

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL WRIT PETITION NO.94 OF 2018

Prashant s/o Madhukar Yamde,
Aged about : 42 years,
R/o 17, Deotale Layout,
Opposite Ambazari Garden,
Nagpur (Nagpur Jail).

..... **PETITIONER**

...V E R S U S...

The State of Maharashtra,
Through Police Station Officer,
Police Station, Dhantoli,
Nagpur.

... **RESPONDENT**

Shri R. M. Daga, Advocate for the petitioner.

Shri K. L. Dharmadhikari, Additional Public Prosecutor for the respondent.

**CORAM:- SMT. VASANTI A NAIK &
ARUN D. UPADHYE, JJ.**

DATED : 01/02/2018.

ORAL JUDGMENT : (PER SMT. VASANTI A NAIK, J.)

Rule. Rule made returnable forthwith. The writ petition is heard finally at the stage of admission with the consent of the learned counsel for the parties.

By this writ petition, the petitioner seeks a direction against the respondent to produce the petitioner in this Court and declare that the detention of the petitioner is illegal and that he should be released forthwith.

The petitioner is prosecuted for the offences punishable under Sections 370 and 506 r/w Section 34 of the Penal Code and Section 89 of the Juvenile Justice Act. The offences were registered against the petitioner on 06/12/2017 and the petitioner was arrested on 08/12/2017. The petitioner was produced before the Judicial Magistrate, First Class, Court No.2, Nagpur on 08/12/2017. The learned Judicial Magistrate, First Class passed an order of police custody remand of the petitioner and other accused till 12/12/2017. On 12/12/2017, the police has sought further PCR of the petitioner and the other accused but the learned Judicial Magistrate, First Class rejected the request and by the order dated 12/12/2017 directed that the petitioner and the other accused be remanded to magisterial custody till 22/12/2017.

It is the case of the petitioner that after 22/12/2017 till date, the petitioner is never produced before the Judicial Magistrate, First Class and the respondent has also not sought the extension of the magisterial custody remand by filing an application before the competent court. Reliance is placed on Section 167(2)(a) and (b) of the Code of Criminal Procedure to point out that the detention of the petitioner after 22/12/2017 is illegal. It is stated that in view of the provisions of Section 167 (2) (b), an accused cannot be detained in custody unless he is produced before the Magistrate either personally or through the medium of electronic video linkage after the expiry of the

period of his remand. It is stated that after 22/12/2017, the order of remand of the petitioner is not extended. It is stated that the petitioner was not produced before the court at any time after 22/12/2017 and after the said date, the detention of the petitioner would be illegal. Reliance is placed on the judgment in the case of Sonu Madanlal Yogi Vs. The State of Maharashtra and another, reported in 2012 ALL MR (Cri.) 4025 to substantiate his submission. It is stated that in almost identical set of facts, this Court had held that the detention of the petitioner in that case was illegal and the petitioner was entitled to be released on bail by imposing certain conditions on him. It is stated that a similar order could be passed in the case of the petitioner as the petitioner was neither produced before the JMFC after 22/12/2017 nor was the order of remand extended.

Shri Dharmadhikari, the learned Additional Public Prosecutor appearing for the respondent does not dispute the statements made on behalf of the petitioner. It is stated that the petitioner was not produced before the Court on 22/12/2017 as the police squad was not available to take the petitioner to the Court. It is stated that the Judicial Magistrate, First Class has passed the order on 12/12/2017 that since the accused could not be produced before the Court on that date, he would be produced before the Court on 22/12/2017. It is fairly admitted that on 22/12/2017 also, the petitioner was not produced before the Court either personally or

through video linkage facility and the Court therefore observed that the petitioner be produced before the Court on 19/01/2018. It is stated that the same thing happened on 15/01/2018 and the Judicial Magistrate, First Class directed that the petitioner be produced before the Court on 02/02/2018. It is stated that due to some difficulties, the petitioner was not produced before the Judicial Magistrate, First Class and though there is no order of extending the judicial custody remand, the Judicial Magistrate, First Class has directed on each hearing that the petitioner be produced before him on the next date mentioned in the order. It is stated that the petitioner would be produced before the Judicial Magistrate, First Class tomorrow as his production is sought on 02/02/2018.

We are afraid that the detention of the petitioner after 22/12/2017 is clearly illegal. The petitioner was produced before the Magistrate on 08/12/2017 and the order of police custody remand was granted. On 12/12/2017, the police has sought further PCR but the said request was rejected and order of magisterial custody remand was passed on 12/12/2017. The petitioner was remanded to magisterial custody till 22/12/2017. From 22/12/2017 till date, the petitioner was never produced before the Judicial Magistrate, First Class either personally or through video linkage and the Judicial Magistrate, First Class has also not extended the magisterial custody remand after 22/12/2017. In almost similar set of facts, this Court had in the

judgment, reported in **2012 ALL MR (Cri.) 4025** held that the detention of the petitioner after the expiry of magisterial custody remand would be illegal if there is no order extending the magisterial custody remand after the expiry of the said period. The aforesaid judgment would squarely apply to the facts of this case. In the circumstances of the case, it would be necessary to direct that the petitioner be released on bail by imposing certain conditions on him as was done in the case in the judgment, reported in **2012 ALL MR (Cri.) 4025**.

Hence, for the reasons aforesaid and for the reasons recorded in the judgment, reported in **2012 ALL MR (Cri.) 4025**, the writ petition is allowed. It is hereby declared that the detention of the petitioner after 22/12/2017 is illegal and the petitioner be released on bail on furnishing a bond in the sum of Rs.25,000/- and with two sureties of the like amount. The petitioner should report to the concerned police station on every Tuesday and Saturday till the filing of the charge sheet. The petitioner should not leave Nagpur city without the prior permission of the Court.

Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

Choulwar