

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.25131 of 2019

18.11.2019

Between:

Gay Kamble Shivananda

...Petitioner

and

The State of Telangana and others

...Respondents

Counsel for the petitioner : Mr. Gajanand Chakravarthy

Counsel for the respondents: Mr. Santosh Kumar,
Special Government Pleader

The Court made the following:



ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner, Gay Kamble Shivananda, has filed the present Habeas Corpus Writ Petition, *inter alia*, on the ground that her son, Gay Kamle Dilip, has been arrested by the police on 08.11.2019 at 7:30 AM and, subsequent thereto, his whereabouts are unknown.

By order dated 14.11.2019, this Court had directed the respondent No.4, the Station House Officer, Adilabad I Town Police Station, Adilabad District, to produce the *detenu* before this Court on 15.11.2019.

On 15.11.2019, Mr. Sripathi Santhosh Kumar, the learned Special Government Pleader, submitted that on 13.11.2019 a complaint has been lodged by Medakothala Naresh with the Adilabad Police Station- I Town, which was registered as FIR.No.253 of 2019. In the said complaint, the complainant had claimed that his motorcycle had been stolen by unknown persons. During the course of investigation of the said case, on 14.11.2019, the petitioner's son was arrested by the police, while he was proceeding on the said motorcycle. Subsequently on 15.11.2019, he was produced before the concerned Judicial Magistrate, who by order dated 15.11.2019 has remanded the *detenu* to judicial custody. Therefore, presently, the *detenu* happens to be in judicial custody. Hence, there is nothing illegal about the custody of the *detenu*.

On the other hand, Mr. Gajanand Chakravarthy, the learned counsel for the petitioner, submits that prior to arresting the *detenu*, the requirements of Section 41A of Cr.P.C have not been followed.

Secondly, even the check list of the accused does not tally with the facts of the present case. For, the check list continues to refer to the accused as a "female person", whereas the *detenu* is a "male

person”. This clearly shows non-application of mind on behalf of the police. Therefore, even the remand order dated 15.11.2019 is an illegal one. Hence, the custody of the *detenu* continues to be an illegal one.

Heard the learned counsel for the parties and perused the record submitted by both the sides.

Section 41A of Cr.P.C is as under:

“41A. Notice of appearance before police officer :- (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

Section 41A of Cr.P.C. requires that before any person can be arrested, a notice needs to be issued to him/her to appear before the Investigating Officer. Once such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the said notice. In case the person continues to comply with the said notice, he/she shall not be arrested in the respect of the offence referred to in the notice, unless for reasons to be recorded, the police officer is of the opinion that he/she ought to be arrested.

In the present case, there is no indication that such a notice was ever issued to the *detenu*. Moreover, there is no reason recorded for the arrest of the person. But, nonetheless according to the arrest

memo, the *detenu* has been arrested on 14.11.2019 at 6:30 hours. Even the check list submitted by the learned Special Government Pleader does not tally with the facts of the present case. For, the check list continues to refer to the accused person as “female accused person”. Moreover, while the caste of the accused happens to be “Mahar”, in the check list, it is claimed that the accused belongs to “Lambada” community. This also shows non-application of mind.

However, the petitioner has not challenged the legality of the remand order. In the case of **Arnesh Kumar vs. State of Bihar [2014 (8) SCC 273]**, the Hon’ble Supreme Court has clearly opined that once a person is arrested, and in case the remand order is not challenged, the custody of the accused cannot be said to be an illegal one. For, the person has to be sent into judicial custody only on the basis of the remand order passed by the concerned judicial officer. Even in the present case, the remand order is not under challenge. Since the remand order has been passed by the learned concerned Magistrate, the custody of the *detenu*, as on today, cannot be said to be an illegal one.

Therefore, this Court does not find any merit in the present Habeas Corpus Writ Petition; it is, hereby, dismissed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

18th November, 2019
JSU

High Court for the State of Telangana**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN****AND****THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY****WRIT PETITION No.25131 of 2019****(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)****Date: 18.11.2019****JSU**