

CASE COMMENT: GAUTAM NAVLAKHA V. NATIONAL INVESTIGATION AGENCY

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INTRODUCTION

Gautam Navlakha got arrested from his residence in the Bhima-Koregaon event. He was charged under penal laws and UAPA (Unlawful Activities Prevention Act) as his name was found connected with the event. He filed his bail application to the Delhi High Court but the court denied it and ordered to keep him under house arrest. He was asked to surrender by the National Investigation Agency. He was under house arrest for almost 90 days. With the help of Section 167 of the Criminal Procedure Code¹, he plead that his house arrest should be considered as ‘custody’. But the Supreme Court denied his plea and passed a decision that his house arrest cannot be included within 90 days which is necessary to get a default bail under Section 167 of CrPC.

FACTS OF THE CASE

Gautam Navlakha, who was a Human Rights Activist and also a journalist got arrested at an event named “Elgar Parishad-Bhima Koregaon”. This is an event celebrated as the remembrance of the remarkable victory of Mahar Dalits over the Peshwa’s Marathas. The celebration of the 200th anniversary took place on December 31, 2017. On January 1, 2018, violence broke out between the Marathas and Dalits in this event, where the police claimed that it took place because of the encouraging speeches of the activists and journalists present there in the event. Several lawyers, journalists, and activists along with Gautam Navlakha were arrested under penal laws, national security laws, and terrorism laws. On January 8, 2018, an FIR was filed against them and was charged under Indian Penal Code for promoting a feeling of discrimination among the people. On March 06, 2018, more FIRs were filed under UAPA (Unlawful Activities Prevention Act, 1967²). The Police alleged that this violence is connected to causing harm to Prime Minister Narendra Modi and removing the Indian Government. Many

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¹ Code of Criminal Procedure, 1973 s 167

² Unlawful Activities Prevention Act, 1967

letters and communications were found that contained names and references of other activists related to this incident, who have been arrested subsequently including Navlakha.

On August 22, 2018, an FIR was filed against Navlakha in Pune. He was arrested from his residence on August 28, 2018, in Delhi. He immediately approached the Delhi High Court seeking the validity of his arrest order. The Delhi High Court ordered to keep him under 'House arrest' in Delhi until the next order. On August 29, 2018, a group of people filed a writ petition to the Supreme Court of India, stating that these activists were arrested to suppress the voices of different people with different views and ideologies. They also said that these arrests were illegal and prayed the Court to permit them to carry out the investigation independently. But the Supreme Court refused their request for an independent investigation and continued the order to keep Navlakha under house arrest for four weeks more and to seek a court of respective jurisdiction to get a remedy permissible under law.

On October 01, 2018, after the decision passed by the Delhi High Court, it stated that Navlakha's arrest was unfair, and then he approached the Bombay High Court to dismiss his FIR. But the petition was rejected after documents were submitted against him by the State which extended the period of house arrest for three weeks more. Challenging this decision, he approached the Supreme Court to grant him anticipatory bail but the Court rejected it and extended the period of house arrest for four weeks more. Then he approached the Session Court but again got rejected. After all the refusals the Supreme Court directed him to surrender himself accordingly and was sent to judicial custody.

With the help of the Criminal Procedure Code under Section 167, he filed the bail application stating that the period of, police arrest, house arrest, and judicial custody continued almost for 90 days and if within 90 days the investigation of the accused is not completed, then the default bail must be granted against him. After getting refused by both courts, he approached the Supreme Court of India.

LEGAL ISSUES

- 1) Whether the duration of 'House Arrest' would be considered as 'Custody' for issuing the grant for bail?
- 2) Whether the Court would issue 'the writ of habeas corpus' as a remedy to Navlakha?

OBSERVATIONS OF SUPREME COURT

The SC observed an issue is to decide whether house arrest can be considered as ‘custody’ or not. The Supreme Court held that in general house arrest is considered as ‘custody’ but only under certain circumstances. After examining the age, mental health, and physical health conditions of the accused, and the circumstances under which the crime was attempted, the court can grant the ‘house arrest’ as ‘custody’. Here, Navlakha argued to the court that the duration of his house arrest should be considered as ‘custody’ under Section 167 of CrPC. He also argued that during his home arrest, police were also permitted to do their investigation. The NIA argued that if Navlakha was granted bail during his detention then it may end his detention but here, as there was no bail granted against him so his house arrest cannot be considered as ‘custody’.

DECISION OF SUPREME COURT

The Supreme Court held that Navlakha was under house arrest after he surrendered himself. As the primary interrogation and investigation were taken by Nation Investigation Agency firstly, the police investigation was not executed. As there was no police custody done against him and the house arrest was ordered by the Delhi High Court and not by the Magistrate (which is required under Section 167 of CrPC) and under Section 167(2) of CrPC, the order of detention has to be ordered by a magistrate but in this case not ordered by the Magistrate, the period of house arrest cannot be included within 90 days which is necessary to issue for getting default bail under Section 167 of CrPC and writ of Habeas corpus³ will not be considered here as a remedy as this was wholly constitutional.

CONCLUSION AND ANALYSIS

In this case, it is found that the Court must look at the aspect of house arrest for those people who are not hardcore criminals. Though there are some problems keeping an accused under house arrest, there are some advantages also. It is true that under house arrest it will be a little hard to keep proper surveillance on the accused but looking upon some factors like health condition, mental health condition, age, the circumstances, and the type of crime of an accused, the Court can issue a house arrest order. As it needs high maintenance costs to maintain the prisoners in the prison and also there is overcrowding of prisoners, it is highly necessary to

³ Constitution of India, Article 32

think about the concept of house arrest as it will reduce the burden of cost and maintenance also. During any medical emergency, an accused can be treated immediately under house arrest but in prison sometimes it is not possible to arrange medical treatment immediately. So looking upon these factors, the Court may make the terms of house arrest flexible and keep a provision to make any changes if there is any need for a particular case.

