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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL.) 822/2020**ANIL MITTAL**

.....Petitioners

Through: **Mr. Aditya Jain, Advocate**

versus

STATE (NCT OF DELHI) & ORS.

.....Respondents

Through:

**Mr. Rahul Mehra, Standing
Counsel with Mr. Chaitanya
Gosain, Advocate for State.
Mr. Amit Mahajan, CGSC with
Mr. Nitesh Rana, Advocate for
UOI.**

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Date of Decision: 19th May, 2020**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE SANJEEV NARULA****J U D G M E N T****MANMOHAN, J: (Oral)****CRL.M.A. 6548-6549/2020**

Allowed, subject to just exception.

W.P.(CRL.) 822/2020

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein.
2. The petition has been heard by way of video conferencing.

3. It is pertinent to mention that present writ of habeas corpus has been filed seeking a direction to release the petitioner in accordance with the order dated 12th May, 2020 passed by the trial court and to declare that the transfer of custody of the petitioner by respondent no. 2 was not in accordance with law.
4. Learned counsel for the petitioner submits that the detention of the petitioner post 12th May, 2020 and his production on 18th May, 2020 before the District & Sessions Judge, Lucknow was illegal and unjustified as there was no pending production warrant against the petitioner on the date he was granted bail i.e. 12th May, 2020 in FIR No. 178/2017 under Sections 406/409/420/120-B IPC Police Station EOW. He points out that the petitioner's daughter had already filed the surety bond before the Duty Magistrate on 15th May, 2020.
5. He also contends that the petitioner is entitled to parity with co-accused Chander Prakash Wadhwa who has been released on bail on 16th May, 2020.
6. Issue notice. Mr. Rahul Mehra, learned standing counsel for State and Mr. Amit Mahajan, learned standing counsel for UOI accept notice for respondents.
7. After hearing learned counsel for the parties, the admitted position that emerges is that on the date the petitioner was granted bail i.e. 12th May, 2020 there was no live production warrant against the petitioner. The last production warrant was dated 6th March, 2020 directing the Jail authorities to produce the petitioner before a court in Lucknow on 16th March, 2020.
8. Section 269 (c) of the Cr.P.C. prescribes that where a person in respect of whom an order is made under Section 267, requiring attendance

of a prisoner before a particular court, is in custody for a period that would expire before expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained, in those circumstances, the officer in charge of the prison must abstain from carrying out the Court's order and instead, should send a statement of reasons to the concerned court for the said absence. [See order ***dated 15/05/2020*** passed in ***W.P. (Crl.) 802/2020 : Vinod Bansal Vs. State & Anr.,***]

9. Also the Allahabad High Court in ***Dharampal and another Vs. State of U.P. and another, 1981 SCC OnLine All 756*** has held as under:-

“9. A consideration of the aforementioned provisions indicate that the requisition under S. 3(2), Prisoners (Attendance in Courts) Act, 1955, and S. 267(1), Cr. P.C. can be addressed to Supdt., of a District jail who is already holding a prisoner under an authority of law. The requisition by itself does not authorise the detention of any person. It merely requires the officer in charge of the prison (1) to produce the detenu before the requisitioning Court on the date fixed by it and (2) after the purpose of requisition is over, to take him back and to keep him in custody in accordance with the writ or direction issued by the Court which had authorised his detention in jail. As laid down in S. 55, Prisons Act, 1894, during the period the prisoner is away from the prison in pursuance of the requisition, he would throughout be deemed to be in the custody of the prison and would be subject to all the same incidents as if he were actually in prison.

10. The requisitions issued by the criminal Courts in Haryana, therefore, did not authorise the Supdt., District Jail, Meerut, to keep the two petitioners in his custody. They merely required the Supdt., to produce the two petitioners before the concerned courts only if the Supdt., was entitled to keep them in his custody under some valid authority. Since the various requisition orders did not authorise the Supdt., District Jail, Meerut to keep the two

petitioners in custody and the moment the petitioners had been admitted to bail in all the criminal cases in connection with which their detention in District Jail, Meerut had been authorised, the authority of the Supdt., District Jail, to keep the petitioners under detention came to an end and the petitioners' detention after being released on bail, became illegal and without authority of law. The requisitions received from the criminal Courts at Haryana under S. 3, Prisoners (Attendance in Courts) Act, 1955 or under S. 267 Cr. P.C. could not confer any valid authority on the Supdt., of jail to keep the petitioners under detention and render his custody in District Jail, Meerut valid."

10. Keeping in view the aforesaid as well as the fact that as of today there is no live production warrant against the petitioner, he is directed to be released forthwith in accordance with the order dated 12th May, 2020 passed by the Additional Sessions Judge (East), Karkadooma Courts, Delhi in FIR No. 178/2017 under Sections 406/409/420/120-B IPC Police Station EOW.

11. However, learned counsel for the petitioner undertakes to this Court that the petitioner shall appear before the Lucknow court on the next date which is as of now scheduled for 12th June, 2020.

12. The undertaking given by learned counsel for the petitioner is accepted by this Court and petitioner is held bound by the same.

13. In future, the Director General (Prisons) is directed to keep in mind Section 269(c) of Cr. P.C. as well as judgment of the Allahabad High Court in ***Dharampal and another Vs. State of U.P. and another, 1981 SCC OnLine All 756*** so that in similar cases accused are not forced to file writ petitions before this Court.

14. With the aforesaid directions, present petition stands disposed of. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

15. Registry is directed to forward a copy of this order to the concerned Jail Superintendents as well.

MANMOHAN, J

SANJEEV NARULA, J

MAY 19, 2020

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