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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 2707/2018 & CrI.M.A. Nos.31767-68/2018

NAVAL KISHORE KAPOOR

..... Petitioner

Through: Mr. Lakshay Dhamija and Sunav
Rastogi, Advocates

versus

NATIONAL INVESTIGATION AGENCY & ANR.

..... Respondent

Through: Mr. Abhay Prakash Sahay, Advocate
for R-1 with Mr. Vipin, Inspector
Mr. Anil Soni, CGSC for R-2/UOI

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

11.09.2018

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The petitioner has preferred the present writ petition to seek the following reliefs:

- a) Issue a writ of habeas corpus, or any other appropriate writ, order or direction, directing immediate release of the petitioner herein Sh. Naval Kishore Kapoor from the illegal arrest dated 26.07.2018 and consequent illegal custody from Tihar Jail in case bearing RC No.10/2017/ NIA/DLI; and;

b) Issuance of a writ of certiorari for quashing/ setting aside of orders dated 27.07.2018, 31.07.2018 and 13.08.2018 passed by District & Sessions Judge, Special Court (NIA), Patiala House Courts, New Delhi remanding the petitioner to judicial custody till 06.09.2018 as being without jurisdiction, illegal, unreasoned and reflecting non-application of judicial mind; and;

c) Issuance of a writ of mandamus or any other appropriate writ/ direction/ order in the nature of writ directing the respondent no.1 to provide in compliance of the condition of Section 43B of the Unlawful Activities (Prevention) Act, 1967 the certified copy of application/ orders as to arrest of petitioner as well as furnish oral or documentary evidence along with grounds of arrest.

The case of the petitioner is that he was named as a witness i.e. PW-28 in the charge sheet dated 18.01.2018 filed by respondent no.2 in case RC 10/2017/NIA/DLI, titled *National Investigation Agency v. Hafiz Muhammad Saeed & Ors.* in the Court of District & Sessions Judge, Special Court (NIA), Patiala House Courts, New Delhi. However, on the basis of further investigation carried out by respondent no.1 under Section 173(8) Cr PC, the petitioner has been arrested. He was initially placed in police custody, and thereafter remanded to judicial custody. The petitioner, admittedly, is in judicial custody since 31.07.2018.

In these circumstances, in our view, the present writ petition is not maintainable to seek a writ of habeas corpus.

Reliance has been placed by learned counsel for the petitioner on *State of Maharashtra & Ors. v. Tasneem Rizwan Siddiquee* in CrI A No.1124/2018 decided on 05.09.2018. Para 9 of the said judgment referred to by learned counsel for the petitioner reads as follows:

“9. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in the case of Saurabh Kumar through his father Vs. Jailor, Koneila Jail and Anr., (2014) 13 SCC 436 and Manubhai Ratilal Patel Vs. State of Gujarat and Ors., (2013) 1 SCC 314. It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18th/19th March, 2018 and decided by the High Court on 21st March, 2018 her husband Rizwan Alam Siddique was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No.131 vide order dated 17th March, 2018 and which police remand was to enure till 23rd March, 2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued”.

In our view, a reading of the aforesaid decision does not advance the submission of the petitioner with regard to maintainability of the present writ petition. Firstly, the Supreme Court was dealing with a situation where the person is in police custody on the date of filing of the writ petition. That is not the case in hand. Secondly, the Supreme Court ruled that *“the incumbent was in judicial custody by virtue of an order passed by the*

jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued”. Thus, the Supreme Court held that the writ of habeas corpus was not maintainable. A writ petition is not maintainable to assail judicial orders and, therefore, the second relief sought by the petitioner is also not maintainable. So far as the third relief is concerned, the same, in our view, can be appropriately dealt with by the competent court dealing the case, if the petitioner has any surviving grievance in that respect.

The petition stands dismissed in the aforesaid terms.

Dasti.

VIPIN SANGHI, J

I.S.MEHTA, J

SEPTEMBER 11, 2018

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