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**CRWP-8774-2024****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****144****CRWP-8774-2024****Date of Decision : September 09, 2024****MANOHAR LAL****-Petitioner****V/S****HON'BLE PUNJAB AND HARYANA HIGH COURT AND ORS.****-Respondents****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Vineet Kumar Jakhar, Advocate
for the petitioner.

*********KULDEEP TIWARI, J. (ORAL)**

1. Through the instant writ of habeas corpus, as cast under Article 226 of the Constitution of India, read with Section 3(2) of Judges (Protection) Act, 1985, the petitioner, who is suffering incarceration in Model Jail, Chandigarh, in FIR No.51 dated 21.05.2024, under Sections 406, 420, 120-B of the IPC, registered at P.S. Maloya, in consonance with an order passed by a court of competent jurisdiction, and, whose regular bail application has also been dismissed by the learned trial Court concerned, seeks issuance of directions upon the respondents to release him from illegal detention/incarceration.

2. The prime argument canvassed by the petitioner, for securing the hereinabove extracted relief, ensues from blatant violations being made of the exposition(s) of law, as became laid down in the hereinafter enumerated verdicts, while ordering petitioner's judicial remand.

“Arnesh Kumar v. State of Bihar”, (2014) 8 SCC 273***“Satender Kumar Antil v. Central Bureau of Investigation”,***



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(2022) 10 SCC 51

“Daggar Malhotra v. State of Haryana”, CRM-W No.1789 of 2023 in/and CRWP No.11962 of 2023

Notification dated 22.09.2023 (No. 159 Gaz. II(17)), issued by this Court on administrative side.

3. At the outset itself, this Court posed a specific query to the learned counsel for the petitioner regarding maintainability of the instant petition, especially when the petitioner is in judicial custody, to which the latter responded that, since the investigating officer had, at the time of petitioner’s arrest, did not adhere to the provisions of Section 41-A of the Cr.P.C., therefore, the basic order of granting police remand becomes tainted with illegality and as a natural corollary thereof, all the subsequent orders of remand also become rendered void *ab initio*. Consequently, the custody of the petitioner is, in fact, illegal detention.

4. This Court has considered the submission(s) made by the learned counsel for the petitioner, but, to the considered mind of this Court, the same do not have any merit. The reason for forming this inference stems from the factum that, the precise issue of maintainability, as involved in the case in hand is no more *res integra*, inasmuch as, the issue regarding maintainability of a writ of habeas corpus against an order of judicial remand has already been examined and answered in negative by the Hon’ble Supreme Court, in a catena of judgments.

5. In the verdict rendered by the Hon’ble Supreme Court in case titled as **“Col. Dr. B. Ramachandra Rao V/s State of Orissna and others”**, Writ Petn. No. 601 of 1970 and Transfer Petn. No. 12 of 1971, Decided on: 11.08.1971, it has been held that a writ of habeas corpus cannot be granted to a person, in case he is undergoing the sentence of imprisonment imposed on him by a competent court. The relevant paragraph of this verdict is reproduced hereunder:-

“6. As admitted by both sides the petitioner was sentenced to imprison-



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ment on conviction by the Third Additional Sessions Judge, Secunderabad in October, 1965. Unfortunately neither side has been able to inform us as to whether that sentence has expired or is still running. The jail authorities at Bhubaneswar, we have little doubt, must have information whether or not the petitioner, when brought there, was undergoing a sentence of imprisonment and how much sentence remained to be undergone, and the petitioner also, in our opinion, must be presumed to be aware of the sentence imposed on him. **We need only add that in case the petitioner is undergoing the sentence of imprisonment imposed on him by competent court then too writ of habeas corpus cannot be granted. This position is well settled.**”

6. In “**Kanu Sanyal V/s District Magistrate, Darjeeling and others**”, AIR 1974 Supreme Court 510, the principle laid down is that, any infirmity in the detention of a person at the initial stage cannot invalidate the subsequent detention and the same has to be judged on its own merits.

7. Gainful reference can also be made to the Constitution Bench decision in “**Sanjay Dutt V/s State through C.B.I., Bombay (II)**”, 1994(3) RCR (Criminal) 684 : (1994) 5 SCC 410, wherein, it has been opined thus:

“It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.”

8. Apart from the exposition of law, as became propounded in **Kanu Sanyal’s** and **Sanjay Dutt’s** case (supra), becoming reiterated by the Hon’ble Supreme Court in its verdict rendered in “**Manubhai Ratilal Patel Tr. Ushaben V/s State of Gujarat and others**”, it has further been held that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court. The relevant paragraph of **Manubhai Ratilal Patel Tr. Ushaben’s** verdict is reproduced hereinafter:-



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“32. Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order of the High Court regarding stay of investigation could only have bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order of remand cannot be regarded as untenable in law. It is well accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in the cases of B.R. Rao (supra) and Kanu Sanyal (supra), the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. **Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law.**”

9. A similar view has been echoed by the Hon’ble Supreme Court in case titled as **“State of Maharashtra and ors. V/s Tasneem Rizwan Siddiquee”**,

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Criminal Appeal No.1124 of 2018 (Arising out of SLP(Crl.) No.2846 of 2018), Decided on: 05.09.2018, wherein, a specific issue was under consideration as to whether a writ of habeas corpus could be maintained in respect of a person, who was in police custody in connection with a criminal case under investigation, pursuant to an order of remand passed by the court of competent jurisdiction. The Hon'ble Supreme Court, while relying upon **Manubhai Ratilal Patel Tr. Ushaben's** case (supra), answered this issue in negative. The relevant paragraph of **Tasneem Rizwan Siddiquee's** case is reproduced hereunder:-

*“9. 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 the case of **Saurabh Kumar through his father v. Jailor, Koneila Jail and Anr., 2014(3) RCR (Criminal) 856 : (2014) 13 SCC 436, and Manubhai Ratilal Patel v. State of Gujarat and Ors., 2012(4) RCR (Criminal) 655 : (2013) 1 SCC 314.** 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 18th/19th March, 2018 and decided by the High Court on 21st March, 2018 her husband Rizwan Alam Siddique was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No.l-31 vide order dated 17th March, 2018 and which police remand was to enure till 23rd March, 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.”*

10. Not only this, the issue raised by the learned counsel for the petitioner herein has also been considered by the Hon'ble Supreme Court in case ti-

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tled as “**V. Senthil Balaji V/s. The State represented by Deputy Director and Ors.**”, wherein, it has been held that when an arrestee is forwarded to jurisdictional Magistrate under Section 19(3) of PMLA, 2002, then no writ of habeas corpus would lie and any plea of illegal arrest is to be made before such Magistrate, as the custody becomes judicial. The relevant paragraphs of the verdict rendered in **V. Senthil Balaji’s case** are reproduced hereinafter:-

“88. *Summation of Law:*

i. When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002 no writ of Habeas Corpus would lie. Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.

ii. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non-compliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002.

iii. An order of remand has to be challenged only before a higher forum as provided under the CrPC, 1973 when it depicts a due application of mind both on merit and compliance of section 167(2) of the CrPC, 1973 read with Section 19 of the PMLA 2002.

XX XX XX”

11. On the touchstone of the hereinabove discussed judicial precedents, this Court has no hesitation to hold that the instant writ of habeas corpus, thereby seeking release of the petitioner, who is in judicial custody by virtue of an order passed by a court of competent jurisdiction, and, whose regular bail application has also been dismissed by the learned trial Court concerned, is not maintainable.

12. Although certain other issues have also been canvassed by the petitioner’s counsel in the instant writ of habeas corpus, which however do not become argued by him during the course of arguments, yet to the considered mind of this Court, the said issues cannot be adjudicated by this Court in the instant



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proceedings.

13. Consequently, the instant criminal writ petition is **dismissed**, however, with liberty to the petitioner to raise all such issues, as canvassed in the instant petition, before the court of competent jurisdiction at the time of seeking relief of regular bail.

September 09, 2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No