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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 29.01.2024

+ W.P.(CRL) 304/2024 & CRL.M.A 2793/2024.

DHARAM NARAYAN GAUTAM Petitioner

Through: Mr. Vishal Gosain, Ms. Rudrani
Tyagi and Mr. Praney Sharma,
Advocates.

versus

STATE THROUGH ECONOMIC OFFENCES WING & ANR.

..... Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.), Ms. Priyam Aggarwal, Mr.
Abhinav Arya, Advocates with SI
Lalit Kumar, EOW, Delhi.
Mr. Sanjay Beniwal, D.G Prisons
with Mr. Pravir Kumar Singh, SCJ-3
Tihar, Delhi, Mr. Prashant Verma,
Senior Law Officer, Tihar, Mr.
Abhijit Shankar, Law Officer CJ-03,
Delhi.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Present petition, which is in the nature of Habeas Corpus, has been filed with the following prayer:-

“(a) Issue an order, direction or writ in the nature of Heabus Corpus, or any other appropriate writ order directing immediate release of the Petitioner from custody at Tihar Jail.”

2. It is claimed that despite bail order and release order, he has been illegally detained by Jail Authorities.



3. As per status report dated 29.01.2024, it is admitted that bail order/release order of the petitioner was received in Jail on 20.01.2024. However, he was not released as there was one production warrants, albeit expired one, against him.
4. A wireless message was sent to DAP 3rd Battalion by Jail Authorities to depute appropriate guards to produce the petitioner before the Court of learned Civil Judge (Sr. Division) F.T.C, G.B Nagar, for further necessary directions in such out-station case pending there.
5. Since as per one previously received letter dated 14.12.2023 from Dy. Commissioner of Police, 3rd Battalion DAP, New Delhi, intimating that the DAP 3rd Battalion would not be in a position to discharge their duties for court production in Delhi & NCR from 19.01.2024 to 27.01.2024 on account of Republic Day arrangements, the custody of petitioner/accused is stated to have been handed over to DAP 3rd Battalion today only i.e. on 29.01.2024 for his production before the Court at G.B Nagar for further necessary directions.
6. It is not in dispute that Jail Authorities at Delhi have no idea about the next date in said out-station case and they do not even know whether accused is on bail there or not. Importantly, there is no live production warrant either.
7. It is admitted case of the State/Jail Authority that the production warrant dated 30.09.2022 had been received from F.T.C, G.B Nagar and consequent thereto, the petitioner was to be produced on 10.10.2022.



8. It is also admitted that the petitioner was never produced on the said date before the concerned Court. No further production warrant was received either in such out-station case.
9. Bail order in the case in Delhi was passed on 16.01.2024 and release order was issued by the concerned Court on 20.01.2024 and was received by Tihar Jail, New Delhi same day.
10. Such fact has not been disputed by Mr. Sanjay Beniwal, Director General (Prisons), Delhi who is present in Court.
11. This Court put a specific query to the said DG (Prisons) enquiring as to what steps have been taken pursuant to the directions passed in W.P.(CRL.) 822/2020 in case of *Anil Mittal versus State (NCT of Delhi) & Ors.* on 19.05.2020. He submits that he has joined the present post about an year back and pursuant to said order dated 19.05.2020, circular dated 05.08.2020 has already been issued, which, *inter alia*, provides as under:

“To avoid any such occasions where delay in release of an inmate is caused owing to clarification about the bail status in an already existing production warrant (especially such situations arise when an inmate in Delhi Prisons has a production warrant from an outstation court), it is reiterated that we any immediately, seek the clarification/confirmation from the concerned Court about the bail status of such other case in which the production warrant is received in Jail, preferably within 24 hours of receiving the production warrant, with specific remarks that the accused will be released from Jail in case he/she secures bail/release orders in the case/cases in which he has been committed to judicial custody in our jail in view of Section 269(c) of Cr.P.C.



Secondly, it has also come to the notice of the Director General (Prisons) that a prisoner was unlawfully detained in a pending Criminal Appeal on account of live warrant against him ignoring the fact that the sentence awarded to him had been completed/undergone already and the appellant (in this case the victim) had sought only the enhancement o punishment imposed against the petitioner (accused). In such case o Criminal Appeal, there was no need to seek clarification from the court about the bail status which caused delay in the release of the prisoner who has secured bail in his other cases. The liberty of the accused was thus deprives by his unlawful further detention in that appeal. To avoid such kind of error, the Jail Superintendent shall ensure that in criminal appeal matters where is preferred against the acquittal of a prisoner or is pending still after expiry of sentence, in such circumstances the prisoner should not be detained prison in that Appeal until and unless the Appellate Authority specific all directs to keep him/her in custody in such appeal matter.”

12. In the case in hand, there is evidently, no confusion or requirement of any clarification as there was no ‘live production warrant’. Moreover, if it all Jail Authorities wanted to know the status, it could have sought information in the year 2022 itself. Instead of honouring said production warrant and producing the accused before said Court on 10.10.2022, it has now woken up from slumber when accused has already secured bail in cases in Delhi.

13. Despite the fact that the release order had been received on 20.01.2024 and there was no existing production warrant from G.B Nagar Court, he thus continues to be in the illegal detention.

14. Obviously, the petitioner could not have detained on a stale production warrant which has no value in eyes of law.



15. There is no explanation to the same from the respondent's side.
16. The Jail Superintendent Mr. Pravir Kumar Singh, Jail No. 03, Tihar Jail, is present in Court and submits that because of some communication gap, the petitioner was sent to G.B Nagar Court for production. We specifically asked from him whether there was any date today in the said Court to which he replied in negative.
17. In view of the above, admittedly, the petitioner is in unauthorized judicial custody since 20.01.2024. Accordingly, we direct the respondents to release the petitioner forthwith.
18. The respondent/State is directed to take appropriate action against the erring officers. The DG (Prisons) who is present in Court has assured this Court, that no such lapse shall take place in future. We make it clear that if any lapse is found on the part of the officers of Jail in this regard in future, strict action shall be taken by this Court against them.
19. We further direct DG (Prisons) to ensure that the directions contained in order dated 19.05.2020 in W.P.(CRL.) 822/2020 are scrupulously followed.
20. It is informed by the counsel for the petitioner that charge-sheet was filed in G.B Nagar case without arrest and summons have already been issued and the petitioner is required to appear on 29.02.2024. Accordingly, as undertaken before us, the petitioner shall appear before the said Court on said date failing which, the concerned Court would be at liberty to take action as per law accordingly.



21. Re-notify on 29.02.2024.

22. Respondent/Jail Authority concerned is directed to place on record a report specifying therein action taken against the erring officers and also about remedial steps taken to ensure that such lapses do not re-occur.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

JANUARY 29, 2024/sw