H.C.P.No.1021 of 2023

J.NISHA BANU, J.,
and
D.BHARATHA CHAKRAVARTHY, J.,

Heard Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the petitioner, Mr. A.R.L.Sundaresan, learned Additional Solicitor General of India, assisted by Mr.N.Ramesh, learned Special Public Prosecutor for Enforcement Directorate.

2. This Habeas Corpus Petition is filed complaining about the illegal detention of the husband of the petitioner namely V.Senthil Balaji, son of Velusamy, aged about 48 years.

3. It is the contention of the petitioner that she is the wife of the detenu. There are three criminal cases pending against the detenu in C.C.Nos.19, 24 & 25 of 2021 on the file of the learned Additional Special Court for trial of cases against M.P. / M.L.A. and the offences are under Sections 406, 409, 420 and 506(1) read with Section 34 of the Indian Penal Code.

4. The occurrences are of the year 2014 wherein it is alleged that the detenu had obtained money from third parties, promising jobs in the Transport Department and thereafter cheated them. On the basis of the same, a case has now been registered under Section 4 of the Prevention of Money Laundering Act, 2002 (*hereinafter referred as 'P.M.L.A.'*) and he was arrested at about 1:30 a.m. on 14.06.2023. Complaining that the notice under Section 41-A of the Criminal Procedure Code was not issued and that the grounds for arrest was not informed and complaining violation of Article 22(1) of the Constitution of India that the detenu was neither informed about the ground of arrest nor permitted the right to consent a legal practitioner, this Habeas Corpus Petition was filed at about 10:30 a.m. on 14.06.2023.

5. The further proceedings that happened in the present case is that the said Habeas Corpus Petition was moved before this Court and the concerned Bench, which was dealing in the matter, expressed inability as one of the Hon'ble Judges forming part of the Bench recused from the matter. Thereafter, on the orders of the Hon'ble Chief Justice, the matter was placed before us today. In these circumstances, we proceeded to hear both the learned counsel.

6. The case on behalf of the Enforcement Directorate is that when the case in ECIR No.MDSZO21 of 2021 was registered as early as on 29.07.2021, summons was issued to the detenu to appear before the Enforcement Directorate. However, the detenu has challenged the same on the ground that predicate offences themselves were quashed on compromise between the parties. Ultimately, on 16.05.2023, the Hon'ble Supreme Court of India had set aside the quashing of the said offences and also has specifically given clearance for the respondents to proceed further in the matter under PMLA.

7. Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India would further submit that the argument by the Learned Senior Counsel for the petitioner relating to the compliance of Section 40, 41-A...etc.. of the Criminal Procedure Code, will not arise in this case of arrest under P.M.L.A. as the same is governed by only Section 19 of the said P.M.L.A. As far as Section 19 of P.M.L.A. is concerned, the same contains the safeguards, as contained under Article 22 of the Constitution of India also. In that view of the matter, non-compliance of Sections 40 or 41-A does not arise in this matter. As far as Section 19 of the P.M.L.A., is concerned, the same has been complied with.

8. He would further submit that after the filing of the Habeas Corpus Petition, since the detenu was not well, the Special Court, namely learned Principal Sessions Judge, Chennai itself visited the Hospital and after examining the conditions of the accused, had rejected the objections for remand and by a judicial order authorised the remand of the accused upto 28.06.2023. Once there is a judicial order remanding the detenu thereafter the Habeas Corpus Petition itself is not maintainable, therefore, the Habeas Corpus Petition is liable to be dismissed.

9. As a matter of fact, even the requirements under Article 22 of the Constitution of India as well as under Section 19 of the P.M.L.A. are complied with, and if notice is served, they can file a counter affidavit, explaining the same. He would further submit that the arrest itself has happened in the house of the detenu and as a matter of fact, the relatives were called over phone and they did not pick up the phone. Similarly, other efforts were also taken by them to inform the arrest and they had sent sms and emails to the wife of the detenu.

10. We have considered the rival submissions made on behalf of the petitioner as well as the respondent Enforcement Directorate in the main Habeas Corpus Petition.

11. The learned Additional Solicitor General of India relied upon the decision in ***Saurabh Kumar through his father vs. Jailor, Koneila Jail and another*** reported in (**2014) 13 SCC 436**, ***State of Maharashtra and others vs. Tasneem Rizwan Siddiquee*** reported in (**2018) 9 SCC 745**, ***A.Lakshmanarao vs. Judicial Magistrate First Class Parvatipuram and others*** reported in **1970 (3) SCC 501** and ***Serious Fraud Investigation Office vs. Rahul Modi and another*** reported in **(2019) 5 SCC 266**.

12. On behalf of the petitioner, the learned senior counsel relied upon the judgement in ***Satender Kumar Antil vs. Central Bureau of Investigation and another*** in (**2022) 10 SCC 51** and judgement in ***Gautam Navlakha vs. National Investigation Agency*** reported in **2021 SCC Online SC 382**.

13. On considering the judgments quoted by both side counsel, we find after discussing of the earlier judgments, the law and the position regarding the maintainability of the Habeas Corpus Petition, is summarised in judgment of the Hon'ble Supreme Court reported in ***Gautam Navlakha's case*** (cited cupra), after

framing the following question: "*Whether the writ of Habeas Corpus Petition against an order of remand under Section 167 of Criminal Procedure Code is maintainable?*" and it has been answered in paragraph no.71 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. "*

14. Thus it can be seen that when the order of remand was subsequent to the filing of Habeas Corpus Petition and when arguments are made impugning the arrest and remand, the following questions arise for consideration in this petition:

(i) Whether the grounds raised on behalf of the detenu of non-compliance is factually correct ? and (ii)Even if they are factual correct, whether it could amount to absolute illegality? . The above questions remain to be answered in this Habeas Corpus Petition.

15. Therefore, on the above limited questions, we entertain the Habeas Corpus Petition. Let notice go to respondents, returnable by 22.06.2023. Let counter affidavit be filed by then. It would be open for the learned counsel for the petitioner to file a copy of the remand order and to raise any additional grounds, thereof by then.

16. In the mean while, it is pleaded on behalf of the petitioner, that seeing the conditions of the detenu, at the time of arrest at about 1.39 am., the respondent Authorities themselves have taken him to the Omandurar Government Multispeciality Hospital. At the Omandurar Government Hospital, the detenu was admitted as an inpatient and it is admitted by both sides that an angiogram has been performed on the detenu and the following is the findings of the Experts at the Omandurar Medical College and Hospital.

> "Selective CAG done through Rt Radial
> LM : Minimal Puminal Irregularities -c distal 10-20%
> LM gives rise to LAD & LCX
> LAD : A proximal discrete

Aneurysm is seen. In mid at 5 level
60 – 70 % stenosis

LCX : Non-dominant
ML I seen throughout -
Major OM has prox 70 %
Stenosis dis Lex 70 %
From Left Colletrals
Visualizes right PLB
RCA : Dom difficulty diseased
Throughout
Prox 50 % MID 50 %
Dis 90 % at bi fure 50 %
PDA pr 70 %
PLB – wid total ob
3 V CAD
Rec : CABG

SIGNATURE
14/06/2023
Dr.G.Karthikeyan
MD DM
Senior Consultant"

A Medical Bulletin is issued by the hospital, which is extracted as follows:-

"**மருத்துவ அறிக்கை**

மாண்புமிகு மின்சாரம், மதுவிலக்கு மற்றும் ஆயத்தீர்வைத் துறை அமைச்சர் திரு.செந்தில் பாலாஜி, கூயது 47, அவர்களுக்கு இருதய இரத்த நாள பரிசோதனை 14.06.2023 அன்று காலை 10.40 மணியவில் செய்யப்பட்டது.

அப்பரிசோதனையில் மூன்று முக்கியமான இரத்த குழாய்களில் அடைப்பு உள்ளது கண்டறியப்பட்டது. அதற்கு விரைவில் பை பாஸ் அறுவை சிகிச்சை செய்ய பரிந்துரைக்கப்படுகிறது."

17. Mr.N.R.Elango, the learned Senior counsel would submit that it can be seen from the Bulletin that the doctors of the Omandurar Government Hospital has advised an Emergent bypass surgery. The learned Senior Counsel would submit that the detenu already has a regular consultant physician who is working at the Cauvery Hospital, Chennai and it would be convenient and the family believes that the surgery can be safer and to their expectancy level, can be done at the Cauvery Hospital at their own expenses and therefore, by way of an interim prayer, request that this court pass an order to shift the detenu to Cauvery Hospital for performing such surgery and treatment. He would submit that in these kinds of life saving surgeries, the choice of the accused to undergo treatement in particular private hospital has been recognised by the Hon'ble Supreme Court of India and other Courts in various orders.

18. Opposing the above prayer, the learned Additional Solicitor General relied upon the judgment of the Honourable Supreme Court of India in ***Enforcement Directorate, Government of India Vs. Kapil Wadhawan and***

another, and would submit that the Government Hospitals are adequately equipped to perform the surgery and there is no question of shifting the detenu to a private hospital. According to him, there can be no two opinions about the diagnosis made by the Omandurar Government hospital, but whether the surgery is emergent or not, can further be determined by external experts to be brought by them from All India Medical Sciences, New Delhi or any other expert team which may be constituted by this Court. Therefore, the learned Additional Solicitor General would submit that as far as the requirement of the emergent surgery is concerned, the same can be determined by an expert panel of Doctors, agreeable by the respondent-Enforcement Directorate also and accordingly, further orders can be passed and therefore, no emergent orders shifting the person from Omandurar Hospital need be passed by this Court.

19. At this juncture, it is brought to the notice on behalf of the petitioner that even in the Omandurar Medical College and Hospital, Doctors from ESIC Hospital, Chennai were brought by the Respondent-Enforcement Directorate to verify the medical condition of the accused and they ascertained the same.

20. We have considered the rival submissions made on either side and perused the material records of the case.

21. We have extracted the medical bulletin issued by the Government Medical College and Hospital, Omandurar Government Estate. At this juncture, we cannot lightly and without any material, doubt the opinion of the doctors, when there has to be an emergent treatment. As *prima facie*, the detenu is in custody by judicial order of remand, there is no question of enlarging him on bail. He shall continue to be in judicial custody. The only question is whether he has to undergo an emergent treatment at the Omandurar Government Hospital itself or the hospital of their choice. In this regard, when the petitioner pleads that they have a regular physician at Cauvery Hospital, Chennai which is also a reputed hospital in Chennai, regarding the treatment in Cardiology, when the matter is concerning a life of an individual, we are of the view that prayer on behalf of the detenu to undergo treatment at the hospital of their choice, at his own cost, can be acceded to even while he continues to be in judicial custody.

22. But however, since there is a concern which is expressed on behalf of

the respondents / Enforcement Directorate, even after shifting the detenu from the Omandurar Government Hospital to Cauvery Hospital, a panel of doctors constituted by the respondents, can also visit and examine the detenu and the medical records and the treatment which is being given to the detenu. It is open to the respondents/ Enforcement Directorate, themselves to determine the Specialist panel, who can also examine the detenu and his condition as well as the treatment, which he undergoes at the Cauvery Hospital. Therefore, we direct that the detenu be shifted to Cauvery Hospital, Chennai, for undergoing the emergency treatment as mentioned in the Medical Bulletin of the Omandurar Government Multi-Speciality Hospital, Chennai, dated 14/06/2023.

23. Call the main Habeas Corpus Petition on 22.06.2023 for final disposal.

[J.N.B.,J.] **[D.B.C.,J.]**

15.06.2022

sts/nvsri

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After pronouncement of the order, the learned Additional Solicitor General of India would submit that the period of treatment undergone by the detenu, has to be excluded when it comes to the question of granting custody of the detenu to the respondent-Enforcement Directorate.

2. Regarding the above submission, we are of the view that the same will be considered on 22.06.2023 at the time of hearing of the main HCP.

[J.N.B.,J.] **[D.B.C.,J.]**

15.06.2023

Note: Issue Order Copy on 15.06.2023 and upload the same immediately

J.NISHA BANU,J.,

and
D.BHARATHA CHAKRAVARTHY.J.,

Nvsri/sts

Interim Order made in
H.C.P.No.1021 of 2023

15.06.2023