



2025:DHC:1323-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 27th February, 2025*+ **W.P.(CRL) 702/2025 & CRL.M.(BAIL) 452/2025 & CRL.M.A. 6510/2025**

NEH SRIVASTAVA

.....Petitioner

Through: Mr. Piyush Pathak and Mr. Rohit Yadav, Advs. (M:7440767574)

versus

STATE (GOVT. OF NCT OF DELHI) & ORS.Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crml.) with Mr. Aryan Sachdeva & Mr. Abhinav Arya, Advs. with Insp. Rakesh Roshan PS EOW.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking, *inter alia*, issuance of a writ in the nature of *habeas corpus* for production of the Petitioner who is stated to be under custody in respect of **FIR No. 92/2020** dated 7th August, 2020 registered P.S. Economic Offences Wing under Sections 409/420/120B.
3. The Petitioner also seeks to challenge his arrest on 16th November, 2022 under the said FIR and subsequent incarceration for being illegal. The ground on which the arrest has been challenged is that though the Petitioner is stated to be arrested on 16th November, 2022, however, he was produced before the concerned Magistrate only on 18th November, 2022. Hence,



according to the Petitioner, there has been a delay in production of the Petitioner before the concerned Magistrate beyond the prescribed period of 24 hours under Section 57 of Code of Criminal Procedure, 1973.

4. This Court notices that the Petitioner was arrested more than two years ago. He has already filed applications seeking bail which was dismissed by the trial court. Order dated 5th August, 2024 has also been passed by the Single Judge of this Court dismissing the Petitioner's application seeking regular bail in **BAIL APPLN. 3320/2023**. The Supreme Court on 06th December, 2024 in **SLP (Crl.) Diary No. 46509/2024** titled **Dr. Neh Srivastava vs. State of NCT of Delhi** has dismissed challenge to the rejection of bail, in the following terms:

"2. Heard Mr. Lokesh Ahlawat, learned counsel appearing for the petitioner. Also heard Mr. Siddharth Aggarwal, learned senior counsel appearing for the State of NCT of Delhi.

3. As the charges have not been framed and we have informed by Mr. Siddharth Aggarwal, learned senior counsel that further forensic investigation regarding genuineness of the signatures is underway, we are disinclined to consider bail at this stage. The Special Leave Petition is dismissed accordingly."

5. Ld. Counsel for the Petitioner submits that this ground of non-production of the Petitioner within the stipulated time before the Magistrate was not in the knowledge of the Petitioner and hence was not raised in the bail applications. Thus, the Ld. Counsel for the Petitioner has submitted that this fact could not be brought to the notice of the Court which decided the bail application including the Supreme Court.



6. The Court has heard the Petitioner. The Petitioner had been arrested way back in November, 2022. It is an admitted fact that the Petitioner has earlier preferred statutory remedies against his arrest by filing bail applications, including before this Court and the Supreme Court. It is only after dismissal of the petition seeking bail by the Supreme Court *vide* order dated 6th December, 2024, has the Petitioner preferred the present petition.

7. At this stage, it is apposite to refer to the observations of the Id. Single Judge in the order dated 5th August, 2024, wherein the Court has duly considered all grounds for grant of regular bail as also the *prima facie* allegations against the Petitioner. The said observations are extracted hereunder:

“59. The applicant in the present case is stated to be a reputed and influential government official. It is alleged that the repute of his position was one of the factors that was used to induce the victims into investing their monies. Given the applicant’s alleged ability to deceive over 500 investors who are high ranking government employees into investing in his projects, there is concern that he may also have the capacity to exert influence over the investors, other witnesses, and evidence to protect his own interests. The applicant is facing allegations of a serious economic offences including cheating and misappropriation of significant public funds, and allegations have to be taken seriously.

60. Prima facie, the allegations of cheating appear to be made out inasmuch as the allegations with respect to taking money into the society’s account and later transferring the same to Aditia Reality Pvt. Ltd. for purchasing the land in the amount lesser than the amount mentioned in the sale deed, as supported by the investigation carried thus far.



61. In the present case, at this stage, the chargesheet, the statement of the members and the documents seized by the Investigation Agency prima facie establish the dishonest intention of the applicant. The applicant was the authorised signatory in the bank account, the president of CSSOS and was actively involved in the day-to-day functioning of CSSOS.

[...]

63. The chargesheet specifically also mentions that the applicant made an attempt to influence the complainant to take back the payment made by him after registration of FIR. [...]

64. In the opinion of this Court, the nature and gravity of the offence alleged against the applicant are serious. Granting bail in a case involving cheating, criminal breach of trust, and alleged false promise given the applicant's knowledge of all the facts and circumstances, and the applicant being an active member in the day to day functioning, it cannot be ruled out that the release of applicant would have an adverse impact on the society. Further, there is a large sum of money involved and the applicant additionally appears to be an influential person. Therefore, there is a possibility that in the event that the applicant is granted regular bail, it is likely that the applicant may tamper with the evidence/witnesses.

65. In view of the above, in the opinion of this Court, the applicant has not made out a prima facie case for grant of bail."

8. The said order was challenged before the Supreme Court, however, the Court did not interfere with the order of the Single Judge. Thereafter, the Petitioner by way of the present petition seeks a writ of *Habeas Corpus* to



challenge the arrest and subsequent detention on the ground that there was infirmity in his initial arrest since he was not produced before the Magistrate within the prescribed time. In effect, the Petitioner seeks this Court to adjudicate the validity of his detention in reference to the initiation of the proceedings against him.

9. This issue has been discussed and clarified by the Supreme Court in ***Serious Fraud Investigation Office vs. Rahul Modi and Another, (2019) 5 SCC 266***. The relevant observations of the Supreme Court are extracted hereinunder:

“17. For considering whether the writ petitioners were entitled to any interim relief, two questions were framed by the High Court in para 16 of its order. Before considering the matter from the perspective of the said two questions, an issue which was stressed by the learned Solicitor General may be addressed first. It was submitted by him that the date with reference to which the legality of detention can be challenged in a habeas corpus proceeding is the date on which the return is filed in such proceedings and not with reference to the initiation of the proceedings. He relied upon the decision of the Federal Court in Basanta Chandra Ghose v. King Emperor [Basanta Chandra Ghose v. King Emperor, 1945 SCC OnLine FC 3 : (1945) 7 FCR 81] , which had concluded: (FCR p. 94)

“... If at any time before the Court directs the release of the detenue, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. ...”

[...]



19. The law is thus clear that “in habeas corpus proceedings a court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings”. In *Kanu Sanyal* [*Kanu Sanyal v. Distt. Magistrate, Darjeeling*, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] the validity of the detention of the petitioner in District Jail, Darjeeling was therefore not considered by this Court and it was observed that the infirmity in the detention of the petitioner therein in District Jail, Darjeeling could not invalidate subsequent detention of the petitioner in Central Jail, Vishakhapatnam.

20. At this stage we may also deal with three recent cases decided by this Court:

[...]

20.2. In *Saurabh Kumar v. Jailor, Koneila Jail* [*Saurabh Kumar v. Jailor, Koneila Jail*, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] the issue was dealt with in para 13 of the leading judgment as under: (SCC p. 440)

[...]

Thakur, J. (as the learned Chief Justice then was) who agreed with the leading judgment authored by Ramana, J., also dealt with the matter in para 22 of his concurring opinion as under: (Saurabh Kumar case [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] , SCC p. 442)

“22. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused



facing prosecution for the offences, cognizance whereof has already been taken by the competent court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody.”

20.3. A Bench of three learned Judges of this Court in *State of Maharashtra v. Tasneem Rizwan Siddiquee* [State of Maharashtra v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386] concluded as under: (SCC pp. 751-52, paras 10-12)

“10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by



the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.

[...]

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

10. Thus, it is clear from the above decision that this Court in a *Habeas Corpus* petition cannot consider the legality of the detention in reference to the initial arrest of the Petitioner. The Petitioner was arrested on 16th



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November, 2022 and thereafter the bail of the Petitioner has been rejected by different forums including this Court by reasoned orders.

11. Considering that the arrest is dating back to November, 2022, the repeated bail application have been rejected as also the decision of the Supreme Court in *Serious Fraud Investigation Office (supra)* this Court is not inclined to entertain the petition for *habeas corpus* in this case.

12. However, it is made clear that insofar as seeking of bail on the ground raised by the Petitioner in the present petition is concerned, the Petitioner is free to avail of this remedies, if any available, in accordance with law, if so advised.

13. The petition is, accordingly, dismissed. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

FEBRUARY 27, 2025/dk/da/msh

(corrected & released on 04th March, 2025)