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

+ W.P.(CRL) 991/2021

GULFISHA FATIMA Petitioner

Through: Mr. Jatin Bhatt and Mr. Sanawar, Advs.

versus

STATE Respondent

Through: Mr. Amit Mahajan, SPP with Mr.Rajat Nair,
SPP, Mr.Dhruv Pande and Mr.Shantnu
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **09.07.2021**

1. The petitioner has preferred the present writ petition seeking issuance of a writ of *Habeas Corpus* directing the respondent to produce the petitioner detenu Ms.Gulfisha Fatima @ Gulfisha Khatoon and to release her from, what is claimed to be “illegal custody,” on personal bond and terms and conditions imposed by this Court for securing her attendance before the concerned trial court in case F.I.R. No. 59/2020, P.S. Crime Branch.

2. The petitioner submits that she was arrested in connection with F.I.R. No. 48/2020 registered at P.S. Jafrabad under various provisions of the Indian Penal Code. She claims that she was formally arrested in F.I.R. 59/2020, registered at P.S. Crime Branch on 11.04.2020. Charges under the Unlawful Activities (Prevention) Act, 1967, were invoked against her in

F.I.R. No. 59/2020, P.S. Crime Branch. She states that she approached the learned Duty M.M. for grant of regular bail in F.I.R. No. 48/2020. During the adjudication of the Bail Application, she states that she, and the learned Duty Magistrate, were informed that the charges under another F.I.R. No. 59/2020 are being investigated by the Crime Branch, Delhi Police, which includes the charges under the Unlawful Activities (Prevention) Act. On 03.05.2020 the learned Duty M.M. dismissed the bail application of the petitioner in F.I.R. No. 48/2020. Thereafter the petitioner moved the application before the learned Sessions Judge for grant of bail in F.I.R. No. 48/2020, and the said bail application was allowed by the learned Sessions Judge on 13.05.2020. However, the petitioner continues in custody due to charges pending in F.I.R. No. 59/2020 registered at P.S. Crime Branch. The Petitioner, through here relative, moved to this Court by preferring Writ Petition (Crl.) No. 824/2020. The said writ petition was dismissed on 22.06.2020 by the Division Bench presided by one us i.e. Vipin Sanghi, J. Since then, the petitioner has continued to remain in judicial custody, since bail has not been granted in F.I.R. No. 59/2020. Petitioner has also disclosed that she was also arrested in F.I.R. No. 83/2020 registered at P.S. Seelampur. However, she was granted bail in the said case on 20.07.2020. The petitioner also preferred a petition under Article 32 of the Constitution of India before the Supreme Court of India, through her brother, seeking her release. The said petition was dismissed as withdrawn on 26.02.2021. The petitioner was again arrested in F.I.R. No.50/2020, registered at P.S. Jafrabad, and she was initially remanded to police custody and, thereafter, she continues in Judicial custody.

3. Mr. Mahajan learned SPP submits that the cognizance has been taken by Court of learned Sessions in F.I.R. No. 59/2020 on 17.09.2020. It is informed by the learned counsel for the petitioner that the said order taking cognizance is under challenge before this Court in Criminal Revision proceedings.

4. The aforesaid narration of facts would show that the petitioner is in judicial custody and her detention therefore cannot be termed as illegal, or without authority of law. If the petitioner has a grievance with regard to the order passed in the aforesaid judicial proceedings, she has the right to avail of the legal remedies statutorily prescribed, which she has already done. It is well settled that a writ of Habeas Corpus would not lie in respect of a person who is in judicial custody. In fact, while dealing with the earlier petition preferred on behalf of the petitioner by her brother Aqil Hussain in W.P.(CRL.) 824/2020 titled *Aqil Hussain v. State Of NCT of Delhi & Ors*, this Court had, inter alia, observed as follows:

“14. There is no dispute on either side, and it is also well settled law that a writ of Habeas Corpus would not lie where a person is under detention/arrest in pursuance of orders passed by a Court. A person who is in custody—either in police remand, or in judicial remand, cannot maintain a writ of Habeas Corpus unless the judicial authority which has remanded the detenue to one or the other kind of remand, is a usurper of authority. It is also not disputed by learned counsels, and it is an equally well settled proposition of law, that while dealing with a writ

*petition seeking issuance of writ of Habeas Corpus, the High Court shall examine the issue: whether the detention of the detenu is illegal – on the date of the petition, if no further developments have taken place between the date of institution of the petition and the date of return/ hearing. However, where further developments have taken place, it is the date of return of the notice, or even the date of hearing – on which the legality of the detention would be examined. In this regard, we may refer to two decisions by this Court. The first is **Rakesh Kumar Vs. State**, 1994 Scc Online Del 91, and the second is a decision of a Division Bench of this Court in **Moin Akhtar Qureshi v. Union of India & Ors**, 2017 SCC OnLine Del 12108. In the subsequent decision, namely **Moin Akhtar Qureshi** (supra), authored by one of us (Vipin Sanghi, J), this Court considered the well-established position in law as enunciated by the Supreme Court, inter alia, in **Madhu Limaye & Ors., In Re.**, 1969 (1) SCC 292; **Kanu Sanyal v. District Magistrate, Darjeeling & Ors.**, (1974) 4 SCC 141 and **Manubhai R.P. Vs. State of Gujarat and Ors.**, (2013) 1 SCC 314. In the present case, the returnable date was fixed vide order dated 20.05.2020 as 29.05.2020.”*

5. Consequently, in our view this petition is completely misplaced and is not maintainable. The same is accordingly dismissed leaving the petitioner to agitate her grievances in respect of judicial orders in the aforesaid

proceeding, before appropriate forums and in appropriate proceedings.

VIPIN SANGHI, J

JASMEET SINGH, J

JULY 9, 2021/sr