

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2 of 2021

Arising Out of PS. Case No.-315 Year-2020 Thana- MINAPUR District- Muzaffarpur

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Gaurav Kumar S/O Bhikhari Sahani (Natural guardian of the petitioner),
resident of village- Madhuban Kanti Kasba, Ward No- 1, P.S.-Minapur
(Panapur O.P.), District-Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Deptt. of Home, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Additional Director General of Police, Headquarter, Bihar, Patna.
5. The Inspector General of Police, Muzaffarpur Region, Muzaffarpur.
6. The Deputy Inspector General of Police, Muzaffarpur Region, Muzaffarpur.
7. The Senior Superintendent of Police, Muzaffarpur.
8. The District Magistrate, Muzaffarpur.
9. The Deputy Superintendent of Police (west), Muzaffarpur.
10. The Station House Officer, Meenapur Police Station, Muzaffarpur.
11. The Station House Officer, Panapur O.P., Muzaffarpur.
12. Sri Ranjeet Sahni S/O Binda Sahni, resident of Village- Madhuban Kanti,
P.S.- Meenapur, District- Muzaffarpur.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Apurva Kumar, Advocate
For the Respondent-State: Mr. Prabhu Narayan Sharma, AC to A.G

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 07-09-2021

Heard Mr. Apurva Kumar, learned counsel for the
petitioner and Mr. Prabhu Narayan Sharma, learned counsel for
the State.

2. The present application under Article 226 of



the Constitution of India has been filed by the petitioner seeking a writ in nature of *habeas corpus* directing the respondents to release him from the detention in connection with Meenapur (Panapur O.P.) P.S. Case No.315 of 2020 dated 21.08.2020 registered for the offences punishable under Sections 414/34 of the Indian Penal Code and 25(1-B)(a), 26 and 35 of the Arms Act.

3. Learned counsel appearing for the petitioner submitted that the petitioner was arrested by the Station House Officer (for short 'SHO') of Meenapur Police Station on 18.08.2020 and was handed over to SHO of Panapur O.P.

4. Being aggrieved by the illegal action of the police, the father of the petitioner filed Misc. Petition No.32 of 2020 on 20.08.2020 before the learned Chief Judicial Magistrate, Muzaffarpur stating therein all the facts.

5. After coming to know about the Misc. Petition filed by the father of the petitioner before the court of Chief Judicial Magistrate, Muzaffarpur, the SHO, Meenapur registered a false case implicating the petitioner vide Meenapur P.S. Case No.315 of 2020 dated 21.08.2020 alleging therein that while the police were on patrolling duty in the evening of 21.08.2020 at 4 PM on Raghai Pul, they saw the petitioner and



three others fleeing away and on chase, they caught Ritik Raushan, Md. Samir, the petitioner and one another and, on search, a loaded countrymade pistol was recovered from the possession of the petitioner.

6. The contention of the petitioner is that the police have framed him in a false case at the instance of respondent no.12 due to political rivalry. He further contended that due to highhandedness of the police, a false seizure-list was prepared and the petitioner has been illegally remanded to judicial custody.

7. On the other hand, learned counsel appearing for the State submitted that the instant writ petition is thoroughly misconceived. He contended that the defence of the petitioner in a criminal case cannot be a ground for invoking the jurisdiction of this Court under Article 226 of the Constitution of India and that too for a direction to issue a writ in the nature of *habeas corpus*.

8. A counter affidavit has also been filed on behalf of the State wherein the plea of false implication of the petitioner in the police case has been denied.

9. We find force in the submission of learned counsel for the State.



10. From the own pleadings of the petitioner, it would be manifest that he has been apprehended in connection with a police case and his personal liberty has not been deprived illegally.

11. In the *habeas corpus* proceeding, the Court is required only to consider illegality of the detention on the date of hearing. If on the date of hearing, it can be said that aggrieved party has been wrongfully deprived of his personal liberty and the detention is contrary to law, a writ of *habeas corpus* can be issued.

12. Admittedly, the arrest of the petitioner is in connection with a case instituted *inter alia* under the Arms Act. According to the FIR, a countrymade loaded pistol was recovered from his possession. The police prepared the seizure-list in presence of two independent witness. Apart from the petitioner, illegal arms were also recovered from the possession of other co-accused persons. The police have completed the investigation of the case and a report under Section 173(2) of the Code of Criminal Procedure has also been submitted in the Court. The initial remand order as also the subsequent remand orders have been passed by the Jurisdictional Magistrate. Hence, the detention of the petitioner is pursuant to the order passed by



a court of competent jurisdiction.

13. It is well settled that an order of remand passed by a Court in a judicial proceeding cannot be made subject matter of *habeas corpus* writ petition.

14. A Full Bench of this Court in ***Shikha Kumari vs. State of Bihar & Ors.*** since reported in **2020 (2) PLJR 15** examined the issue as to whether, in a petition for issuance of a writ of *habeas corpus*, an order passed by the Magistrate could be assailed ? While relying on the judgments of Supreme Court in ***Manubhai Ratilal Patel vs. State of Gujrat & Ors.*** since reported in **(2013) 1 SCC 314**, ***Saurabh Kumar vs. Jailor, Koneila Jail & Anr.***, since reported in **(2014) 13 SCC 436**, ***State of Maharashtra & Ors. vs. Tasneem Rizwan Siddiquee***, since reported in **(2018) 9 SCC 745** and ***Serious Fraud Investigation Office vs. Rahul Modi & Anr.***, since reported in **(2019) 5 SCC 266**, the Full Bench held as under:-

“Our irresistible conclusion in view of the ratio laid down by the Supreme Court in the aforementioned cases is that a writ of *habeas corpus* would not be maintainable, if the detention in custody is as per judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction. Consequently an order of remand passed by a Judicial Magistrate



having competent jurisdiction cannot be assailed or set aside in a writ of *habeas corpus*.”

15. In view of the judgment passed by the Full Bench in ***Shikha Kumari*** (supra), the instant application filed by the petitioner challenging the order of detention pursuant to an order of remand passed by a Judicial Magistrate cannot be entertained. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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