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W.P.No.17007 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM :

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.SIVAGNANAM

W.P.No.17007 of 2024

1. Ahmed Mansoor
S/o Shahul Hameed
 2. Hameed Hussain
S/o Ahmed Mansoor
 3. Abdur Rahman
S/o Ahmed Mansoor
- .. Petitioners

v.

1. The State represented by
Assistant Commissioner of Police
Cyber Crime Branch
CCB, Vepery, Chennai
(Ref: Cr.No.173/2024)
2. Union of India rep.by its
Inspector of Police
National Investigation Agency
Branch Office, Chennai
Purasaivakkam, Chennai 600 010
(Ref.RC-02/2024/NIA/CHE)



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(R2 impleaded vide order of Court
dated 23.08.2024 in WMP.26473/2024
in WP.17007/2024)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring the arrest and the subsequent remand dated 23.05.2024 of the petitioners in connection with Cr.No.173 of 2024 on the files of the first respondent as illegal, unconstitutional and against the law laid down by the Hon'ble Apex Court in *Prabir Purkayastha vs State (NCT Delhi) 2024 INSC 414* and consequently direct the immediate release of the petitioners from the custody in connection with Cr.No.173 of 2024 dated 21.05.2024 on the file of the first respondent.

For Petitioners :: Mr.I.Abdul Basith

For Respondents :: Mr.E.Raj Thilak
Additional Public Prosecutor for R1
Mr.AR.L.Sundaresan
Additional Solicitor General of India
assisted by Mr.R.Karthikeyan
Special Public Prosecutor for R2

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

W.M.P.No.18741 of 2024 seeking to permit the petitioners to file a single writ petition stands allowed.



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2. The present writ of declaration has been instituted to declare the arrest and the subsequent remand dated 23.05.2024 of the petitioners in connection with Crime No.173 of 2024 on the file of the first respondent as illegal, unconstitutional and violative of the legal proposition laid down by the Hon'ble Apex Court in ***Prabir Purkayastha vs State (NCT Delhi) 2024 INSC 414*** and to release the petitioners from the custody in connection with Crime No.173 of 2024.

3. The first respondent registered a First Information Report in Crime No.173 of 2024 on 21.05.2024 against the second petitioner for the alleged offence under Sections 34, 153B of Indian Penal Code and Section 13 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “the UAPA”). It is alleged that the second petitioner is the leader of Hizb-ut-Tahrir (HuT) organisation, which is banned in several countries across the world. The police claim that through his YouTube channel, “Dr.Hameed Hussain Talks”, the second petitioner incites young Islamists to secretly implement Islamic rule to overthrow the democratic government in India.



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4. On 23.05.2024 at 6.05 A.M., the police arrested the second petitioner at his residence. The police interrogated the second petitioner and formed an opinion that the petitioners 1 & 3 were accomplices. Subsequently, the first and third petitioners, who are the father and brother of the second petitioner respectively, were arrested at their residence at 6.55 A.M., on the same day and were listed as A2 and A3 in the First Information Report.

5. The learned counsel for petitioners Mr.Abdul Basith would mainly raise two issues to declare the arrest of the petitioners as illegal. Firstly, the grounds of arrest, as contemplated under Section 43B of UAPA, had not been served on the petitioners before arrest. Secondly, Section 41A notice had not been issued by the competent authority. These two requirements are mandatory, both under the UAPA and as per the ratio laid down by the Hon'ble Supreme Court of India in the case of *Prabir Purkayastha v. State (NCT Delhi)* reported in 2024 INSC 414 and in the case of *Pankaj Bansal v. Union of India* reported in 2023 INSC 866.



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6. Mr.Abdul Basith would mainly contend that the Supreme Court in unequivocal terms held that the grounds of arrest must be served in writing to the persons sought to be arrested under Section 43B of UAPA, which has not been complied with in the present case. In this context, he would rely on the observations made by the Apex Court in the two cases cited supra. It is further contended that the oral information provided to the petitioners regarding the grounds of arrest would be insufficient and would result in non-compliance of the ratio laid down by the Supreme Court. Thus the arrest is to be declared as illegal and violative of the legal proposition laid down by the Supreme Court in the cases cited supra.

7. The learned Additional Public Prosecutor Mr.Raj Thilak appearing on behalf of the first respondent would submit that the procedures as contemplated were scrupulously followed by the first respondent while executing arrest. The remand requisition report had been served to the petitioners and before serving, the contents therein were also explained orally to the petitioners by the police officer concerned. At the time of providing information and serving of the remand requisition report, the



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counsel for the petitioners Mr.A.Rawther Naina Mohamed was also present.

The learned Magistrate recorded the same and passed an order of remand thereof. That being so, the procedures as contemplated both under the Code of Criminal Procedure and under the UAPA have been complied with and thus the present writ petition is to be rejected.

8. The learned Additional Solicitor General of India Mr.AR.L.Sundaresan appearing on behalf of the second respondent would submit that the Supreme Court, while interpreting the scope of Section 43B of UAPA, held that the grounds for arrest must be informed in writing to the persons sought to be arrested. The objective of the interpretation is to achieve the purpose for which the provision contemplates that the grounds for such arrest is to be informed to the persons. In *Vijay Madanlal Choudhary v. Union of India* reported in (2022) SCC OnLine SC 929, the Supreme Court held that so long as the person is informed of the grounds of his/her arrest, that would be sufficient compliance with the mandate of Article 22(1) of the Constitution. It is further reiterated that Article 22(1) of the Constitution provides *inter alia* that no person who is arrested shall be



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detained in custody without being informed, as soon as may be, of the grounds for such arrest.

9. Let us now consider the language employed in Section 43B of UAPA, which deals with procedure of arrest, seizure, etc. Sub-section (1) stipulates that “any officer arresting a person under Section 43A shall, as soon as may be, inform him of the grounds for such arrest”. Though the language employed under Section 43B(1) is “as soon as may be inform him of the grounds for such arrest”, the Apex Court interpreted in order to ensure that the object of such a provision is sought to be achieved by informing the person of the grounds for arrest.

10. The question arises whether oral information regarding the grounds of arrest would be sufficient. In this context, it is relevant to rely on the case cited by the petitioners in *Prabir Purkayastha* supra. The Supreme Court has held in paragraph-49 that the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity to defend himself against the



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custodial remand and to seek bail. Thus the mere “grounds of arrest” would invariably be personal to the accused and cannot be equated with the “reasons of arrest” which are general in nature. The Apex Court distinguished the “grounds of arrest” and the “reasons of arrest”. The distinguishable factors are clarified in paragraph-50 of the said judgment, which reads as under:-

“50. From the detailed analysis made above, there is no hesitation in the mind of the Court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel before passing of the order of remand dated 4th October, 2023 which vitiates the arrest and subsequent remand of the appellant.”

11. In *Pankaj Bansal's case*, the Supreme Court in paragraph-32 referred to the case of *V.Senthil Balaji v. The State represented by Deputy Director and others* reported in (2023) SCC OnLine SC 934 and held that the grounds of arrest readout and explained to the person would be insufficient. Importantly it is observed that the very purpose of this



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constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely readout or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Prevention of Money-laundering Act, 2002. In paragraph-35, it is observed that to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of Prevention of Money-laundering Act of informing the arrested person of the grounds of arrest, it would be necessary henceforth that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.

12. Thus we have no doubt that the grounds of arrest must not only be orally informed, but the grounds of arrest must be given in writing to the persons sought to be arrested.

13. The question arises whether the first respondent in the present case had complied with the provisions of Section 43B of UAPA and in



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consonance with the interpretation made by the Supreme Court in the cases cited supra, more specifically, in the case of *Prabir Purkayastha*.

14. Reading the facts of the case in *Prabir Purkayastha*, it is found that indisputably First Information Report No.224 of 2023 came to be registered on 17th August, 2023 in the said case decided by the Supreme Court. The copy of the First Information Report was never brought in the public domain, as the same was not uploaded in the website by the investigating agency. This exactly is the reason why the Supreme Court in paragraph-50 of the judgment clarified that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused in the said case or to his counsel before passing the order of remand.

15. However, in the present case, the facts are distinguishable. In the present case, the petitioners were not only orally informed about the grounds of arrest, but the grounds of arrest contained in the remand requisition report was served to the petitioners and they have acknowledged the same, which



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had been produced by the petitioners themselves in the typedset filed in the present writ petition. The counsel for the petitioners was present before the learned Magistrate at the time of receiving the remand requisition report which would contain the grounds of arrest. A perusal of the remand requisition report reveals that the grounds of arrest are stated elaborately which, in our opinion, would be sufficient to form an opinion that the grounds of arrest as required under Section 43B with reference to the ratio laid down by the Supreme Court in the judgments cited supra, have been complied with.

16. It is unnecessary to reiterate that the provisions of special enactment would prevail over the general law. Section 48 of the UAPA stipulates the effect of the Act and Rules inconsistent with other enactments. Accordingly, the provisions of UAPA would prevail over the Code of Criminal Procedure, which is a general law and in the present case, the grounds of arrest made available in the remand requisition report was served on the petitioners before arrest in the presence of their lawyer and thus we have no hesitation to arrive at a conclusion that the fundamental rights



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enshrined under Article 22(1) of the Constitution along with Section 43B of the UAPA had been complied with and thus we do not find any infirmity or procedural irregularity in effecting the arrest of the petitioners in the case in Crime No.173 of 2024. Thus the writ petition fails and stands dismissed. Consequently, W.M.P.No.18742 of 2024 is also dismissed. No costs.

Index : yes/no
Neutral citation : yes/no

(S.M.S.,J.) (V.S.G.,J.)
01.10.2024

ss

To

1. The Assistant Commissioner of Police
Cyber Crime Branch
CCB, Vepery, Chennai
2. The Inspector of Police
National Investigation Agency
Branch Office, Chennai
Purasaivakkam
Chennai 600 010
3. The Public Prosecutor
High Court, Madras
4. The Special Public Prosecutor for NIA cases
High Court, Madras



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S.M.SUBRAMANIAM,J.

AND

V.SIVAGNANAM,J.

SS

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