, New Delhi and order dated 21.04.2018 passed by Court of Sh.O.P.Saini, Additional Sessions Judge, New Delhi.*
- e. Pass any other or further orders as may be deemed fit and proper in the circumstances of the case.”*

2. The factual matrix in which the present proceeding arises are being adumbrated as follows:-

- i. The petitioner who is stated to be ordinarily resident in Delhi is arrayed as an accused in FIR No. 122/2016 under Sections 420/468/471 IPC at PS Karkhana, Secunderabad, Hyderabad, Telangana.
- ii. It is an admitted position that the petitioner instituted a bail application before the court of competent jurisdiction under Section 437 Cr.P.C. Vide order dated 20.04.2018, the learned ACMM allowed an application for transit remand for three days in relation to the petitioner and dismissed his application for bail.
- iii. Subsequent thereto, the petitioner instituted another bail

application under Section 439 Cr.P.C. which came to be dismissed by the ASJ/Special Judge, CBI on 21.04.2018.

- iv. It is further an admitted position that, the petitioner had subsequently instituted a bail application under Section 437 Cr.P.C before a court of competent jurisdiction in Telengana, subsequent upon his transit remand in police custody. The said bail application has admittedly been allowed by the court of competent jurisdiction, which has released the petitioner on bail, subject to certain conditions.
3. Learned counsel appearing on behalf of the petitioner, predicated on the decisions rendered in **D.K.Basu vs State of W.B** reported as **AIR 1997 SC 610**; **Arnesh Kumar vs State of Bihar & Anr** reported as **AIR 2014 SC 2756** and **Rajbhushan Omprakash Dixit vs Union of India & Anr** reported as **2018 SCC Online Del 7281** *inter alia* assails his arrest and custody as being illegal and prays for his release from detention.
4. The attention of this court has been invited to the decision in **D.K. Basu** (supra) to urge that, the absence of preparation of arrest memo, at the time of his arrest, vitiates the order dated 20.04.2018 rendered by the court of competent jurisdiction. It is further urged that, the failure on the part of the police to prepare an arrest memo is contrary to the directions issued by the Hon'ble Supreme Court of India in **Arnesh Kumar** (supra). Whilst referring to the decision of a Division Bench of this Court in **Rajbhushan Omprakash Dixit** (supra), it is

sought to be urged that if the detention in custody of the petitioner is violative of the mandate of Article 22 of the Constitution of India, the illegal custody of the petitioner cannot be continued.

5. Having heard the learned counsel appearing on behalf of the petitioner and perused the writ petition and its annexures, we find ourselves unable to agree with the submissions made on behalf of the petitioner.
6. In *Manubhai Ratilal Patel vs State of Gujarat & Ors* reported as (2013) 1 SCC 314, the Hon'ble Supreme Court of India whilst considering the legality of an order of detention/remand clearly and categorically observed that "unless writ court is satisfied that a person has been committed to jail custody by virtue of order that suffers from vice of lack of jurisdiction or absolute illegality, writ of habeas corpus cannot be issued".
7. In this behalf, it would be apposite to state that a writ of habeas corpus is maintainable subject to the petitioner being able to satisfy the Court as to the existence of the following essential conditions:
 - i) That his arrest is patently illegal; and
 - ii) That the order of the Magistrate or the Special Court committing the petitioner to jail custody is wholly illegal and without jurisdiction.
8. In the present case, it is axiomatic that, what is principally assailed is the lack of preparation of arrest memo at the time of the arrest of the petitioner. The challenge to the order dated 20.04.2018 passed by the

learned ACMM is founded on the very same ground. In this behalf, it is pertinent to observe that, the order dated 20.04.2018 merely allowed an application for transit remand for 3 days in relation to the petitioner. The same was rendered after hearing the petitioner on his application seeking bail, wherein the issue of his illegal arrest owing to non-preparation of arrest memo was evidently raised. Predicated on the same ground, the petitioner also instituted another bail application under Section 439 Cr.P.C. which also came to be dismissed by the learned ASJ/Special Judge, CBI on 21.04.2018.

9. A perusal of the foregoing clearly demonstrates that, it cannot be the petitioner's assertion that the order of transit remand passed by the court of competent jurisdiction suffers from the vice of lack of jurisdiction or is an absolute illegality. What is urged on behalf of the petitioner is that, the procedure of preparing the arrest memo was not followed by the concerned police at the time of his arrest and that the same is contrary to the directions issued in ***D.K.Basu*** (supra); and therefore ought to result in quashing of his detention, as well as, setting aside of the order dated 20.04.2018.
10. We, as aforementioned, do not agree.
11. In this behalf it must be observed in this regard that, the learned counsel appearing on behalf of the petitioner, candidly states that the orders passed by the concerned learned ACMM are assailable otherwise in law.

12. It is trite to state that a writ of habeas corpus cannot be granted where a person is committed to custody by a competent court by an order which does not *prima facie* appear to be patently without jurisdiction or wholly illegal. It is further axiomatic that, unless the writ court is satisfied that the person has been committed to 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. More so, in the facts and circumstances of the present case, where the petitioner has already invoked his right in law and has been set at liberty in the bail application instituted before a court of competent jurisdiction. The present proceedings for a writ of habeas corpus resultantly cannot be permitted to be continued so as to return a finding that, the order dated 20.04.2018 granting his transit remand to the police and dismissing his earlier bail application was erroneous or illegal.
13. In our considered opinion, the reliance placed by the petitioner on the decisions in *D.K. Basu* (supra) and *Arnesh Kumar* (supra) are misplaced in the facts and circumstances of the present case.
14. A Constitution Bench of the Apex Court in the case of *Sanjay Dutt v. State* reported as (1994)5 SCC 410 has held that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.
15. In this behalf, it is further observed that non-preparation of an arrest memo is a procedural irregularity which renders a police officer liable

for its consequences resulting in departmental action and initiation of contempt proceedings. The same has no bearing on the validity of the remand order rendered by a court of competent jurisdiction, committing him to custody.

16. Therefore, simplicitor non-compliance of a safeguard required to be followed in cases of arrest or detention shall not render the arrest of the petitioner patently illegal, so as to entitle him on that ground alone to invoke the extraordinary writ jurisdiction of this Court for issuance of habeas corpus.

17. It is also observed that, no reply has been filed by respondent Nos.2 and 3, despite the last opportunity granted to them in this behalf.

18. Accordingly, the writ petition is dismissed as being devoid of merit. However, needless to state that, the petitioner is at liberty to initiate appropriate proceedings to assail the action of the respondents before the Court of competent jurisdiction, in accordance with law.

SIDDHARTH MRIDUL
(JUDGE)

SANGITA DHINGRA SEHGAL
(JUDGE)

NOVEMBER 27, 2018
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