

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.168 of 2021

1. Mukesh Kumar Sahu S/o Shri Kashi Prasad Sahu Aged About 31 Years (Wrongly Mentioned As 38 In The Order Sheet) Years, R/o Ward No. 03, Ratakhar, Bajrang Chowk, Korba, District Korba Chhattisgarh.
2. Ashish Maiti S/o Shri Prabhat Kumar Maiti Aged About 39 Years R/o Ram Sagar Para, Darri Road, Korba, Tahsil And District Korba Chhattisgarh,
(Both are prisoners Represented By Their Next Friend Namely Kamlesh Sahu S/o Ashok Sahu, Aged About 36 Years, R/o Ramsagar Para, Darri Road, Police Station Kotwali Korba, District Korba Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through The District Magistrate, Korba, District Korba Chhattisgarh
2. The Officer In Charge Out Post CSEB, Police Station Kotwali Korba, District Korba Chhattisgarh

---- Respondents

For Petitioners : Mr. Dharmesh Shrivastava, Advocate.

For State/Respondents : Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

23/03/2021

1. This petition has been brought challenging the legality, propriety and correctness of order dated 22.02.2021 passed by the Court of Additional Chief Judicial Magistrate, Korba, District- Korba, C.G.
2. It is submitted by the learned counsel for the petitioners that the petitioners were arrested by the respondent No.2 in Istgasa No.03/2021 registered under Section 41(1-D) of Cr.P.C. read with Section 379/34 of I.P.C. The Section 41(1-D) of Cr.P.C. is not an offence. The petitioners

moved an application under Section 436 of Cr.P.C. praying for grant of bail, which has been rejected by the impugned order.

3. It is submitted that the arrest and detention of the petitioners is illegal as there is no offence registered against them. Therefore, the learned trial Court ought to have granted bail to them, hence, it is prayed that these petitioners may be enlarged on bail and they may also be granted other reliefs as has been prayed for in this revision petition.
4. Learned State counsel opposes the submissions and firstly raises the ground of maintainability of this Writ Petition, which has been brought against the order of a Criminal Court. It is further submitted that the petitioners have suppressed this fact that they have separately moved an application under Section 439 of Cr.P.C. which is pending. Therefore, a parallel petition for the same relief is not maintainable. The impugned order does not suffer from any infirmity. There are sufficient facts present in the case, on the basis of which, there is strong suspicion present that these petitioners are involved in the commission of offence of theft etc. Hence, this petition may be dismissed at motion stage.
5. In reply, it is submitted by the learned counsel for the petitioners that the application under Section 439 of Cr.P.C. has been separately filed, which is pending before this Court. The petitioners have also preferred Writ Petition (Criminal) before this Court, which is also pending. However, the petitioners cannot be shut out from the relief, for which they are entitled to. Hence, the petition may be considered for granting relief to the petitioners.
6. Heard learned counsel for both the parties and perused the documents present.
7. Considered on the submissions. The Writ Petition under Article 227

Constitution of India is maintainable against the orders of a Criminal Court also. The wordings in the Article 227 Constitution of India do not make any difference with respect to Court as is mentioned in the proviso. Although the extent of the supervisory jurisdiction is very limited in such cases but such power can be exercised in suitable cases. It is the view laid down by a five Judge Bench of Patna High Court in the case of **Surendra Singh & Ors. Vs. State of Bihar & Ors.** reported in 1991 Cr.L.J. 3040.

8. The challenge has been given by the learned counsel for the petitioners to the legality of the orders passed by the Court on this basis that in fact there is no offence registered against these petitioners. The perusal of the impugned order itself mentions that Istgasa registered against the petitioners is with respect to Section 41(1-D) of Cr.P.C. read with Section 379/34 of I.P.C. The Section 41(1-D) of Cr.P.C. provides for power of police officer to arrest without warrant that “any police officer may without an order from a Magistrate and without a warrant, arrest any person – in whose possession anything is found, which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such things.
9. Section 56 of Cr.P.C. provides that “after making any arrest without warrant, the police officer shall, without unnecessary delay and subject to the provision herein contained as to bail, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of the Police Station”. Section 57 of Cr.P.C. provides for the duration for which the person arrested can be detained by the police which is not more than 24 hours. Subsequent to these provisions, the provision under Section 167 of Cr.P.C. comes into play, according to which “whenever any person is arrested and detained in

custody, and it appears that investigation cannot be completed within the period of 24 hours fixed under Section 57, and there are grounds for believing that the accusation or information is well founded”, the police officer shall then present the accused before the Judicial Magistrate to pray for judicial remand.

10. The facts of this case disclose that the arrest of these petitioners has been made on the suspicion of having stolen the property worth Rs.25 Lakhs, which has been seized in this case by the police. Hence, the arrest appears to have been lawfully made and the petitioners had been remanded to jail in accordance with law. Therefore, they have entitlement to make prayer for grant of bail. Subsequent to dismissal of their application by the learned Judicial Magistrate, the petitioners have filed application under Section 439 of Cr.P.C. which is the correct procedure for seeking relief for the petitioners. Therefore, I do not find any substance in the present Writ Petition, which is dismissed and disposed off at the motion stage.

11. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge