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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(CRL) 2559/2018**

GAUTAM NAVLAKHA ..... Petitioner  
Through Ms. Nitya Ramakrishnan with Mr.  
Ashmath Sitaraman, Ms. Warsha Farasal, Mr.  
Ahmed Said & Mr. Nafsa Khan, Advocates  
versus

STATE (NCT OF DELHI) & ORS ..... Respondents  
Through Mr. Rahul Mehra, Standing counsel  
(Crl.) with Mr. Chaitanya Gosain, APP for State  
Mr. Aman Lekhi, ASG with Mr. Vinay Navara &  
Sh. Nishant Katheswarkar, Advocates for  
Respondent no.3

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE VINOD GOEL**

**ORDER**  
**29.08.2018**

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1. Mr. Aman Lekhi learned Additional Solicitor General of India appearing for the Maharashtra Police informs the Court that translation of the documents in Marathi language, which was required to be produced before this Court is taking some more time. He states that copies of translation will be provided to counsel for the Petitioner positively by noon.

4. List at 2.15 p.m. today.

**S.MURALIDHAR, J**

**VINOD GOEL, J**

**AUGUST 29, 2018/mw**

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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (CRL) 2559/2018**

GAUTAM NAVLAKHA ..... Petitioner  
Through: Ms. Nitya Ramakrishnan,  
Advocate with Mr. Ashwath Sitaraman and  
Ms. Warisha Farasat, Advocates.

versus

STATE (NCT of DELHI) & ORS. .... Respondents  
Through: Mr. Aman Lekhi, ASG with  
Mr. Vinay Navare, Advocate for R-3  
Mr. Rahul Mehra, Standing Counsel (Crl)  
with Mr. Chaitanya Gosain, Advocate.  
DCP Bachhan Singh with ACP Gawade,  
Yerawada, Pune.  
ACP K.G. Tyagi, Special Cell, Delhi Police

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE VINOD GOEL**

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**ORDER**  
**29.08.2018**

**Dr. S. Muralidhar, J:**

1. The Petitioner has approached this Court seeking the issuance of a writ of *habeas corpus* for his release from illegal custody and questioning the legality of his arrest by the Maharashtra Police (Respondent No.3) on 28<sup>th</sup> August 2018 pursuant to FIR No.4/2018 registered at Police Station (PS) Vishrambagh, Pune.

2. This petition was mentioned before the Chief Justice of this Court yesterday, i.e. 28<sup>th</sup> August 2018, at 2:15 pm and was assigned to this Court,

which is the Roster Bench dealing with *habeas corpus* petitions, and was taken up at around 2:20 pm yesterday.

3. In para 2 of the petition, it is stated that originally the officials of Respondent No.3 came to the Petitioner's house at Nehru Enclave, New Delhi but since the search warrant was not shown, they were not permitted to enter. Later, they came back with the warrant and search of the house was undertaken. Para 4 of the Petition states that the Petitioner was shown a copy of FIR No.4/2018 regarding a cultural program held on 31<sup>st</sup> December 2017. It is further averred in para 4 that the said FIR did not contain the Petitioner's name. The Petitioner claims that "he was not even present at the meeting". The petition notes that offences under the provisions of the Unlawful Activities (Prevention) Act 1967 ('UAPA'), particularly under Sections 30 and 18, have been added to the FIR which was originally under Sections 153A, 505, and 117 read with Section 34 IPC.

4. When the matter was taken up at 2:25 pm yesterday, Mr. Rahul Mehra, learned Standing Counsel (Criminal) for the State of NCT of Delhi appeared. The Court then passed the following order at around 2:45 pm:

"1. The petition complains of the Petitioner and his companion Sehba Husain being restrained in his house by the Maharashtra Police pursuant to FIR No. 4/2018, registered at P.S. Vishrambagh, Pune.

2. Notice. Mr. Rahul Mehra, who appears and accepts notice and informs that he will take some instructions.

3. The Court is informed by Ms. Nitya Ramakrishnan, learned counsel appearing for the Petitioner, that her information is that the Petitioner is just being taken away from his house. No

further precipitate action of removing the Petitioner from Delhi be taken till the matter is taken up again at 4 pm.”

5. The petition was again taken up at 4 pm on 28<sup>th</sup> August 2018. This time, DCP Bachhan Singh and ACP Ganesh Gawade, officers of Respondent No.3, were present to instruct Mr. Mehra. They were also accompanied by ACP K.G. Tyagi of the Special Cell of the Delhi Police. The order passed by the Court at 4:30 pm reads as under:

“1. This order has to be read in continuation of the order passed by this Court earlier in the day at around 2.45 pm upon an urgent mentioning before the Hon'ble Chief Justice and upon his assigning the petition to this Bench. The Court had issued notice in the petition and kept it for further hearing at 4 pm. It had directed that no precipitate action of removing the Petitioner from Delhi be taken till then.

2. Court is informed at 4 pm by Mr. Rahul Mehra, learned Standing counsel for the State that an order was passed today by the learned Chief Metropolitan Magistrate (CMM), South East District, Saket in the post lunch session granting transit remand for producing the Petitioner before the learned Special Court, Shivaji Nagar, Pune on or before 30<sup>th</sup> August, 2018.

3. The Court is also shown the documents produced before the learned CMM most of which (including FIR No. 4 of 2018 registered at Police Station Vishrambagh, Pune) are in Marathi language and only the application filed for transit remand before the learned CMM is in Hindi. However, it is not possible to make out from these documents what precisely the case against the Petitioner is.

4. Since it is already 4.30 pm, the Court considers it appropriate to direct that pursuant to the order dated 28<sup>th</sup> August, 2018 of the learned CMM, the Petitioner will not be taken away from Delhi and this case will be taken up as the first case tomorrow morning.

5. Translations of all the documents produced before the CMM be provided to this Court tomorrow.

6. The Petitioner shall, in the meanwhile, be kept at the same place from where he was picked up with two guards of the Special Cell, Delhi Police along with local Police that was originally here to arrest the Petitioner, outside the house. Barring his lawyers, and the ordinary residents of the house, the Petitioner shall not meet any other persons or step out of the premises till further orders.

7. *Dasti* under the signature of the Court Master.”

6. This morning, the case was called as the first case. The Court was informed by learned ASG Mr. Aman Lekhi, who is appearing on behalf of Respondent No.3, that the translation of the documents which were in Marathi and which were to be produced before this Court is taking some more time. He, however, stated that copies of the translation will be provided to counsel for the Petitioner positively by today. Recording this, the Court passed a short order listing the case at 2:15 pm today.

“Mr. Aman Lekhi learned Additional Solicitor General of India appearing for the Maharashtra Police informs the Court that translation of the documents in Marathi language, which was required to be produced before this Court is taking some more time. He states that copies of translation will be provided to counsel for the Petitioner positively by noon.”

7. At 2.15 pm, the Court has been shown a bunch of documents which runs into 36 pages and which includes a copy of FIR No.4/2018 in Marathi, the English version of the FIR, the letter for adding Section 120B IPC (in English), the letter to add provisions of the UAPA (in English), the letter for search under Section 166 (3) Cr PC (in Marathi), the English version of the

search letter, the letter to arrest in Marathi, and the English version of the arrest letter. The bunch also includes the search and seizure form, the search *panchnama*, and the arrest memo, all of which are in Marathi. For some reason, these have not been translated as yet. Mr. Lekhi stated that some more time is required for this purpose. However, the Court did not consider it appropriate to give any further time for this purpose and proceeded to hear the petition on the core issues that arose. The papers also include the copy of transit remand application (in Hindi) which was presented before the Chief Metropolitan Magistrate, South East, District Court, Saket ('CMM') yesterday, i.e. 28<sup>th</sup> August 2018, at around 2.45 pm after the Petitioner was arrested from his residence at Nehru Enclave at 2:15 pm.

8. The bunch of papers also includes a copy of the order passed by the learned CMM yesterday, i.e. 28<sup>th</sup> August, 2018. The said order reads as under:

“FIR No.4/18

PS: Vishrambagh, Pune, Maharashtra  
U/s: 153A/505 (1) (B)/117/34 IPC & u/s  
13/16/17/18/18B/20/30/40 of Unlawful Activities Prevention  
Act

State Vs. Gautam Pratap Navlakha

28.08.2018

Present:- Sh. Jagdamba Pandey, Ld. APP for the State.  
IO Assistant Police Inspector Sushil V. Bobde  
along with ACP Ganesh Gawade and DCP Bachan  
Singh.

Inspector Sanjay Gupta, PS Special Cell, Lodhi Colony, New Delhi.

Accused Gautam Pratap Navlakha produced in Police custody.

Sh. Om Prakash, Ld. LAC for the accused.

This is a handwritten application preferred by the IO Assistant Police Inspector Sushil V. Bobde seeking transit remand of two days the above noted accused persons. The identity of IO as a police officer of PS Vishrambagh, Pune, Maharashtra is established upto my satisfaction upon his having shown his identity card.

Heard. It is submitted by the IO that above noted accused is required in above noted case FIR registered at PS Vishrambagh, Pune, Maharashtra and has been arrested from his house at Kalkaji, Delhi. It is further submitted by the IO that the accused has been arrested without warrant and he is required to be produced before a competent court i.e. Court of Ld. Special Court, Shivaji Nagar, Pune, Maharashtra and therefore, his transit remand may be granted.

Heard. Considered. I have given my thoughtful consideration to the submissions made by the IO and the learned APP for the State.

As per the police papers, FIR No.4/18 has been registered under Sections 153A/505 (1) (B)/117/34 IPC and Section 13/16/17/18/18B/20/39/40 of Unlawful Activities Prevention Act at Police Station Vishrambagh, Pune, Maharashtra wherein the accused is required. As per the arrest memo the accused namely Gautam Pratap Navlakha was arrested on 29.08.2018 at 2.15 at Kalkaji, Delhi. Information of arrest of accused has been given to his partner/friend.

As the accused is required for further investigation of the case, therefore, his transit remand is granted till 30.08.2018. The accused be produced before the concerned Ld. Special Court Shivaji Nagar, Pune, Maharashtra on or before 30.08.2018 without fail. Accused be got medically examined as per rules and the directions of the Hon'ble Supreme Court. A copy of this order be given dasti to the Investigating Officer.

Application of transit remand is disposed of accordingly.  
Necessary record be maintained by the Ahlmad.

(Manish Khurana)  
CMM/SE/District Court, Saket  
New Delhi/28.08.2018.”

9. It must be noted here that the above order was shown to the Court when the matter was heard at 4 pm yesterday. Therefore, the Court reasonably presumes that after having been arrested at Nehru Enclave at 2:15 pm, the Petitioner may have been produced before the learned CMM at Saket Courts at around 2:45 pm. Thereafter, the matter was heard, the order passed and signed by the CMM, and the copy of the order was issued and then given to counsel who produced it before this Court at 4 pm.

10. The Court in the present petition is concerned with the legality of the arrest of the Petitioner. This will include examining the legality of the order of transit remand passed by the learned CMM.

11. It was urged by Mr. Lekhi that although the FIR itself does not name the Petitioner or refer to his involvement in the offence for which the FIR has been registered, Respondent No.3 has other sufficient material which points to his involvement. When asked whether any of the papers in the bunch shown to this Court, which presumably was available even when the remand application was moved before the learned CMM, contains such material, Mr. Lekhi referred to the remand application (in Hindi) which according to him indicated what the involvement of the Petitioner was in the case.

12. His further submission is that once a remand application has been filed



and a transit remand has been granted, a writ of *habeas corpus* does not lie and the Petitioner would have to seek regular bail and/or challenge the entire proceedings on merits in other proceedings in accordance with law.

13. The officers of the Maharashtra Police present in the Court, i.e. ACP Ganesh Gawade, DCP Bachhan Singh, were asked by Mr. Lekhi, at the instance of the Court, whether at any time during the proceedings before the learned CMM, the learned CMM asked to see the case diary in which purportedly the relevant material concerning the involvement of the Petitioner is contained. The answer, on the instructions of the said police officers, was in the negative. The Court is further informed that the case diary is also written in Marathi.

14. As already noted hereinbefore, it is apparent from the translated version of the FIR No.4/2018 that the FIR itself does not contain anything which shows the involvement of the present Petitioner. It indicates that apart from Sections 153A, 505(1)(b), 117/34 IPC and the UAPA provisions, i.e. Section 13 UAPA (punishment for unlawful activities), Section 16 UAPA (punishment for terrorist acts), and Section 17 UAPA (punishment for raising funds for terrorist acts), Section 18 UAPA (punishment for conspiracy, etc.), Section 18B UAPA (punishment for recruiting of any person or persons for terrorist act), Section 20 UAPA (punishment for being member of terrorist gang or organisation), have been added.

15. Relevant to the question of the arrest of a person for the aforementioned cognizable offences under UAPA is Section 43D UAPA. Section 43D(4) UAPA states that the provision of anticipatory bail under Section 438 Cr PC

is not available to a person arrested for commission of an offence cognizable under the UAPA. The proviso to Section 43D(5) UAPA states that the said accused person “shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that these are reasonable grounds for believing that the accusation against such person is prima facie true”. Section 43D(6) UAPA states that the “restrictions on granting of bail specified in subsection (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail”. These provisions make it explicit that once a person is taken into custody pursuant to an FIR for cognisable offences under the UAPA, it would be extremely difficult for such person to obtain regular bail, till at least the filing of the charge sheet.

16. Section 43C UAPA makes it clear that provisions of the Cr PC “shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches, and seizures made under this Act”.

17. At this stage, while this order was being dictated, at 5:03 pm in the Court, Mr. Lekhi interjected to state that the Supreme Court has been petitioned in a PIL under Article 32 of the Constitution questioning the validity of the arrest and transit remand orders passed by the MMs not only in the Petitioner’s case but in other similar cases as well. He is informed that the Supreme Court has in the said petition passed an interim order today staying the transit remand orders, including the one passed by the CMM in respect of the Petitioner, and has ordered that all those who have been arrested including the Petitioner shall continue under house arrest. The next

date of the said PIL is stated to be 6<sup>th</sup> September 2018.

18. In view of the above development, it would not be appropriate for this Court to continue considering the validity of the transit remand order passed by the learned CMM. The Court considers it appropriate to list this matter tomorrow at 2:15 pm by which time the order of Supreme Court would be available.

19. List on 30<sup>th</sup> August 2018 at 2:15 pm.

**S. MURALIDHAR, J.**

**VINOD GOEL, J.**

**AUGUST 29, 2018**

“sandeep”