
CRWP No.4926 of 2020
Date of Decision: 20.07.2020

GURPREET SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vikas Arora, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SUDIP AHLUWALIA, J. (ORAL)

In this petition, the petitioner happens to be the real brother of the detainee- Hardeep Singh, who had been originally arraigned as an accused in FIR No.345 dated 28.11.2019 registered at Police Station Sadar Dhuri, under Sections 22, 27 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985.

[2] The above said detainee was granted interim protection by way of an order passed, by this Court, on 15.01.2020, in his petition being CRM-M-54369 of 2019 filed under Section 438 of the Cr.P.C to seek anticipatory bail. Such anticipatory bail petition is still pending and is now reported to be listed on 28.09.2020 before this Court.

[3] In the meantime, the Judge, Special Court, Duty Officer, Sangrur vide the impugned order dated 10.01.2020 ordered for taking the petitioner into Judicial custody, on account of the fact that challan had been presented against the co-accused Jatinder Singh, who had been granted interim bail by this Court on 07.02.2020, but the FSL report had already been received.

2019, concerning the detainee-Hardeep Singh, however, nowhere mentions about the requirement of the FSL report. On the contrary, he had been granted interim protection only in view of the fact that his name had transpired from the disclosure statement of the co-accused. The said anticipatory bail petition is still pending. As in such a situation, the Ld. Court below undoubtedly passed a patently illegal order exceeding its jurisdiction by directing incarceration of the petitioner though already on interim anticipatory bail granted by this Court, which has yet not been revoked.

[5] Reliance has been placed on the decisions of the Supreme Court in “**Home Secretary (Prison) and others Vs. H. Nilofer Nisha, 2020 (1) ALT (Crl.) 263**” wherein, it has been observed inter alia that:-

“It is a settled principle of law that a writ of habeas corpus is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention. As justice Hidayatullah (as he then was) held. “The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention.....”

[6] While considering the question whether a writ in the nature of Habeas Corpus in such a situation where a person was taken into custody on the basis of an illegal order passed by a Magistrate, exceeding his jurisdiction was maintainable, the Karnataka High Court in “**Mrs. Sudha Shivaram Gowda Vs. State of Karnataka reported in 1993 CriLJ 1533**” had observed, *inter alia* :-

“We may point out that without even seeking a writ of certiorari to quash the order of remand, it is open to the

accused or a prisoner in custody or any one of their relatives to seek a writ in the nature of habeas corpus and such a writ can be issued if it is proved that the custody is not authorized custody and it is unauthorized. We may also point out that unlike the other writs, writ of habeas corpus is not controlled by any technical objection or limitation. The jurisdiction to issue writ of habeas corpus is wider and the limitations that are placed against the issue of writs of other nature would not apply to a writ of habeas corpus because personal liberty with which it is concerned is given utmost importance. Therefore, whenever a citizen or a person approaches this Court alleging that personal liberty of a person or citizen is unauthorisedly curbed, this Court cannot refuse to look into that petition, but find out as to whether the grievance of the petitioner is justified in law or not....”

[7] Similarly, a Division Bench of Madras High Court in **“Tamizharasi and another Vs. Assistant Director NCB reported in 1996 CriLJ 208”**, had also observed that:-

“ As far as HCP No.1675 of 1994 and HCP No.1692 of 1994 are concerned, it was fairly stated by Mr. K. Asokan, that till today, complaint has not been filed, for information is yet to be received from foreign countries, in spite of efforts having been made though Delhi authorities even from August, 1994. More than three months have elapsed. As we have already stated there is no scope for extension of remand period, under the available provisions in the Narcotic Drugs And Psychotropic Substance Act, contra distinguished from certain salient amended provisions of the TADA Act. We are satisfied that on default committed by the prosecution, detenu Arumugham (HCP No.1675 of 1994) and and detenu Y. V. Nagaraj (HCP No.1692 of 1994) will be entitled to be released on bail, since they are prepared to furnish bail. We

are not inclined to accede to the argument of Mr. Asokan, that since the Special Court had chosen to decline the plea for bail made by these two detenues on default made by the prosecution, the remedy, if any, cannot be through issue of a habeas, but only through a petition invoking the inherent powers of this Court, under Section 482 of the Code of Criminal Procedure. Once it is evident that the Magistrate had no power to extend remand, on the expiry of 90 days on default committed by the respondent, moreso, when they were prepared to furnish bail, further incarceration will have to be necessarily held to be illegal. In that event, seeking issue of habeas', for release from illegal detention will be a just and proper remedy, which cannot be refused merely because an alternate remedy could also have been chosen. Illegality of detention would certainly entitle these two detenues to invoke out constitutional powers for issue of a habeas. On the facts available, application of proviso to Section 167(2) of the Code of Criminal Procedure, 1973 these two detenues will be entitled to be released on bail while directing release on bail, of these two detenues, certain conditions will have to be imposed, for their availability, for the further processing of the prosecution case. ”

[8] In the given circumstances, the order passed by the Ld. Court below directing that the petitioner's brother who was already granted interim anticipatory bail by this Court, be taken into custody, on the face of it, would appear to be not-sustainable and beyond jurisdiction on account of which *per se*, the writ of habeas corpus does appear to be maintainable.

[9] The petition is, therefore, disposed off, at this stage, by directing that the detinue shall be immediately released against bail bonds already furnished by him, in compliance of the earlier order passed by this

Court on 15.01.2020, in CRM-M-54369 of 2019, and he shall continue to

remain on such interim anticipatory bail till the next of hearing, in the said case.

20.07.2020

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**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No