

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1064 of 2025
With
IA No. CAN 1 of 2025
Union of India
Vs.
Raghunath Kumar @ Raghunath & Anr.

For the Appellant	: Mr. Rajdeep Mazumder, Ld. DSGI. Mr. Gourango Kumar Das, Adv. Mr. Moyukh Mukherjee, Adv. Mr. Pritam Roy, Adv. Mr. Sagar Saha, Adv.
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For the Respondent no. 1/ Writ Petitioner	: Mr. Ayan Bhattacharyee, Sr. Adv. Mr. Aparak Basu, Adv. Mr. Nazir Ahmed, Adv. Mr. Sounak Mondal, Adv. Mr. Soumyajit Chakraborty, Adv. Ms. Sanghamitra Mridha, Adv. Mr. Shuvam Kanjilal, Adv. Ms. S. Gupta, Adv. Mr. Yagnik Singhal, Adv.
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For the Respondent no. 2	: Mr. Dhiraj Trivedi, Ld. DSGI Mr. Shailendra Kr. Mishra, Adv.
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Hearing Concluded on	: July 23, 2025
Judgement on	: July 25, 2025

DEBANGSU BASAK, J.:-

1. Appellant has assailed an order dated July 8, 2025 passed by the learned Single Judge in WPA 14963 of 2025.

2. Learned Deputy Solicitor General appearing for the appellant has contended that, provisions of Prevention of Illicit Traffic in Narcotic Drug and Psychotropic Substances Act, 1988 not invoked as against the private respondent. An order dated May 16, 2025 had been passed by the appropriate authority exercising powers under Section 3(1) of the Act of 1988. He has referred to the order dated May 16, 2025 passed in this regard.

3. Learned Deputy Solicitor General has drawn the attention to the fact that such order dated May 16, 2025 was annexed to the writ petition filed by the private respondent in which the impugned order was passed. He has also referred to the order of the Co-ordinate Bench permitting affidavits to be filed and the affidavit of the private respondent filed pursuant thereto. In particular, he has referred to paragraph 4(c) of the affidavit of the private respondent and contended that, the respondent No. 1 claimed receipt of such order from the respondent No. 2 on June 7, 2025. He has contended that, respondent No. 1 is not supposed to receive a copy of such order in the manner and form as claimed by the respondent No. 1.

4. Learned Deputy Solicitor General appearing for the appellant has contended that, the respondent No. 1 is running a drug racket from the correctional home at which, he is lodged. He has pointed out that, despite the respondent No. 1 being granted bail in two out of the five police cases in the State of West Bengal, respondent No. 1 did not furnish bail in those two police cases and continued to remain within the correctional home in order to continue with his nefarious activities.

5. Learned Deputy Solicitor General appearing for the appellant has contended that, the appellant will produce the respondent No. 1 as and when physical production of the respondent No. 1, is directed by the jurisdictional Court, in respect of the criminal cases pending as against the respondent No. 1 in the State of West Bengal. He has contended that, production of an accused in a criminal case, on the virtual platform is permissible in law. He has contended that, respondent No. 1 will not be prejudiced in the event he is relocated to a different correctional home.

6. Learned Senior Advocate appearing for the respondent No. 1 has raised the issue of maintainability of the appeal. He has pointed out the description of the appellant. He has

contended that, although, the respondent No. 2 in the writ petition, which is the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, PITNDPS Unit is the authority which passed the order dated May 16, 2025, appeal was preferred by a different authority, therefore, the appeal is not maintainable.

7. On the issue of maintainability of the writ petition of the appeal, learned Senior Advocate appearing for the respondent No. 1 has relied upon **2017 Volume 5 Supreme Court Cases 533 (Ram Kishan Fauji vs. State of Haryana and Others)**. He has contended that, the writ petition is essentially in respect of a criminal proceeding and therefore, a Letters Patent Appeal is not maintainable.

8. Learned Senior Advocate appearing for the respondent No. 1 has relied upon **1974 Volume 4 Supreme Court Cases 514 (Anil Dey vs. State of West Bengal)** in support of the proposition that, there is a need to communicate the grounds of detention which has not been done.

9. Relying upon **1990 Volume 3 Supreme Court Cases 459 (Gazi Khan alias Chotia vs. State of Rajasthan and Another)** learned Senior Advocate appearing for the respondent No. 1 has contended that, whenever, an allegation

of mala fide or abuse of power or personal bias is attributed to the detaining authority, such authority should himself swear the counter-affidavit.

10. Learned Deputy Solicitor General in reply has contended that, ***Ram Kishan Fauji (supra)*** is not attracted in the facts of the present case. He has pointed out that, the present order of detention does not result in conviction or is an order of sentence. Therefore, it cannot be classified as a criminal proceeding as sought to be contended on behalf of the respondent No. 1. Consequently, the appeal is maintainable. Moreover, he has contended that, the appellant before the Court is the Union of India who is represented by a designated authority. On such score also, the appeal cannot be said to be not maintainable.

11. As noted above, the impugned order has been passed in a pending writ petition. Learned Single Judge has, by the impugned order, directed the writ petition to appear on August 25, 2025. Learned Single Judge has noted the respective contentions of the parties. Learned Single Judge has directed the authorities to submit a report and the same to be circulated. Learned Single Judge has restrained the authorities from taking any steps or further steps in

furtherance to the order dated May 16, 2025 till September 26, 2025 or until further orders whichever is earlier.

12. Union of India is the appellant and has filed the appeal through the Narcotics Control Bureau and its Additional Director of the Kolkata Zonal Unit. Respondent No. 1 in his writ petition has arraigned the Union of India as a party respondent with service through the Ministry of Law and Justice, Department of Legal Affairs.

13. Additional Director, Narcotics Control Bureau, Kolkata Zonal Unit is a party respondent No. 3 in the writ petition. It is capable of representing the Union of India and has done so in this appeal. It has claimed itself aggrieved by and dissatisfied with the impugned order. It has the right to prefer an appeal. It is not the contention of the parties that, the appeal was filed without due authority. Objection of the respondent No. 1 on this score is untenable, specious and therefore rejected.

14. ***Ram Kishan Fauji (supra)*** has held that, no Letters Patent Appeal lies against an order passed by a Single Judge of a High Court in exercise of criminal jurisdiction. It has held that, the crucial factor for the determination of the maintainability of a Letters Patent Appeal is the nature of

jurisdiction invoked by the party and the true nature of the order passed by the learned Single Judge of the High Court.

15. *Ram Kishan Fauji (supra)* while considering the issue as to the maintainability of a Letters Patent Appeal against an order passed by a learned Single Judge under Article 226 of the constitution relating to criminal jurisdictions, has held that, the view expressed by the High Courts of Gujarat and Delhi was correct and that, the view of the Full Bench of the Andhra Pradesh High Court was incorrect in this regard. The High Court of Gujarat in **2001 GujLR 206 (*Sanjeev Rajendrabhai Bhatt vs. State of Gujarat*)** has held that, the test, whether, criminal proceedings are pending or not and the petition under Article 226 of the Constitution concerns such criminal proceedings would be whether, the criminal proceedings would result in conviction and order of sentence. It has held that, while, a petition under Article 226 of the Constitution seeking quashing of a F.I.R would be a criminal proceedings and, while the High Court deals with such criminal proceedings, the High Court exercises its criminal jurisdiction. In such circumstances, a Letters Patent Appeal is not maintainable against an order passed by the learned Single Judge.

16. In the facts and circumstances of the present case, the respondent No. 1 in his writ petition has not sought quashing of a First Information Report. The respondent No. 1 has impugned an order dated May 16, 2025 passed under the Act of 1988 which, does not result in an order of conviction or a sentence and is not a First Information Report. Subject matter of the writ petition has emanated out of the order affecting civil rights of an individual enshrined under Article 21 of the Constitution of India.

17. Since the order impugned was not passed in the exercise of criminal jurisdiction, the ratio laid down in **Ram Kishan Fauji (supra)** that no appeal lies against an order passed in criminal jurisdiction is not attracted has no manner of application.

18. In **Gazi Khan alias Chotia (supra)** it has been held that, when there is an allegation of mala fide or abuse of power or personal bias attributed to the detaining authority, such authority should himself swear the counter-affidavit. The ratio therein has no manner of application in the present case, since, we are hearing an appeal. The stage of affidavit is before the learned Single Judge.

19. In *Anil Dey (supra)* has held that, judicial review of an order of detention is excluded excepting within a narrow area. In this appeal, we need not enter into the arena of the subjective satisfaction of the detaining authority with a view to appreciate its objective sufficiency. The writ petition is yet to be finally decided.

20. Respondent No. 1 in his writ petition has assailed an order dated May 16, 2025 issued under the provisions of Section 3(1) of the Act of 1988 by the proforma respondent in the present appeal.

21. The Act of 1988 has noted provisions of Article 22 of the Constitution of India and provided for a mechanism for addressing issues with regard to the detention order. It has established Advisory Boards under Section 9 for the purposes of Article 22 of the Constitution of India as specified therein.

22. Although, the impugned order has restrained the authorities from taking steps in terms of the order dated May 16, 2025, in our view, the impugned order does not contain any reasons as to why such direction was issued. The respective submissions of the appearing parties have been noted in the body of the impugned order. The contention on behalf of the respondent No. 1 before the learned Single Judge

was that, there was no evidence as against the respondent No. 1 and that, by the impugned order, the authority has directed to circumvent the provision of law. Learned Single Judge in the impugned order has not recorded that such contentions have found favour with the learned Single Judge at the prima facie level.

23. The Act of 1988 empowers the authority who passed the order dated May 16, 2025 to pass such an order. Remedy with regard to such a decision is available under the Act of 1988. In any event, there is no material on record to establish or suggest that, the authority passing the order dated May 16, 2025 has circumvented any provision of law.

24. There are five criminal cases pending as against the respondent No. 1, in the State of West Bengal. All of those five cases relate to the Narcotic Drugs and Psychotropic Substances Act, 1985. In all of the five police cases, the respondent No. 1 has been granted bail. The respondent No. 1 is on bail in respect of three of the police cases. He has not furnished surety in respect of two of the police cases in compliance with the order granting bail.

25. The contentions of the appellant that, the respondent No. 1 is engaged in nefarious activities relating to drugs in the

correctional home where he is lodged and therefore, is unwilling to come out of the correctional home at which he is lodged gains traction particularly at an interim stage, when, such contentions is coupled with the fact that the order on May 16, 2025, was made available to the respondent No. 1 when, the same should not be with the respondent No. 1 at that material point of time.

26. Even, if we are to overlook the fact that, the respondent No. 1 was favoured with the order dated May 16, 2025, then also, the contentions of the appellant has to be given due weightage that is to say that, the respondent No. 1 is involved in certain activities which are prejudicial not only to the inmates of the correctional home where he is lodged but also to the public at large.

27. We have noted that, the impugned order does not provide any reasons as to why the interim protection was granted to the respondent No. 1. Be that as it may, in the facts and circumstances of the present case, we are of the view that the respondent No. 1 has failed to establish that the balance of convenience and inconvenience lies in his favour in the grant of an interim protection. The respondent No. 1 will not be prejudiced in the event, the order dated May 16, 2025

is given effect to. He cannot have a choice of the correctional home at which he is lodged.

28. In such circumstances, we set aside the impugned order to the extent that it restrains the authorities from acting in terms of the order dated May 16, 2025.

29. MAT 1064 of 2025 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

30. I agree.

[MD. SHABBAR RASHIDI, J.]