

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1052 OF 2019

ALONG WITH

**CRIMINAL APPLICATION NO.123 OF 2019
IN
WRIT PETITION NO.1052 OF 2019**

Rajiv Soni
Age : 62 years,
R/o. 19/2, Manoramaganj,
Indore (M.P.)

... Petitioner /
Applicant

Versus

1. The State of Maharashtra
2. Economic Offences Wing,
Mumbai, Maharashtra

... Respondents

.....

- Mr. Vikram Choudhari, Senior Advocate a/w Mr. Prashant G. Pandey, Mr. Hemant Shah & Ms. Vijayalaxmi Shetty for Petitioner/Applicant.
- Mrs. S. V. Sonawane, APP for State.

CORAM

**:- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.**

RESERVED ON

:- MARCH 05, 2019

PRONOUNCED ON

:- MARCH 11, 2019

JUDGMENT (PER : SARANG V. KOTWAL, J.) -:

1. By this Petition, the Petitioner is seeking issuance of writ of Habeas Corpus directing immediate release of the Petitioner. The Petitioner is also seeking quashing of the remand order passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai dated 23/02/2019, whereby the Petitioner was remanded to police custody upto 01/03/2019 in relation to C.R.No.76/16 registered with Economic Offences Wing, Mumbai.
2. An FIR vide C.R.No.222/16 was registered on 02/09/2016 at MRA Marg Police Station, Mumbai, u/s 420, 465, 467, 468, 471, 120-B of the Indian Penal Code. The FIR was lodged by Nayan Chandrakant Bhagdev, who was working as an Associate Vice President from Investigating Department, HSBC bank at the relevant time. The allegations in the FIR in short were that M/s Metal Man India were holding loan/cash credit account and current account with HSBC Bank, V.N. Road, Mumbai. These two accounts had become NPA since December 2010. The present Petitioner was one of the Directors of the said

company. The bank had instituted proceedings in the Debt Recovery Tribunal on 01/01/2011 for recovery of the amount to the tune of Rs.7,83,28,000/-. The Directors of the said company did not remain present before the DRT. The Fraud Investigating Department of HSBC Bank made investigation in respect of the accounts of the said company. It was found that M/s Opal Trade Impex Pvt. Ltd. was a supplier of the said M/s Metal Man India, internal investigation of the HSBC Bank revealed that some forged documents were used to avail of the credit facilities by M/s Metal Man India. M/s Opal Trade Impex Pvt. Ltd. was not found at the address furnished to the Bank. On these allegations, the FIR was lodged for causing loss to the bank to the tune of Rs.5,18,00,000/- by committing fraud between the period from 13/11/2009 to 20/05/2010 by using forged documents.

3. It appears that the investigation was transferred to the EOW, Mumbai and they registered their own C.R.No.76/16 u/s 420, 465, 467, 468, 471, 120-B of IPC.

4. The Petitioner was arrested at Indore on 08/02/2019. On 09/02/2019 Investigating Officer PI S.S. Dhemare, attached to EOW Banking Unit II, Mumbai, made an application for transit remand to escort Petitioner to Mumbai. The said application mentions that the Petitioner was the Chairman and Managing Director of the M/s Metal Man India. He had availed of loan facility from the Bank by submitting forged and fabricated documents for purchase of goods from M/s Opal Trade Impex Pvt. Ltd. It is further mentioned in the application that the Petitioner siphoned off the money and diverted it to his another company 'Soni Ispat'. The application mentions that the Petitioner was arrested on 08/02/2019 at 18.15 p.m from New Palasia, Indore. The Petitioner was taken to M.Y. Hospital, Indore, which was a Government Hospital. He was admitted in the said hospital at 08/02/2019 at 08.00 p.m. and was discharged on 09/02/2019 at 04.30 p.m. On 09/02/2019, the Petitioner was produced before the Judicial Magistrate First Class, Indore, for consideration of transit remand. The learned Magistrate observed that the Petitioner required immediate

medical attention and therefore transit remand could not be granted on that day. The learned Magistrate directed the Investigating Officer to admit the Petitioner again in M.Y. Hospital and after treatment to produce him before that Court on 11/02/2019. The Roznama of the said application shows that the Petitioner was not produced before the Court on 11/02/2019, 12/02/2019 and 13/02/2019. Neither the Petitioner was produced before the Court nor anyone remained present and no information was given to the Court. Therefore the application for transit remand was dismissed by the learned Chief Judicial Magistrate, Indore, on 13/02/2019.

5. On 15/02/2019, the learned Chief Judicial Magistrate, Indore was on leave and the charge was handed over to another Judicial Magistrate, Indore. On that day, the Investigating Officer, again filed an application for transit remand for a period of 3 days. On this day, the Petitioner was not produced before the Court and therefore the learned Magistrate observed that since the Petitioner was not produced before the Court it was

not proper to grant any remand. It was also observed that since the Petitioner was admitted in hospital, it was not proper to grant transit remand till he was declared fit.

6. In the meantime, the Petitioner's application for transit bail was rejected by the Sessions Judge, Indore, by his order dated 11/02/2019 passed in Bail Application No.505/196 as well as by the High Court of Madhya Pradesh at Indore, vide order dated 20/02/2019 passed in M.Cr.C. No.7790/19. The Madhya Pradesh High Court Bench at Indore, however directed the Investigating Officer to take the Petitioner by Air from Indore to Mumbai and if the Petitioner demanded, he was permitted to be accompanied by a Doctor. The order mentions that the report given by Joint Director and Superintendent of M.Y. Hospital, Indore, revealed that the Petitioner was suffering from Prostatic Hypertrophy with lower Urinary Track obstruction and that the said disease was not a serious ailment. With this ailment, the Petitioner could very well travel from Indore to Mumbai.

7. The Investigating Officer thereafter produced the Petitioner before the Additional Chief Judicial Magistrate, Indore, for transit remand. A reference was made to the order passed by the High Court at Indore in M.Cr.C No.7790/19. After hearing both the sides, the learned Magistrate granted transit remand for 3 days from 22/02/2019 to 25/02/2019 with certain conditions to safeguard the physical wellbeing of the Petitioner. The Petitioner was to be produced before the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai.

8. The Petitioner was produced before the ACMM, Mumbai, Esplanade, on 23/02/2019 with an application praying for police custody remand. It was mentioned in the Remand Application that the Petitioner was in hospital from 08/02/2019 to 22/02/2019 and he did not cooperate in any manner with the investigation. It was necessary to conduct investigation in respect of the role of the Petitioner in procuring the forged documents and in disposal of the amount involved in the

offence. The learned ACMM, Esplanade, Mumbai, passed an order dated 23/02/2019 granting police custody remand of the Petitioner till 01/03/2019. While passing the order, the learned Magistrate noted the submissions made on behalf of the Petitioner. It was submitted before the learned Magistrate that the 15 days period provided u/s 167 of the Cr.P.C. was over and therefore the Petitioner could not be remanded to police custody. The learned Magistrate noted the ruling cited on behalf of the Petitioner in the case of Matang Sinh Vs. CBI, passed by the Calcutta High Court in C.R.R. No.637 of 2015 dated 07/05/2015. Learned Magistrate observed that the said ruling was not helpful to the contentions advanced on behalf of the Petitioner. He further observed that for that purpose, the transit period could not be considered as the Petitioner was produced on that day i.e. 23/02/2019. It was observed that considering the nature of offence and stage of investigation, grant of police custody for further investigation was necessary. The Petitioner has taken exception to this order on the ground that from his first remand dated 09/02/2019, fifteen days period was over

and the learned Magistrate could not have granted police custody remand beyond the period of first 15 days from the first remand.

9. We have heard learned Senior Counsel Mr.Vikram Choudhari for the Petitioner a/w Mr. Prashant G. Pandey and Mrs.S.V. Sonawane, learned APP for the State. Learned Counsel for the Petitioner heavily relied on the judgment of the Hon'ble Supreme Court passed in case of **CBI Vs. Anupam Kulkarni, as reported in AIR 1992 SC 1768**. In the said judgment, it was clearly observed that if an accused is detained in police custody, the maximum period during which he can be kept in such custody is only 15 days either pursuant to a single order or more than one order when such orders are for lesser number of days but on the whole such custody cannot be beyond 15 days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody.

10. Thus, according to learned Counsel Mr.Choudhari and Mr.Pandey, the period starts from the date of first remand i.e.

09/02/2019 in this case. Therefore according to learned Counsel for Petitioner, the learned ACMM, Mumbai could not have granted police custody beyond fifteen days after 09/02/2019. Thus, according to this order granting police custody till 01/03/2019 was not correct and needed to be set aside. According to them, such detention in the police custody which was not permissible, was illegal detention and therefore issuance of writ of Habeas Corpus was necessary.

11. Before considering the question as to whether Anupam Kulkarni's case (supra) covers the facts in the present case, it is necessary to decide whether a writ of Habeas Corpus could lie in case of detention of the Petitioner under an order of learned ACMM, Mumbai. At this stage, it may be noted that right from his arrest on 08/02/2019, the Petitioner was in hospital and was not available for interrogation by the police. We are informed that on 01/03/2019 the learned ACMM, remanded the Petitioner to Magisterial custody.

12. Mrs.Sonawane, learned APP, mainly canvassed that, this Petition for issuance of writ of Habeas Corpus was not maintainable in the present facts and therefore no relief could be granted to the Petitioner. Both the sides relied on the same set of Judgments of the Hon'ble Supreme Court to canvass their respective point of view. There are many cases of the Hon'ble Supreme Court which discuss about the nature and scope of Habeas Corpus Petition. Both the sides before us relied mainly on the case of Manubhai Ratilal Patel through Ushaben Vs. State of Gujarat & Ors. as reported in (2013) 1 SCC 314. The Hon'ble Supreme Case considered previous cases on the subject while deciding this case. Hon'ble Supreme Court referred to the case of Kanu Sanyal, Vs. District Magistrate, Darjeeling & Ors. As reported in (1974) 4 Supreme Court Cases 141, wherein it is observed that the writ of Habeas Corpus dealing with machinery of justice is a substantive law and that object of the writ was to secure release of a person who was illegally restrained of his liberty. A reference was also made to the case

of Col. Dr.B. Ramchandra Rao Vs. State of Orissa, as reported in 1972 (3) SCC 256, wherein it was opined that a writ of Habeas Corpus was not granted where a person was committed to jail custody by a competent Court by an order which prima facie did not appear to be without jurisdiction or wholly illegal.

While summing up in paragraph No.31 of Manubhai's case (supra) Hon'ble Supreme Court observed thus;

“It is well-accepted principle that a writ of habeas corpus is not to 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. As has been stated in B. Ramchandra Rao and Kanu Sanyal, the Court is required to scrutinise the legality 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.”

13. On the basis of observations of Hon'ble Supreme Court in Manubhai's case, the learned Counsel for the Petitioner submits that the order passed by the Learned ACMM, Esplanade, Mumbai, suffers from three vices mentioned by the Hon'ble Supreme Court. They submitted that the impugned order is passed in an absolutely mechanical manner. It is also illegal because the Magistrate could not have granted the police custody beyond the first 15 days and that he had not jurisdiction to grant police custody after the first 15 days.

14. On the other hand, Mrs.Sonawane submitted that the order passed by the learned Magistrate cannot be termed as illegal and it was not passed by the Magistrate not having jurisdiction.

15. We have perused the impugned order. The learned Magistrate has noted rival submissions and has referred to a Judgment cited on behalf of the Petitioner. The learned Judge has commented on the applicability or otherwise of the said

citation. The learned Magistrate has also referred to the necessity of police custody for the purpose of investigation. From the order it appears that the learned Magistrate has applied his mind to the case before him and the order is not passed mechanically.

16. Even assuming that the contention of the Petitioner to be correct that the police custody could not have been granted after 15 days from the first remand, still on that day i.e. on 23/02/2019, the learned ACMM, Mumbai, was fully competent to pass the order granting police custody remand as on that day, period of 15 days was not over. Therefore it cannot be said that the Magistrate was not competent to pass the order granting police remand on 23/02/2019. Even thereafter his jurisdictional competence is not in doubt. The contention of the learned Counsel for the Petitioners that the order passed by the learned Magistrate was illegal can also not be accepted. The Petitioner, could criticize the impugned order by labelling it to be erroneous but the order passed by an competent Court cannot

be termed as 'illegal'. Therefore by applying ratio led down by the Hon'ble Supreme Court in Manubhai's case we find that the writ of Habeas Corpus cannot be entertained as the order passed by the learned ACMM does not appear to be without jurisdiction or passed in absolutely mechanical manner or fully illegal. Therefore we are of the firm view that in the facts of this case, the Petition for issuance of writ of Habeas Corpus is not maintainable.

17. In this context, a reference can be made to a recent judgment of Hon'ble Supreme Court passed in the case of *State of Maharashtra and others Vs. Tasneem Rizwan Siddiquee, as reported in (2018)9 Supreme Court Cases 745*. In that case the argument of the person who was detained was that there was violation of section 41-A of Cr.P.C. and hence his arrest was illegal. He was produced before the learned Magistrate on 13/03/2018 and was remanded to the police custody until 23/03/2018. The Hon'ble Supreme Court observed in paragraph No.10 of that Judgment as follows;

“10. 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 *Saurabh Kumar v. Jailor, Koneila Jail and Manubhai Ratilal Patel v. State of Gujarat*. 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 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 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. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. 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.

18. Learned Counsel Mr.Pandey tried to submit that this observation meant that if the order of Magistrate granting police custody was challenged in the writ for Habeas Corpus, then the Petition was maintainable. We are unable to agree with these submissions of Mr.Pandey. The Hon'ble Supreme Court clearly observed that in such a case it cannot be termed as 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 and resultantly no writ of Habeas Corpus could be issued.

19. These observations of the Hon'ble Supreme Court, in our considered view would clearly mean that when the incumbent is in any custody, pursuant to the order passed by a Judicial Magistrate, a writ of Habeas Corpus could not be issued.

20. Since we are holding that the present Writ Petition for issuance of Habeas Corpus is not maintainable we are not entering into deciding the question whether the learned ACMM,

Mumbai, could have granted police custody beyond 24/02/2019. The Petitioner is at liberty to pursue such other remedies in that behalf as are available in law. We are not inclined to quash and set aside the order passed by the learned ACMM, Mumbai, on 23/02/2019 granting police custody remand to the Petitioner, in this Petition; which is essentially a Petition for issuance of writ of Habeas Corpus. Hence the following order;

ORDER

1. Writ Petition is dismissed.
2. The Petitioner is at liberty to pursue other remedies in accordance with law as are available to him.
3. In view of the dismissal of the Writ Petition, the connected Criminal Application No.123/19 is disposed off.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)