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H.C.P.No.185 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2024

PRONOUNCED ON : 07.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.185 of 2024

Mrs.Arafath Nisha

Petitioner/Wife

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Chief Secretary,
Home Department,
Secretariat, Chennai.
2. The Commissioner of Police,
Chennai City Veppery,
Chennai – 600 007.
3. Directorate of Revenue Intelligence
Rep by its Senior Intelligence officer
Chennai Zonal Unit (DRI-CZU),
Tamil Nadu, Chennai.

...Respondents



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Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to direct the 3rd respondent to produce the detenu Mohamed Refayedeen S/o. Abdul Wahab aged 26 from the illegal detention and custody of the above said respondent before this Court and set him at liberty.

For Petitioner : Mr.T.Mohan
Senior Counsel
for
Mr.I.Abdul Basith

For Respondents : Mr.E.Raj Thilak (for R1 and R2)
Additional Public Prosecutor

Mr.AR.L.Sundaresan (for R3)
Additional Solicitor General
for
Mr.N.P.Kumar
Special Public Prosecutor

ORDER

(Order of the Court was delivered by SUNDER MOHAN,J.)

The captioned Habeas Corpus petition has been filed stating that the husband of the petitioner was taken into custody from his residence at about 5.30 a.m. by six persons claiming to be officers in the third respondent's unit; that the petitioner received a call at 9.45 p.m. that the detenu was admitted to



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Stanley Hospital; that when the petitioner saw her husband, she found that there were several injuries on her husband; and that she apprehended danger to her husband's life who was kept under illegal detention by the third respondent/Directorate of Revenue Intelligence.

2. This Court requested Mr.N.P.Kumar, the learned Special Public Prosecutor, to take notice on behalf of the third respondent. The learned Additional Public Prosecutor took notice for the respondents 1 and 2.

3. Today, when the matter was called, the third respondent filed a counter stating that the officers went to serve summons, and at that time, the petitioner's husband attempted to escape; that the officers caught hold of the petitioner's husband, and subsequently, he accepted the summons and appeared before the third respondent in his office; that the petitioner's husband was arrested at 21.15 hours on 30.01.2024 at the office of the Directorate of Revenue Intelligence at T.Nagar and was produced before the learned Judicial Magistrate, Special Court for Customs, Alandur, and remanded to judicial custody; and that therefore, there was no illegal custody as claimed by the petitioner.



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4.Mr.T.Mohan, the learned Senior Counsel for the petitioner, submitted:-

(i) that the petitioner's husband's arrest is illegal; that the petitioner's husband was kept in an illegal detention from 5.30 a.m. on 30.01.2024 and after the Habeas Corpus petition was filed, the respondents made it appear that the arrest was at 21.15 hours on 30.01.2024.

(ii) that in the counter, the respondents have not denied the averment in the affidavit filed by the petitioner that the petitioner's husband was taken into custody at 5.30 a.m. on 30.01.2024.

(iii) that the respondents have also not stated in the counter the time of remand and that the petitioner's husband actually was remanded at about 8.00 p.m. on 31.01.2024 and hence submitted that since the petitioner's husband was kept in custody for more than 24 hours, the remand itself is illegal, and consequently, this Court may release the petitioner's husband.

(iv) The learned Senior Counsel relied upon the following Judgments of the Hon'ble Supreme Court in support of his submission:



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(a). In the matter of *Madhu Limaye and others* reported in *(1969) 1 SCC 292*.

(b). *Manoj Vs. State of Madhya Pradesh* reported in *(1999) 3 SCC 715*.

(c). *Gautam Navlakha Vs. National Investigation Agency* reported in *(2022) 13 SCC 542*.

5. Mr.AR.L.Sundaresan, the learned Additional Solicitor General, for the third respondent, submitted:

(i) that the petitioner's husband was arrested only at 21.15 hours and remanded by the learned Judicial Magistrate, Sub Court for Customs, Alandur.

(ii) that the petitioner's husband broke the table topglass in the office of the third respondent by using a fire extinguisher cylinder and used one of the glass pieces to hurt himself with multiple wounds on his wrist and stomach and also threatened the officers with dire consequences.

(iii) that since the petitioner's husband is now in judicial remand, this Habeas Corpus Petition is not maintainable; that there are several factual



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disputes which cannot be gone into this Habeas Corpus Petition; and that therefore, this Habeas Corpus Petition is not maintainable and relied upon the Judgments of the Hon'ble Supreme Court in (a) ***V.Senthil Balaji Vs. State Represented by Deputy Director and others*** reported in ***2023 SCC OnLine SC 934*** and (b) ***Serious Fraud Investigation Office Vs. Rahul Modi and another*** reported in ***(2019) 5 SCC 266*** in support of his submission.

6. We have carefully considered the rival submissions on either side.

7. Admittedly on 02.02.2024 when we heard the matter, there was an order of remand by the learned Judicial Magistrate, Alandur. The learned Additional Solicitor General submitted on instruction that the petitioner's husband was remanded at 3.00 p.m. on 31.01.2024. However, Mr.T.Mohan, the learned Senior Counsel for the petitioner, submitted on instruction that the petitioner's husband was remanded only at 8.00 p.m. We could have called for the records from the learned Magistrate to verify when the petitioner's husband was remanded. However, we felt that it was not necessary in view of the orders that we propose to pass.



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8. The petitioner's case is that he was arrested at 5.30 a.m on 30.01.2024.

However, in the counter, the respondent would state that they went to serve the summons on the petitioner's husband, and since he made an attempt to escape as he did earlier, they caught him and used minimum force to serve the summons and thereafter he appeared before the Directorate of Revenue Intelligence. According to the respondents, the petitioner's husband was arrested only at 21.15 hours on 30.01.2024. The learned Senior Counsel for the petitioner produced certain photographs and submitted that those would show that the petitioner's husband was taken away by six officers of the third respondent at gunpoint at 5.30 a.m., and therefore, the third respondent's counter is not only false, but there is no specific denial of the averments made in the affidavit; and further, the petitioner's husband was subjected to custodial violence. The learned Additional Solicitor General, on the other hand, produced certain photographs to show that the petitioner's husband attempted to cause injuries to himself after causing damage to the glass table top in the third respondent's office.



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9. The Hon'ble Supreme Court entertained Writ of Habeas Corpus petition where the arrest was *ex facie* illegal and the order of remand did not reflect any application of mind. In ***Madhu Limaye's case (cited supra)***, the Hon'ble Supreme Court found that the arrest was illegal since the Police arrested the detenu therein for a non-cognizable offence. Similarly, in ***Manoj vs. State of Madhya Pradesh's case (cited supra)***, the Hon'ble Supreme Court found that if any person is detained in custody beyond the period of 24 hours without any authority of a Magistrate, then his/her detention would be illegal and he/she could be released forthwith. However, in the said case, there was an admission by the State of Madhya Pradesh, and therefore, the Hon'ble Supreme Court held that detention was unlawful and passed orders. The relevant paragraph in the said Judgment reads as follows:

“15. Of course the stand of the State of Madhya Pradesh is that appellant continues to be under detention pursuant to his arrest in the Rajasthan's case. Excuses were advanced by the respondent-State of their inability to produce the accused before the nearest magistrate within the required period. But no such excuse has been recognized by law. Hence respondent



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cannot validly press for further detention of the accused beyond 24 hours. That arrest has now become otiose."

So also in ***Gautam Navlakha Vs. National Investigation Agency's case*** cited by the learned Senior Counsel, the Hon'ble Supreme Court held that if the remand is absolutely illegal or the remand is afflicted by a vice of lack of jurisdiction, then a Habeas Corpus Petition would lie. The relevant paragraph reads as follows:

"63. Thus, we would hold as follows:

If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie."

10. In the instant case, we find there is no admission by the respondents that the petitioner's husband was detained in their custody for more than 24 hours. The third respondent stated in their counter that the arrest was



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at 21.15 hours on 30.01.2024 and even according to the petitioner, the petitioner's husband was remanded at 8.00 p.m. on 31.01.2024. That apart, the question as to whether the petitioner's husband was taken into illegal custody at 5.30 a.m. at gunpoint and, therefore, he was in detention for more than 24 hours is factual and cannot be adjudicated in this Habeas Corpus petition. We cannot proceed on the basis of the affidavit and the photographs, which have to be tested. The fact that the respondents have not specifically stated the time when they went to serve summons on the petitioner's husband is a matter that can be agitated by the petitioner or her husband in an appropriate forum in a manner known to law.

11. Further, once we find that the petitioner's husband is in judicial remand, we would not entertain a Habeas Corpus Petition. In this regard, we would rely upon the observations of the Hon'ble Supreme Court in ***Serious Fraud Investigation Office Vs. Rahul Modi and another's case (cited supra)*** which read as follows:

“21. The act of directing remand of an accused is thus held to be a judicial function and the challenge



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to the order of remand is not to be entertained in a habeas corpus petition. The first question posed by the High Court, thus, stands answered. In the present case, as on the date when the matter was considered by the High Court and the order was passed by it, not only were there orders of remand passed by the Judicial Magistrate as well as the Special Court, Gurugram but there was also an order of extension passed by the Central Government on 14-12-2018. The legality, validity and correctness of the order or remand could have been challenged by the original writ petitioners by filing appropriate proceedings. However, they did not raise such challenge before the competent appellate or revisional forum. The orders of remand passed by the Judicial Magistrate and the Special Court, Gurugram had dealt with merits of the matter and whether continued detention of the accused was justified or not. After going into the relevant issues on merits, the accused were remanded to further police custody. These orders were not put in challenge before the High Court. It was, therefore, not open to the High Court to entertain challenge with regard to correctness of those orders. The High Court, however,



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considered the matter from the standpoint whether the initial order of arrest itself was valid or not and found that such legality could not be sanctified by subsequent order of remand. Principally, the issue which was raised before the High Court was whether the arrest could be effected after period of investigation, as stipulated in the said order dated 20-6-2018 had come to an end. The supplementary issue was the effect of extension of time as granted on 14-12-2018. It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on 14-12-2018. Additionally, there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpus petition, the High Court was not justified in entertaining the petition and passing the order. "

We may also refer to the observations of the Hon'ble Supreme Court in

V.Senthil Balaji's case (cited supra), which read as follows:



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“88.We shall first consider the maintainability of the writ petition filed. A writ of Habeas Corpus was moved questioning the arrest made. When it was taken up for hearing on a mentioning, the next day by the Court, the appellant was duly produced before the learned Principal Sessions Judge in compliance with Section 19 of the PMLA, 2002. The custody thus becomes judicial as he was duly forwarded by the respondents. Therefore, even on the date of hearing before the High Court there was no cause for filing the Writ Petition being HCP No. 1021 of 2023. Added to that, an order of remand was passed on 14.06.2023 itself. The two remand orders passed by the Court, as recorded in the preceding paragraphs, depict a clear application of mind. Despite additional grounds having been raised, they being an afterthought, we have no hesitation in holding that the only remedy open to the appellant is to approach the appropriate Court under the Statute. This was obviously not done. We may also note that the appellant was very conscious about his rights and that is the reason why, by way of an application he even opposed the remand.”



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12. Therefore, we are of the considered view that it is for the petitioner's husband to establish that arrest was illegal and that he was kept in detention beyond the period of 24 hours before the appropriate forum in a manner known to law. Hence, we are not inclined to entertain this Habeas Corpus Petition as there are factual disputes. However, it is left open for the petitioner's husband to seek appropriate remedy in accordance with the law. With the above observations, this H.C.P.No.185 of 2024 is dismissed.

(M.S.R.,J.) (S.M.,J.)
07.02.2024

Index : yes
Neutral citation : yes
dk



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Copy to:

1. The Chief Secretary,
The State of Tamil Nadu,
Home Department,
Secretariat, Chennai.
2. The Commissioner of Police,
Chennai City Veppery,
Chennai – 600 007.
3. Directorate of Revenue Intelligence
Rep by its Senior Intelligence officer,
Chennai Zonal Unit (DRI-CZU),
Tamil Nadu, Chennai.



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AND
SUNDER MOHAN,J.
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Pre-delivery order in
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