

**High Court Of Telangana**

Bench: K. LAKSHMAN, J and K. SUJANA, J

Date of Decision: 27 September, 2023

**WRIT PETITION No.15566 OF 2023**

**Smt. Dubashi Swapana** .....Petitioner

**Versus**

**The State of Telangana etc.** .....Respondents

**Section, Acts, Rules, and Article:**

Article 21 of the Constitution of India

National Investigation Agency Act, 2008

Unlawful Activities (Prevention) Act, 1967

**Subject:** Writ of Habeas Corpus – Alleged illegal detention of petitioner's husband – Violation of procedural requirements and guidelines – Arrest made without following due procedure laid down under law – Lack of compliance with requirements set by the Supreme Court in D.K. Basu case – Detention declared illegal.

**Headnotes:**

*Writ of Habeas Corpus – Alleged illegal detention of petitioner's husband – Violation of procedural requirements and guidelines – Arrest made without following due procedure laid down under law – Lack of compliance with requirements set by the Supreme Court in D.K. Basu case – Detention declared illegal – Superintendent, District Jail, Jagdalpur, Chhattisgarh, impleaded as respondent No. 7 – Husband of petitioner ordered to be released forthwith – Liberty granted to respondents to strictly follow procedure laid down under law in conducting investigation in NIA Case No. RC-01/2021/NIA/RPR, dated 18.03.2021. [Para 18-23]*

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**ORDER** : (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. M. Venkanna, learned counsel for the petitioner, Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader appearing for respondents 1 to 4 and Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing for respondents 5 and 6.

2. This writ petition is filed to issue a writ of *habeas corpus* directing respondents to produce the detenu *viz.*, Dubashi Devender S/o Dubashi Shankar, aged about 34 years, R/o H.No.1-63/1, Pasumamula village, Abdullapurmet Mandal, Ranga Reddy District, before this Court and direct them to record his statements on being produced before this Court.

3 . The petitioner filed the present writ petition initially against respondent Nos.1 to 4. When this writ petition came up for hearing on 20.06.2023, learned Special Government Pleader representing learned Additional Advocate General submitted that the husband of the petitioner was arrested by NIA and he was produced in Special Court, Chhattisgarh. He has also filed copy of FIR, arrest memo and remand report etc. and copies of the same were also furnished to learned counsel for the writ petitioner. In the light of the same, the petitioner has impleaded respondent Nos.5 and 6 herein.

4. The petitioner is wife of the detenu. On 18.06.2023 at about 3.30 P.M. while appearing for Dr. B. R. Ambedkar Open University Under Graduation examination at Government Degree College, Siddipet, he was picked up by plain clothed people from the exam hall without disclosing their identity and other particulars etc. She received a phone call from the detenu in the

intervening night of 18.06.2023 at about 1.00 A.M. and he informed her that he was kept in Mulugu Police Station of Mulugu District and they are taking to Raipur Town of Chhattisgarh State.

i) She submits that her husband would be killed in bogus encounter branding him as Maoist and creates a story that they did so in exercise of right to private defence. Her husband is not having any iota of connection with any banned organization, but he previously used to work as an activist in the Patriotic Democratic Movement. Now he is leading normal family life. They are having a baby boy of six months old. They are eking out their livelihood by doing petty jobs. She has to look after her baby boy. The detenu is the only breadwinner of her family. She is apprehending danger to the life of the detenu. Thus, according to the petitioner, her husband was illegally detained by the respondents. Therefore, she seeks to produce the detenu before this Court.

5. On the other hand, Inspector of Police - cum - Investigation Officer (CIO), filed counter on behalf of respondents 5 and 6 stating that on 27.07.2019, information was received by Nagarnar Police Station that a group of armed Cadres of CPI (Maoist) had gathered near Tiriya Village with an intention to perpetuate a big incident on 28.07.2019 during Shaheed Diwas. During search operation, exchange of fire between the armed cadres of CPI (Maoist), a combined team of District Reserve Guards, Special Task Force and CRPF, resulting in the killing of six Maoist

cadres and one civilian. Police recovered arms and ammunition and other incriminating materials from the scene of crime. The said incident was also registered as Cr.No.179 of 2019, dated 27.07.2019 by PS Nagarnar, Bastar District for the offences punishable under Sections 147, 148, 149, 302 and 307 IPC and Sections 25 and 27 of the Arms Act, 1959 and Sections 38(2) and 39 of Unlawful Activities (Prevention) Act, 1967 against 4 known persons and 30 to 40 unknown persons.

i) The Government of India, Ministry of Home Affairs, CTCR

Division, North Block, New Delhi, issued order vide F.No.11011/24/2021/NIA dated 17.03.2021, as per Section 6(5) read with Section 8 of the National Investigation Agency Act, 2008 (for short, 'the NIA Act') directing the National Investigation Agency (NIA) to take up investigation in the said crime. NIA took up investigation, the crime was re-registered as NIA Case No.RC01/2021/NIA/RPR dated 18.03.2021. Thereafter the detenu was arrested on 18.06.2023 by following the due procedure laid down under law for the purpose of investigation regarding his involvement in the present crime.

ii) On 17.06.2023, the NIA issued notice under Section 41-A of Cr.P.C, to the detenu. On 18.06.2023, the detenu appeared before respondent No.5 and answered certain questions put to him with regard to investigation in the present crime. After confirmation of the facts pertaining to his involvement in the present crime and his association with the members of underground

cadres of CPI (Maoists), he was arrested following due procedure of law. They informed reasons for the arrest of the detenu to the petitioner. During examination, the detenu admitted the facts pertaining to his role and involvement in commission of the present crime and his close association with the co-accused i.e. cadres of the CPI (Maoist) organization. They produced the detenu before special Judge for NIA Cases at Jagdalpur, Chhattisgarh on 19.06.2023 and the said Court ordered police custody for 05 days and thereafter extended for 05 days till 27.06.2023.

iii) It is further contended that the detenu admitted that he was working as courier for the CPI (Maoist) organization and he used to visit its cadres in forest (Cora area) of CPI (Maoist). He also admitted that he was close to the top leader of CPI (Maoist), namely Akkiraju Haragopal @ R.K. @ Saket @ Madhu @ St. @ Vishal and also to act as a bridge between the leaders of the Maoist Party in the forests and the leaders of frontal organizations in the civil/urban areas. He used to receive money from the top leaders of the organization for their antinational activities. The present writ petition is not maintainable on the ground that the detenu is in judicial custody of NIA Special Court, Jagdalpur from 27.06.2023. Therefore, they sought to dismiss the writ petition.

6. The petitioner filed reply to the counter filed by respondents 5 and 6 stating that she was not informed about the arrest of the detenu to her Mobile No.9100590383 as stated by respondents, even through any

medium of communication. Since the offences mentioned in the present crime are serious in nature and punishment prescribed is upto 10 years and above cumulatively, the invocation of process under Section - 41A of Cr.P.C. is illegal. They did not state any reasons as to why the delay of more than two years was caused to affect the arrest of her husband. They have not followed the stipulated procedure established under law in arresting and detaining the detenu. They have not produced any material to prove that they served a notice under Section - 41A of Cr.P.C. There is inconsistency in the version of the respondents with regard to the place of arrest i.e. one is at Pattabhipuram, Guntur District as mentioned in Arrest Memo and as per notice under Section 41-A of Cr.P.C. it is at NIA Camp Office, Police Head Quarters, Mangalagiri, Vijayawada. In fact, the detention was effected at Government Degree College (RCC), Siddipet while the detenu was appearing examination without following due procedure.

i) Learned counsel for the petitioner placing reliance on the decision of the Apex Court in **D.K. Basu v. State of West Bengal**<sup>1</sup>, would submit that the respondents have not followed the guidelines issued by the Apex Court while effecting arrest of the detenus.

Therefore, the detention is illegal. The detenu is in District Jail, Jagdalpur, Chhattisgarh.

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<sup>1</sup> 1997 (1) SCC 416

ii) With the said submissions, the petitioner sought to allow the writ petition.

7. The aforesaid facts would reveal that according to the petitioner, her husband was picked up by plain clothed people from the examination hall at Government Degree College (RCC), Siddipet. Her husband made a phone call to the petitioner in the intervening night of 18.06.2023 at about 1 O' clock and informed her that he was kept in Mulugu Police Station of Mulugu District. He further informed that he would be taken to Raipur town of Chhattisgarh. The petitioner herein has filed photostat copies of D-Form-cum-Roomwise Statements dated 16.06.2023, 17.06.2023 and 18.06.2023, to contend that her husband attended examination in the Government Degree College (RCC), Siddipet Centre allotted to him. Perusal of the same would reveal that the name of the husband of the petitioner is mentioned at serial Nos.22, 23 and 18 respectively. The said fact would reveal that the petitioner's husband appeared for the examinations conducted by Dr. B.R. Ambedkar Open University, Hyderabad, Examination Branch in the Government Degree College (RCC), Siddipet on the aforesaid dates. There is no reply by respondent Nos.5 and 6 to the same in the counter.

8. As discussed above, the petitioner specifically contended in paragraph No.6 of the writ affidavit that she received phone call from her

husband in the intervening night of 18.06.2023 at about 1 O' clock and informed her that he was kept in Mulugu Police Station of Mulugu District and they would take him to Raipur Town Police Station of Chhattisgarh. Even then, there is no specific denial with regard to the same by respondent Nos.5 and 6 in the counter.

9. As discussed above, the aforesaid crime No.179 of 2019 was registered by Nagarnar Police Station, Bastar District, Chhattisgarh against the accused therein for the offences punishable under Sections - 147, 148, 149, 302 and 307 of IPC, Sections - 25 and 27 of the Arms Act, 1959 and Sections - 38 (2) and 39 of the Unlawful Activities (Prevention) Act, 1967. After entrustment of investigation, NIA registered a case vide RC-01/2021/NIA/RPR, dated 18.03.2021. The punishment prescribed for the aforesaid offences is more than seven (07) years. Even then, a notice under Section - 41A of Cr.P.C. dated 17.06.2023 said to have been issued to the husband of the petitioner herein by the Chief Investigating Officer of the Case, Branch Office at Raipur. There is no satisfactory explanation from respondent Nos.5 and 6 with regard to issuance and service of notice dated 17.06.2023 under Section - 41A of Cr.P.C. on the husband of the petitioner. There is no mention about date, time and place of service of the said notice on the detenu. However, learned Deputy Solicitor General of India tried to justify the action of respondent Nos.5 and 6 stating that as part of investigation,



to enquire about the role played by the petitioner in commission of offences for the purpose of answering certain questions, the aforesaid notice under Section 41A of Cr.P.C. dated 17.06.2023 was served on the husband of the petitioner. In the light of the aforesaid discussion, the said contention of learned Deputy Solicitor General of India cannot be accepted.

10. However, in the said notice, the address of the husband of the petitioner is mentioned as 'Chegunta village, Medak District, Telangana', whereas, in the arrest memo dated 18.06.2023 filed by respondent No.5, the address of the husband of the petitioner is mentioned as 'permanent address: 1-104, Narsampally village, Doulatnabad Mandal, Siddipet District' and present address as '163/1, Pasumamula village, Hayathnagar PS, Ranga Reddy District, Telangana'. There is no answer from respondent Nos.5 and 6 to the variation in the address of the husband of the petitioner.

11. According to respondent Nos.5 and 6, the husband of the petitioner appeared before the Investigating Officer in the subject Crime at NIA Camp Office, Police Head Quarters, Mangalagiri, Vijayawada, Andhra Pradesh, in compliance of the notice dated 17.06.2023. They have arrested the husband of the petitioner on 18.06.2023 by following the procedure laid down under law and he was produced before the Designated Court on 19.06.2023. As discussed

supra, he has attended exams in the aforesaid Centre at Siddipet and in proof of the same, the petitioner filed D-Form-cumroom-wise statements dated 16.6.2023, 17.06.2023 and 18.06.2023. Therefore, the question of the husband of the petitioner appearing before the Investigating Officer at the aforesaid place on 17.06.2023 and arresting him on 18.06.2023 does not arise. The aforesaid facts would reveal that respondent Nos.5 and 6 created the said story including notice under Section - 41A of Cr.P.C. dated 17.06.2023 and arrest memo etc., only to cover up their illegal action.

12. It is relevant to note that the Apex Court in **D.K. Basu**<sup>1</sup> laid down certain requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive* measures. The same are extracted as under:

“(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by at least one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative

or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

13. It is the specific contention of the petitioner that the police have not followed the said requirements while arresting the husband of the petitioner. They have not served grounds of arrest on her and also her relatives etc. In the arrest memo and remand report, there is no mention about service of the same either on the petitioner or on her relatives. There is no explanation by respondent Nos.5 and 6 with regard to the same in the counter.

14. According to respondent Nos.5 and 6, the husband of the petitioner was produced before the NIA Special Court at Jagdalpur, Chhattisgarh on 19.06.2023. The said Court accepted the remand. If the petitioner or her husband is aggrieved by the said remand order, they have to challenge the same. The husband of the petitioner was sent to the District Jail, Jagdalpur, Chhattisgarh. The said fact was also confirmed by the

petitioner in her reply. Even then, she has not impleaded the Superintendent of District Jail, Jagdalpur. There is no challenge to the remand order.

15. However, in **V. Senthil Balaji v. State, represented by Deputy Director<sup>2</sup>**, in paragraph No.29, the Apex Court held as follows:

“29. A writ of Habeas Corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of Habeas Corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a noncompliance of the mandatory provisions along with a 13 total non-application of mind, there may be a case for entertaining a writ of Habeas Corpus and that too by way of a challenge.”

16. In **Duddu Kusuma Kumari v. The State of Andhra Pradesh<sup>3</sup>** filed by the co-accused in the subject crime, a Division Bench of High Court of Andhra Pradesh followed the said principle.

17. As discussed above, respondent Nos.5 and 6 did not follow the procedure laid down under law and also the requirements laid down by the Apex Court in **D.K. Basu<sup>1</sup>** while apprehending the husband of the petitioner. The petitioner herein filed the aforesaid DForm-cum-room wise statements, dated 16.06.2023, 17.06.2023 and

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<sup>2</sup> . 2023 SCC OnLine SC 934

<sup>3</sup> . W.P.No.18432 of 2023, decided on 30.08.2023

18.06.2023 to show that the husband of the petitioner appeared for Dr.B.R. Ambedkar Open University Under Graduation Examination at Government Degree College (RCC), Siddipet. Though, there is no need to comply with Section - 41A of Cr.P.C., according to respondent No.5, he has served the notice on the husband of the petitioner. In the counter filed by respondent Nos.5 and 6, the time, date and place of service of the said notice on the husband of the petitioner were not mentioned. In the entire counter, there is no mention about the grounds of arrest, intimation etc., and the requirements as laid down by the Apex Court in **D.K. Basu**<sup>1</sup>. Therefore, according to this Court, respondent Nos.5 and 6 have violated the entire procedure laid down under law and also the requirements laid down by the Apex Court in **D.K. Basu**<sup>1</sup>, while apprehending the husband of the petitioner.

18. The NIA being a Premier Investigating Agency is expected to follow the procedure laid down under law. Instead of doing so, it has violated the entire procedure while apprehending the husband of the petitioner by giving a go-by to the requirements laid down by the Apex Court in **D.K. Basu**<sup>1</sup>.

19. It is not in dispute that the husband of the petitioner is in District Jail, Jagdalpur, Chhattisgarh State. Writ of *habeas corpus* is summary in nature and we have to decide the same basing on the affidavits filed by the parties. We have to examine whether there is any illegal detention of the

husband of the petitioner as alleged by the petitioner in the present writ petition. We have to decide the present writ of *habeas corpus* in the touch stone of Article - 21 of the Constitution of India. Right to live is a precious right guaranteed by the Constitution of India to a citizen. The arrest of the husband of the petitioner is in violation of Article - 21 of the Constitution of India. It is an illegal detention.

20. As discussed above, in the present case, there is violation of the entire procedure laid down under law including the requirements laid down by the Apex Court in **D.K. Basu**<sup>1</sup>. Therefore, the present writ of *habeas corpus* is maintainable as held by the Apex Court in **Senthil Balaji**<sup>2</sup>.

<sup>3</sup>, the facts are slightly

21. In **Duddu Kusuma Kumari**

different. There is no finding that the detenu was arrested by following the due procedure laid down under law. Whereas, in the present case, there is violation of entire procedure laid down under law and the requirements laid down by the Apex Court **D.K. Basu**<sup>1</sup> while apprehending the husband of the petitioner.

22. In the light of the aforesaid discussion, the contention of respondent Nos.5 and 6 that they have followed the entire procedure laid down under law while arresting the husband of the petitioner is untenable.

23. In the light of the above discussion, this writ petition is allowed. The detention of the husband of the petitioner is declared as illegal. Therefore,

the Superintendent, District Jail, Jagdalpur, Chhattisgarh, is impleaded as respondent No.7 *suo-motu*. Respondent Nos.5 to 7 are directed to release the husband of the petitioner, *namely*, Dubashi Devender S/o Dubashi Shankar, aged about 34 years, R/o H.No.1-63/1, Pasumamula village, Abdullapurmet Mandal, Ranga Reddy District, forthwith. However, liberty is granted to respondent Nos.5 and 6 to strictly follow the procedure laid down under law while conducting investigation in NIA Case No.RC-01/2021/NIA/ RPR, dated 18.03.2021. In the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

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