



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3602 of 2024

Faisal Ashraf Tole

.. Petitioner

Versus

The State of Maharashtra & Anr

.. Respondents

...

Mr. Ali Kaashif Khan Deshmukh with Ms.Snigdha Khandelwal,
Ms.Hitanshi Gajaria, Ms. Zainab Burmawala and Ms.Bhagyashree
Sortue for the petitioner.

Mr.Himanshu Indise for respondent no.2.

Ms.M.M. Deshmukh, APP for the State.

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ
DATED : 26th NOVEMBER, 2024

P.C:-

1 The present petition is filed by the petitioner seeking a declaration that his arrest in connection with FIR No.166/2024 on 15/3/2024 by Bhiwandi Taluka Police Station be declared as illegal, as it is in gross violation of the fundamental rights guaranteed under Article 21 and 22 of the Constitution.

In addition, a declaration is also sought for setting aside the remand order passed by the Magistrate pursuant to his arrest dated 21/3/2024 and 24/3/2024 being null and void, since

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there is failure to adhere compliance of Section 50 of the Code of Criminal Procedure, 1908. By setting aside the said remand orders, as being null and void, a direction is sought to release the petitioner by issuing a writ of Habeas Corpus.

2 On 15/3/2024, an FIR came to be registered at the instance of respondent no.2 and based upon the accusation levelled therein, in relation with the incidents which occurred between 5/9/2023 to 10/10/2023, Section 376, 377 and Section 420 of IPC were invoked. Pertinent to note that the FIR is filed on 15/3/2024.

The complainant specifically alleged that on she being acquainted and introduced to the petitioner through a matrimonial website, she was under an impression and he is unmarried and on the pretext of marriage, he had sexual intercourse with her without her consent and against her will. In addition, it is also alleged that he had expended an amount of Rs.1,84,000/- from her Credit Card and thus, an offence punishable under Section 420 of IPC is attracted.

3 The petitioner came to be arrested in connection with the said C.R on 21/3/2024 and the Arrest/Court Surrender Form is part of the petition.

Upon his arrest, he was produced before the Magistrate and the Remand Application refer to the details of accusations

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including the fact of his arrest on 21/3/2024 at 1.50 p.m and when he came to be produced before the Magistrate, it referred to the accusations faced by him with a request for grant of police custody. Initially, the police custody of the Petitioner was granted which was extended in second Remand Application and by order dated 24/3/2024, he was committed to Magisterial custody on 6/4/2024.

4 The learned counsel for the petitioner, by relying upon the exposition of law in case of **Pankaj Bansal Vs. Union of India & Anr**¹, to be followed by **Prabir Purkayast Vs. State (NCT of Delhi) & Anr**,² and the two decisions from this Court which has followed the law laid down by the Apex Court i.e. in case of *Mahesh Naik vs. State of Maharashtra* and *Manula Kanchwala vs State of Maharashtra* (Criminal Writ Petition No.3276 of 2024) has categorically averred that the arrest, in absence of the grounds being communicated, is liable to be declared as illegal and therefore, his detention pursuant to an illegal arrest, shall be quashed and set aside by securing his release.

5 The counsel for the complainant has opposed the maintainability of the Writ Petition claiming issuance of writ of Habeas Corpus, as it is his specific contention that there is no challenge to the remand orders, and that the Petitioner had also

1 (2024) 7 SCC 576

2 (2024) 8 SCC 254

attempted to secure his release on bail but his application was rejected by the Sessions Court.

It is his specific contention, that the writ of Habeas Corpus which is a prerogative writ to be issued by this Court, may not be issued, as by short circuiting the procedure available to him in law, by filing Bail Application before this Court, since his Bail Applications were rejected by the Sessions Court, he has invoked the writ jurisdiction of this Court.

Ms. Deshmukh, the learned APP has also opposed the petition and she has placed reliance upon the affidavit filed by Police Sub Inspector attached to Bhiwandi Taluka Police Station on 6/9/2024 and according to the said affidavit, the petitioner was informed about the grounds of arrest and therefore, the contention raised in the petition that there was violation of his fundamental right and also of Section 50 of Cr.P.C is specifically denied. In para 14 of the affidavit, it is specifically pleaded that the petitioner was arrested on 21/3/2024 at 1.50 a.m and for the purpose of depicting compliance of Section 50, the copy of the Station Diary is annexed along with the affidavit.

When we have perused the contents thereof, we do not find that the grounds of arrest being communicated to the petitioner, though it assert about compliance of the Apex Court directives, while the petitioner was arrested and this include the intimation being given to the wife of the petitioner about his

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arrest and even he was apprised about his right to avail the legal remedy.

6 It is a position of law, which is well settled that non-communication of the grounds of detention, would violate the arrest of an accused and despite the fact that on completion of investigation, charge-sheet is filed, it has been held that it would not cure the illegal arrest.

In *Prabir Purkaystha (supra)*, Their Lordships of the Apex Court have clearly drawn a distinction between ‘reasons of arrest’ and ‘grounds of arrest’, and the reasons of arrest are specifically set out to be the one which are of purely formal parameters i.e. to prevent the accused from committing any further offence; for proper investigation; to prevent the accused from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person from making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer.

On the other hand, grounds of arrest is contemplated to contain all such details in the hands of the Investigating Officer which necessitated the arrest of the accused.

Since it is now the law laid down, that these grounds of

arrest which would invariably be personal to the accused cannot be equated with the 'reasons of arrest' which are personal in nature, must be communicated in writing and this has been declared as the law of the land by the Apex Court, by holding that it binds each and everyone, in absence of the ground of arrest being communicated to the petitioner, the petition must succeed by declaring his arrest to be illegal.

As far as the contention of the counsel for respondent no.2 that a writ of Habeas Corpus ought not to be entertained, it is worth to note that when the petitioner seek a relief of declaring his arrest to be illegal, the consequential relief sought by him is, setting aside of the remand orders, and in the wake of the law laid down in *Prabir Purkayastha* (supra), if the arrest and remands are declared to be illegal, there is no reason why the petitioner should continue to be in custody, even though in Magisterial custody, and therefore, the relief is prayed for declaring his detention to be illegal, by issuing a writ of Habeas Corpus, for his release, which is now declared as illegal, since the arrest is effected in flagrant violation of the fundamental right as well as in utter contrast to the requirement under Section 50 of Cr.P.C.

Finding no merit and substance in the contention raised by the respondent no.2, we reject the same.

As a result of the aforesaid discussion, Petitioner deserve a relief which is sought in the petition and we make the

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Writ Petition absolute in terms of prayer clauses (a) and (b), by declaring arrest of the Petitioner as illegal and also the subsequent remand orders.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J.)

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