



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.139 OF 2025**

Mr. Kaushik Rameshchandra Thakkar )  
 @ Anam, Age - 42 Years, Occ - Business, )  
 R/at Sarthak Apartment, )  
 Plot No.18, Sector 12, Vashi, )  
 Navi Mumbai ) ....Petitioner/  
 At present In Thane Central Prison (in jail) ) Accused

***Versus***

State of Maharashtra )  
 Through PI )  
 Kasarwadavali Police Station & EOW Thane ) .... Respondent

**WITH**

**INTERIM APPLICATION (ST.) NO.2949 OF 2025**

**IN**

**WRIT PETITION NO.139 OF 2025**

Sumeet Ganpatrao Bachewar )  
 Age - 54 years, Occupation - Business )  
 Residing at Plot No.155, )  
 Santushti Bungalow, Sector - 28, ) .... Applicant/  
 Vashi, Navi Mumbai ) Intervener

**IN THE MATTER BETWEEN**

Kaushik Rameshchandra Thakkar @Anam )  
 Age - 46 years, Occup - Business )  
 Residing at Sarthak Apartment, )  
 Plot No.18, Sector 12, Vashi, )  
 Navi Mumbai, )  
 at present at Thane Central Prison ) .... Petitioner

***Versus***

The State of Maharashtra )  
 Kasarvadawali Police Station & EOW, Thane ) .... Respondent

**WITH**

**INTERIM APPLICATION (ST.) NO.5872 OF 2025**

**IN**

**WRIT PETITION NO.139 OF 2025**

Sundeep Prakash Bafna, )

Aged about 50 years, )  
Occupation Business, )  
Residing at 201, Pleasant Palace, )  
Narayan Dabholkar Marg, )  
Malabar Hill, Mumbai - 400 006 ) .... Intervener

**IN THE MATTER OF**

Kaushik Rameshchandra Thakkar @Anam )  
Aged about 45 years, Occupation Business )  
Residing at Sarthak Apartment, )  
Plot No. 18, Sector 12, Vashi, )  
Navi Mumbai ) .... Petitioner

***Versus***

The State of Maharashtra )  
(at the instance of Senior Inspector of )  
Police, Economic Offences Wing, Thane )  
vide Kasarwadavali Police Station vide C.R. )  
No.I-1217 of 2024) .... Respondent

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Mr. Niranjana Mundargi a/w. Mr. Rishi Bhuta, Mr. Pranav Pokale, Mr. Aditya Bagar, Advocate Keral Mehta, Mr. Ashish Dubey, Ms. Ankita Bamboli, Ms. Vaishnavi Javheri, Ms. Saakshi Jha, Mr. Prateek Dutta and Mr. Chinmay Sawant i/b. Mr. Pranav Pokale for the Petitioner.

Ms. Sharmila Kaushik, APP for the Respondent - State.

Mr. Sanjeev P. Kadam, Senior Advocate a/w. Mr. Prashant Raul, Ms. Varsha Milind Thorat and Mr. Mohan Kumbhar i/b. Mr. Dilip Shinde for the Applicant/ Intervener in IA (ST.) No.2949 of 2025.

Mr. Nitin Sejpal a/w. Ms. Pooja Sejpal, Ms. Akshata Desai, Mr. Sahir Patel, Mr. Siddharth Gharat and Mr. Sameer G. for the Applicant/ Intervener in IA (ST.) No.5872 of 2025.

Mr. Ashok Shendage, API, EOW Thane City is present.

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**CORAM : RAVINDRA V. GHUGE &  
ASHWIN D. BHOBE, JJ.  
DATE : 16<sup>th</sup> APRIL, 2025**

**ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :**

1. Rule. Rule made returnable forthwith and heard finally

by the consent of the parties.

2. This matter was heard at length on 04.04.2025, 07.04.2025, 09.04.2025, and today.

3. The Petitioner has put forth his prayers below paragraph F (i), (ii) and (iii), which read as under :

*(i) After examining the facts, circumstance and remand order passed by the Ld. Magistrate Thane be pleased to issue writ of habeas corpus or any other appropriate writ or direction under Article 226 of the Constitution of India and section 482 of Criminal Procedure Code 1973 (528 of BNSS), thereby declaring the arrest of the Petitioner in Crime No.1217/2024, registered with Kasarwadavli Police Station, under section 420, 465, 467, 468, 120(B), 34 of Indian Penal Code to be illegal;*

*(ii) This Hon'ble Court be pleased to declare the arrest illegal and thereby quash and set aside the remand orders dated 17<sup>th</sup> August 2024, 19<sup>th</sup> August 2024 and 22<sup>nd</sup> August 2024 passed by the Ld. Magistrate Thane; and*

*(iii) This Hon'ble Court may be pleased to issue appropriate direction to release the present Petitioner on interim bail in Crime No.1217/2024 registered with Kasarwadavli police station forthwith.*

**PLEADINGS, AVERMENTS AND SUBMISSIONS OF THE PETITIONER**

4. The Petitioner has set out his case story in the pleadings, which can be summarised, as under :

(a) It is alleged that the original Complainant has a business and is dealing with immovable assets, purchase and sale through out Maharashtra. It is further alleged that in the year 2022, the original Complainant had met Accused No.1/the Petitioner and his wife through one agent, namely Indramohan Johari.

(b) It is alleged that Accused No.1/the Petitioner Kaushik Anam and Accused No.2/his wife, approached the original Complainant with the intention to deceive the Complainant by inducing him to invest in the disputed properties. It is further alleged that Accused No.1/the Petitioner told the Complainant that he has an office at Fort Point, Ghodbander Road, Anand Nagar, Thane West – 400 615 and gained his trust.

(c) It is alleged that Accused No.1/the Petitioner had informed the Complainant about an investment at Ulve, Navi Mumbai and quoted lesser price than the market value, i.e., Rs.1,34,50,000/- as an investment in the said property. Further, the present Complainant deposited the alleged amount in the account of one, Mr. Sundeep Bafna's company and even handed over the cash as well as account transaction into the Petitioner's account.

(d) It is alleged by the Complainant that Accused No.1/the Petitioner used the power of attorney of Mr. Sundeep Bafna and thereby, they entered into the Sale Deed on 18.05.2023 of four flats and the said forged Sale Deeds were handed over to the present Complainant by Accused No.1/the Petitioner.

(e) It is further alleged by the Complainant that when he visited the said flats in the month of June, 2023, he got to know that, some other individuals are residing in the alleged premises and hence, he became suspicious of the said Sale Deeds. Hence, he approached Sundeep Bafna

using the Aadhar card details from the documents, whereupon Sundeep Bafna disowned his signature on the documents.

(f) It is also alleged by the Complainant, that he obtained the certified copies of the said Sale Deeds bearing Nos.8924,8926, 8923, 8925 of 2023, whereby he got to know that there are some other documents registered with regards to the four properties located at Shivkar. That the Complainant alleged that the said documents are forged, and he has not entered in any kind of Sale Deed with regards to the property situated at Shivkar.

(g) It is further, alleged that Accused No.1/the Petitioner deceived the Complainant by providing four flats in Dream Heritage Building, Ulve, Navi Mumbai through false documents and the forged signature of Mr. Sundeep Bafna and government stamps.

(h) It is alleged that by deceiving the Complainant with regards to Dream Heritage Building at Ulve, Navi Mumbai and other various property, Accused No.1/the Petitioner and Accused No.2, have cheated the Complainant for an amount of Rs.7,67,35,233/-.

(i) It is stated that for the alleged incident the Complainant has filed an FIR No.1217/2024 with Kasarvadavali Police Station on 26.07.2024 for the offences punishable under Sections 420, 465, 467, 468, 120(B), 34 of the Indian Penal Code.

(j) It is submitted that the Petitioner had preferred an Anticipatory Bail Application on 25.07.2024 before the Learned Sessions Court at Thane. However, the said Application qua the present Petitioner became infructuous as he was arrested as per remand report on 16.08.2024 at 2.20 pm. That, on 16.08.2024 the said Anticipatory Application was posted for the final arguments.

(k) It is submitted by the Petitioner that he was produced before the Learned Magistrate, Thane on 17.08.2024 at 2.50 pm and was granted PCR time to time and on 22.08.2024, the Petitioner was granted MCR. It is further submitted that the Petitioner is presently in the judicial custody at Thane Central Prison.

5. The issues raised before this Court are set out below paragraph no.9, *inter-alia* stating that an FIR No.1217/2024 was registered with the Kasarwadwali Police Station on 26.07.2024, alleging commission of offences punishable under Sections 420, 465, 467, 468, 120(B) and 34 of the IPC.

6. The grounds in support of the prayer for issuance of the Writ of Habeas Corpus, that the arrest and detention be declared illegal, with a further prayer for release on bail, are set out in the averments below paragraph E (1) to (13), which are reproduced verbatim, in the backdrop of the contention of the Respondents that sufficient grounds have not been raised :

*1. It is submitted by the Petitioner that the aforesaid Petitioner came to be formally arrested by the EOW Thane City on 16.08.2024 at 2.20 PM, for the offences punishable under section 471, 468, 467, 465, 420, r/w 12B of the Indian Penal Code in connection with C.R. No.1217/2024. That the Petitioner was produced before the Ld. Magistrate on 17<sup>th</sup> August 2024 at 2.50 PM. It is submitted by the Petitioner that the intimation of arrest was not tendered to the Ld.*

*Magistrate on 16<sup>th</sup> August 2024 nor the grounds of arrest were furnished to the Petitioner on the same day at the time of arrest.*

*2. It is submitted by the Petitioner that the Anticipatory bail final hearing was posted on 16<sup>th</sup> August 2024. That on the same day of the final hearing of the Anticipatory Bail Application bearing No.1307/2024, the Petitioner was arrested from hotel Wayin Palanpur, State of Gujrat by the investigation agency in the morning at around 6:30 AM on 16<sup>th</sup> August 2024. That because of the unjustifiable arrest the Petitioner for the Anticipatory bail qua the Petitioner got infructuous. That the bare perusal of the remand report and the arrest memo, the formal arrest was shown on 16<sup>th</sup> August 2024 at 2.20 PM, the location of arrest was shown to be the EOW office Thane. That no individual who is trying to safeguard his liberty before the Ld. Session's Judge Thane would get himself arrest on the very same day of the final argument of the Anticipatory bail. That such malafied conduct of the Investigation machinery raises serious concern with regards to the neutral investigation which is supposed to be carried out. Annexure herein are the copies of all remand application and its orders. Marked as Annexure "B".*

*3. It is vehemently submitted by the Petitioner that the investigation machinery arrested the present Petitioner and bought him to Mumbai Via Indigo Flight bearing No.6E 533 from Ahmedabad to Mumbai which landed at 11:55 hours on 16<sup>th</sup> August 2024, It is pertinent to note that bare perusal of the station diary and the arrest memo, the formal arrest has been shown as EOW office Thane. Annexure herein is the copy of Indigo flight ticket of 6E 533 from Ahmedabad to Mumbai. Marked as Annexure "C".*

*4. It is vehemently submitted by the Petitioner that, bare perusal of the arrest memo and station*

*diary, there is absolutely no whisper of the said travel to Palanpur, Ahmadabad Gujrat via Flight and thereby the arrest of the Petitioner at the said spot and the petitioner was brought to Mumbai via indigo flight. It is further submitted by the Petitioner that there no mention of the prior requisition of traveling beyond jurisdiction via Flight, moreover, there is even absence of intimation given to the local Police Station of Palanpur from where the Petitioner has been arrested. It is pertinent to note that no TRANSIT REMAND was obtained from the local Magistrate of Palanpur, Gujrat. It is further submitted by the Petitioner that bare perusal of the arrest memo no grounds of arrest have been furnished to the Petitioner at the time of arrest. Annexure herein is the copy of the station diary and the arrest memo of the Petitioner. Marked as Annexure "D".*

*5. It is submitted by the Petitioner that bare perusal of the Chargesheet it can be perceived that no departmental permission were sought for such extra territorial jurisdiction travel. Moreover, the excerpt of station diary miserably lacks the details of the Petitioner time and place of arrest along with the grounds of arrest. It is pertinent to not that even after arresting the Petitioner the Investigating officer abstained from producing the Petitioner before this Hon'ble court on 16<sup>th</sup> August 2024. That investigation machinery have flouted the law laid down under section 50, 57 of the Criminal Procedure Code (47 & 58 of BNSS) and Article 22 of The Constitution of India. That such conduct of the Investigating officer has violated the basic fundamental right of the present Petitioner. That it was the duty of the investigation officer to produce the Petitioner before this Hon'ble JMFC court within 24 hrs of arrest. Moreover, the Petitioner was produced before the Ld. Magistrate on 17<sup>th</sup> August 2024 at 2.50 PM, which is nearly after 32 Hours of arrest/detention. That the arrest and the conduct of the investigation machinery is illegal and on that*

*ground itself the Petitioner may be released on bail forthwith.*

*6. It is submitted by the Petitioner that he was not informed about the grounds of arrest in writing as contemplated under section 50 of CRPC (sec 47 of the BNSS) and Article 22(1) of Constitution of India. It is vehemently submitted by the Petitioner that he was not produce before the concerned magistrate within the stipulated period of 24 hours as well as was not informed the grounds of arrest in writing. Further, the police machinery miserable failed to even inform the Magistrate about the arrest of the Petitioner and to get the sanction of the custody beyond 24 hours as contemplated under sec 167 of the Criminal Procedure Code (Sec 187 of BNSS). That it was the duty of the investigation officer to adhere to the provision of the code of Criminal Procedure. It is pertinent to note that there is breach of the Fundamental rights of the Petitioner as contemplated under article 22 of the constitution of India. That the right of being informed about the ground of arrest as well as to be produce before the magistrate within 24 hours are the statutory right of the Petitioner. That the liberty of the Petitioner was curtailed without following the due process of law and hence, it can be perceived that the said arrest was illegal.*

*7. It is submitted by the petitioner that the sec 57 pf the CRPC (sec 58 of the BNSS) state that “No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in absence of special order of magistrate under sec 167, exceed twenty-four hours exclusive of the time necessary form the place of arrest to the magistrate’s court”. Further the Article 22 of the Constitution of India states that “i. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds*

*for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice. ii. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of Twenty four hours of such arrest excluding the time necessary for the Journey from the Place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the Authority of magistrate”.*

*8. It is pertinent to note that this Hon’ble Court and the Hon’ble Supreme Court on numerous occasions have pointed out the fundamental right of being informed the furnishing of grounds of arrest in writing to the person who has been arrested by the legal authorities. That the Hon’ble courts even differentiated between the grounds of arrest, reasons of arrest and reasons for the remand. Moreover, the grounds of arrest shall contain the details of the case, the gist of the allegation, the evidence collected prior to the arrest and thereby the evidence leads to the prima facie case against the person who is being arrested. The importance of the furnishing of the ground of arrest have been enunciated by the Hon’ble Supreme Court in the case of Pankaj Bansal Vs Union of India, and in the recent judgment of Prabir Purkayastha Vs State (NCT of Delhi), 2024 SCC online 934. It is pertinent to note that this Hon’ble Court in the very recent Judgement of Hem Prabhakar Shah Vs State of Maharashtra (204NCBHC-AS-36016), this Hon’ble Court dealt extensively with the law laid down under section 50, 57 of the CrPC and Article 22 of the Constitution of India. That the Hon’ble Court has observed that the arrest of the person starts from the moment his freedom of action is curtailed by the authority. That it is constitutional mandate to produce the arrested/ custody person before the nearest Magistrate within 24 hours. If the machinery fails to adhere to the said constitutional mandate, then the said*

*arrest and remand would be declared to be illegal and the person shall be released from the custody.*

*9. It is further stated by the Petitioner that in catena of the judgment the Hon'ble Supreme Court and this Hon'ble Court has given emphasis on protecting the individual liberty and adherence to the laws and procedure prior to the curtailment of the liberty. That the Hon'ble Supreme Court in its latest Judgement of Arnesh Kumar Vs State of Bihar (2014) 9 SCC 273, It is stated in para 9 that an accused arrested without warrant by the police has the constitutional right under article 22(2) of the Constitution of India and section 57 of the Criminal Procedure Code to be produced before the magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorized by the magistrate in exercise of the power under section 167 CrPC. The detention is a very Solemn function. It affects the liberties and freedom of citizen and needs to be exercised with great care and caution. Our experience tells us that it is not exercise with the seriousness it deserves. In many other cases, detention is authorized in a routine, casual and cavalier manner before marriage detention under section 137 of CrPC. He has to be first satisfied that the arrest made is legal and in accordance with the law, and all the constitution rate of the person arrested is satisfied. Further, the Hon'ble Supreme Court in the case of Manoj Vs State of Madhya Pradesh Criminal Appeal No.371 of 1999 para 12 has stated that it is constitutional mandate that no person shall be deprived of liberty, except in accordance with the procedure established in law. Close to its heels, the constitution directs that the person arrested and detained in custody shall be produced before the nearest magistrate within 24 hours of such. The only time permitted by the article 22 of the Constitution of India to be*

*excluded from the state period of 24 hours is the time necessary for going from the place of arrest to the court of the magistrate and only under two contingencies can the set direction be obviated. One is when the person arrested is an enemy alien second is when the arrested person is under any law for preventive detention. In all other cases, the constitution has prohibited peremptorily that accused shall be detailed in custody beyond the said period without the authority of the magistrate. It is further stated by the petitioner that Hon'ble Supreme Court in its latest judgment Prabir Purkayastha Vs State of NCT of Delhi 2024 AIR Supreme Court 2967 laid down that the Communication of grounds of arrest to accused in writing it is a fundamental and statutory right of the an accused to be informed about the grounds of arrest in writing, grounds on which liberty of a citizen curtailed, must be communicated in writing so as to enable that individual to seek remedial measures against the deprivation of liberty. The purpose of the informing to the arrested person, the grounds of arrest is salutary and sacrosanct in as much as, this information would be the only effective means for the arrested person to consult his advocate, oppose the police custody demand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under article 22(1) of constitution of India. The right to life and personal liberty is the most sacrosanct fundamental right. Any attempt to encroach upon this fundamental right has been frowned upon right to be informed about the grounds of arrest flows from the article 22(1) of the Constitution of India, and any infringement of this fundamental right would vitiate the illegality and the unconstitutionality committed at the time of arresting accused and the grant of initial police custody remand to the accused. It is further differential by the Hon'ble Supreme Court with regards to the phrase reasons for arrest and grounds of arrest the reason of arrest as indicated*

*in the memo or purely formal parameters whereas the grounds of arrest would be required to contain all such details in hand of the investigation officer, which necessitated the arrest of the accused, thus the grounds of arrest would in variably, be personal to the accused, and cannot be acquitted with the reason of arrest which are general in nature. That his Hon'ble Court in case of Mahesh Pandurang Naik vs State of Maharashtra AIR Online 2024 BOM 1240 declared the arrest to be illegal as it was not compliant with the Article 22(1) and sec 50 of CrPC. Further it can be perceived that such non compliance of the aforementioned section would amount to the gross violation of fundamental rights of the accused. Considering the said facts and circumstances this Hon'ble Court was pleased to released the accused from the custody.*

*10. It is submitted by the Petitioner that on numerous occasions the petitioner has raised the contention of his illegal arrest before the Ld. JMFC, Thane during the stage of remand of the Petitioner on 17<sup>th</sup> August 2024. However, the Ld. Magistrate failed to consider the said fact during the said remand order, further, the same issue was raised before the Ld. Magistrate prior to the filing of the chargesheet the same was not considered during the passing of the impugned order of bail.*

*11. It is submitted by the Petitioner that the act of the investigation machinery and the Ld. JMFC Thane has resulted in severe miscarriage of justice on that ground itself the petitioner ought to have released from the custody.*

*12. It is submitted by the Petitioner that the Ld. Magistrate ought to have considered the date, time, place of arrest, which forms the pre-requisite to the sanction for the remand of the Petitioner. Further, it was the prime responsibility of the Ld. Magistrate supervise the legal compliance which ought to have followed by the*

*investigation machinery prior to the curtailment of the individual liberty. That the Ld. Magistrate miserably failed to safeguard the fundamental rights of the Petitioner. That considering the aspects of the infringement of arrest the Ld. Magistrate ought to have released the Petitioner from the custody forthwith.*

*13. It is submitted by the Petitioner that the said illegality have been mentioned before the Ld. Magistrate Thane during the course of bail argument. However, the said illegality was not considered and the bail was rejected by the Ld. Magistrate.*

### **ANALYSIS OF THE PLEADINGS AND SUBMISSIONS**

7. Considering the strenuous submissions of the learned APP for the State, as well as the learned Senior Advocate Shri Kadam for the first Informant, we have perused the case diary. The specific reason for us to go through the case diary is in the backdrop of the controversy revolving around the timing as to when was the Petitioner taken into custody and/or when was he actually arrested and produced before the Court.

8. The Petitioner has invoked the Writ of Habeas Corpus under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 (presently Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023).

9. It is the case of the Police Department that the Petitioner was arrested on 16.08.2024 at 14:20 hrs. Thereafter, he was conveyed six reasons for his arrest. He was produced before the concerned Magistrate at 1.15 PM, on 17.08.2024. Here also lies a dispute as regards the timing of the presentation of the Petitioner before the Magistrate. The order of the Magistrate indicates the production at 14:50 hrs. and the Police authorities claim that he was brought inside the Court at 1.15 PM, which is hand-written on the form.

10. The case diary pertaining to FIR No.1217/2024 indicates that the Police Officer, namely, Ashok Shendage had received information that the Petitioner/Accused was hiding in Palanpur, Gujarat. Accompanied by the police personnel, namely, Mandar Lad, Nilesh Kanade and Nitin Ovalekar, the team travelled by IndiGo Flight No.6E 5243 on 16.08.2024 and landed at the Ahmedabad Airport at 02:25 hrs. (2.25 AM). From the Airport, they travelled to 'Hotel Way Wait' in Palanpur via the bypass road. The distance was around 145 kms. and they reached the Hotel at around 06:30 hrs. They took assistance of the constables from the Local Crime Branch, namely, Shri Alpesh Kumar and Shri Chirag Singh and intercepted the Petitioner at 07:00 hrs. on 16.08.2024.

At 07:00 hrs., the Petitioner was taken into custody, is the specific noting in the case diary.

11. The whole case turns upon the aspect of the specific timing of taking the Petitioner into custody. This issue assumes importance in the light of the judgments cited before us, which we would be adverting to in the later portion of this judgment. On page no.51 of the case diary, it has been recorded that the Police team first verified whether the Petitioner was hiding in the said Hotel. After confirming his identity, he was taken into custody (in marathi: *taabyat ghetle*). He was then taken by a vehicle to Ahmedabad. They boarded the flight taking the Petitioner with the team from Mumbai, and they landed at the Mumbai airport around 12 noon. He was taken to the EOW office and was arrested at 14:20 hrs. He was informed of the reasons for arrest. Thereafter, he was taken for a medical examination and then was kept overnight in the Police lock-up.

12. On page no.53 of the case diary, it has been recorded that the arrest of the Petitioner was conveyed to his brother Deepak on the mobile numbers recorded therein. For security reasons, after the arrested Petitioner was subjected to a medical examination, he

was put in the Thane Nagar Police Station lock-up, till 17.08.2024. The Investigating Officer, who is present in the Court, confirms that this was done on 16.08.2024 itself.

13. The remand papers placed before us indicate that the Petitioner was produced before the concerned Magistrate at 1.15 PM on 17.08.2024, which is written in hand writing. The learned Magistrate, who has passed an order on 17.08.2024, granting police custody remand of the Petitioner until 19.08.2024, has recorded in paragraph no.1 of the order that the Petitioner was produced before him at 2.50 PM by the ASI Ashok Shendage. His statement was recorded that the Accused was brought to the Court at about 1.15 PM and that he has been produced within the prescribed time of 24 hrs.

14. The learned APP for the State and the learned Senior Advocate for the Informant, have contended that the Petitioner was arrested at 14:20 hrs. on 16.08.2024. The Magistrate has, however, recorded in paragraph no.3 of the said order that he was arrested at 7.00 AM in the said Hotel at Palanpur, on 16.08.2024.

15. It is brought to our notice that the air ticket of IndiGo airlines, to bring the Petitioner from Palanpur via Ahmedabad to Mumbai, was purchased at 2.07 AM on 16.08.2024. The ticket indicates the flight number as 6E 533 (A320), traveling from Ahmedabad to Mumbai at 10:45 hrs. to reach Mumbai at 11:55 hrs.

16. The affidavit in reply filed by the Investigating Officer Shri Ashok Shendage, dated 03.02.2025, contains an averment that the fundamental right of the Petitioner under Article 22(2) has not been violated. After registration of the FIR, the Petitioner was arrested on 16.08.2024. The Petitioner was granted PCR. He filed a regular Bail Application, which was rejected by an order dated 04.09.2024. The chargesheet has been filed on 08.11.2024. The second Bail Application was rejected on 19.12.2024.

17. In paragraph nos.11 to 14 of the affidavit in reply, it is stated that after receiving credible information about the whereabouts of the Petitioner, the Police team had reached the spot on 16.08.2024 and left Hotel Way Wait at around 7.00 AM along with the Petitioner and reached the Ahmedabad Airport around 9.15 AM. Thereafter, they have boarded the flight and reached Mumbai at around 12 noon. The Petitioner was taken to the office of

the Economic Offence Wing (EOW), Thane at around 1.15 PM. He was apprised of his rights and the grounds for arrest, in writing and after obtaining his signature, he was placed under arrest at 14:20 hrs. In paragraph no.17, it is averred that the Petitioner was produced before the Trial Court at 1.15 PM on 17.08.2024. In paragraph no.20, it is reiterated, that the fundamental right of the Petitioner under Article 22 has not been violated.

18. The learned Senior Advocate Shri Kadam representing the Informant, has adverted to the contentions set out in the Intervention Application. It is canvassed that two Bail Applications of the Petitioner were rejected by the Trial Court. One application is pending before the Sessions Court. Considering the law laid down by the Hon'ble Supreme Court in *State of Maharashtra and Ors. v/s. Tasneem Rizwan Siddiquee*<sup>1</sup>, if the person is in police custody pursuant to the remand order passed by the jurisdictional Magistrate, a Petition invoking the Writ of Habeas Corpus, is not maintainable. In the said backdrop of the pleadings, it is prayed that the Writ Petition be dismissed.

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1 2018 (9) SCC 745

**WHETHER THE PETITIONER IS IN CUSTODY BEYOND 24 HOURS**

19. We would deal with the first issue of whether the Petitioner was taken into custody at 7.00 AM on 16.08.2024 or at 2.20 PM on the said date, and confined in custody beyond 24 hrs. We do not find that this issue could be disputed anymore after perusing the records of the case. In ***Vihaan Kumar v/s. The State of Haryana and Anr.***, the Hon'ble Supreme Court had delivered a judgment on 07.02.2025 in Criminal Appeal No.621 of 2025, in similar circumstances.

20. In ***Niranjan Singh and Anr. v/s. Prabhakar Rajaram Kharote and Ors.***<sup>2</sup>, it was concluded in paragraph nos.7, 8 and 9 as under :

*7. When is a person in custody, within the meaning of s.439 Cr. P.C. ? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of s. 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The*

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<sup>2</sup> 1980 2 SCC 559

*equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties, are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.*

*8. Custody, in the context of s. 439, (we are not, be it noted, dealing with anticipatory bail under s.438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.*

*9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can, be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and maybe, enabled the accused persons to circumvent the principle of s. 439 Cr.P.C. We might have taken a serious view of such a course, indifferent to mandatory provisions by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions*

*subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but sitting under Art. 136 do not feel that we should interfere with a discretion exercised by the two courts below.*

21. It is, thus, long standing law that a person is deemed to be in custody within the meaning of Section 439 of the Criminal Procedure Code, after the investigating agency or other Police or allied authority has held him or is under the control of the Court having been remanded by a judicial order or having offered himself to the Court's jurisdiction. The case diary in no uncertain words clearly mentions in Marathi language that the Petitioner was taken into custody by the Investigating Officer with the help of the Local Crime Branch Police Constables and the team accompanying him, from Mumbai. Dealing with such situation, the Hon'ble Supreme Court observes in paragraph no.7 that "*The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties, are unfair evasions of the*

*straightforwardness of the law*".

22. In *Directorate of Enforcement v/s. Subhash Sharma*, the Hon'ble Supreme Court delivered its judgment on 21.01.2025, in Criminal Appeal No.310 of 2025. The arrest of the Accused was under the Prevention of Money Laundering Act, 2002. The grievance raised by the Accused before the High Court was that the arrest is deemed to be illegal as he was not produced before the Magistrate within 24 hrs. thereby impinging his fundamental rights under Articles 21 and 22(2). The High Court concluded that the continuation of the Accused in the custody without production before the Magistrate within 24 hrs., is unconstitutional. Referring to Section 57 of the Criminal Procedure Code, the High Court concluded that the said provision would apply even to offences punishable under the provisions of the Prevention of Money Laundering Act, 2002 and that the requirement to produce the arrested individual before a Magistrate within 24 hrs., is mandatory.

23. The Hon'ble Supreme Court upheld the view taken by the High Court of Chhatisgarh, by recording in paragraph nos.5, 6, 7, 8 and 9, as under :

*5. The submission of the learned counsel*

*appearing for the appellant is that pursuant to the Look Out Circular (for short, 'the LOC') issued against the respondent, he was detained at IGI Airport from 11.00 hours, on 5<sup>th</sup> March, 2022. But he was shown as arrested at 01.15 hours on 6<sup>th</sup> March, 2022 by the appellant Enforcement Directorate and was produced before the Court of the learned Magistrate within 24 hours from 1.15 hours on 6<sup>th</sup> March, 2022.*

*6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant - Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4<sup>th</sup> March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5<sup>th</sup> March, 2022. Thereafter, at 1.15 hours on 6<sup>th</sup> March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6<sup>th</sup> March, 2024. The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5<sup>th</sup> March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has*

*been violated.*

*7. The requirement of clause 2 of Article 22 has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C). There is no inconsistency between the provisions of the PMLA and Section 57 of Cr.P.C. Hence, by virtue of Section 65 of the PMLA, Section 57 of the Cr.P.C applies to the proceedings under the PMLA.*

*8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.*

*9. Therefore, when arrest is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA.*

24. The facts appearing in *Subhash Sharma* (Supra) are quite similar to those before us. The Director of Enforcement had issued a Look Out Circular and detained the Accused at 11:00 hrs. on 05.03.2022 at the IGI Airport. He was shown to be arrested at 01:15 hrs. on 06.03.2022. He was produced before the Magistrate within 24 hrs. from the actual date and time of arrest.

25. The High Court had negated the said contention and so did the Hon'ble Supreme Court. It was concluded that the Accused was detained by the Appellant on 04.03.2022 at the IGI Airport. He was not allowed to move. His custody was taken at 11:00 hrs. on 05.03.2022 and arrest memo was prepared at 01:15 hrs. on 06.03.2022 and produced before the Court at 3.00 PM on the said date. The conclusion drawn by the Hon'ble Supreme Court is that the Accused was not produced before the nearest learned Magistrate within 24 hrs. Hence, the arrest was held to be completely illegal in view of clause 2 of Article 22 having been violated.

26. In the case in hands, at the cost of repetition, the record clearly indicates that the Petitioner was taken into custody at 7.00 AM on 16.08.2024. He could have been produced before the nearest learned Magistrate and a transit remand could have been obtained. Nevertheless, the Accused was taken by the Police team in a vehicle to Ahmedabad and they flew to Mumbai, admittedly landing at 12 noon on 16.08.2024. He was taken to the office of the EOW. He was medically examined on the same day and lodged in the lock-up. He was purportedly produced at 1.15 PM, on 17.08.2024 and was actually presented before the Magistrate at 2.50 PM. It is also stated that the Court is at a distance of 500 meters

from the office of the EOW. Considering the law laid down by the Hon'ble Supreme Court in *Niranjan Singh* (Supra) and *Subhash Sharma* (Supra), the fundamental right of the Petitioner under Article 22 read with clause 2, and the protection under Article 21, has been violated.

### **REASONS FOR ARREST**

27. It is not the case of the Police authorities that after the Petitioner was taken into custody at 7.00 AM on 16.08.2024, he was apprised of the reasons for arrest. The narration in the case diary is that the Police team verified that it was the same Accused, in search of whom, the team had reached Palanpur. Once his identity was verified and the Police team confirmed that he is Accused No.1, he was taken into custody (ताब्यात घेतले) as per the narration in the case diary.

### **TIME TO BE EXCLUDED U/S 58 OF BNSS**

28. It has been argued by the learned Senior Advocate on behalf of the Informant, as well as by the learned APP, that the time required for the transportation of the Accused to the Court of the concerned Magistrate in Mumbai and for the medical examination,

will have to be excused in the light of Section 58 of the Bharatiya Nagarik Suraksha Sanhita.

Section 58 reads as under :

*58. Person arrested not to be detained more than twenty-four hours. - No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.*

29. Even if the aforesaid submission is taken at its best, there has to be a reasonable link and proximity between the taking over of the custody of the Petitioner, his medical examination and production before the Magistrate. In short, the journey to be undertaken from the place of arrest to the Magistrate's Court, whether having jurisdiction or not, should be direct without being interjected by events not covered by Section 58. In the instant case, the distance between the place of arrest and the Court, is 500 meters.

30. If the aforesaid contention is to be accepted, it would mean that the time beginning from 7.00 AM, when the Petitioner was taken into custody on 16.08.2024, inclusive of the journey by air to the office of the EOW in Mumbai, the medical examination,

his overnight confinement in the lock-up and then production at 1.15 PM before the Magistrate on 17.08.2024, will have to be excused. This submission is palpably fallacious. If such submission is to be accepted, an Accused could be detained even beyond 24 hrs. with the justification on the spacious plea that the entire time required for the journey, interjected with several events up to the Court of the Magistrate, will have to be excluded. Such submission could be accepted if there is a close connection and proximity between the arrest, movement to the medical facility for medical examination and further movement to the Court of the Magistrate.

31. In the case in hands, the journey of the Petitioner, in custody of the Police, from Palanpur to Ahmedabad to Mumbai, was followed with the Police team taking him to the office of the EOW where he was detained and shown to be arrested at 2.20 PM. There is no explanation as regards the transportation of the Petitioner, after medical examination, for an overnight stay in the lock-up, only to be produced in the Court of the Magistrate, at 1.15 PM, on 17.08.2024. In the light of the above facts, the violation of Article 22(2) is writ large. Section 58 does not contemplate the exclusion of the time required for such a journey, interjected with several events, while computing the time of 24 hrs.

## WRIT OF HABEAS CORPUS

32. The learned APP and the learned Senior Advocate Shri Kadam, have strenuously contended that the Petitioner himself cannot approach the High Court invoking the Writ of Habeas Corpus and more so, after the Magistrate has granted a remand order. Reliance is placed on the judgment delivered by this Court in the matter of *Naresh Goyal v/s. Directorate of Enforcement and Ors.*<sup>3</sup> Our attention is specifically drawn to paragraph nos.2, 11, 12, 14, 15, 19 and 20, which read thus :

*“2. It is pertinent to note that the aforesaid petition has been placed before us as per the Roster, only in view of prayer clause (a) i.e. writ of habeas corpus. If prayer clause (a) which is the principal prayer, cannot be entertained, as being not maintainable in the facts, the question of entertaining rest of the prayers, would not arise. Hence, we proceed to consider whether the aforesaid petition seeking a writ of habeas corpus would be maintainable in the facts.*

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*11. In Ram Narayan Singh (supra), the Apex Court has observed that a writ of habeas corpus is with respect to legality of detention at the time of return of rule and not to the date of institution and that if on the date of return i.e. the return of the rule, the detention is not illegal and is duly authorised by a Competent Magistrate by remand orders then the writ of habeas corpus will not lie. In this context, it*

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<sup>3</sup> 2023 SCC OnLine Bom. 2446

would be apposite to reproduce the relevant paragraph i.e. para 4 which reads thus :

*“4. It has been held by this Court that in habeas corpus proceedings, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. The material date on the facts of this case is the 10th March, when the affidavit on behalf of the Government was filed justifying the detention as a lawful one. But the position, as we have stated, is that on that date there was no order remanding the four persons to custody. This Court has often reiterated before that those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of the law. That has not been done in this case. The petitioners now before us are therefore entitled to be released, and they are set at liberty forthwith.”*

*(Emphasis supplied)*

*12. In Madhu Limaye, In RE MANU/SC/0047/1968: 1969 (1) SCC 292, the issue raised in the said petition pertained to non-compliance of the provisions of Article 22(1) of the Constitution. The Apex Court observed that the law as laid down in Ram Narayan Singh (supra), was that the Court must have regard to the legality or otherwise of the detention at the time of return. The relevant para reads thus :*

*“11. It remains to be seen whether any proper cause has been shown in the return for declining the prayer of Madhu Limaye and other arrested persons for releasing them on the ground that there was non-compliance with the provisions of Article 22(1) of the Constitution. In Ram Narayan*

*Singh's case, it was laid down that the court must have regard to the legality or otherwise of the detention at the time of the return. In the present case the return, dated November 20, 1968, was filed before the date of the first hearing after the rule nisi had been issued. The return, as already observed, does not contain any information as to when and by whom Madhu Limaye and other arrested persons were informed of the grounds for their arrest. It has not been contended on behalf of the State that the circumstances were such that the arrested persons must have known the general nature of the alleged offences for which they had been arrested; vide Proposition 3 in *Christie v. Leachinsky* ((1947) 1 All ELR 567). Nor has it been suggested that the show cause notices which were issued on November 11, 1968, satisfied the constitutional requirement. Madhu Limaye and others are, therefore, entitled to be released on this ground alone.”*

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14. In *Sanjay Dutt v. State* MANU/ SC/ 0554/1994: 1994 (5) SCC 410, the Apex Court in para 48 observed as under :

**“48.....It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See *Naranjan Singh Nathawan v. State of Punjab*, MANU/SC/ 0073/1952:[1952] SCR 395; *Ram Narayan Singh v. The State of Delhi*, MANU/SC/0035/1953: [1953] SCR 652 and**

***A.K. Gopalan v. Government of India, MANU/SC/0091/1965: [1966] 2 SCR 427.***”

*(Emphasis supplied)*

15. *In Manubhai R.P. (supra), the Apex Court in para 31 has observed as under :*

*“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 of the High Court regarding stay of investigation could only have 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 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 (supra) and Kanu Sanyal (supra), the***

*court is required to scrutinize 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.”*

*(Emphasis supplied)*

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*19. Reliance was placed on the Apex Court judgment in V. Senthil Balaji (supra) by both, Mr. Amit Desai and Mr. Venegavkar. In the context of the facts in hand, the relevant paras of the said judgment, with which we are concerned, are being reproduced herein-under i.e. paras 29, 30, 31, 88, 89 and 95.*

*“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 non-compliance of the mandatory provisions along with a 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.**

30. In a case where the mandate of Section 167 of the CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of Habeas Corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India, 1950. **There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of Habeas Corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given.** In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the Court as mandated under sub-section (3), since it becomes a judicial custody thereafter and the concerned Court would be in a better position to consider due compliance.”

“ 31. .... Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate.....”

*“88. We shall first consider the maintainability of the writ petition filed. A writ of Habeas Corpus was moved questioning the arrest made. When it was taken up for hearing on a mentioning, the next day by the Court, the appellant was duly produced before the learned Principal Sessions Judge in compliance with Section 19 of the PMLA, 2002. The custody thus becomes judicial as he was duly forwarded by the respondents. Therefore, even on the date of hearing before the High Court there was no cause for filing the Writ Petition being HCP No. 1021 of 2023. Added to that, an order of remand was passed on 14.06.2023 itself. The two remand orders passed by the Court, as recorded in the preceding paragraphs, depict a clear application of mind. Despite additional grounds having been raised, they being an afterthought, we have no hesitation in holding that the only remedy open to the appellant is to approach the appropriate Court under the Statute. This was obviously not done. We may also note that the appellant was very conscious about his rights and that is the reason why, by way of an application he even opposed the remand.*

*89. Despite our conclusion that the writ petition is not maintainable, we would like to go further in view of the extensive arguments made by the learned Senior Advocates appearing for the appellant. As rightly contended by the learned Solicitor General the scheme and object of the PMLA, 2002 being a sui generis legislation is distinct.*

*Though we do not wish to elaborate any further, we find adequate compliance of Section 19 of the PMLA, 2002 which contemplates a rigorous procedure 6 ptbefore making an arrest. The learned Principal Sessions Judge did take note of the said fact by passing a reasoned order. The appellant was accordingly produced before the Court and while he was in its custody, a judicial remand was made. As it is a reasoned and speaking order, the appellant ought to have questioned it before the appropriate forum. We are only concerned with the remand in favour of the respondents. Therefore, even on that ground we do hold that a writ of Habeas Corpus is not maintainable as the arrest and custody have already been upheld by way of rejection of the bail application.”*

*“95. SUMMATION OF LAW :*

*i. When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002 no writ of Habeas Corpus would lie. Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.*

*ii. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non-compliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002.*

*.....”*

*(emphasis supplied)*

*In paragraph 95 clause (i) of V. Senthil Balaji (supra), the Apex Court has held that when an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002, no writ of habeas corpus would lie and that any plea of illegal arrest is to be made before such Magistrate, since custody becomes judicial. Thus, having regard to the aforesaid legal position, it is clearly evident that a writ of habeas corpus cannot be issued in the facts of the present case. Once it is brought to the notice of the writ Court that the person, at the time of filing of the aforesaid petition, was in judicial custody, the custody having been granted by a Court of Competent jurisdiction, then the writ of habeas corpus cannot be entertained, ofcourse, subject to certain exceptions as spelt out in the judgments aforesaid. As noted by us, admittedly, none of the grounds i.e. non-handing over of a copy of the grounds of arrest, illegality of petitioner's arrest, non-production before the competent court within 24 hours, were ever raised, at the time of the 1<sup>st</sup> or 2<sup>nd</sup> remand of the petitioner. Both the remand orders i.e. dated 2<sup>nd</sup> September 2023 and 11<sup>th</sup> September 2023 are detailed reasoned remand orders, and do not show that any arguments were advanced by the learned counsel for the petitioner, at the first available opportunity with respect to illegality of arrest, non-handing over of the copy of the grounds of arrest or non-production within 24 hours before the competent Court. The case in hand, does not fall under any exception, and consequently, the relief as sought for cannot be granted. Although, Mr. Desai placed heavy reliance on Madhu Limaye (supra), to buttress his submission that it is*

*well possible to entertain a writ of habeas corpus, if the remand orders are patently routine and appear to have been made mechanically and that if the detention in custody cannot continue after arrest, because of the violation of Article 22(1) of the Constitution, the person is entitled to be released forthwith, inasmuch as, the orders of remand are not such, as could cure the constitutional infirmities, we are afraid the same would not apply to the present case. The ratio laid down in Madhu Limaye's case (supra), cannot be disputed, however, the same would not apply to the petitioner's case, as the facts in hand, are clearly distinguishable, from the facts in Madhu Limaye's case (supra).*

*20. As noted, at the outset, in para 2, we are restricting ourselves only to prayer clause (a), i.e. prayer seeking a writ of habeas corpus, by virtue of which, the petition is placed before us. It is also pertinent to note, that the competence and jurisdiction of the Enforcement Directorate and of the learned Special Judge, PMLA respectively, have not been challenged. A few dates which are relevant to decide the issue, are as under :*

*On 1<sup>st</sup> September 2023, the petitioner's statement was recorded at his residence and after his statement was recorded, the petitioner was flown to Mumbai from Delhi and was arrested at 10:50 p.m. According to the prosecution, the grounds of arrest were served upon him and that the petitioner has acknowledged having received the same, by affixing his signature thereon.*

*On 2<sup>nd</sup> September 2023, the petitioner was produced before the Special Court at about 1:30 p.m. and the Special Court granted custody of 9 days to the Enforcement Directorate.*

*On 11<sup>th</sup> September 2023, in the second remand, further 4 days' custody was granted to the Enforcement Directorate.*

*On 14<sup>th</sup> September 2023, on the date of the third remand, the petitioner was sent to judicial custody.*

*On 15<sup>th</sup> September 2023, the aforesaid petition was filed.*

*On 20<sup>th</sup> September 2023, the petition appeared before this Court, for the first time (petitioner was at the relevant time, in judicial custody). Accordingly, we formally issued notice to the Enforcement Directorate. On the said date, Mr. Venegavkar appearing for the Enforcement Directorate sought time to file their reply.*

*In the meantime, i.e. on 27<sup>th</sup> September 2023, 4<sup>th</sup> October 2023, the Special Court extended the judicial custody of the petitioner, on the said dates and has continued to do so, till date.*

*Admittedly, none of the remand orders, post filing of the petition have been challenged before us, as according to Mr. Desai, the arrest and first and second remand orders itself being illegal, subsequent orders are not required to be challenged.*

*On 6<sup>th</sup> October 2023, the petitioner was directed to amend the cause title of the petition in view of the objection raised by Mr. Venegavkar, since the petition, filed as a writ of habeas corpus, was not supported by any affidavit or statement on oath. Accordingly, amendment was carried out.*

*On 11<sup>th</sup> October 2023, the respondent-Enforcement Directorate filed their affidavit-in-reply.*

*On 12<sup>th</sup> October 2023, the affidavit-in-reply was placed before the Court (date of return of rule). It is not in dispute that on the returnable date i.e. 12<sup>th</sup> October 2023, the petitioner was in judicial custody of the Competent Court. It is also not in dispute that prior to the filing of the present petition and even post, several orders have been passed by the Competent Court extending judicial custody of the petitioner from time to time.*

[Emphasis supplied]

33. We have already concluded that the detention/restraintment of the Petitioner in the custody of the Police authorities beyond 24 hrs., considering the effect of Section 58, amounts to illegal detention and Article 22(2) has been violated. We do not find that the above admitted dates and events, in the backdrop of the analysis of law, would support the contentions of the State and the Informant. It is settled law that an individual, in such peculiar circumstances, can file a Petition invoking the Writ of

Habeas Corpus.

34. While dealing with the case of *Naresh Goyal* (Supra), this Court specifically observed in paragraph no.21 that the prayer for issuance of a Writ of Habeas Corpus is not being entertained since the Petitioner had not raised the ground that his detention was beyond 24 hrs., while assailing his arrest. It would be apposite to reproduce paragraph no.21 from *Naresh Goyal* (Supra), hereunder :

*21. At this juncture, at the cost of repetition, it is pertinent to note that the submissions that **the petitioner's arrest was illegal, that the grounds of arrest were not furnished to him; and that his detention was beyond 24 hours, were never raised by the petitioner or his counsel, both, at the time of the first remand as well as the second remand i.e. on 2<sup>nd</sup> September 2023 and 11<sup>th</sup> September 2023** and the same has also not been disputed by the learned senior counsel for the petitioner. It is also not in dispute, that as far as supply of the grounds of arrest i.e. physical copy is concerned, the same was raised by the learned senior counsel for the petitioner, having regard to the latest judgment of the Apex Court in *Pankaj Bansal* (supra) delivered on 3<sup>rd</sup> October 2023, post filing of the aforesaid petition.*

[Emphasis supplied]

35. So also, the judgment of the Hon'ble Supreme Court in *Pankaj Bansal v/s. Union of India and Ors.*<sup>4</sup> would support the Petitioner since it has mandated that a copy of the written grounds

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of arrest should be furnished to an arrested person without an exception. The State has been unable to point out, inasmuch as, the case diary clearly indicates that when the Petitioner's custody was taken at 7.00 AM on 16.08.2024, a formal arrest was not shown and he was not informed of the grounds for arrest, even orally, much less in writing.

36. The Hon'ble Supreme Court (5 Judges Bench) has dealt with illegal detention and failure to produce a detainee before the Magistrate within 24 hrs. of his arrest, in ***Gunupati Keshavram Reddy v/s. Nafisul Hasan and Anr.***<sup>5</sup> and observed in it's short judgment, as under :

*This is an application under Article 32 of the Constitution of India complaining that one Shri Homi Dinshaw Mistry is under illegal detention and praying that he be released forthwith. The petition alleges that Shri Mistry was arrested in Bombay on 11-3-1952 and taken in custody to Lucknow to be produced before the Speaker of the Uttar Pradesh Legislative Assembly to answer a charge of breach of privilege. It is further alleged that Shri Mistry was not produced before a Magistrate within twenty-four hours of his arrest; but is still kept in detention in the Speaker's custody at Lucknow. The Attorney General admits before us that this allegation is well founded, that is to say, that since his arrest on the 11<sup>th</sup> March, Shri Mistry has not been produced before a Magistrate; but is still detained in custody. This is a clear breach of the*

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<sup>5</sup> (1952) 1 SCC 343

*provisions of Article 22(2) of the Constitution of India which is quite peremptory in its terms:*

*“22. (2)... no such person shall be detained in custody beyond the said period without the authority of a Magistrate.”*

*2. In view of the admitted facts it is perfectly clear that this provision of the Constitution has been contravened and the said Mr Mistry is entitled to his release. The habeas corpus petition therefore succeeds and we direct that Mr Mistry be released forthwith. (Order communicated by telegram at the expense of the petitioner.)*

37. In ***Sagar Maruti Suryawanshi v/s. State of Maharashtra and Anr.*** (Criminal Writ Petition No.1101 of 2024) this Court ruled in its judgment dated 29.04.2024, more specifically in paragraph no.9, that the question of issuance of Writ of Habeas Corpus would arise only in the event of the Petitioner’s detention being found to be illegal as held in ***V. Senthil Balaji v/s. State***<sup>6</sup>.

38. In ***Tasneem Rizwan Siddiquee*** (Supra), the Accused Rizwan was apprehended while destroying evidence from his mobile phone as well as from his laptop. Therefore, the Investigating Officer took a conscious decision to arrest him by taking assistance from the nearest Versova Police Station. After his arrest, he was produced before the jurisdictional Magistrate within the statutory period of 24 hrs. Hence, the Hon’ble Supreme Court

<sup>6</sup> (2024) 3 SCC 51

concluded that a Writ of Habeas Corpus was not maintainable. In *Niranjan Singh* (Supra) and *Subhash Sharma* (Supra), the Hon'ble Supreme Court noted that the Accused was not produced before the jurisdictional Magistrate within 24 hrs. and, hence, it was ruled that a Writ of Habeas Corpus was tenable before the High Court.

39. In view of the law laid down by the Hon'ble Supreme Court in *Gunupati Keshavram Reddy* (Supra) and *Subhash Sharma* (Supra), the detention of the Petitioner at 7.00 AM as on 16.08.2024, is held to be illegal and vitiated in view of the completion of 24 hrs. in custody thereby violating his fundamental right to liberty guaranteed under Article 21 of the Constitution of India. **This Petition invoking the Writ of Habeas Corpus, is allowed.**

40. **Rule is made absolute in the above terms.**

41. We make it clear that our observations made, and conclusions drawn in this judgment are with reference to the detention of the Petitioner and would not influence the Trial Court or affect the merits of the case.

42. At this juncture, when the dictation of this judgment in the open Court was concluded at 4.45 PM, the learned Advocate for the Informant prayed for a stay to this judgment.

43. The learned Advocate for the Petitioner submits that when bail is granted, even an order of bail is normally not stayed, more so, on the request of the Informant. The Petitioner is behind the bars since 16.08.2024, the investigation is complete and the chargesheet has been tendered on 08.11.2024 and hence, the release of the Petitioner would in no way affect the trial. He also assures that the Petitioner will never attempt to influence any witnesses or tamper with evidence.

44. In view of the above and having concluded that the detention of the Petitioner continued beyond 24 hrs., is violative of Article 22(2), that we decline to stay this judgment.

45. The original case diary is returned to the learned APP.

46. Considering the above, the Thane Central Prison Authority shall act in furtherance of this order.

47. **Both the Interim Applications stand disposed off.**

**(ASHWIN D. BHOBE, J.)**

**(RAVINDRA V. GHUGE, J.)**