



IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
THE HON’BLE CHIEF JUSTICE MR. G. NARENDAR
AND
THE HON’BLE JUSTICE MR. ALOK MAHRA

Habeas Corpus No.20 of 2025
9th July, 2025

Subodh Shukla --Petitioner

Versus

State of Uttarakhand and Others --Respondents

Presence:-
Mr. Arvind Vashistha, learned Senior Counsel assisted by Mr. Gaurav Singh, learned counsel for the petitioner.
Mr. J. S. Virk, learned DAG along with Mr. Rakesh Joshi, learned Brief Holder for the State.

JUDGMENT : (per Mr. G. Narendar, C. J.)

Heard learned Senior Counsel for the petitioner and learned DAG for the State.

2. The facts, in brief, are that on 25.05.2025, the petitioner was caught red-handed pursuant to a trap by the Vigilance Sector, Haldwani, after he had received a sum of ₹50,000/- from the complainant as bribe and it is alleged that the bribe was demanded for discharging his official duties.



3. Be that as it may, the core contention is that the order, extending the remand of the petitioner on 09.06.2025, is per se illegal and, hence, the petition be allowed and petitioner be enlarged from custody.

4. The complaint against the petitioner came to be registered as FIR No.05 of 2025, for offence punishable under Section 7 of the Prevention of Corruption Act, 1988. The order of first remand was passed on 25.05.2025 i.e. the day he was arrested, on which day, he was remanded to judicial custody; that, on 27.05.2025, the articles seized during the entrapment were produced before the Court and the petitioner was sent to judicial custody i.e. from 27.05.2025 to 09.06.2025.

5. While so, on 02.06.2025, an application came to be moved by the prosecution on behalf of the I.O. and, under the said application, permission of the court was sought for taking the voice sample of the accused Subodh Shukla in furtherance of the investigation; that, the Director of FSL, Dehradun fixed the date for recording of voice sample on 09.06.2025, incidentally, the date on which the accused was required to be presented for extension of remand. The Court, by order



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dated 02.06.2025, permitted the I.O. to take the accused to the FSL, Dehradun for obtaining voice sample. The order dated 02.06.2025 has a bearing on the instant petition and the same reads as under:-

“Dated 02.06.2025

In the said case, an application has been submitted by the prosecution on behalf of Mr. Vinod Kumar Yadav, Inspector/Investigating officer, Vigilance Sector Nainital, to the effect that the voice sample of the accused Subodh Shukla is to be taken in the said case, for which the date of 09.06.2025 has been fixed by the Joint Director Forensic Science proceedings of the said voice sample, the Superintendent Sub Jail Haldwani should be directed to present the accused in the Forensic Science Laboratory Uttarakhand Dehradun 09.06.2025 with 02-02 photographs and photocopies of Aadhar card.

2. The investigating officer has submitted a copy of the letter dated 22.05.2025 of the Forensic Science Laboratory, Uttarakhand, Dehradun, along with his application, which states that the recording of the voice sample is done in the presence of the magistrate or his appointed representative, the investigating officer and two witnesses and two photographs of the accused, Aadhar card, copy of FIR and voice transcript are mandatory.

3. Heard and perused the relevant documents.

5. Since the date of 09.06.2025 has been fixed by the Forensic Science Laboratory for taking the voice sample of the accused in the case. Therefore, the Superintendent Sub Jail Haldwani, District Nainital, is directed to ensure that the accused Subodh Shukla is presented before the Joint Director, Forensic Science Laboratory Uttarakhand Dehradun, on 09.06.2025 at 10.30 am for collection of voice sample with proper police security along with 02 photographs and a photocopy of his Aadhar card.

6. It is the responsibility of the investigating officer to provide a copy of the First Information Report and the voice transcript. As far as the recording magistrate or his appointed representative and two witnesses are concerned; the City Magistrate Dehradun is directed to conduct the proceeding of in his presence of the date



fixed recording of voice sample.

Proceed for recording and the investigating officer is also directed to keep two independent witnesses present on the appointed date. Accordingly, the application is disposed of.

7. One copy each of this order should be sent to the Superintendent, Sub Jail Haldwani, District Nainital, City Magistrate Dehradun and the concerned investigating officer for information and necessary action.”

6. Learned Senior Counsel for the petitioner would submit that, in the light of settled law, there can be no, non-production of the accused, either physically or virtually, beyond 15 days; that, the non-production of the accused and the extension of the judicial remand in the absence of the accused, is per se illegal and, in this regard, he would place reliance on the ruling rendered by the Hon’ble Apex Court in ***Raj Narain vs. Superintendent, Central Jail, New Delhi***, reported in ***1970(2) SCC 750*** and would take the court through para nos.5, 7 and 8, which read as under:-

“5. Mr. Raj Narain's counsel relied upon the case reported in *In re Venkataraman* [49 Cr LJ 41] where it was held that an illegality was committed by a Magistrate in remanding a prisoner without having him before him and asking him whether he wished anybody to represent him and giving him an opportunity of showing cause why he should not be further remanded. The ruling restates, what was said in on old case reported in *Anonymous* [2 Weir 209] where it was ruled that just as commitment required the presence of a prisoner, so did recommitment. The earlier case contains no discussion and in opinion stated on a reference by the Magistrate.

7. The facts here are different from the case cited. Mr Raj Narain did not want bail or seek to appear by



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counsel. He complained of nothing except his detention which he described as illegal for the technical reason that he was not produced before the Magistrate. If he wanted bail he could have asked us as he was in our custody. There is nothing in the law which required his personal presence before the Magistrate because that is a rule of caution for Magistrates before granting remands at the instance of the police. However, even if it be desirable for the Magistrates to have the prisoner produced before them, when they recommit him to further custody, a Magistrate can act only as the circumstances permit. Where the prisoner's custody is transferred to a superior court such as this the Magistrate can only adjourn the case at the same time extending the period of remand. It is for this Court to see that the custody by it continues under proper orders and if this Court is satisfied that the prisoner is in proper custody under a proper order of remand, the prisoner will not be released. This Court does not order detention and cannot extend the remand. Its custody is co-terminus with the remand ordered by the Magistrate. If the Magistrate extends the period of remand and communicates the order to the person having the immediate custody of the prisoner, with intimation to this Court and the prisoner, nothing more is expected of him. The object of production of the prisoner before the Magistrate is more than answered by his production before this Court because the prisoner has the protection of his interests transferred from the Magistrate to this Court.

8. There is no reason why we should order the release of Mr. Raj Narain when we are satisfied that he is held on a proper remand by a Magistrate and there are no circumstances justifying release by us. To expect the Magistrate to do more under Section 344 of the Code in such circumstances is to expect an impossibility from him and the law does not contemplate an impossibility. Indeed, similarly courts trying cases may find it necessary to order a remand in the absence of an accused, e.g., when an accused is so seriously ill that the trial has to be adjourned and he cannot be brought to court and in such case the order made without production of accused in Court will not be invalid."

7. Per contra, learned DAG would submit that the production of the accused was impossible on account of the fact that the distance between the Forensic Science Laboratory at Dehradun and the Court at Haldwani is



about 300 Kilometers and it takes 6-7 hours journey time to travel the said distance; that, the accused was directed to be produced at 10:30 a.m. and, thereafter, the process commenced and, by no stretch of imagination, police could have reached the Court.

8. Per contra, learned Senior Counsel for the petitioner would submit that he could have been produced virtually at least.

9. The short point that arises for consideration is whether the non-production of the accused at the time of consideration of application for extension of remand is fatal to his continued incarceration?

10. This Court need not delve deeper than the order dated 02.06.2025. On a reading of the order, it is apparent that the application and the consequential directions were within the knowledge of the accused himself. That apart, it is seen that order dated 09.06.2025 clearly reflects application of mind by the Magistrate, who has categorically recorded that he be presented before the City Magistrate, Dehradun to facilitate forensic test. Further the Court below is also cognizant of the fact of the accused being in the custody of the police. The order dated 09.06.2025, reads as



under:-

“Date- 09/06/2025/ 23-06-2025

Today the accused Subodh Shukla in Police Custody is sent to the Joint Director, Forensic Science Laboratory, Uttarakhand, Dehradun for giving his voice sample. The Superintendent, Sub-Jail, Haldwani has filed an application in this regard and informed about it, due to which the accused is not present in the Court, it was informed by the Investigator that the evidence collection proceedings are pending in the case and a request for 14 days remand was made, remand application and case diary sent by the investigating officer were perused, there are sufficient grounds for remand, the remand of the accused is granted from 09-06-2025 to 23-06-25. Appear on the date fixed.

11. It is not as if that the extension of remand, in the absence of the accused, was opposed by the defence counsel. In fact, the order dated 09.06.2025 does not even reflect the presence of the counsel for the accused. The order clearly records that the accused is in the custody of the police. The authorities could not have transmitted the accused from Haldwani Sub-Jail to the FSL, Dehradun, for conducting the forensic test if the accused were to be produced before the Court. The custody, being with police and that too, as authorized by the Court and the failure to even object to the same, we find the present petition wholly misconceived. The purpose and object behind production of the accused for extension of remand is no more res integra. The purpose and object behind production of the accused is well settled and needs no reiteration by this Court. The



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custody having been given to the police on the said date and the order handing over custody having been validly made by the Court and the same not having been challenged in the instant petition, in our considered opinion, is wholly misconceived and without substance. Furthermore, there being no order to produce the accused on the said day for extension and there being no objection to the same, the present petition is merely an attempt to take advantage of the developing circumstances.

12. Accordingly, petition stands rejected. It is needless to state that the rejection of this writ petition shall not influence the decision of the court considering the bail application.

(G. NARENDAR, C. J.)

(ALOK MAHRA, J.)

Dated: 09.07.2025
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