

(2022) 12 PAT CK 0086

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1279 Of 2022

Manoj Kumar Ladha @ Manoj Ladha

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 8
Indian Penal Code, 1860 — Section 120B
Code Of Criminal Procedure, 1973 — Section 41A, 41A(3), 173(8)

Citation : (2022) 12 PAT CK 0086

Hon'ble Judges : Chakradhari Sharan Singh, J;Khatim Reza, J

Bench : Division Bench

Advocate : S.D. Sanjay, Mohit Agarwal, Ananya Matin, Rahul Kumar, Nivedita Nirvikar, Sujeet Prakash

Final Decision : Dismissed

Judgement

1. The petitioner is an accused in Special Case No. 3 of 2022 arising out of RC 8(A) of 2022 registered by the Central Bureau of Investigation (CBI for short) for the offences punishable under Sections 7 and 8 of the Prevention of Corruption Act, 1988 read with Section 120-B of the Indian Penal Code. A copy of the FIR has been brought on record by way of Annexure-1 to the writ petition, from which it transpires that the petitioner is one of the Directors of M/s Abha Agro Industries Private Limited and M/s Abha Agro Export Private Limited. Based on a secret information to the effect that the petitioner and other persons, under a well-made conspiracy with the officials of East Central Railway Headquarter (ECR), Hajipur were availing out-of-turn allotment of railway rake services, having extra stacking time for their firms and other undue advantages in exchange of payment of huge bribes on monthly basis to the public servants, a trap was laid by a CBI team on 31.07.2022, during the course of which the petitioner's driver was caught giving bribe to a co-accused Sanjay Kumar, CFTM, ECR, Hajipur at his residence at Patna to the tune of Rs. 6 lakhs. From the possession of said Sanjay Kumar further incriminating materials in terms of cash

were subsequently recovered.

2. The petitioner who is a chargesheeted accused in the aforesaid case has been arrested by the CBI on 25.10.2022 and has been sent to judicial custody by an order dated 26.10.2022 passed by the learned Special Judge, CBI-I, Patna, which has been brought on record by way of Annexure-10 to this writ application.

3. The petitioner has filed the present writ application seeking issuance of a writ in the nature of writ of Habeas Corpus by directing the respondents for production of the petitioner and his immediate release from the judicial custody. The relief is being sought on the premise that the order of remand dated 26.10.2022 passed by the learned Incharge Court of CBI-I, Patna is in violation of the provisions of Section 41-A of the Code of Criminal Procedure as well as the guidelines issued by the Supreme Court in case of *Arnesh Kumar vs. State of Bihar* and another reported in (2014) 8 SCC 273 and *Satender Kumar Antil vs. Central Bureau of Investigation* and another reported in (2022) 10 SCC 51.

4. It is the petitioner's case, as set out in the writ petition, that when the investigation was pending, the Dy.S.P. Anti-Corruption Branch, CBI, Patna (respondent No. 5) had issued a notice dated 09.09.2022 under Section 41-A of the Cr.P.C. to the petitioner directing him to appear before her on 15.09.2022 at 11:00 hours. The petitioner did appear before respondent No. 5 in response to the said notice and joined the investigation. He had allowed his voice sample to be taken by the CBI officials during the course of interrogation. Two weeks thereafter, on 29.09.2022, the CBI submitted its charge-sheet against the petitioner and five other persons who were in custody.

5. It further transpires from the pleadings in the writ petition that the petitioner had filed an anticipatory bail application before the learned CBI Court during the pendency of which the respondent No. 5 filed a petition dated 10.10.2022 before the said court, seeking issuance of warrant of arrest against the petitioner on the ground that he had not answered the questions placed before him by respondent No. 5. The said anticipatory bail application of the petitioner subsequently came to be rejected by the learned CBI Court by an order dated 11.10.2022 passed in Special Case No. 3 of 2022. The petitioner, thereafter, filed an anticipatory bail application before this Court on 17.10.2022 through e-filing portal bearing Token No. Criminal Miscellaneous 67532 of 2022. Needless to say that the said anticipatory bail application has lost its utility after the petitioner's arrest by the CBI.

6. It is the petitioner's case that another notice under Section 41-A of the Cr.P.C. was issued by respondent No. 5 on 19.10.2022, after rejection of the anticipatory bail application by the CBI Court requiring the petitioner to appear before the respondent No. 5 on 25.10.2022. In response to the said notice dated 19.10.2022, the petitioner appeared before respondent No. 5 on 25.10.2022. After his interrogation for sometime on 25.10.2022, he was asked to wait, whereafter the petitioner was made to wait till 6:30 P.M. by the CBI Officials on

the pretext of certain papers to be signed by him. Thereafter, the petitioner came to be arrested by the CBI officials. As has been noted at the outset, the petitioner was produced before the learned Court of CBI-I, Patna on 26.10.2022 and has been sent to judicial custody. The CBI was seeking two days' police remand, which was denied by the CBI Court.

7. It is the petitioner's case that once the charge-sheet was already submitted against the petitioner, there was no occasion for the CBI officials to have arrested him after asking him to appear before them pursuant to notice under Section 41-A of the Code of Criminal Procedure. It is further case of the petitioner that since the petitioner was cooperating with the CBI in investigation to the extent that he had allowed his voice sample to be taken, there was no germane reason available for the CBI to have arrested him on 25.10.2022. As the arrest itself is illegal, according to the petitioner, action of the Court of CBI in remanding the petitioner to judicial custody is also bad and unauthorised.

8. A counter affidavit has been filed on behalf of the Central Bureau of Investigation opposing the relief sought in the writ petition. It has been stated in the counter affidavit that based on the evidence collected during the investigation, a charge-sheet was submitted on 29.09.2022 against the accused persons including this petitioner. However, the investigation was kept open for the purpose of collecting further material. It has been stated, inter alia, that during the said further investigation contemplated under Section 173(8) of the Code of Criminal Procedure, the said notice was issued to the petitioner under Section 41A of the Cr.P.C. on 25.10.2022. The petitioner appeared pursuant to the said notice, but was found not cooperating with the investigation. He contradicted his own statements which he had made during his interrogation on 17.09.2022. The petitioner's non-cooperation during the further investigation compelled the CBI to arrest him and accordingly he was arrested and subsequently produced before the learned Special Court, CBI-I. The prayer of the CBI to grant police custody for two days was rejected. Reason for the petitioner's arrest, after he had appeared pursuant to the notice under Section 41-A of the Code of Criminal Procedure have been recorded in the case diary as also in the petition filed before the learned Special Judge CBI-I (In-charge). It is accordingly the case of the CBI that the petitioner's arrest is in accordance with the statutory requirement under Section 41-A of the Code of Criminal Procedure and since he has been taken into judicial custody under a judicial order passed by the CBI Court, the petitioner cannot maintain this writ application before this Court seeking issuance of a writ in the nature of writ of Habeas Corpus.

9. Mr. S.D. Sanjay, learned senior counsel appearing on behalf of the petitioner with his usual vehemence submitted that since the petitioner had joined the investigation after he appeared before the Investigating Officer pursuant to the notice under Section 41-A of the Code of Criminal Procedure, there was no occasion for the CBI officials to have arrested him subsequently, after submission of charge-sheet, after summoning him again by issuing another notice under

Section 41-A of the Cr.P.C. He has submitted that, in no case, the petition could have been arrested once he had appeared pursuant to the second notice under Section 41-A of the Code of Criminal Procedure and was ready to cooperate with the investigation. He has further submitted that learned Special Court, CBI-I committed gross illegality while passing the order of judicial remand in a mechanical manner without due application of mind. The learned Special Court, CBI-I ought to have considered the crucial aspect that the petitioner's arrest itself was illegal and, therefore, he ought to have been set free by the learned Special Court CBI-I, after the petitioner's production before the said Court, he would contend.

10. Mrs. Nivedita Nirvikar, learned senior counsel appearing on behalf of the CBI, has placed heavy reliance on a Full Bench decision of this Court in case of Shikha Kumari vs. The State of Bihar & Ors. reported in 2020(2) PLJR 15 wherein it has been clearly laid down that a writ of Habeas Corpus cannot be issued in cases where the detention or custody is authorised by an order of remand issued by a competent court of jurisdiction and secondly, where a person is committed to jail by a competent court by an order which does not appear to be without jurisdiction.

11. In response to the said submission advanced on behalf of the CBI, Mr. S.D. Sanjay, learned senior counsel has relied on a Supreme Court's decision in case of Gautam Navlakha vs. National Investigation Agency reported in 2021 SCC OnLine SC 382 to contend that a Habeas Corpus petition would lie if an order of remand is passed in an absolutely mechanical manner.

12. Before advertng to the rival submissions made on behalf of the parties in the background of the pleadings on record which have been briefly narrated hereinabove, Section 41-A of the Code of Criminal Procedure needs to be taken note of first, which reads as under.

"41-A. Notice of appearance before police officer.-- (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as

may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice." (Underscored for emphasis)

13. It is evident from the language of Section 41-A of the Code of Criminal Procedure that it does not cast any bar on arrest of a person summoned by an Investigating Agency under Section 41-A of the Code of Criminal Procedure. Sub-section (3) of Section 41-A states that if a person complies with the notice, he shall not be arrested in respect of the offence referred to in the notice unless 'for the reasons to be recorded, the police officer is of the opinion that he ought to be arrested'.

14. In the counter affidavit filed on behalf of the CBI, it has been pleaded that the arrest was effected after recording reasons in the case diary, which reasons were disclosed in the application filed before the learned Special Court, CBI-I, seeking a judicial remand as well.

15. In view of the aforesaid stand taken on behalf of the CBI, the Court had required learned senior counsel for the CBI to produce before this Court the original records justifying the petitioner's arrest by the CBI, after he had appeared before it pursuant to a notice issued under Section 41-A of the Code of Criminal Procedure. On 14.12.2022, the original records were produced as directed by the order dated 06.12.2022.

16. We have perused the records. Based on the original records containing reasons for effecting arrest of the petitioner, in our considered opinion, the reasons cannot be said to be completely unfounded for this Court to record a finding that the petitioner's arrest itself was illegal. Nevertheless, he was produced before the learned Special Court, CBI-I on 26.10.2022, who, by an order dated 26.10.2022 has directed for judicial remand of the petitioner.

17. In the light of the question that has arisen as to whether the learned Special Court, CBI-I has passed the order in a mechanical manner and, therefore, the petitioner is entitled to issuance of a writ in the nature of Habeas Corpus, it would be apt to reproduce the said order dated 26.10.2022 (Annexure-10), which reads as under

"26-10-2022 The I.O. has produced Manoj Kumar Ladha @ Manoj Ladha, s/o Late BalKishan Ladha, Aged about 56 years, R/o. NH remanded 07.11.2022. Later on 34, Dalkhola Bazar, P.S. - Dalkola, District - Uttar Dinajpur (West Bengal) before me. The I.O. makes prayer for remanding him to judicial custody.

The IO has submitted arrest memo. The arrest memo shows that the I.O had informed nephew of the accused about his arrest. He was asked about ill treatment at the hand of police. But the accused did not complain of any ill-treatment at the hands of police. The accused was asked for his willingness for legal aid at the expense of State. But the accused wishes to hire advocate of his own choice.

Thereafter, an objection petition has been filed on behalf of the accused person in

which he submitted that accused appeared on 25-10-2022 in compliance of notice served under section 41A Cr.P.C.. Therefore, arrest of accused is illegal on part of the CBI. Further prayed to release the accused abovenamed.

Perused the materials available on record. As per IO, notice under section 41A Cr.P.C. was issued to the accused abovenamed upon which he appeared before them on 25-10-2022. But he didn't co-operate with the investigation. On perusal of case diary, there appears to be sufficient Material for judicial remand.

In the result, the accused is to judicial custody till 26-10-2022 Another petition has been filed by IO praying therein to grant police custody for two days for his custodial interrogation. In view of the material available on record, it appears to the court that IO of the case has not mentioned any of the reasons which comes within the purview of the parameters laid down for the grant of police remand. Apart from this, charge sheet has already been filed against the accused person for whom police remand is sought.

Therefore, this court is of opinion that at present given the material available on record, it is not the fit case for grant of police remand. Hence, this petition is disposed of."

18. It is evident on bare reading of the order dated 26.10.2022 that the same was not passed in a mechanical manner rather with due application of mind. The court, by an order passed on the same date, rejected the application of the CBI for police remand of the petitioner, as in the opinion of the court, the Investigating Officer failed to mention any of the reasons which fell within the purview to the parameters laid down for grant of police remand.

19. In our considered view, therefore, the Supreme Court's decision in case of Gautam Navlakha (supra) has no application for the purpose of relief which the petitioner is seeking in the present writ application. Mr. S.D. Sanjay, learned senior counsel has placed reliance on Paragraph-71 of the said decision, which reads as under :-

"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."

20. A full Bench of this Court in case of Shikha Kumari (supra) has laid down, in no uncertain terms, in paragraph 68 as under :-

"68. We, accordingly, sum up our conclusions in respect of the first three issues for determination as follows :-

Question No. 1 : "Whether, in a petition for issuance of writ of habeas corpus, an order passed by a Magistrate could be assailed and set- aside?"

Answer: Our irresistible conclusion in view of the ratio laid down by the Supreme Court in the aforementioned cases is that a writ of habeas corpus would not be maintainable, if the detention in custody is as per judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction. Consequently an order of remand passed by a Judicial Magistrate having competent jurisdiction cannot be assailed or set aside in a writ of habeas corpus.

Question No. 2: "Whether an order of remand passed by a Judicial Magistrate could be reviewed in a petition seeking the writ of habeas corpus, holding such order of remand to be an illegal detention?"

Answer: An illegal or irregular exercise of jurisdiction by a Magistrate passing an order of remand can be cured by way of challenging the legality, validity and correctness of the order by filing appropriate proceedings before the competent revisional or appellate court under the statutory provisions of law. Such an order of remand passed by a Judicial Magistrate of competent jurisdiction cannot be reviewed in a petition seeking the writ of habeas corpus.

Question No. 3 : "Whether an improper order could be termed/ viewed as an illegal detention?"

Answer: In view of the clear, unambiguous and consistent view of the Supreme court in the aforesaid cases, we unhesitatingly conclude and hold that an illegal order of judicial remand cannot be termed/ viewed as an illegal detention."

21. In any view of the matter, since we do not find the order of judicial remand passed by the learned Special Court, CBI-I to have been mechanically passed, we are not inclined to issue any direction as sought in the present case. We have been informed that the petitioner has not even applied for regular bail by filing proper application before the appropriate court.

22. Be that as it may, in the facts and circumstance as noted above, we do not find any merit in this writ application, which is accordingly dismissed.

23. The petitioner shall be at liberty to apply for his release on regular bail, if so advised.