

HOB'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

HON'BLE SRI JUSTICE V.SRINIVAS

I.A.No.3 of 2023

In

W.P.No.8965 of 2023

ORDER: *(per Hon'ble D.V.S.S.Somayajulu)*

This Court has heard Sri K.S.Murthy, learned senior counsel for the petitioner and the Special Public Prosecutor for the CID Smt. Y.L.Siva Kalpana Reddy.

2. A writ of Habeas Corpus was filed questioning the arrest; the remand order passed by the III Additional Chief Metropolitan Magistrate, Vijayawada in Crime No.2 of 2023 dated 10.03.2023 and the further transit warrants etc. Interim bail is also sought.

3. Learned senior counsel Sri K.S.Murthy essentially raises two fundamental legal grounds with regard to the arrest and remand. It is his contention that the accused was produced before the Magistrate at 6:00 p.m. on 30.03.2023 although he was arrested on 29.03.2023 at 12 noon. It is submitted that the period of 24 hours has expired and the learned Magistrate did not look into this issue at all. The second ground urged is that the accused is said to have committed an offence under the Andhra Pradesh Protection of Depositors of Financial

Establishments Act, 1999 (for short 'the Act No.17 of 1999') and sections 76 and 79 of the Chit Funds Act. It is submitted that under the Act, only a Special Judge for Trial of Offences who is of the rank of District Judge can entertain the case. He points out that the Magistrate in question did not have the necessary authority or jurisdiction to pass the order of remand. The fact that he passed the order of remand clearly shows that there was non-application of mind.

4. In reply to the submission that the accused was lawfully arrested and sent to remand and that a writ of Habeas Corpus will not lie, learned senior counsel relied upon the judgment of the Hon'ble Supreme Court of India reported in ***Gautam Navalkha v. National Investigation Agency***¹ to argue that if the remand is absolutely illegal or afflicted with the vice of lack of jurisdiction, a writ of Habeas Corpus would lie. He also argues that multiple FIRs are registered and this is contrary to the case reported in ***Tarak Dash Mukharjee & others v. State of Uttar Pradesh & others***²

5. Learned standing counsel for the respondents Smt. Y.L.Siva Kalpana Reddy on the other hand argues that there is a human error in the remand order. Relying on her instructions, she submits that the witness was actually produced at 6:30 a.m., but it was wrongly recorded as 6:30 p.m by the Magistrate. She submits that an

¹ 2021 SCC Online SC 382

² 2022 LiveLaw (SC) 731

application for extension of the remand was filed before the Special Judge for Trial of cases under the Act and extension was granted. She also submits that the remand order was made by the Magistrate after hearing the learned counsel for the accused. Therefore, it is her contention that there is no error committed and that alternatively even if it is argued that an initial error was committed, the subsequent extension of the remand order makes it clear that it is only the designated Court that had dealt with the matter.

6. Relying upon the judgment reported in ***State of Maharashtra and others v. Tasneem Rizwan Siddiquee***³, she argues that when a person is in police custody pursuant to a remand order passed by a jurisdictional Magistrate and the order is in force, a writ of Habeas Corpus will not lie. To the same effect is the Division Bench judgment relied upon by her reported in ***Ahamed Riswan v. State of A.P., rep., by its Principal Secretary Home Department, Amaravati and others***⁴. Therefore, learned counsel submits that the detention cannot be termed as illegal and that Habeas Corpus petition is misconceived. Hence, she states that the interim prayer cannot be granted. She also relies upon ***Kanu Sanyal v. District Magistrate, Darjeeling and others***⁵, ***The Registrar (Judicial) v. Krishnaswami***

³ (2018) 9 SCC 745

⁴ 2019 (2) ALT (Cri.) 209 (D.B.)

⁵ AIR 1974 SC 510

***Naidu and others*⁶; *Anitha Mohan Waghmare v. IV Additional Metropolitan Magistrate, (Telangana & A.P.)*⁷; *Umakant Yadav v. Superintendent of District Jail Azamgarh & others*⁸ and orders in *W.P.No.24584 of 2020 (Telangana High Court)* and *W.P.No.27423 of 2022 (Andhra Pradesh High Court)* in support of her contention.**

7. During the course of the submission, the certified copy of the remand order dated 30.03.2023 is filed along with a memo. A perusal of the remand order shows that the learned Magistrate has noted that A.5 is produced at 6.30 p.m. only. Learned standing counsel submits that this is an error and the accused was in fact produced at 6.30 a.m. In the opinion of this Court, this is an issue which shows non-application of mind by the learned Magistrate. The Magistrate should be aware of the fact that he is dealing with a constitutional safeguard provided under Article 22(2) of the Constitution of India, which mandates that the accused should be produced within 24 hours. Hence a duty was cast upon him to note the time properly.

8. Apart from it, this Court also notices that the learned Magistrate in his own handwriting has recorded the fact that apart from the offences under the Indian Penal Code, the accused is also charged with an offence under the Act No.17 of 1999. This is a law specially

⁶ Reference Case No.1 of 2018

⁷ 2017 (1) ALT (CrI.) 14

⁸ 1995 CrI.L.J.906

enacted in Andhra Pradesh which provides the following as per section 6 of the Act:

6. Special Court (1) For the purposes of this Act, the Government shall, with the concurrence of the Chief Justice of the High Court, by notification, constitute a District and Sessions Court as a Special Court.

(2) No court including a court constituted under the Presidency Towns Insolvency Act, 1909 (Central Act III of 1909) and the Provincial Insolvency Act, 1920, (Central Act V of 1920), other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other court to which the provisions of this Act apply shall stand transferred to the Special Court.

(4) The Special Court shall, on an application by the competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money realised from out of the property attached.

Sections 13 and 14 of Act No.17 of 1999 are as follows:

13. Procedure and Powers of Special Courts regarding offences - (1) The Special Court may take cognizance of the offences without the accused being committed to it for trial and in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), for the trial of warrant cases by Magistrates. (2) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall, so far as may be, apply to the proceedings before a Special Court and for the purpose of the said provisions, a special Court shall be deemed to be a Magistrate.

14. Act to override other laws - Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

9. Special Courts have also been constituted in the State of Andhra Pradesh under the said Act. This important jurisdictional issue has been overlooked by the learned Magistrate.

10. As far as case law cited by the respondents is concerned, there is no doubt that if the petitioner is in custody pursuant to an order passed by a jurisdictional Magistrate in connection with an offence under investigation, a Habeas Corpus will not lie.

11. In the case of **Gautam Navalkha** (1 supra), the Hon'ble Supreme Court was dealing with a specific question whether a Habeas Corpus lies against an order of remand under section 167 Cr.P.C. This is dealt with in paras 67 to 71 of the judgment.

12. In para 71, it is clearly held as follows:

71. Thus, we would hold as follows:

If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie.

13. Even the judgment of **Tasneem Rizwan Siddiquee** (2 supra), cited by the learned counsel for the respondents states that a writ of Habeas Corpus will not lie in case a person who is in police custody pursuant to a remand order passed by a 'jurisdictional' Magistrate. In the current case, as mentioned earlier, there are certain glaring aspects which are noticed particularly in the remand report. Even if the time is wrongly recorded as 6.30 p.m. instead of 6.30 a.m. as stated entertaining the remand as urged; when an alleged offence under the Act No.17 of 1999 is committed, it should have been noted. It shows the lack of attention that is required to be bestowed by the Magistrate while passing a remand order. He did not have the 'jurisdiction' to entertain the remand. The Hon'ble Supreme Court in **Gautam Navalkha** (1 supra) in para 71 held that if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. In addition, if the order is absolutely illegal or suffers with a vice of lack of jurisdiction, the Habeas Corpus petition would lie. This Court has already referred to the provisions of the Act, which clearly state that it is only a designated Court which can deal with cases registered under the said Act. The designated Court/Judge shall be deemed to be a Magistrate also. The learned Magistrate has obviously no jurisdiction to entertain the remand report. The accused should have been produced before the Special Court which was admittedly there in the vicinity in the

District i.e. Metropolitan Sessions Judge, Vijayawada. No reason is forthcoming for the failure to produce the accused before the Special Court. The Magistrate committed a serious error in granting the remand as prayed for.

14. The arguments of Ms. Kalpana Reddy at first blush appear to be appealing, but the fact remains in the case law she relied, the Police could produce the accused before the local Jurisdictional Magistrate who in turn could remand him to custody for 15 days and then send him to the designated Court. In **Anitha Mohan Waghmare** case (7 supra), section 36(A) 1(b) of the NDPS Act is noticed. In **Krishnaswami Naidu's case (6 supra)**, which was a reference, it was held that the Special Judge under the POCSO Act is also the Magistrate for the purpose of Section 167 Cr.P.C. The further argument is that the initial error if any is cured by the Special Courts remand. She relies on **Umakant Yadav's case (8 supra)**.

15. In the case of hand, certain fundamental aspects are lacking. The Magistrate's failure to record the time; to note whether 24 hours since arrest have expressed or not; and the failure to note the provisions of Act No.17 of 1999 are clearly visible. In the *prima facie* opinion of this Court, there are infirmities affecting 'constitutional safeguards' which cannot be cured by the subsequent order of remand by the special Court. The error affects a person's fundamental right

and the initial deprivation cannot be cured by a later act. These are inherent and basic rights under Part III which cannot be abridged or taken away even by a law. This is the importance given to the said rights.

16. Since only the application for bail is being considered, these opinions are expressed for the purpose of the interim application only.

(a) Relying on the case of **Gautam Navalkha** (1 supra), it is held that Habeas Corpus is *prima facie* maintainable.

(b) Hence, I.A.No.3 of 2023 is allowed. Interim bail is granted to the accused in this case. There is no averment that the accused is a flight risk etc. He is also a professional and an auditor. Hence, bail is granted on the following conditions: (a) He shall execute a bond for Rs.50,000/- (Rupees fifty thousand only) along with two sureties for a like sum of Rs.50,000/- each to the satisfaction of the Metropolitan Sessions Judge, Vijayawada. (b) He shall cooperate in the investigation and shall report/be present for investigation.

D.V.S.S.SOMAYAJULU,J

V.SRINIVAS,J

Date: 27.04.2023

KLP

Note: issue C.C.today.