

Secretariat,  
Sachivalay Marg, Near,  
ITO, Vikram Nagar,  
New Delhi, 110002

3) Kalkaji Police Station      Respondent      Respondent  
Through SHO, Kalkaji,      No.2      No.3  
New Delhi.

4) Delhi Special Cell      Respondent      Respondent  
Police Station      No.4      No.4  
Through  
Joint Commissioner  
Lodhi Colony  
New Delhi

All are contesting  
Respondents.

To,

THE HON'BLE THE CHIEF JUSTICE OF  
INDIA AND HIS COMPANION JUDGES  
OF THE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION  
OF THE ABOVENAMED RESPONDENT

MOST RESPECTFULLY SHOWETH:-

1. This present Special Leave Petition under Article 136 of the Constitution of India is filed against the final judgment and order passed by the High Court of Delhi, at New Delhi in Writ Petition (Crl) No. 2559/2018 whereby it was pleased to allow and dispose the said Writ Petition by passing the following Order.

“32. The Writ Petition is allowed in above terms. Order be given *dasti* under the signatures of the Court Master.”

1A. The Writ Petition filed by the Respondent No.1 in the Hon'ble High Court of Delhi, at New Delhi, was for seeking a Writ of Habeas Corpus. The Trial of the offences has yet not commenced. Therefore, the status of parties before the trial court is not required to be stated.

1B. The nomenclature of the present Petitioner was wrongly mentioned in the Writ Petition before Hon'ble High Court of Delhi, at New Delhi as “Maharashtra Police, through Resident Commissioner, Maharashtra.” The correct nomenclature is as stated as above.

1C. The Writ Petition filed by the Respondent No.1 in the Hon'ble High Court of Delhi, at New Delhi, was for seeking a Writ of Habeas Corpus. The Trial of the offences has yet not commenced. Therefore, the Respondent No,1 has not undergone any sentence.

2. QUESTIONS OF LAW:

1) Whether the High Court has erred in entertaining the Writ Petition seeking a writ

of habeas corpus when the same was not maintainable in view of the law laid down by this Hon'ble Court in the cases of State of Maharashtra Vs. Tanseem Rizwan Siddiqui (Criminal Appeal No. 1124/2018) and Saurabh Kumar Vs. Jailor, Koneila Jail and another reported in (2014) 13 SCC 436?

- 2) Whether the High Court has erred in allowing the Writ Petition when this Hon'ble Court has disposed of Writ Petition (Crl.) No.260/2018 with certain directions by granting liberty to the respondent no. 1 to file appropriate proceedings before the appropriate court?
- 3) Whether the High Court has considered the purport of section 167(1) of the Criminal Procedure Code in its proper perspective?
- 4) Whether the High Court has erred in holding that production of case diary was necessary before the Magistrate while applying for transit remand?
- 5) What are the parameters u/s 167 and (2) of the Criminal Procedure Code to be followed

while granting order of transit remand and whether they were followed by the Chief Metropolitan Magistrate ?

6) Whether the High Court has erred in setting aside the transit remand order when there was neither prayer to that effect nor there was amendment in the Writ Petition?

7) Whether there was an occasion for the High Court to comment upon the aspect of intimation of grounds of arrest to the respondent no. 1?

8) Whether the High Court has unnecessarily commented about Article 22 of the Constitution of India when the police has followed proper procedure while seeking transit remand?

9) Whether the High Court has unnecessarily commented about section 57 of the Criminal Procedure Code when the police has followed proper procedure while seeking transit remand?

3. DECLARATION IN TERMS OF RULE 2(2):-

The Petitioner states that, no other Petition seeking leave to appeal has been filed by him against the final judgment and order passed by the High Court of Delhi, at New Delhi in Writ Petition (Crl) No. 2559/2018.

4. DECLARATION IN TERMS OF RULE 4:-

That **ANNEXURES P-1** to **P-16** produced along with the Special Leave Petition are true copies of the pleadings/ documents which formed part of the records of the case in the Court/Tribunal below against whose order the leave to appeal is sought for in this Petition.

5. GROUNDS:

a) Because the case in hand depicts misreading of section 167 (1) and (2) of Code of Criminal Procedure by the High Court while passing the impugned order. Section 167 (1) of the code of criminal procedure makes it clear that in case an accused is to be produced before the jurisdictional

magistrate, then it is incumbent upon the police to produce the case diary. In case the police applies for transit remand before a Magistrate having no jurisdiction, then it is not necessary for the police to produce the case diary. In the case in hand, the Police arrested 5 persons from different places in the country. It was, therefore, not expected and not possible to produce the case diary before the concerned Courts.

b) Because, the High Court has erred in entertaining the Writ Petition seeking a Writ of Habeas Corpus. Entertaining the Writ Petition by the High Court was clearly against the law laid down by this Hon'ble Court in the case of State of Maharashtra vs. Tanseem Rizwan Siddique (Crl. A. No. 1124/2018) and Saurabh Kumar vs. Jailor, Koneil Jail (2014)13 SCC 436. While deciding the Crl. A. No. 1124/2018, this Hon'ble Court was pleased to hold as under:

"9. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence

under investigation, this issue has been considered in the case of Saurabh Kumar through his father Vs. Jailor, Koneila Jail and Anr 1 and Manubhai Ratilal Patel Vs. State of Gujarat and Ors. 2 It is no more res integra . In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18 th /19 th March, 2018 and decided by the High Court on 21 st March, 2018 her husband Rizwan Alam Siddique was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No.I31 vide order dated 17<sup>th</sup> March, 2018 and which police remand was to enure till 23<sup>rd</sup> March, 2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the

jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.”

c) Because, while deciding Writ Petition (Crl) No. 260/2018, this Hon’ble court held as under

“37. Accordingly, this writ petition is disposed of with liberty to the concerned accused to take recourse to appropriate remedy as may be permissible in law. The interim order passed by this Court on 29<sup>th</sup> August, 2018 shall continue for a period of four weeks to enable the accused to move the concerned court. The said proceedings shall be decided on its own merits uninfluenced by any observation made in this judgment, which is limited to the reliefs claimed in the writ petition to transfer the investigation to an independent Investigating Agency and/or Court monitored investigation. The Investigating Officer is free to proceed against the concerned accused as per law. All the accompanying



applications are also disposed of in terms of this judgment.”

In view of the above direction it was not necessary for the high court to pass the impugned order. The High court could have simply disposed of the Writ Petition in view of the disposal of the Writ Petition (Crl) No. 260/2018 by this Hon'ble Court.

d) Because the High Court has erred in arriving at a conclusion that, there was non-application of mind by Chief Metropolitan Magistrate in passing the order of transit remand. It needs to be seen that, while passing the order of transit remand the Magistrate had gone through the application filed by the Police and he had heard the concerned Police officer. It is not possible/ pragmatic to mention minute details while passing the order of remand. The Ld. Chief Metropolitan Magistrate has also mentioned about his thoughtful consideration to the submissions of the concerned police officer.

e) Because the High Court has erred in holding in paragraph 29 as under:

"29. In view of Section 56 read with Section 57 Cr PC, in the absence of the remand order of the learned CMM, the detention of the Petitioner, which has clearly exceeded 24 hours, is again untenable in law. Consequently, the house arrest of the Petitioner comes to an end as of now."

When this Hon'ble Court has extended the period of house arrest by 4 weeks it was not necessary to observe about end of house arrest.

f) Because the High Court has erred in allowing a Writ Petition by setting aside the order of remand. It is pertinent to note that, neither was there a prayer to set aside the order of remand nor was there any amendment to that effect. The Writ Petition was filed seeking a Writ of habeas Corpus only.

g) Because the High Court has erred in doubting the procedure of arrest in arresting the Respondent No.1. It needs to be seen that, while arresting the Respondent No.1, an arrest Panchnama was executed by making the Respondent No.1 understand the contents therein. The arrest panchnama has been signed by the Respondent

No.1. The Respondent No.1 did not approach the High Court with clean hands thereby suppressing the fact of execution of arrest panchnama. The Respondent No.1 was informed orally about the grounds of arrest.

h) Because the high Court has unnecessarily gone in to the aspect of Article 22 of the Constitution of India and Section 57 of the Code of Criminal Procedure. The Police followed the procedure while arresting the Respondent No.1 as well as while seeking transit remand.

6. GROUND(S) FOR INTERIM RELIEF(S):

The Petitioner has set out all the relevant facts in details in the accompanying List of Dates and the Petitioner shall crave leave to refer to and rely upon the same as if incorporated herein verbatim for the sake of brevity. The Petitioner submits that the Petitioner has good case on merits and is likely to succeed before this Hon'ble Court. The Petitioner states that Petitioner has made out *prima facie* case on merits and that the balance of convenience is also in favour of the Petitioner, therefore, it is desirable in the interest of justice that during the pendency of

proceedings in this Hon'ble Court the interim relief as prayed for herein be granted or else the Petitioner shall suffer irreparable loss.

7. MAIN PRAYER:

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Grant special leave to appeal against the final judgment and order dated 1/10/2018, passed by the High Court of Delhi, At New Delhi in the Writ Petition (Crl) No. 2559/2018;
- b) Pass such other order(s) and further order/directions as this Hon'ble Court deems just and proper in the facts and the circumstances of the present case.

8. PRAYER FOR AD-INTERIM RELIEF:

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) Grant ad-interim ex-parte stay to the final judgment and order dated 1/10/2018, passed by the High Court of Delhi, At New Delhi in Writ Petition (Crl) No. 2559/2018;

- (b) Grant permission to the Petitioner to keep the Respondent No.1 under House Arrest in view of the judgment and order dated 28/09/2018 passed by this Hon'ble Court in Writ Petition (Crl) no. 260/2018.
- (b) Pass such other order(s) and further order/directions as are deemed just and proper in the facts and the circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn By:

Filed & Drawn By

Drawn on : . 10.2018

Filed on : . 10.2018

NISHANT R KATNESHWARKAR  
ADVOCATE FOR THE PETITIONER