

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**WRIT PETITION NO.4798 OF 2019**

Poonam Manoj @ Malikarjun Dodamani  
(w/o. of the detenu Manoj Dodamani)

...Petitioner

vs.

The State of Maharashtra and Others

...Respondents

Mr. Vaibhav Gaikwad a/w. Ms. Kiran Patil, for the Petitioner.  
Mrs. S.V. Sonavane, APP for the Respondents-State.

**CORAM : S.S. SHINDE &  
N.B. SURYAWANSHI, JJ.**

**JUDGMENT RESERVED ON : 15<sup>th</sup> NOVEMBER, 2019  
JUDGMENT PRONOUNCED ON : 18<sup>th</sup> DECEMBER, 2019**

**JUDGMENT** (Per N.B. Suryawanshi, J.)

. Rule. Rule made returnable forthwith. Heard with consent of the parties.

2. By this Petition the Petitioner seeks release of her husband Manoj (hereinafter referred as “Accused No. 1”) by invoking writ of Habeas Corpus on the ground that his remand is not authorized by the competent Court.

3. Few facts as are necessary for decision of the Petition are as follows:

Accused No. 1 namely Manoj Dodamani along with other accused Yash Mane were arrested on 5<sup>th</sup> May, 2019 in connection with C.R. No. 157 of 2019 registered with Shahupuri police station, Satara for offence punishable under Sections 302, 504 and 506 read with 34 of Indian Penal Code. It is the case of the prosecution that on 2<sup>nd</sup> May, 2019 at 20.40 hours Accused No. 1 along with co-accused Yash assaulted Vilas Bansode (father in law) with wooden log and iron rod due to which Vilas Bansode expired.

4. Accused No. 1 came to be arrested on 5<sup>th</sup> May, 2019 and on production before the concerned Magistrate was remanded to police custody up to 7<sup>th</sup> May, 2019 which was extended till 9<sup>th</sup> May, 2019. On that day i.e. on 9<sup>th</sup> May, 2019, he was remanded to Magisterial custody. The investigating officer added section 3(2)(v) and 3(2)(vi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for sake of brevity hereinafter will be referred as “said Act”) on 25<sup>th</sup> June, 2019. Thereafter, charge sheet came to be filed on 2<sup>nd</sup> August, 2019 and on the same day the learned Judicial Magistrate First Class, Satara committed the matter to the

Special Court, Satara. The bail application No. 497 of 2019 filed by Accused No. 1 came to be rejected on merits.

5. Heard learned counsel for the Petitioner and learned APP for the State. Perused the record with the assistance of both learned counsel for the parties.

6. The learned counsel for the Petitioner urged that the learned Magistrate is empowered to pass order remanding the accused for 14 days and not beyond that. Since there is no remand order from 22<sup>nd</sup> May, 2019 the detention of the Petitioner is illegal and the fundamental right of the Petitioner under Article 22(5) of the Constitution of India is violated. Hence, the Petitioner is entitled for relief of release of her husband/Accused No.1. The learned counsel placed reliance in **Sonu Madanlal Yogi vs. The State of Maharashtra and Anr.**<sup>1</sup>, **Ram Narayan Singh vs. The State of Delhi and Others.**<sup>2</sup> and **Rajkumar Bhagchand Jain vs. Union of India and Anr.**<sup>3</sup>.

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1 2012 ALL MR (Cri) 4025.

2 AIR 1953 SUPREME COURT 277.

3 2018 ALL MR (Cri) 1000.

7. The learned APP on the other hand argued that since the Accused No. 1 could not get bail, he is trying to come out of the prison by invoking writ of Habeas Corpus. Since the remand is authorized by the competent Court, the writ of Habeas Corpus is not maintainable in the facts of the present case. Learned APP relied on the ratio laid down in **Saquib Abdul Hamid Nachan vs. State of Maharashtra and Anr.** <sup>4</sup> and **Sanjay Dutt vs. State Through CBI, Bombay (II)** <sup>5</sup> in support of her contentions.

8. It is not disputed that Accused No. 1 was initially arrested on 5<sup>th</sup> May, 2019 and was in police custody till 9<sup>th</sup> May, 2019 and on production, Accused No.1 was remanded to magisterial custody till 22<sup>nd</sup> May, 2019. The charge sheet came to be filed on 2<sup>nd</sup> August, 2019 and section 3(2)(v) and 3(2)(va) of the said Act were added in the charge-sheet. The learned Judicial Magistrate First Class thereafter on 2<sup>nd</sup> August, 2019 forwarded the charge sheet and remand papers along with a covering letter to the Special Court for consideration. The case was numbered as Atrocities Special Case No. 39 of 2019.

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4 2006 Cri.L.J. 2196.

5 (1994) 5 Supreme Court Cases 410.

9. The learned Special Court took cognizance of the case on 7<sup>th</sup> August, 2019. The roznama reflects that after filing of Charge sheet (Exhibit 1) by Shahupuri police station, Satara, the case was adjourned for framing of charge and thereafter the matter was adjourned from time to time for framing charge. On 8<sup>th</sup> November, 2019 both the accused were produced before the learned Special Court, Satara. Application (Exhibit 2) was filed by Accused No. 1 seeking discharge, and the learned Special Court adjourned the matter for say of the prosecution on the said application and the matter was posted on 11<sup>th</sup> November, 2019. The present Writ Petition is filed on 20<sup>th</sup> September, 2019 in this Court i.e. after the Special Court took cognizance of the matter.

10. It is necessary to mention here that Bail Application filed by the Petitioner seeking regular bail under section 439 of Cr.P.C. came to be rejected by the trial Court. In **Serious Fraud Investigation Office vs. Rahul Modi and Another**<sup>6</sup> the Hon'ble Hon'ble Supreme Court has held that the action of directing the remand of the accused is a judicial function and the challenge

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6 (2019) 5 Supreme Court Cases 266.

to the same is not to be entertained in Habeas Corpus Petition.

11. The Hon'ble Hon'ble Supreme Court in the case of **Sanjay Dutt** (supra) has held that writ of Habeas Corpus filed on the basis of absence of valid order of remand or detention has to be dismissed, if on the date of return of rule the custody of detenu is on the basis of valid order. In the present case, since the special Court has taken cognizance of the matter and the matter is posted for framing of charge, it can be said that, it has authorized the remand of the accused in judicial custody, as in the present case, it can be presumed that the remand of the accused in the judicial custody is authorized and extended. It is also relevant to mention that an application filed by the Petitioner for regular bail under section 439 of Cr.P.C. came to be rejected.

12. The authority relied upon by the learned counsel for the Petitioner in the case of **Sonu Madanlal Yogi** (supra) is distinguishable on facts. In that case the accused was arrested in connection with offence punishable under section 363, 366, 376 of I.P.C. The Petitioner was sent to judicial custody

pursuant to the remand orders passed from time to time. The last remand order passed in the case of the Petitioner was dated 11<sup>th</sup> November, 2011. On that date charge sheet was also filed before the concerned Magistrate. The learned Magistrate authorized the judicial custody of the accused till 25<sup>th</sup> November, 2011 and committed the matter before the Sessions Court. In that case, the learned Sessions Court did not take cognizance of the matter and the accused was also not produced before the learned Sessions Court.

13. Noting these facts, this Court repelled the argument of learned APP that section 309 (2) of Cr.P.C which was pressed in service by the learned APP, comes into play only after the concerned Court takes cognizance of the offence. Admittedly, in that case, cognizance was not taken. In that view, this Court allowed the Petition by issuing writ of Habeas Corpus.

14. Reverting back to the case in hand, since cognizance is already is already taken by the learned Special Court on 7<sup>th</sup> August, 2019 and the present matter is filed on 20<sup>th</sup> September, 2019, the ratio of the above judgment would not be applicable

to the present case.

15. The second judgment relied upon by the learned counsel for the Petitioner is **Rajkumar Bhagchand Jain** (supra) wherein also the facts were different as the judicial custody of the Petitioner therein was authorized by the Magistrate beyond a period of 60 days. Hence, the said ratio will not help the Petitioner.

16. The learned counsel for the Petitioner also relied upon the ratio in **Ram Narayan Singh** (supra), wherein it is held that the detention of person in custody after expiry of remand order, without any fresh order of remand committing him to further custody while adjourning the case under section 344 of Cr.P.C is illegal. The Petitioner in that case were prosecuted for alleged defiance of an order prohibiting meetings and processions in the area in question punishable under section 188 of IPC. The facts of that case are distinguishable from the facts of the present case.

17. In the light of ratio in **Sanjay Dutt** (supra) and in **Serious**

**Fraud Investigation Office** (supra) since in the present case, learned special Court has already taken cognizance of the matter and subsequently Accused No. 1 was produced before the learned special Court on 8<sup>th</sup> November, 2019 on which date he has filed discharge application, the learned special Court had adjourned the matter to 11<sup>th</sup> November, 2019 calling say on the said discharge application, in that view of the matter, the remand of the Accused No. 1 has been authorized by the learned special Court. Even if for the sake of argument, the contention of the Petitioner is accepted that there was no formal remand order, the same can be said to be irregularity. In view of the facts of the present case, we are not inclined to exercise our extra ordinary jurisdiction under Article 226 of the Constitution of India in favour of the Petitioner. We do not find any merit in the present Petition. In the result following order:

18. Writ Petition is dismissed.
19. Rule is discharged.
20. There shall be no order as to costs.

**(N.B. SURYAWANSHI, J.)**

**(S.S. SHINDE, J.)**