#10 & 11

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order delivered on: 20.12.2018

W.P.(CRL) 3842/2018

RAHUL MODI ..... Petitioner

versus

UNION OF INDIA & ORS ..... Respondents

W.P.(CRL.) 3843/2018

MUKESH MODI ….. Petitioner

versus

UNION OF INDIA & ORS. …..Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Kapil Sibal, Sr. Advocate and Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Aditya Singla, Mr. Pallav Gupta and Mr. Adit Pujari, Advocates in W.P.(CRL.) 3843/2018
Mr. Siddharth Aggarwal, Advocate with Ms. Supriya Juneja, Ms. Chestha Jetley and Mr. Krishna Multani, Advocates in W.P.(CRL) 3842/2018

For the Respondents : Ms. Maninder Acharya, ASG with Mr. Anurag Ahluwalia, CGSC, Mr. Amit Mahajan, CGSC, Ms. Tejaswita Sachdeva, Mr. Viplav Acharya, Mr. Harshul Chaudhary, Advocates
Mr. Saud Ahmed, Joint Director, SFIO, Mr. P.C. Maurya, Mr. Prashant Baliyan and Mr. Ajeet Shrivastava, SFIO Officers

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A.50034/2018 (Exemption) in W.P.(CRL.) 3842/2018
CRL.M.A.50036/2018 (Exemption) in W.P.(CRL.) 3843/2018

Exemption granted subject to all just exceptions.

The applications are disposed of accordingly.

W.P.(CRL.) 3842/2018 & W.P.(CRL.) 3843/2018

1. The present writ petitions under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 instituted on behalf of the petitioners pray as follows:-

A. Issue a writ of mandamus or any other appropriate writ/direction/order in the nature of a writ declaring that the power of Respondent Nos.2 to 4 to carry out investigation under Section 212(3) Companies Act, 2013 after the expiry of the time period is illegal and unconstitutional.

B. Issue a writ of mandamus or any other appropriate writ/direction/order in the nature of a writ declaring that the investigation carried out after 19.09.2018 in File No.SFIO/INV/AOI/2018-19-AGC&L/842-966 Vide Order No.07/115/2018-CL-II dated 20.06.2018 as illegal and without jurisdiction.

C. Issue a writ/direction/order declaring the arrest of the petitioner dated 10.12.2018 at New Delhi in the office of respondent No.2 by respondent No.3, and proceedings

emanating therefrom being without jurisdiction and illegal and the petitioners be released forthwith.

D. Issue a writ of habeas corpus directing immediate release of the petitioners herein from the illegal arrest dated 10.12.2018 at New Delhi and consequent illegal custody from respondent No.2 to 4 at;

E. Pass any such other writ or order(s) as it may deem fit and proper in the interest of justice."

2. Ms. Maninder Acharya, learned Additional Solicitor General appearing on behalf of Union of India has produced the relevant original file, in relation to the subject matter of the present proceedings for the perusal of this Court.

3. Having perused the relevant original file and heard the learned counsel appearing on behalf of the parties, we are of the view that the present petition warrants consideration.

4. Issue notice.

5. Ms. Maninder Acharya, learned Additional Solicitor General accepts notice on behalf of the respondents and prays for time to file reply.

6. Let the counter affidavit be filed within a period of three weeks from today with advance copies to counsel for the petitioners, who may file rejoinder thereto, if any, before the next date of hearing.

7. List on 31.01.2019.

CRL.M.A.50033/2018 in W.P.(CRL.) 3842/2018
CRL.M.A.50035/2018 in W.P.(CRL.) 3843/2018

1. The present applications instituted on behalf of the applicants/petitioners in the writ petition (hereinafter referred to as 'the applicants') seek immediate *ad-interim ex parte* release of the applicants from the alleged illegal arrest dated 10.12.2018.

2. Having heard learned counsel appearing on behalf of the parties at length and with their consent the present applications are disposed of with the following order:-

3. Briefly encapsulated, the challenge in the present proceedings is fundamentally in the nature of a declaration to the effect that, the Serious Fraud Investigation Office (hereinafter referred to as 'SFIO') had no legal sanction for carrying on investigation under Section 212(3) of the Companies Act, 2013 (hereinafter referred to as 'the said Act'), after the expiry of the time, specified in the order dated 20.06.2018 issued by the Joint Director, Ministry of Corporate Affairs, Government of India, (hereinafter referred to as the 'said order dated 20.06.2018'), directing the former to investigate into the affairs of 120 Companies and 5 Limited Liabilities Partnerships (hereinafter referred to as 'the subject entities'), and furnish a

report in that behalf within a period of three months therefrom, in the public interest.

4. A further declaration is also sought to the effect that, the investigation carried out by the SFIO beyond three months period, specified in the said order dated 20.06.2018, and the arrest of the applicants on 10.12.2018, pursuant thereto, is illegal and without jurisdiction.

5. It is an admitted position that, pursuant to the said order dated 20.06.2018, the SFIO was unable to complete its investigation into the affairs of the subject entities, within the period of three months stipulated therein. It is further an admitted position that, an extension of time to carry out and conclude investigation, in relation to the subject entities, was made by the SFIO to the Competent Authority only on 13.12.2018, almost two and half months after the initial period of three months granted in this regard had already elapsed.

6. It is further observed from a perusal of the original file that, extension of time upto 30.06.2019, to carry out investigation has been subsequently granted to the SFIO by the Competent Authority, vide its order dated 14.12.2018.

7. In the aforestated backdrop, what arises for consideration in the

present proceedings is:-

a) Whether the *ex post facto* extension granted on behalf of the Competent Authority is valid in law; and

b) Whether the vested rights created in favour of the applicants, in the interregnum, when there was purportedly no legal sanction to carry out the investigation against the applicants, renders the said action, and in particular their arrest illegal, without jurisdiction and contrary to law.

8. Mr. Kapil Sibal, learned Senior Counsel and Mr. Siddharth Aggarwal, learned counsel appearing on behalf of the applicants would urge that, in view of the circumstance that the original period of time granted to the SFIO to carry out the investigation into the affairs of the subject entities had come to an end by efflux of time on 19.09.2018, the action taken by the SFIO to carry on with the investigation, without an express permission from the Competent Authority so to do, was patently without jurisdiction. It is, therefore, urged that, the arrest of the applicants on 10.12.2018, after the specified period had expired and prior to the SFIO obtaining *ex post facto* extension from the Competent Authority, suffers from the vice of illegality and lack of jurisdiction.

9. It is further urged on behalf of the applicants that, consequently, once the action of the SFIO is without jurisdiction, it is for the latter to establish before this Court that, the orders of remand, rendered by the Judicial Magistrate First Class, Gurugram and Sessions Judge, Gurugram dated 11.12.2018 and 14.12.2018 (hereinafter referred to as the 'remand order') stand the test of validity and consequently do not suffer from the vice of lack of jurisdiction rendering them illegal.

10. It is also urged on behalf of the applicants that, the order of extension passed by the Competent Authority on 14.12.2018, is *inter alia* without application of mind and non est, since the same was granted without the formulation of a prior opinion, in accord with the mandate of the provisions of Section 212 of the said Act. In other words, it is the case of the applicants that, the time specified by the Central Government, after the formulation of an opinion, in accordance with law, is *sine qua non* for the conduct of an investigation by the SFIO; and the period specified by the Competent Authority, in the order directing the conduct of such an investigation, is sacrosanct.

11. It is further urged on behalf of the applicants that on 11.12.2018, when they were produced before the Duty Magistrate, JMIC, Gurugram by the

SFIO seeking police remand, at that point of time the applicants raised objections qua the territorial jurisdiction of the said Magistrate, however, the said objections were not dealt with by the concerned Magistrate.

12. Lastly, our attention has been invited to the norms formulated by the SFIO itself for the discharge of its functions, to urge that, they are required thereby to complete the investigation, within the time frame specified by the Competent Authority.

13. Per contra, Ms. Maninder Acharya, learned Additional Solicitor General appearing on behalf of the official respondents would urge that, neither does this Court have territorial jurisdiction over the valid remand orders rendered by the concerned Magistrate in Gurugram, nor can this Court grant interim protection/release on bail to the applicants in the present applications.

14. In order to buttress the above submissions, our attention has been invited to the following decisions:-

(i) ***State of Maharashtra and Others*** **vs.** ***Tasneem Rizwan Siddiquee,*** reported as **(2018) 9 SCC 745;**
(ii) ***Manubhai Ratilal Patel*** **vs.** ***State of Gujarat and Others,*** reported as **(2013) 1 SCC 314;**
(iii) ***Serious Fraud Investigation Office*** **vs.** ***Neeraj Singal & Anr.,*** in **Criminal Appeal No.1114/2018,** arising out of SLP (CRL.) No.7241/2018 and ***Union of India*** **vs.**

Neeraj Singal & Anr., in **Criminal Appeal No.1115/2018**, arising out of SLP (CRL.) No.7242/2018.

15. In view of the submissions made on behalf of the parties, the issues that arise for consideration in the present applications are:-

a) Whether this Court can in a proceeding for habeas corpus under Article 226 of the Constitution of India, test the correctness, legality and validity of an order of remand, passed by a Competent Magistrate? and

b) Whether this Court has the territorial jurisdiction to adjudicate the present habeas corpus proceedings, in view of the circumstance that the remand orders were rendered by a Competent Magistrate at Gurugram, which have not been specifically assailed in these proceedings?

16. In this behalf, there is no gainsaying the legal position, that a writ in the nature of habeas corpus is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure the release of a person who is illegally restrained of his liberty. The writ of habeas corpus is, therefore, primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality

of his detention enquired into and determined, and if the detention is found to be unlawful, having himself discharged and freed from such restraint. (Ref: ***Kanu Sanyal* vs. *District Magistrate, Darjeeling*,** reported as **(1973) 2 SCC 674**).

17. The Constitution Bench of the Hon'ble Supreme Court in ***Kanu Sanyal*** *(supra)* observed as follows:-

> "**4.** It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed **in order that the circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint"**. The form of the writ employed is "We command you that you have in the King's Bench Division of our High Court of Justice — immediately after the receipt of this our writ, the body of A.B. being taken and detained under your custody — together with the day and cause of his being taken and detained — *to undergo and receive all and singular such matters and things as our court shall then and there consider of concerning him in this behalf*". **The italicized words show that the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness**

and, as pointed out by Lord Halsbury, L.C., in *Cox* v. *Hakes* "the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom" and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end. The production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained. In the early days of development of the writ, as pointed out above, the production of the body of the person alleged to be wrongfully detained was essential, because that was the only way in which the Courts of common law could assert their jurisdiction by removing parties from the control of the rival courts and thereby impairing the power of the rival courts to deal with the causes and persons before them. **The common law courts could not effectively order release of the person unlawfully imprisoned by order of rival courts without securing the presence of such persons before them and taking them under custody and control. But the circumstances have changed long since and it is no longer necessary to have the body of the person alleged to be wrongfully detained before the Court in order to be able to inquire into the legality of his detention and set him free, if it is found that he is unlawfully detained.** The question is whether in these circumstances it can be said that the production of the body of the person alleged to be unlawfully detained is essential in an application for a writ of habeas corpus. We do not think so. There is no reason in principle why that which was merely a step in the procedure for determining the legality of detention and securing the release of a subject unlawfully restrained should be elevated to the status of a basic or essential feature of the writ. That step was essential to the accomplishment of the purpose of the writ at one time, but it is no longer necessary. **The inquiry into the legality of the detention can be made and the person illegally detained can be effectively set free without requiring him to be produced before the Court.** Why then should it be necessary that the body of the person

> alleged to be wrongfully detained must be produced before the Court before an application for a writ of habeas corpus can be decided by the Court? Would it not mean blind adherence to form at the expense of substance? Why should we hold ourselves in fetters by practice which originated in England about three hundred years ago on account of certain historical circumstances which have ceased to be valid even in that country and which have certainly no relevance in ours? But we may point out that even in England it is no longer regarded as necessary to order production of the body of the person alleged to be wrongfully detained, in an application for a writ of habeas corpus."

18. A Three Judge Bench of the Hon'ble Supreme Court in the matter of ***Madhu Limaye and Others***, reported as **1969 (1) SCC 292** whilst affirming the dictum of their Lordships in ***Ram Narayan Singh* vs. *State of Delhi & Ors,*** reported as **AIR (1953) SC 277**, observed that "*those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law.*" It further went on to reaffirm the ratio in ***Ram Narayan Singh*** *(supra)* to the effect that "*the Court must have regard to the legality or otherwise of the detention at the time of the return.*"

19. In ***Tasneem Rizwan Siddiquee*** *(supra)*, which is heavily relied upon on behalf of the official respondents, a Three Judge Bench of the Hon'ble Supreme Court of India observed in paragraph 10 as follows:-

> **"10.** 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 *Saurabh Kumar* v. *Jailor, Koneila Jail* [*Saurabh Kumar* v. *Jailor, Koneila Jail*, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and *Manubhai Ratilal Patel* v. *State of Gujarat* [*Manubhai Ratilal Patel* v. *State of Gujarat*, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . 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 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 [*Tasneem Rizwan Siddiquee* v. *State of Maharashtra*, 2018 SCC OnLine Bom 2712] her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. 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."**

20. In ***Manubhai Ratilal Patel*** *(supra)* the Hon'ble Supreme Court of India pleased to observe as follows:-

> **"23.** Keeping in view the aforesaid concepts with regard to the writ of habeas corpus, especially pertaining to an order passed by the learned Magistrate at the time of production of the accused, it is necessary to advert to the schematic postulates under the Code relating to remand. There are two provisions in the Code which provide for remand i.e. Sections 167 and 309. The Magistrate has the authority under Section 167(2) of the Code to direct for detention of the accused in

such custody i.e. police or judicial, if he thinks that further detention is necessary.

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. **While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand**. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. **It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.**

25. It is apt to note that in *Madhu Limaye, In re* [(1969) 1 SCC 292 : AIR 1969 SC 1014] it has been stated that: (SCC p. 299, para 12)

> **"*12.* Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters."**

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31. Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of the order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order [*Manubhai Ratilal Patel* v. *State of Gujarat*, Criminal Misc. Application

No. 10303 of 2012, order dated 17-7-2012 (Guj)] of the High Court regarding stay of investigation could only have a bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order [*Manubhai Ratilal Patel* v. *State of Gujarat*, Special Criminal Application No. 2207 of 2012, decided on 7-8-2012 (Guj)] of remand cannot be regarded as untenable in law. **It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in *B. Ramachandra Rao* [(1972) 3 SCC 256 : 1972 SCC (Cri) 481 : AIR 1971 SC 2197] and *Kanu Sanyal* [(1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted.** It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law."

21. In ***Neeraj Singal*** *(supra)*, which has also been strongly relied upon on behalf of the official respondents, the Hon'ble Supreme Court has observed as follows:-

> "6. Although the challenge to the constitutional validity of the provisions of the Companies Act, 2013 was limited to Sections referred to in prayer clauses (A) and (B), for the grant of interim relief, the High Court has considered diverse aspects which would create impediment for the Competent Authority under the Act, if not debar them from investigating into offences punishable under the Companies Act, 2013 (for short 'the Act'), including to file a complaint and/or police report.
>
> 7. Indisputably, respondent No.1/Neeraj Singal was sent to judicial custody in connection with the alleged offences under Section 447 of the Act in terms of a judicial order passed by the jurisdictional court. That order was in force when the writ petition was filed and the interim order to release respondent No.1/Neeraj Singal came to be passed. The High Court issued its interim directions, prima facie, in the teeth of the decisions of this Court in ***Saurabh Kumar v. Jailor, Koneila Jail and Another***[1] and ***Manubhai Ratilal Patel vs. State of Gujarat and Others***[2]. **Further, the reasons assigned by the High Court in the impugned order for grant of interim relief are not confirmed to the issue of the validity of the stated sections of the Act or concerning grant of bail but prima facie impact upon issues concerning matters of investigation and lodging of the complaint and/or police report in respect of offences under the Act.**"
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> 9. In the nature of the interim ordedr that we propose to pass, we refrain from elaborating on the contentions and the reasons recorded by the High Court at this stage. **However,**

[1] (2014) 13 SCC 436
[2] (2013) 1 SCC 314

> **we may observe that prima facie we find that the reasons being on the constitutional validity of provisions apart from Sections 212(6)(ii) and 212(7) of the Act ought not to have weighed with the High Court for grant of interim relief. Moreover, in any case, the High Court ought to have applied the broad contours required to be kept in mind for grant of bail under Section 439 Cr.P.C., which aspect, we find has not been adverted to at all in the impugned order. There is prima facie substance in the grievance of the appellants that the High Court has failed to consider matter such as the nature of gravity of the alleged offence. Moreover, we find that in the course of the impugned order, the High Court even proceeded to recall certain observations made by it in another case** (***Poonam Malik v. Union of India*** [W.P.(Crl.) No.2384 of 2018] **order dated 10th August, 2018**."

22. On a conspectus of the above decisions and in the light of the arguments advanced on behalf of the parties, what we are called upon to determine at this stage is whether the arrest of the applicants was illegal and without the authority of law; and whether the subsequent remand orders, which are cited to sanctify the arrest, are beyond the pale of examination by this Court in the present applications.

23. There is no denying the fact that, the Competent Authority vide its order dated 20.06.2018 directed the SFIO to conduct an investigation into the affairs of the subject entities, in public interest. There is also no quarrel with the circumstance that, the period specified by the Competent Authority

in the said order dated 20.06.2018 lapsed on 19.09.2018. There is also no dispute with regard to the fact that, the SFIO sought an extension of time, from the Competent Authority, to carry out further investigation under the mandate of the provisions of Section 212 of the said Act, only on 13.12.2018, admittedly two and half months after the period granted to them by the Competent Authority for the said purpose, had come to an end by efflux of time.

24. There is also no quarrel with the circumstance that, the *ex post facto* extension granted by the Competent Authority, retrospectively, was granted only on 14.12.2018. It is, therefore, *prima facie* axiomatic that, when the applicants were arrested by the SFIO on 10.12.2018, the period specified in the said order dated 20.06.2018 for the submission of the report, post investigation, had already elapsed. It is further relevant to state that, at that juncture the SFIO had neither applied nor obtained the *ex post facto* extension of the period specified in the said order dated 20.06.2018.

25. It is, in these circumstances, read in conjunction with the norms set out by the SFIO itself, warranting investigation to be completed within the timeframe, stipulated by the Central Government, that we are of the considered view that the order of arrest suffers from the vice of lack of

jurisdiction, unlawful and illegal.

26. A statutory body must be strictly held to the standards by which it professes its conduct to be judged.

27. Illegal detention of the applicants, in our considered view, cannot be sanctified by the subsequent remand orders, passed by the concerned Magistrate. The right of the applicants to insist upon the strict and scrupulous discharge of their duty by the SFIO and observe the forms and rules of law, is absolute**.** The arrest of the applicants on 10.12.2018 in the light of the circumstances antecedent and attendant was an absolute illegality and patently suffers from the vice of lack of legal sanction and jurisdiction.

28. This Court in a petition for habeas corpus cannot justify the continued illegal detention of the applicants; merely on account of the circumstance that the concerned Magistrate has rendered remand orders. The further custody of the applicants would, in our considered view, violate the principles of personal liberty, enshrined in Article 21 of the Constitution of India. The continued detention of the applicants does not admit of lawful sanction.

29. Even otherwise, the remand order dated 14.12.2018, insofar as, it observes as follows:-

> "6. …….. And in this case all, after investigations when the team submitted report to competent authority, which is the Director of SFIO, he permitted the team to arrest the accused and go for further investigations, which in the given facts and circumstances amount to extension."

is wrong, incorrect and patently contrary to law and the official record.

30. This is quite apart from the circumstance that, the applicants were arrested at the SFIO office at New Delhi on 10.12.2018, thereby rendering the remand orders passed by the concerned Magistrate in Gurugram wholly without jurisdiction.

31. In view of the foregoing, the ratio of the decision in ***Tasneem Rizwan Siddiquee*** *(supra)* does not come to the aid of the official respondents, since in that case the stated offence was being investigated, in terms of a valid sanction, in accordance with law, against the detenue. Further, from a perusal of the observations made by the Hon'ble Supreme Court in ***Neeraj Singal*** *(supra)*, it is evident that, *prima facie* the reasons for grant of interim relief to those applicants, in the order of the High Court under challenge, were for reasons of constitutional validity of the provisions; which course of action, in the view of the Hon'ble Supreme Court, ought not to have been considered with the High Court for grant of interim relief. The Hon'ble

Supreme Court had further observed that, before granting interim relief to the petitioner in those proceedings, the High Court ought to have applied the broad contours, required to be kept in mind for grant of bail under Section 439 of the Code of Criminal Procedure, 1973, which aspect, it was found has not been adverted to at all in the order of the High Court.

32. In the present case, it is an admitted position that subsequent upon the rendering of the said order dated 20.06.2018 by the Competent Authority, the applicants joined investigation and have appeared before the officer concerned on numerous occasions, in response to notices received from the latter.

33. It is further an admitted position that, in compliance to the notice by way of telephonic communications, the applicants, as directed, appeared before the official respondents on 10.12.2018, and were thereafter arrested at 06.15 p.m. on the same day at the office of SFIO at New Delhi.

34. In addition, it is observed that, a plain reading of the order of arrest dated 10.12.2018 clearly and unequivocally establishes that the applicants, who were appearing in response to a notice in this behalf, were detained at the office of SFIO, New Delhi.

35. In other words, it can be emphatically observed that, the applicants are

co-operating with the investigation.

36. We must also add that no cogent material has been brought to our notice on behalf of the SFIO to urge that, the applicants are a flight risk or that they will misuse the liberty granted to them by this Court.

37. We must also add that, the applicants have deep roots in the society and belong to a respectable business family and have no criminal antecedents. Consequently, there is no possibility of their absconding and not being available for further investigation.

38. In view of the foregoing discussion, the issues framed in the present applications are answered in favour of the applicants and against the official respondents. We have already hereinbefore expressed our considered view that, the facts and circumstances of the present case do not admit the continued unlawful detention of the applicants.

39. In view of the foregoing, the present application is allowed. The applicants shall be released on interim bail, during the pendency of the accompanying petitions, on their furnishing a personal bond in the sum of Rs.5,00,000/- each with two local sureties each of the like amount to the satisfaction of the trial court subject to the following conditions:-

(i) That the applicants shall not leave the territorial jurisdiction of National Capital Region, without prior permission of this Court.

(ii) That the applicants shall co-operate with the investigation and appear before the concerned Investigating Officer, SFIO, as and when called upon to do so, with sufficient prior notice in writing.

(iii) That the applicants are directed to surrender their Passports with the concerned Investigating Officer, SFIO in this case, forthwith.

40. With the above directions, the applications stand disposed of.

41. A copy of this order be given *dasti* under the signature of Court Master to counsel for the parties.

SIDDHARTH MRIDUL
(JUDGE)

SANGITA DHINGRA SEHGAL
(JUDGE)

DECEMBER 20, 2018
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