

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP 4596 of 2020 (O&M)

Date of Decision: July 15, 2020

Vinay KumarPetitioner
Versus
State of U.T.Chandigarh and another Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Arvind Kashyap, Advocate
for the petitioner.

Mr. Gautam Dutt, APP for U.T. Chandigarh
for respondent No.1.

Dr. Sukant Gupta, Central Standing Counsel
for respondent No.2.

FATEH DEEP SINGH, J. (Oral)

**CRM W-572 of 2020 and
CRM W-573 of 2020**

Since these applications are moved in compliance of order dated 07.07.2020 passed by this Court, the same are allowed subject to all just exceptions. Affidavits of Shri Omvir Singh, IPS, Deputy Inspector General of Police, Police

Headquarters, Sector 9 Chandigarh and Shri Virat, HCS, Joint IG, Prisons-cum-Superintendent of Model Jail, Burail, Chandigarh are taken on record. Office to tag the same as per Rule.

CRWP 4596 of 2020

The short question that has arisen in this criminal writ petition filed under Article 226 of the Constitution of India seeking writ of habeas corpus directing the respondents to produce and release the petitioner from illegal detention of the respondents, is as to the ambit and powers of the Court under provisions of Sections 267, 272 and 249 of the Cr.P.C.

Upon hearing Mr. Arvind Kashyap, Advocate for the petitioner, Mr. Gautam Dutt, APP for U.T. Chandigarh for respondent No.1 and Dr. Sukant Gupta, Central Standing Counsel for respondent No.2.

The undisputed facts are that petitioner Vijay Kumar was arrested by the Chandigarh Police in case FIR No. 306 dated 28th September 2019 under Sections 419, 420, 120 IPC P.S. Sector 17 (in short, **the first case**). During his judicial custody, he was detained with respondent No.2 in Model Jail Burail (Chandigarh). The Court of learned Additional Sessions Judge, Chandigarh vide order dated 20.06.2020 bailed out the accused in this first case. It is worthwhile to refer here that

during the course of his detention in Model Jail Burail Chandigarh, the petitioner was made an accused in case CR No. 94 of 2019 dated 30.05.2019 under Sections 419, 420 IPC and Sections 66(c) and (d) of IT Act with Police Station D.B. Marg, Mumbai, Maharashtra (in short **the second case**). The Court of learned Metropolitan Magistrate, Girgaon, Mumbai sent an email dated 02 July, 2020, which was received and responded by respondent No. 1 on 11 July, 2020 regarding production warrants and handing over of accused Vinay Surendra Kumar in the second case followed by another response by respondent No. 2 dated 14.07.2020, whereby, correspondence was exchanged through email regarding production of accused through video conferencing and which was declined by Metropolitan Magistrate, Girgaon, Mumbai vide order dated 13.07.2020, whereby, fresh production warrants were ordered to be issued on that day. The copy of the same through email was received the same very day by the Jail Superintendent, Model Jail, Chandigarh. Thus, in the light of this imbroglio, the accused/petitioner was not released by the jail authorities in consequence of his bail orders and remained in custody compelling the petitioner to knock at the doors of this Court on 04.07.2020 by way of instant writ petition.

Shri Arvind Kashyap, learned counsel for the

petitioner to drive home the point that Article 22(2) of the Constitution of India read with Sections 57 and 167 of the Cr.P.C. mandates the production of the accused in custody before the nearest Magistrate within period of 24 hours of such an order and where a person remains in custody/is arrested without warrants for a longer period is not permissible without authorization of a Magistrate and has cited case law settled in **State by Inspector of Police, Anti Land Grabbing Special Cell, City Crime Branch, Trichy Vs. N.K. Nehru and others** 2012(1) MadWN (Cri) 4.

Mr. Sukant Gupta and Mr. Gautam Dutt, Advocates for respondents have controverted the contentions of the counsel for the petitioner by raising the plea that since production warrants have been issued by the Court in Mumbai in the second case, therefore, the respondents did not have any other option but to ensure that the petitioner is kept in custody till there is due transit of the accused to the Court in Mumbai.

Appreciating the submissions of the two sides, in the light of the records. Under Section 3 of the Prisoners (Attendance in Courts Act 1955 (in short the **Prisoners Act**) empowers the Court to require appearance of persons to give evidence or answer a charge. Sub-Section 3 of Section 3 of the Prisoners Act in its application to the State of Punjab, Haryana

and Chandigarh ensures that no order made under Section 3 by a Criminal Court, which is inferior to the Court of Magistrate of the 1st Class so being admitted unless it is counter signed by the Chief Judicial Magistrate to whom that Court is subordinate or out of the local limits of order jurisdiction of that Court is situated. To the specific query of this Court none for the respondents could convince this Court that the production warrants so issued qualifies this obligation or not and what is apparent to the naked eyes from the documents placed on the records, the same have been issued purely under the signatures of Metropolitan Magistrate Girgaon Mumbai. Thus, in the light of the aforesaid provisions of the Prisoners Act, the respondents were under no obligation to make compliance of these warrants, when the same did not satisfy the mandatory pre-requisite of the statute. It is fairly conceded on behalf of the respondents that till date no arrest warrants have been received qua the petitioner, who is accused in the second case by the authorities at Chandigarh. What transpires is that the authorities have failed to understand the very meaning of production warrants. **A production warrant issued under Section 267 Cr.P.C. does not constitute a detention order authorizing detention of a person in prison.** In akin situation before the Division Bench of Allahabad High Court in Nabbu Vs. State of

U.P. and others 2006 CriLJ 2260 similar situation as in this case, had arisen. The date for which, the accused was required to be produced in the second case in a Court at Mumbai had expired and, therefore, it is another distressing feature for the respondents, thus, necessitating this Court to observe that the authorities were not supposed to oblige and keep the petitioner behind the bars on the basis of lapsed production warrants which provision by way of 268(1) Cr.P.C. ensures such warrants cease to hold good.

The order envisages in such warrants to be an order to produce a person confined or detained in a prison before a criminal Court for answering a charge for the purpose of any proceedings against him. It needs to be differentiated that any such order of production warrants does not partakes, the character of detention order by the Court seeking protection qua the charge of the proceedings pending before it, when the accused (in the first case), petitioner before this Court was ordered to be released on bail on 20th June 2020. What prompted the authorities without there being any legitimate order or detention/custody of the petitioner to be kept behind the bars, that too, for such a long period of time spanning over for around 03 weeks till today in a jail at Chandigarh. No doubt, under the very contingencies of Section 269 Cr.P.C., an

officer/Incharge of prison is obliged to arrange production of such persons in his prison before the Court for their proceedings except when there is exclusion in view of provisions enshrined in Section 268 Cr.P.C. as in this case. What steps have come about from the initial date of receipt of production warrants through email till date by the respondents bears out glaring insolence of the authorities and unable to decipher the scope of provisions has rather chosen a convenient way to keep mum over the issue, thereby, rendering the custody of the petitioner in Burail Jail to be illegal and in gross violation of the mandate of law for which the conduct of the authorities needs to be deprecated. Therefore, the detention of the petitioner in Burail Jail Chandigarh is held to be illegal and the petitioner needs to be released forthwith. Similar preposition had cropped up before a Division Bench of Jharkhand High Court in case **Nemi Chand Jain Vs. State of Jharkhan and another,** 2008(2) CRR 385.

What has baffled this Court is that at the sight of production warrants, the authorities appeared to have frozen in their response and neither having resorted to the provisions of Section 270 Cr.P.C. nor to Section 269 Cr.P.C. To the specific query of this Court what steps have been initiated by the authorities for the period in between, the counsel for the

respondents were clearly at loss of words. Thus it emancipates from these observations that a valuable inherent **Constitutional Right** of the petitioner provided under Article 21 of the Constitution has been grossly and abundantly circumvented arising out of this flagrant misuse of powers by the respondents. The conduct of the respondents and their officers/officials certainly needs to be denounced. This Court stops short of ordering the respondents to pay compensation for this illegal detention of the petitioner but would certainly call upon the authorities to ensure that in such a situation where they are unable to determine the legal implications, they are at liberty to seek legal opinion when the U.T. Chandigarh is maintaining a huge posse of legal experts and a department for this and, thus, could have easily escaped from this misdemeanor and misconduct.

In the light of what have been detailed and discussed above, the present petition stands allowed thereby setting aside ill-legal detention of the petitioner by the respondents and for the release of the petitioner from custody of jail at Chandigarh.

It is apt to quote here the words of George Stillman Hillard the famous American Writer and Lawyer “ if liberty with law is fire

on the hearth, liberty without law is fire on the floor”.

Oral intimation be sent by the Office to respondents as it may not be possible to upload the orders on DMS today itself being late evening. Office to sent copy of this order to Adviser of U.T., Chandigarh as well so that such a remiss does not reoccur. However, this order shall not come in the way of the petitioner if he chooses to seek compensation for his illegal detention or invoke any other legal recourse available to him.

Disposed off.

July 15, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No