

HIGH COURT FOR THE STATE OF TELANGANA

* * * *

CRIMINAL REVISION CASE No.228 OF 2024

Between:

Vishal Manohar Mandrekar
S/o. Manohar Mandrekar,
Age:40 years, Occ: Business,
R/o. 630, Munang Waddo,
Near Hindu Crimination Animal Rescue,
Assagao, Bardez, Goa.

...Petitioner

And

The State of Telangana represented by
its Public Prosecutor, High Court Buildings,
Hyderabad through S.H.O., S.R. Nagar,
Hyderabad and another.

...Respondents

JUDGMENT PRONOUNCED ON: 29.02.2024

THE HONOURABLE Dr. JUSTICE G. RADHA RANI

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

THE HONOURABLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.228 of 2024

%29.02.2024

Vishal Manohar Mandrekar
S/o. Manohar Mandrekar,
Age:40 years, Occ: Business,
R/o. 630, Munang Waddo,
Near Hindu Crimination Animal Rescue,
Assagao, Bardez, Goa.

...Petitioner

VERSUS

\$ The State of Telangana represented by
its Public Prosecutor, High Court Buildings,
Hyderabad through S.H.O., S.R. Nagar,
Hyderabad and another.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioners : Sri Y. Soma Srinath Reddy,
learned counsel representing Sri
Nageshwar Rao Pujari, learned
counsel for the petitioner.

^Counsel for Respondents : Additional Public Prosecutor

? Cases referred : 1. (1999) 3 SCC 715
2. (2011) 10 SCC 445
3. 2023 INSC 1008 arising out of SLP
(Crl.) Nos.11423-11426 of 2023
dated 20.11.2023.
4. 1996 (1) A.P.L.J. 370 (HC)
5. Crl. Misc. Application (Bail) No.585
of 2021 (filing)
6. (1980) 2 SCC 565
7. (2014) 9 SCC 457
8. (2021) 2 SCC 485

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No. 228 of 2024

ORDER:

This Criminal Revision Case is filed by the petitioner – accused No.44 under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to set aside the order of remand dated 02.02.2024 against him in Crime No.958 of 2023 of S.R. Nagar Police Station, Hyderabad on the file of the III Additional Chief Metropolitan Magistrate at Hyderabad registered for the offences under Sections 8(c) read with 22(c), 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The case of the prosecution in brief was that on 16.12.2023 at 18:30 hours, the S.I. of Police of S.R. Nagar Police Station on credible information that a person who was in possession of psychotropic substance was at Maitrivanam, Ameerpet, S.R. Nagar, Hyderabad proceeded to the said place and on identification by the informant, apprehended a person by name Jalli Ashok Yadav (accused No.4) and seized two (02) ecstasy (psychotropic substance) pills from his possession. On interrogation, accused No.4 confessed that he along with his friend Rajesh was procuring the ecstasy pills from one Sai Charan of Bangalore and one Baba of Goa @

Rs.1,000/- per pill and were selling them at Hyderabad @ Rs.3,000/- per pill to needy customers. As per the instruction of Rajesh on 12.12.2023, he went to Goa and procured 60 ecstasy pills from Baba, resident of Goa by paying Rs.60,000/- and came to Hyderabad and handed over to Rajesh. On 16.02.2024, Rajesh gave 2 ecstasy pills to him to sell the same to their regular customers. As per the instructions of Rajesh, he came to Maitrivanam, S.R. Nagar, Hyderabad and waiting for their regular customers. Basing on the said confession of accused No.4, the above case was registered by the S.R. Nagar police station as F.I.R. No.958 of 2023 under Section 8(c) read with 22(c), 27 and 29 of NDPS Act.

2.1. It was further alleged that A3, A4 and A45 were drug peddlers, A1, A2, A5, A6 and A39 to A44 were supplying the drugs to A3, A4 and A45 and A7, A8 to A27 and A46 to A48 were consumers.

2.2. The further case of the prosecution was that on 30.01.2024, the Inspector of Police, S.R. Nagar received credible information that the present petitioner-A44 was available at his residence at 630, Munang Waddo, near Hindu Cremation Animal Rescue, Assagao, Bardez, Goa and deputed the S.I. of Police of S.R. Nagar police station along with two constables to apprehend the accused and they proceeded on a four-wheeler

to Goa. On 01.02.2024 at about 12:00 hours, they reached the said address and found the accused person in the house and took him into custody and tried to interrogate him. The petitioner-A44 had not co-operated to record his confession statement. As his family members and surrounding people gathered, the S.I. of police brought him to the nearest police station i.e., Anjuna police station of Goa and conducted interrogation. The petitioner-A44 voluntarily admitted his guilt. Satisfied about his involvement in the offence, the S.I. effected the arrest of the accused at 13:00 hours on 01.02.2024 and intimated to his brother under proper acknowledgment. After completion of arrest formalities, the S.I. left from there to Hyderabad. It was alleged that there was no time to take transit warrant from the Court.

2.3. It was mentioned in the remand report that the petitioner-A44 being a notorious habitual criminal had contacts with many drug suppliers in Goa and if they waited for taking transit warrant from Court, his associates/drug suppliers/drug peddlers might be attacking them, as such, brought him immediately to Hyderabad. On 02.02.2024, they produced the petitioner-A44 before the Inspector. Immediately, his confession-cum-seizure panchanama was recorded by the Inspector and sent the petitioner-A44 for medical checkup and produced before the learned XIII Additional Chief Metropolitan Magistrate, Hyderabad.

2.4. Learned counsel appearing on behalf of the accused appeared before the Magistrate and took objection to remand the accused to judicial custody contending that the accused was produced beyond 24 hours, therefore, his arrest was illegal, no transit warrant was obtained by the S.R. Nagar police at Goa. The notices under Sections 50 and 50-A of Cr.P.C. were alleged to be signed by the Inspector of Police, who had not travelled to Goa. As such, his arrest was not legal and relied upon the judgment of the Hon'ble Apex Court in **Manoj Vs. State of Madhya Pradesh**¹. It was also further contended that the accused had to be produced before the Special Court, but not before the Magistrate.

2.5. The learned XIII Additional Chief Metropolitan Magistrate, Hyderabad set aside the objections raised by the learned counsel for the accused and remanded the petitioner to judicial custody by placing reliance upon the judgment of the Hon'ble Apex Court in **Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra**² wherein it was held that:

“any violation by the police by not producing the appellant within 24 hours of arrest, the appellant could seek her liberty only so long as she was in the custody of the police and after she is produced before the Magistrate, and remanded to custody by the learned Magistrate, the

¹ (1999) 3 SCC 715

² (2011) 10 SCC 445

appellant cannot seek to be set at liberty on the ground that there had been non-compliance of Article 22(2) or Section 167(2) of the Cr.P.C. by the police.”

The learned Magistrate also justified the production of petitioner-A44 before her holding that the accused was produced before her court, since, it was the nearest judicial Magistrate court.

3. Aggrieved by the said order in remanding the petitioner-A44, this Criminal Revision Case is filed by the petitioner-A44 contending that as per the record, the petitioner was arrested on 01.02.2024 at 01:00 P.M., at Goa. The Investigating Agency had not obtained any transit warrant from the nearest Magistrate at the place of arrest before bringing him to the jurisdictional court in Hyderabad, which was against the spirit of Section 167 of Cr.P.C. and various judicial decisions. The notice of arrest of the petitioner-accused under Section 50-A of Cr.P.C. was given by the Investigating Agency to the brother of the petitioner. However, the said notice was signed by the Inspector of police, who was not even present at the place of arrest. As such, the arrest of the petitioner was vitiated since beginning. The petitioner was produced before the learned Magistrate at 4:35 P.M., on 02.02.2024, but the Investigating Agency had not even made an attempt to explain the delay caused in producing the petitioner beyond 24

hours after his arrest and had violated the fundamental right of the petitioner under Article 22(2) of the Indian Constitution and also violated the provision under Section 57 of Cr.P.C., as such, the arrest would become otiose. The decision in **Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra** (2 supra) stood on a different footing and prayed to allow the Criminal Revision Case by setting aside the order of the remand dated 02.02.2024 against the petitioner-accused No.44 in Crime No.958 of 2023 of S.R. Nagar police station, Hyderabad.

4. Heard Sri Y. Soma Srinath Reddy, the learned counsel for the petitioner and the learned Additional Public Prosecutor.

5. Learned counsel for the petitioner stated that he was challenging the remand order, basically on the following four grounds:

- i. The petitioner-A44 was produced beyond 24 hours in violation of Article 22(2) of the Constitution.
- ii. The petitioner was brought from Goa to Hyderabad without obtaining any transit warrant
- iii. Arrest intimation letter was signed by the Inspector of Police, who did not go to Goa, as such there was non-compliance of Sections 50 and 50-A of Cr.P.C..
- iv. The petitioner-accused ought to have been produced before the Special Court, but not before the

jurisdictional Magistrate Court, as the offences under NDPS Act were exclusively triable by the Special Court.

6. While arguing the matter, the learned counsel for the petitioner not insisted upon the last point and stated that he was limiting his arguments only to the first three points. He relied upon the judgments of the Hon'ble Apex Court in **Manoj Vs. State of Madhya Pradesh** (1 supra), **Priya Indoria Vs. State of Karnataka & Ors., Etc.**³ and of the High Court of Andhra Pradesh in **Mrs. Iqbal Kaur Kwatra Vs. The Director General of Police, Rajasthan State, Jaipur**⁴ and of the High Court of Bombay at Goa in **Mr.Ugochukwu Solomon Ubabuko Vs. Union of India (NCB)**⁵.

7. Learned Additional Public Prosecutor contended that the reasons for not obtaining the transit warrant were stated by the Police in the remand report of the petitioner-A44 itself. Satisfied with the said reasons only, the learned XIII Additional Chief Metropolitan Magistrate remanded the petitioner-A44 to judicial custody. The petitioner-A44 was apprehended at Goa at his house on 01.02.2024 at 12:00 noon and his arrest was shown at 13:00 hours. The petitioner-A44 was brought in a car from Goa to Hyderabad. The journey time was more than 16 to 17 hours. The travel

³ 2023 INSC 1008 arising out of SLP (CrI.) Nos.11423-11426 of 2023 dated 20.11.2023.

⁴ 1996 (1) A.P.L.J. 370 (HC)

⁵ CrI. Misc. Application (Bail) No.585 of 2021 (filing)

time has to be excluded as per Article 22(2) of the Constitution. The petitioner was brought to Hyderabad on 02.02.2024 at 10:30 hours. The confession-cum-seizure panchanama of the petitioner-A44 was conducted from 10:30 A.M. to 12:30 P.M. on 02.02.2024. Thereafter, he was taken to the medical officer and at 16:30 hours produced before the Magistrate. The petitioner was not under any illegal detention. The right under Article 22(2) of the Constitution of India was available only when the petitioner was under illegal detention of the police and relied upon the judgment of the Hon'ble Apex Court in **Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra** (2 supra) on the aspect that:

“...in every case where there is violation of Article 22(2) of the Constitution, an accused has to be set at liberty and released on bail. Whereas, an accused may be entitled to be set at liberty if it is shown that the accused at that point of time is in illegal detention by the police, such a right is not available after the Magistrate remands the accused to custody. Right under Article 22(2) is available only against illegal detention by police. It is not available against custody in jail of a person pursuant to a judicial order. Article 22(2) does not operate against the judicial order.”

8. He further contended that the petitioner ought to have applied for a regular bail instead of challenging the remand. There was no illegality in the order passed by the Magistrate in remanding the petitioner-A44 to judicial custody. On instructions, he further submitted that the S.I. of Police

had signed on the arrest intimation on behalf of the Inspector of Police at Goa. There was no violation of Sections 50 and 50-A of Cr.P.C.. The petitioner-A44 was a drug peddler and he was supplying the contraband and was involved in various cases and prayed to dismiss the Criminal Revision Case.

9. Now the point for consideration is:

Whether there is any illegality in the order of the XIII Additional Chief Metropolitan Magistrate, Hyderabad in remanding the petitioner-accused to judicial custody and whether the same is in violation of Article 22(2) of the Constitution of India?

10. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. Article 22 (2) of the Constitution of India mandates that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours, excluding the time necessary for the journey from the place of the arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

11. Section 57 of Cr.P.C. was incorporated in accordance with the above Article. It mandates that no police officer shall detain in custody a

person arrested without warrant for a longer period than under all the circumstances of the case was reasonable, and such period shall not, in the absence of a special order of Magistrate under Section 167 Cr.P.C., exceed 24 hours excluding the time necessary for the journey from the place of arrest to the Magistrate Court.

12. The above two provisions came up for consideration before the Hon'ble Apex Court on several occasions and the Hon'ble Apex Court in certain terms held that without the authorization of the Magistrate, no accused can be detained in the custody of the police beyond 24 hours from the time of arrest excluding the time taken for the journey from the place of arrest to the court.

13. In the present case, the petitioner-A44 was apprehended on 01.02.2024 at 12 noon and his arrest was shown at 13:00 hours on the said date and he was produced before the Magistrate on 02.02.2024 at 16:30 hours, which was more than the 24 hours period.

14. Now the point that arises for consideration is whether the time taken for journey from the place of arrest from Goa till the production of the petitioner at Hyderabad before the Magistrate at 16:30 hours can be excluded?

15. It was stated in the remand report of the petitioner-A44 that there was no time to take transit warrant from the Court and if they waited for a transit warrant from the Court, there is every likelihood that the petitioner-A44 who was a notorious habitual criminal, having contacts with many drug suppliers in Goa, his associates/drug suppliers/drug peddlers might be attacking them. But it was incomprehensible that, when the raiding party could take the petitioner-A44 to the police station, then why could not they take the petitioner-A44 to the nearest Executive Magistrate or Judicial Magistrate with the escort of the local people and why they could not obtain a transit warrant so that the journey time from Goa to Hyderabad could have been excluded from the mandatory period of 24 hours. But no such steps were taken by the raiding party who went to apprehend the petitioner-A44.

16. The Hon'ble Apex Court in its recent judgment in **Priya Indoria Vs. State of Karnataka & Ors., Etc.** (3 supra) while considering whether the power of the High Court or the Court of Sessions to grant anticipatory bail under Section 438 of the Cr.P.C. could be exercised with respect to an FIR registered outside the territorial jurisdiction of the said court held that police have to obtain a transit warrant when arresting the individual outside the jurisdiction where the offence was registered. The said mandate was in

line with the requirements of Article 22 of the Constitution of India and held that:

“34. Section 48 of CrPC permits the police to pursue an accused in other jurisdictions. A police officer, for the purpose of arresting without a warrant, one whom he is allowed to arrest, may pursue an individual anywhere in India. Prior to effecting the arrest outside a particular jurisdiction, the police is obligated to secure the transit remand i.e. the remand of the accused, for taking him from one place to another in their own custody, usually for the purpose of producing him before the concerned magistrate who has jurisdiction to try/commit the case.

The primary purpose of such a remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated and tried. However in various cases, the police and investigating agencies have failed to exercise necessary restraint while functioning within their legal remit. It is for the aforesaid reason that an accused apprehending arrest seeks pre-arrest bail.

The Courts in India have to be vigilant about such applications being filed particularly when a person alleged to have committed an offence can be proceeded with by setting the criminal law in motion in a place other than the place where the offence has actually occurred. In such circumstances the Courts must balance the interest of the accused in the context of the salutary principle of access to justice which is a facet of Article 21 of the Constitution as well as a Directive Principle of State Policy, especially Article 39(A). More importantly, it is a facet of Article 14 of the Constitution which guarantees to every person in the country, equality before the law and equal protection of the law.

35. Immediately upon affecting the arrest of a person outside the jurisdiction where the offence is registered, the police is obligated to secure a transit remand.

The arrested person has to be produced before the nearest magistrate. If such a magistrate finds that he has no jurisdiction to try the case in which the accused has been arrested, he may order the accused to be forwarded to a magistrate having the jurisdiction to try the case or to commit it for trial. Thus, the police is obligated to secure a transit remand of the accused for taking him from the place where he is arrested to the place where the crime is registered, for production before the competent magistrate in terms of the requirement of Article 22.

As we have already noted, the primary purpose of such a transit remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated. It appears that from the aforesaid requirement of transit remand, has arisen the necessity of 'transit anticipatory bail' for, an affected person cannot be without a remedy.

17. Thus, obtaining a transit warrant is mandatory for the police to claim protection under Article 22(2) of the Constitution of India. The above judgment was rendered on the aspect of granting transit anticipatory bail for a limited duration. It was further held that to maintain the delicate balance between the individual liberties and the difficulties of the Investigating Agency in procuring the presence of the accused persons residing in other states, it was essential to follow the safeguards as mandated under Article

22(2) of the Constitution and the provisions pertaining to Section 57 of Cr.P.C.. The Constitutional bench of the Hon'ble Apex Court in **Shri Gurbaksh Singh Sibbia vs. State of Punjab**⁶ speaking through Chandrachud, C.J., observed that:

“society has a vital stake in preserving personal liberty as well as investigational powers of the police and their relative importance at any given time depends upon the complexion and restraints of political conditions.”

18. The Hon'ble Apex Court in **Manoj Vs. State of Madhya Pradesh** (1 supra) held that:

“12. It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established in law. Close to its heels the Constitution directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest. The only time permitted by Article 22 of the Constitution to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of the Magistrate". Only under two contingencies can the said direction be obviated. One is when the person arrested is an "enemy alien". Second is when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited peremptorily that "no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

13. When the State of Madhya Pradesh, whose police made the arrest of the appellant in connection with the M.P. case on 7-8-1998, admitted that after the arrest he was not produced before the nearest Magistrate within

⁶ (1980) 2 SCC 565

24 hours, its inevitable corollary is that detention made as a sequel to the arrest would become unlawful beyond the said period of 24 hours.”

It is also held in the above judgment that:

“Excuses were advanced by the respondent State for their inability to produce the accused before the nearest Magistrate within the required period. But no such excuse has been recognized by law. Hence the respondent cannot validly press for further detention of the accused beyond 24 hours. That arrest has now become otiose.”

19. In the present case also, though some excuses were given by the respondent-State for their inability to produce the accused before the nearest Magistrate at the place of his arrest at Goa, they cannot claim the protection of excluding the time period of 24 hours for travelling from the place of arrest to the court of Magistrate at Hyderabad as no transit warrant was obtained by them. The above case was also a case under NDPS Act and the Hon’ble Apex Court held that:

“It is settled that benefit of the provision under Section 167(2) Cr.P.C. would endure to the accused involved in the cases under NDPS Act as well.”

20. The High Court of Andhra Pradesh in **Mrs. Iqbal Kaur Kwatra Vs. The District General of Police, Rajasthan State, Jaipur** (4 supra) held that:

“...Thus it is held that on a construction of Section 60, 61 and 167 of the Code of Criminal Procedure (old), equivalent to Sections 56, 57 and 167 of the Code of Criminal Procedure (new) that unless a police officer considers that he can complete the investigation within a period of twenty-four hours, it is his duty to produce the accused forth with before a Magistrate. The views expressed in these judgments have been quoted with approval in the case of *Rajni Kanta v. State of Orissa* 1975 Cri LJ 83 and a learned single Judge of the Orissa High Court has observed that the decisions referred to above indicate the true spirit of the law on the subject.

23. Thus it is seen that a police officer cannot detain any person in custody without arresting him and any such detention will amount to a wrongful confinement within the meaning of Section 340 of the Indian Penal Code. Actual arrest and detention do not appear to be necessary. A person in custody cannot be detained without producing him before a Magistrate under the colourable pretention that no actual arrest is made and the burden of proving the reasonable ground is on the arrester that the time occupied in the journey was reasonable with reference to the distance traversed as also other circumstances and in case of continuation of detention for twenty-four hours, particularly, when the police officer has reason to believe that the investigation cannot be completed within twenty-four hours, he must produce the accused forthwith before the Magistrate and cannot wait for twenty-four hours.”

Thus, a duty lies upon the respondent-state to produce the arrested person before the nearest Magistrate not waiting for the stipulated 24 hours period.

21. The High Court of Bombay at Goa in **Mr.Ugochukwu Solomon Ubabuko Vs. Union of India (NCB)** (5 supra) which was also pertaining to a case under NDPS Act, while considering whether the ground of violation of Articles 21 and 22(2) of the Constitution could be raised on behalf of the applicant, even if subsequently the order was passed sending the applicant to judicial custody by relying upon the judgment of the Hon'ble Apex Court in the case of **Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra** (2 supra) observed that a coordinate Bench of the Hon'ble Apex Court in **Union of India, through Central Bureau of Investigation Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav**⁷ and a three judge Bench of the Hon'ble Apex Court in **M Ravindran vs The Intelligence Officer Directorate of Revenue Intelligence**⁸ held the judgment of **Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra** (2 supra) as 'per incuriam' and further held that:

“15. The above quoted portions of the said latter judgments of the Hon'ble Supreme Court show that even in the context of the right to default bail, it has been held that once the accused files an application for grant of default bail, such a prayer is to be considered by the concerned Court even if subsequently an application is filed on behalf of the prosecution for extension of time to file chargesheet. It has been specifically held that even

⁷ (2014) 9 SCC 457

⁸ (2021) 2 SCC 485

if the Magistrate adjourns the proceedings and procrastinates, it would not frustrate the legislative mandate to which the accused would be entitled. This clearly indicates that if the accused moves the Magistrate on the first opportunity to vindicate his rights, the same cannot be frustrated by holding that subsequently an order has been passed sending the Applicant/Accused to judicial custody.

16. In the present case, a perusal of the documents shows that on 08.03.2021 itself, an application for bail was moved on behalf of the Applicant before the Magistrate. In the said application, a specific ground was taken regarding violation of the rights available to the Applicant under the Constitution. When this application was moved before the Magistrate on 08.03.2021, no orders were passed and when the Applicant was actually produced before the Magistrate on the morning on 09.03.2021, the Magistrate simply directed that the Applicant be produced before the Special Court concerning NDPS offences. At this stage, the Applicant was in the custody of the Respondent no.1 and he had specifically raised the aforesaid issues regarding his illegal detention.

18. The application for bail filed on behalf of the Applicant on 08.03.2021, came up for consideration before the Magistrate on 10.03.2021 and, at this stage also, the aforesaid specific contention regarding illegal detention of the Applicant was raised, pointing out that he was produced before the Magistrate after expiry of 24 hours. Yet, the Magistrate rejected the contention by holding that the question of custody of the Applicant being illegal, no longer survived as he was already remanded to judicial custody on 09.03.2021 by the Special Court. The approach of the Magistrate in holding that the said question did not survive, is in the teeth of the law laid down in aforesaid judgment of the Hon'ble Supreme Court

in the case of Union of India, through Central Bureau of Investigation vs. Nirala Yadav (7 supra). No matter that the observations in the said judgement regarding the approach to be adopted by the Magistrates, have been made in the context of Section 167(2) of the Cr.P.C., it would equally apply to a situation like the one that has arisen in the present case. The Applicant could not have been shut out from raising the question of violation of Articles 21 and 22(2) of the Constitution of India, although he had specifically raised such an issue in his bail application filed before the Magistrate on 08.03.2021 itself, merely on the ground that subsequently on 09.03.2021, the Special Court had passed an order remanding him to judicial custody.

19. The Court of Additional Sessions Judge completely failed to appreciate this aspect of the matter, while relying upon the judgment of the Hon'ble Supreme Court in the case of Pragyna Singh Thakur (2 supra) and rejecting the said contention raised on behalf of the Applicant.

20. The learned Additional Public Prosecutor was also not justified in contending that the said ground could not be raised by the Applicant in the bail application and that if he wanted to raise a grievance concerning violation of Articles 21 and 22 of the Constitution of India, he should have moved a Writ Petition before this Court at the relevant time. The judgment in the case of Suaibo Ibow Casamma Vs. Union of India [1994(1) Bom CR 64] clearly covers the position of law in favour of the Applicant, because in almost identical circumstances, this Court not only entertained the bail application, but allowed the same on the specific ground of violation of the rights available to the Applicant under Articles 21 and 22 of the Constitution. Hence, it is found that the Applicant

is entitled for grant of bail on the sole ground raised in the present application.”

22. The facts of this case are also in consonance with the facts of the above case. The petitioner-A44 raised the ground of illegality of his arrest at the time of his remand before the jurisdictional Magistrate. The Magistrate remanding the petitioner-accused to judicial custody would not frustrate the legislative mandate of producing him within 24 hours of his arrest. As such, the subsequent remand order made by the Magistrate would not legalise the prior detention which was against the constitutional and legal mandate. As such, producing the petitioner-A44 before the Magistrate beyond 24 hours without obtaining any transit warrant is considered as violative of Article 22(2) of the Constitution and the petitioner-A44 is entitled to be released. However, as the entitlement of the petitioner to be released is based on the illegality of his arrest for the inability of the prosecuting agency to produce the petitioner-accused before the nearest executive or judicial Magistrate within 24 hours but not based on the merits of the case and as it was alleged that the petitioner is a drug peddler who was supplying the contraband drugs, it is considered fit to impose certain conditions.

23. In the result, the Criminal Revision Case is allowed setting aside the order of remand and the accused is set at liberty on executing a personal

bond for an amount of Rs.1,00,000/- (Rupees One Lakh Only) with a surety for the like-sum to the satisfaction of the III Additional Chief Metropolitan Magistrate at Hyderabad. He shall appear before the trial/Special Court and also produce proof of his residence and address in the State of Goa and shall give the details of his contact numbers to the Investigating Officer. He shall not indulge in any other cases during his release. Any violation of the above grounds would entail his arrest in accordance with the procedure established under law.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

February 29, 2022

SS

Note:

LR copy to be

Marked

B/o.

ss