IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.03.2019

Delivered on : 27.03.2019

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2171 of 2018

Bhoopesh Kumar Jain .. Petitioner

vs

The Deputy Director,
Directorate of Enforcement,
2nd & 3rd Floor No.84,
Murugesan Naicker Office Complex,
Greams Road, Thousand Lights,
Chennai-600 006. .. Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the records relating to the extension of remand of the detenu, Bhoopesh Kumar Jain, Son of Bharmal Jain, made on 03.08.2018 in CC.No.13/18 after the expiry of the statutory period and quash the same as violative of Article 21 of the Constitution of India.

For Petitioner : Mr.N.R.Elango, Senior Counsel for Mr.P.Soloman Francis.

For Respondent : Mr.N.Ramesh, Special Public Prosecutor

ORDER

M.SATHYANARAYANAN, J.



The detenu is the petitioner herein and in this Habeas Corpus Petition, challenge is made to the initial order of remand dated 25.05.2018 as well as the subsequent extension of remand in connection with ECIR No.CEZO/03/2016 dated 09.03.2016 on the file of the respondent.

2. The petitioner/detenu, in the affidavit filed in support of this Habeas Corpus Petition, would aver among other things

that the General Manage of State Bank of India, Mid Corporate Regional Office-I, Chennai has lodged a complaint to the Central Bureau of Investigation (CBI) alleging that the petitioner is the Promoter-cum-Managing Director and his wife, namely Smt.Neeta Jain is the Director of M/s.Kanishk Gold Private Ltd., [KGPL], which manufactures gold jewels and marketing under the brand name "KRIZZ". Originally ICICI Bank had advanced loan facilities and it was taken over by State Bank of India (SBI) and thereafter, the banking arrangement was converted into a multiple banking arrangement with a consortium of 14 banks with SBI as the lead bank.

3. It is further averred that the above said company started making default in payment of interest from March, 2017 in respect of banks numbering eight and on 25.07.2017, the Consortium Members visited the Corporate Office, Factory and Showroom of the said company and found that there was no activity and the petitioner said to have sent a letter admitting falsification of records since 2009 and removal of stocks which are given as security to the lenders and subsequently, an audit was also carried out, which revealed that there are misrepresentations/falsification of records, diversion of funds and disposal of stocks by the company and the total loss caused to the banks due to the above fraud works out to the tune of Rs.824.15 Crores, outstanding as on 31.12.2017 with interest and the security available with banks to cover the said loss is to the tune of Rs.158.65 Crores.

4. CBI has registered an F.I.R. in RC.05/E/2018-BS &FC/BLR on 21.03.2018 for the alleged commission of offences under Sections 120-B, 420, 467 and 471 IPC r/w. Section 13(2) r/w. 13 (1)(d) of the Prevention of Corruption Act, 1988 against 6 named accused and also against unknown public servants and others. The petitioner herein is arrayed as A-2 and his wife is arrayed as A-3.

5. The Directorate of Enforcement, Chennai-6, moved for arrest of the accused and accordingly, the petitioner was arrested on 25.05.2018 and produced before the Court of XIV Metropolitan Magistrate, Chennai, who vide order passed on the same day, remanded the petitioner to judicial custody till 08.06.2018. Subsequently, the Deputy Director, Directorate of Enforcement, Chennai has filed a complaint on the file of the Principal Sessions Judge at Chennai, which was taken on file in C.C.No.13/2018 against five accused, in which the petitioner was arrayed as A-2 and they said to have committed the offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 [in short "PMLA"] and liable to be published under Section 4 of the said Act.

6. It is further averred that the petitioner/detenu, who was arrested earlier, was produced before the Principal and Sessions Judge, Chennai on 08.06.2018 and his remand period was extended till 22.06.2018 and thereafter, his remand was extended periodically till 06.07.2018, 20.07.2018, 03.08.2018 and 17.08.2018.

7. Mr.N.R.Elango, learned Senior Counsel assisted by Mr.P.Soloman Francis, learned counsel appearing for the petitioner would submit that the total money borrowed was Rs.747 Crores, out of which a sum of Rs.400 Crores has already been paid and that apart, sufficient securities were also available in respect of the balance amount and the loss incurred by the Company is a genuine business loss and as such, there is no necessity to arrest and incarcerate the petitioner/detenu/A-2. It is the further submission of the learned Senior Counsel appearing for the petitioner that in terms of Section 44(1)(c) of PMLA, it is imperative on the part of the Special Court conducting the trial under the said Act to conduct the trial of the Scheduled Offences also simultaneously before it and admittedly, the case relating to the Scheduled Offences is still under the stage of F.I.R and the investigation is yet to complete and therefore, the complaint filed by the respondent is per se not maintainable. It is also contended by the learned Senior Counsel appearing for the petitioner that the liberty of an individual is of paramount importance and drawn the attention of this Court to the initial order of remand as well as the order of extension of remand and would submit that the Court which passed the order of initial remand and extension of remand is expected to apply their mind as to the necessity for the extension of remand and admittedly, except periodically extending the period of remand, no reason whatsoever has been assigned by the Special Court and on that ground also, the impugned order warrants interference.

8. Attention of this Court was also drawn to Section 309 CrPC as well as the decision of the Hon'ble Supreme Court in the matter of Madhu Limaye and Others [1969 (1) SCC 292], S.Sundaram Pillai and Others v. V.R.Pattabiraman and Others [(1985) 1 SCC 591]. It is also brought to the notice of this Court by the learned Senior Counsel appearing for the petitioner that as regards simultaneous trial of the offences under PMLA and Scheduled Offences, the issue has been seized by the Hon'ble Apex Court and is pending consideration.

9. Per contra, Mr.N.Ramesh, learned Special Public Prosecutor appearing for the Enforcement Directorate has drawn the attention of this Court to the counter affidavit of the respondent and would submit that the Company as well as the Directors, in collusion with Statutory Auditors and others, with

a malafide intention cheated and defrauded the Consortium Banks consisting of State Bank of India, Punjab National Bank, Bank of India, Central Bank of India, Corporation Bank, Bank of Baroda, IDBI, Tamil Nadu Mercantile Bank, Syndicate Bank, HDFC, ICICI, Andhra Bank, UCO Bank and Union Bank, had diverted the funds detriment to the rights and interest of the said banks and the accounts of the company has also been classified as "Non Performing Asset (NPA)". It is the further submission of the learned Special Public Prosecutor that outstanding as on 31.12.2017 is to the tune of Rs.824.15 Crores and the respondent has also filed a complaint before the Special Court, which has been taken on file and the petitioner also filed a petition for bail before the Principal Sessions Judge at Chennai in Crl.M.P.No.8700 of 2018, which came to be dismissed on 21.06.2018 and the bail application filed before this Court in Crl.O.P.No.16661 of 2018 was also dismissed as withdrawn on 13.08.2018 and copies of documents have also been furnished to the petitioner and the case is posted for framing charges.

10. It is also the stand of the respondent that the investigation under the provisions of PMLA is independent and the investigation is being conducted by CBI for Scheduled Offences and the investigation is being conducted under PMLA in order to identify the proceeds of the crime committed, vide Scheduled Offences by the petitioner and to launch criminal prosecution under Section 45 of the said Act. It is also brought to the knowledge of this Court that Section 45 of PMLA was amended by the Finance Act, 2018 (Act No.13 of 2018) dated 29.03.2018 and in terms of the said amendment, consideration of bail application in PMLA is quite independent of the Scheduled Offences and in the light of the fact that the quantum of proceeds of crime is to the tune of Rs.824 Crores, the petitioner is not entitled to any indulgence from this Court.

11. The learned Special Public Prosecutor appearing for the respondent on legal plea would submit that in terms of Section 309(2)CrPC, the Special Court is periodically extending the remand by taking into consideration the relevant materials and the remedy open to the petitioner, if any, is to file an application for bail and come out and he cannot skip the said procedure by filing this Habeas Corpus Petition and hence, prays for dismissal of this petition. The learned Special Public Prosecutor, in support of his submissions, has placed reliance upon the following decisions:

(i) Chhagan Chandrakant Bhujbal & Another v. Union of India [CDJ 2016 BHC 1766]

(ii) Manubhai Ratilal Patel Tr.Ushaben v. State of Gujarat & Others [CDJ 2012 SC 657]

(iii) Saurabh Kumar through his father v. Jailor, Koneila Jail & another [CDJ 2014 SC 628]

(iv) Order dated 01.12.2017 made in W.P.(Crl.)No.2465 of 2017 [Moin Akhtar Qureshi v. Union of India and Others]

(v) The State of Maharashtra and Others v. Tasneem Rizwan Siddiquee [CDJ 2018 SC 907].

12. This Court paid it's best attention and anxious consideration to the rival submissions and also perused the entire materials placed before it as well as the decisions relied on by the respective learned counsel appearing for the parties.

13. It is relevant to extract Section 309 CrPC:

309. Power to postpone or adjourn proceedings.

(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided that when the inquiry or trial relates to an offece under Section 376, Section 376-A, Section 376-B, Section 376-D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that:-

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand. Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

14. It is also relevant to extract Section 46 of PMLA:

46. Application of Code of Criminal Procedure, 1973 to proceedings before Special Court. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor :

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

15. The scope of Sections 167(2) and 309(2) CrPC came up for consideration before a Division Bench of this Court in the decision in K.Chandran v. The Inspector of Police, Korattur

Police Station, Madras and Others [1996 (1) MWN (Cr.) 266]. Facts of the said case would disclose that a Habeas Corpus Petition was filed by the petitioner therein for the production of his son and set him at liberty for the reason that the jurisdictional Magistrate has been extending the remand without even a request from the concerned police mechanically and as such, continued detention would be illegal. In Paragraph No.6 of the said decision, it was observed that "...Time and again, Courts have held that directing remand or ordering extension of remand are not mere mechanical formalities, but involve application of judicial mind to the facts placed before Court, before orders are passed.". Reliance has also been placed upon the earlier decision in Syed Kaleemullah and Another v. The Appraising Officer, Special Investigation Branch, Customs House, Madras -I and Another [1993 L.W.(Crl.) 317] and the relevant portion of the said judgment has also been extracted and it would be useful to quote the same:

> "A Magistrate has jurisdiction to pass an order of remand despite the absence of any formal written application or a request for such remand being made by the police or the prosecution and that it would be doing violence to the plain language of Secs.167(2) and 309(2) Crl.P.C. by reading into them a requirement of a formal application for request therefor. There cannot be a second opinion that application of mind by the remaining Magistrate would be required for extension of remand, but that will be a question of fact which will vary from case to case.... It will not only be better, but it will almost always be necessary, that if extension of remand is required, an application is filed setting out the reasons for judicial scrutiny. However, merely because extension of remand has not been asked for by the prosecuting agency, it cannot be concluded, that the remanding Magistrate has no power to order extension of remand, if on the available material, he was of the opinion that extension of remand was necessary in the interests of justice. If it were to be held, that without a plea for extension of remand, the remanding Magistrate cannot act and that he has to necessarily set at liberty the concerned accused, even if the crime was grave enough, it is then possible to comprehend a court becoming a mere powerless figurehead if either due to negligence or collusion, remand extension applications are not presented, even in grave crimes. The ultimate authority is the remanding court and the discretion to extend the remand cannot be bartered away to the whims of the prosecuting agency, who for reasons best known to them, omit plead for extension of remand."

16. In the matter of Madhu Limaye and Others [1969 (1) SCC 292], arrest of the petitioners therein was put to challenge on the ground that the officers did not give to the arrested persons the reasons for their arrest or the offences for which they had been taken into custody. In Paragraph No.12 of the said decision, the Hon'ble Apex Court observed that "Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters.... The remand orders are patently routine and appear to have been made mechanically.... If their detention in custody could not continue after their arrest because of the violation of Art.22 (1) of the Constitution they were entitled to be released forthwith..."

17. In S.Sundaram Pillai and Others v. V.R.Pattabiraman and Others [(1985) 1 SCC 591], the scope of Explanation to the statutory provisions came up for consideration and it is relevant to extract Paragraph No.53 of the said decision:

> "53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a satutory provision is -
>
> (a) to explain the meaning and intendment of the Act itself,
>
> (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
>
> (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
>
> (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and
>
> (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

18. Though it is contended by the learned Senior Counsel appearing for the petitioner by drawing the attention of this Court to the 2$^{nd}$ proviso to Section 45 of PMLA, in the considered opinion of the Court, the said submission lacks merit for the reason that as per paragraph No.1 of the said complaint, the

Deputy Director, Directorate of Enforcement, Chennai is competent to file a complaint in C.C.No.13/18.

19. The primordial submission made by the learned Senior Counsel appearing for the petitioner is that even without any specific reason/explanation for extending the remand under Section 309(2) CrPC, the concerned Court went on passing orders extending the period of remand in a mechanical manner and without due and proper application of mind and therefore, prays for quashment of the initial order of remand and subsequent orders, extending the period of remand.

20. The Hon'ble Supreme Court of India in the decision in Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722] has considered the issue as to whether reasons are to be recorded at the time of framing of charges and in Paragraph No.12, held as follows:

> “12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.”
>
> (emphasis supplied)

The said decision was also considered by a Division Bench of Patna High Court in the decision in Dr.Ghanshyam Narayan Singh v. State of Bihar [2001 Cri.L.J.2811] and after taking into consideration the decisions in Ram Narayan Singh v. State of Delhi [AIR 1953 SC 277]; Joginder Kumar v. State of U.P. [(1994)

4 SCC 260] and D.K.Basu v. State of W.B. [(1997) 1 SCC 416] and in Paragraph No.9, it was held as under:

> "9. Thus, if the Magistrate has not assigned any reason at the time of remand then on that ground remand order itself would not be invalidated. The Court will see the materials on the record to find out as to whether the ground of remand exists or not. In this case, the allegation was also made by the victim lady against the petitioner. The forwarding letter, as appears, contained the details of the allegations and the materials and as such the remand of the petitioner was a valid one and his detention was not illegal by virtue of the order of remand passed by the Chief Judicial Magistrate on 9-10-1999..."

21. In P.Navaneetha Krishnan v. The Commissioner of Police, Greater Chennai, Egmore, Chennai and Others [2008 (1) MWN (Cr.) 165 (DB)], the issue relating to extension of remand without producing the accused before the Court came up for consideration and in Paragraph No.5 of the decision, a Division Bench of this Court has considered the scope of Section 309(2) CrPC and observed that ".... After the Magistrate having taken cognizance, requisition from the Investigating Officer is not necessary and it is the Magistrate who, under Section 309 Cr.P.C., on production of the person accused on the date of expiry of remand and on application of mind, can extend the remand or release the person accused of the offence on bail..."

22. In T.Mohan etc., v. State by Inspector of Police, CBCID, Madras, [1993 L.W. (Crl.) 392], this Court in Paragraph No.6 observed that "On facts, there is no doubt that the order extending the remand by the Judicial Magistrate, Chengalpattu, from 25.01.1993 to 25.02.1993 is totally illegal and unsustainable. But that does not automatically enable or help the petitioner to get the relief as prayed for in this petition, notwithstanding the valid and legal remand order passed by the learned District and Sessions Judge, Chengalpattu, on 14.2.1993". It was further observed in the said paragraph that "the relevant date for the purpose of considering whether the custody is legal or illegal is the date of hearing of the Habeas Corpus Petition and not the date of filing of the said petition, nor any earlier date.."

23. In Chhagan Chandrakant Bhujbal & Another v. Union of India, Central Government Advocates, Income Tax Building Annexe & Others [CDJ 2016 BHC 1766], an Habeas Corpus Petition was filed for release from the custody by setting aside the impugned arrest order and consequent remand orders on the ground that they are manifestly improper, illegal and without jurisdiction. The High Court of Bombay, after referring to various earlier

decisions rendered by the Hon'ble Supreme Court, held that the detenu did not raise any grievance at the time of his arrest alleging that it was not made by following due procedure of law and not by a competent authority and for more than 8 months, he did not challenge the arrest or detention and in the light of availability of adequate alternative remedy including filing of fresh application for bail on medical grounds, is not entitled to any relief and accordingly, dismissed the petition. The High Court of Bombay has also placed reliance upon the decision in Saurabh Kumar through his father v. Jailor, Koneila Jail & Another [(2014) 13 SCC 436] and extracted Paragraph No.22 of the said decision and it is relevant to quote the same:

> "22. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for offences, cognizance whereof has already been taken by the competent Court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of Habeas Corpus is, in the circumstances, totally mis-placed. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the Court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody."

It was concluded by the Bombay High Court that even in respect of an illegal order of remand, which was passed mechanically in a cavalier fashion also, the remedy of writ of habeas corpus was not found to be appropriate remedy, but the only remedy which Hon'ble Apex Court considered appropriate was that of filing the application for bail.

24. It is also brought to the knowledge of this Court that the petitioner has field an application for bail in Crl.M.P.No.8700 of 2018 on the file of the Principal Sessions Court at Chennai and it came to be dismissed, vide order dated 21.06.2018 and the petitioner also filed a bail application before this Court in Crl.O.P.No.16661 of 2018 and the same was dismissed as withdrawn on 13.08.2018 and may be on account of pendency of this Habeas Corpus Petition, the petitioner did not file any fresh application for bail and the Court concerned, on taking cognizance of the complaint filed by the respondent, has also furnished copies to him.

25. This Court, on a careful consideration of the submissions made and on scrutiny and analysis of the materials placed, is of the considered view that the challenge made to the impugned order fails and finds no merit in this Habeas Corpus Petition.

26. In the result, the Habeas Corpus Petition is dismissed. However, if the petitioner/detenu is so advised and if it is open to him under law, he is at liberty to workout his further remedy in accordance with law before the competent forum.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Deputy Director,
   Directorate of Enforcement,
   2nd & 3rd Floor No.84,
   Murugesan Naicker Office Complex,
   Greams Road, Thousand Lights,
   Chennai-600 006.

2. The Public Prosecutor,
   Madras High Court, Chennai.

+1 cc to Mr.P.Soloman Francis, Advocate, S.R.No.28802

+1 cc to Mr.N.Ramesh, Advocate, S.R.No.29615

Order in
H.C.P.No.2171 of 2018

NRL(CO)
SSM(23/04/2019).