

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

WRIT PETITION NO.4642 OF 2019

1. Ankit Ghanshyam Mutha

S/o. Ghanshyam V. Mutha
12, 2nd Floor, M. Byrappa Lane,
Ranasinghpeth Chickpet,
Bangalore-560 053.
Presently Residing at
9A, Nathdwara Road,
Ahimsapuri, Udaipur-313001

And presently detained in custody at
Arthur Road Central Prison,
Sane Guruji Marg, Chinchpokli,
Opp. Kasturba Hospital,
Mumbai-400 011

...Petitioner

V/s.

1. Union of India

Through Directorate of Revenue Intelligence
13, Sir, Vithaldas Thackersey Marg,
Marine Lines, Mumbai-400 020

2. Intelligence Officer

Directorate of Revenue Intelligence,
13, Sir Vithaldas Thackersey Marg,
Marine Lines, Mumbai-400 020.

3. State of Maharashtra

Through the Superintendent
Arthur Road Central Prison
Sane Guruji Marg, Chinchpokli,
Opp. Kasturba Hospital,
Mumbai-400 011.

...Respondents

Mr. Sebin M. Josheph for the Petitioner.

Mr. Jitendra B. Mishra, Special P.P. for Respondent Nos.1 and 2.

Ms.S.V. Sonawane, APP for the Respondent-State.

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

RESERVED ON : 18th OCTOBER 2019

PRONOUNCED ON : 21st JANUARY 2020

JUDGMENT : (Per Shri.N.B. Suryawanshi, J.)

1. Rule.

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

3. This petition seeks a Writ of Habeas Corpus and a direction to forthwith release of the petitioner (Detenu) from the custody of he Directorate of Revenue Intelligence (for short 'DRI') in RA No.71 of 2019 arising out of DRI F. No.DRI/MZU/E/INT-65/2019, on the ground that the detention of petitioner in custody is illegal and the same is violative of Article 14, 21 and 22 of the Constitution of India.

4. Facts necessary for the decision of the present petition, are as follows:-

About in the month of March 2019 the second respondent started investigation into the Smuggling of Gold by a syndicate. In pursuance of the said investigation, on 29.03.2019 one Shri.Happy Dhakad was arrested under Section 104 of the Customs Act, 1962. Thereafter, though his bail application was rejected, subsequently statutory default bail was granted to him. An action under COFEPOSA Act of detention was not sustained by the Advisory Board and hence he was released. Criminal Writ Petition No.2700 of 2019 was preferred by the family members of Shri.Happy Dhakad as well as by the petitioner, seeking certain reliefs to protect their fundamental rights. An order came to be passed by partly allowing the Writ Petition thereby permitting the presence of advocate at visible, but not audible distance during interrogation and video recording of statement was also allowed.

5. It is case of the petitioner that on 27.08.2019 at about 6.30 p.m. Directorate of Revenue Intelligence (for short 'DRI ') Officers, without disclosing their identity apprehended the petitioner at an Office in Udaipur, Rajasthan-State, where the petitioner is presently employed. The officers were not wearing any badges nor carrying their identity cards. The petitioner was taken to an undisclosed destination at about 9.45 p.m. in Udaipur, no formal

arrest of memorandum served upon the petitioner, he was also not produced before any Court to seek transit remand. The petitioner was interrogated in absence of any advocate, inspite of orders passed by this Court.

6. Thereafter the petitioner was forcibly taken from Udaipur to Mumbai on 28.08.2019 and at 11.35 p.m, the petitioner's formal arrest was shown and Memorandum of arrest was served on him. At 4.00 p.m. the petitioner was produced before the Learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai (for short 'ACMM') seeking his remand, which according to the petitioner is much after the expiry of 24 hours of arrest on 27.08.2019. An application was filed on behalf of the petitioner opposing remand highlighting his illegal arrest, non-production within 24 hours. The learned ACMM allowed RA No.71 of 2019 remand of the petitioner to DRI custody for two days. The petitioner therefore, seeks his release from the custody on the ground of his illegal arrest, non-production within 24 hours before the competent court, and for failure to take his transit remand etc.

7. Heard learned counsel for the petitioner, learned counsel for respondent Nos.1 and 2 and learned Additional Public

Prosecutor for respondent No.3.

8. The learned counsel for the petitioner has taken us through the paper book of the Writ Petition to strenuously urge that the petitioner was illegally arrested and detained on 27.08.2019, at instance of DRI Officials. Without obtaining transit remand, the petitioner was forcibly taken from Udaipur office of DRI to Mumbai DRI office on 28.08.2019. At about 11.30 p.m. the petitioner is shown to have been formally arrested and was served with Impugned Memorandum of Arrest. Thereafter, after much time i.e. at about 4.00 p.m. the petitioner was produced before the learned ACMM, Esplanade, Mumbai, by filing RA No.71 of 2019, seeking two days' DRI custody remand. In spite of the fact that the application was filed before the learned Trial Court opposing remand, pointing out the illegal arrest and non-production of the petitioner within 24 hours, non-obtaining transit remand, the learned Magistrate has mechanically passed order granting remand. According to the learned counsel for the petitioner the actions on the part of the respondents have violated the fundamental rights guaranteed to the petitioner under Article 14, 20, 21 and 22 of the Constitution of India. The petitioner is, therefore, entitled to be released forthwith by issuing the Writ of Habeas Corpus.

9. The learned counsel for the petitioner placed reliance upon the following judgments in support of his arguments :-

- (i) Rajbhushan Omprakash Dixit V/s. Union of India & Anr. 2018 SCC Online Del 7281.
- (ii) Mrs.N. Ratnakumari V/s. State of Odisha & Ors. 2014 SCC Online Ori 256.
- (iii) A.V. Papayya Sastry V/s. Govt of AP & Ors. (2007) 4 SCC 221.
- (iv) D.K. Basu V/s. State of W.B. (1997) 1 SCC 416
- (v) Arnesh Kumar V/s. State of Bihar and Anr. (2014) 8 SCC 273
- (vi) Madhu Limaye V/s. State of Maharashtra AIR 1969 SC 1014.
- (vii) Ram Narayan Singh V/s. State of Delhi & Ors. AIR 1953 SC 277
- (viii) Kanu Sanyal V/s. District Magistrate, Darjeeling & Ors. 1973 2 SCC 674
- (ix) Chhagan Bhujbal V/s. Union of India (2016) SCC Online BOM 9938.
- (x) Pranab Chatterjee V/s. State of Bihar & Anr. (1970) 3 SCC 926.

- (xi) Sadhwi Pragyna Singh Thakur V/s. State of Maharashtra (2011) 10 SCC 445.
- (xii) Sanjay Dutt V/s. State through CBI, Bombay 1994 (5) SCC 410
- (xiii) Kailas J. Kharjule V/s. State of Maharashtra 2013 (1) Bom CR (Cri) 93.
- (xiv) Kanu Sanyal V/s. Dist. Magistrate, Darjeeling 1974 AIR (SC) 510.
- (xv) Saurabh Kumar Through his Father V/s. Jailor, Konelia Jain and Another (2014) 13 SCC 436.
- (xvi) Manubhai Ratilal Patel through Ushaben V/s. State of Gujarat and Ors. (2013) 1 SCC 314.
- (xvii) Serious Fraud Investigation Office V/s. Rahul Modi and Another (2019) 5 SCC 266.
- (xviii) Serious Fraud Investigation Office V/s. Niraj Singal (2018) SCC Online SC 1573.

10. The learned Special P.P. has resisted the petition by urging that Writ of Habeas Corpus is not maintainable, since on the date of filing of the petition, Competent Court had authorised the remand of detenue. It is further urged that even if for the sake of argument, it is accepted for a moment that the petitioner was not

allowed to leave the office of the DRI of the Udaipur, that by itself does not mean that petitioner was arrested and detained. It is argued that an action of the detention at the initial stage cannot invalidate the subsequent detention, which was authorised by Competent Court.

11. The learned Special PP further states that the act of granting remand of accused is a judicial function and challenge to the same cannot be by way of Writ of Habeas Corpus. It is urged that the petitioner has a remedy of seeking bail before the learned Trial Court and in view of the said alternate efficacious remedy, the present petition is not maintainable and the same is liable to be dismissed.

12. The learned Special Public Prosecutor has also placed reliance on the affidavit-in-reply filed on behalf of the respondent Nos.1 and 2 and further relied upon the additional affidavit-in-reply.

13. The learned Special PP further states that there are serious allegations against the petitioner that he is involved in smuggling of gold. The petitioner, who was in the employment of the M/s.Ekdant Commercial Pvt. Ltd., had received around 30 kgs of

smuggled gold on behalf of M/s.Ekdant. The said fact is also reflected in the Memorandum of Arrest dated 28.08.2019 of the Intelligence Officer of the DRI. The learned APP has strenuously urged that the petitioner was not arrested on 27.08.2019 as alleged and the petitioner was arrested only on 28.08.2019. It is further urged that the reliance placed by the learned counsel for the petitioner in the order passed by this Court in the case of father of Happy Dhakad was in different set of facts as he was arrested only because he was director of M/s.Ekdant and *prima facie*, his active involvement was not found from record. In that case it was observed that there were no direct allegations against him.

14. The learned APP relies upon the following judgments:-

(i) *Chhagan Chandrakant Bhujbal V/s. Union of India & Ors. 2017 (1) Bom. C.R. (Cri.) 300.*

(ii) *Kanu Sanyal V/s. District Magistrate, Darjeeling 1974 AIR (SC) 510.*

(iii) *Manubhai Ratilal Patel , through Ushaben V/s. State of Gujarat & ors. 2013 1 SCC 314.*

(iv) *Saurabh Kumar through his father V/s. Jailor Koneila Jail and Anr. 2014 3 SCC 436.*

- (v) *Serious Fraud Investigation Office V/s. Rahul Modi & Ors. CDJ 2019 SC 400.*
- (vi) *Serious Fraud Investigation Office & Anr. V/s. Neeraj Singhal & Anr. CDJ 2018 SC 950.*
- (vii) *Ashok Chandrej Singh V/s. CBI-EOW and Anr. Criminal Writ Petition No.1801 of 2018.*
- (viii) *Narain V/s. Suprintendent, Central Jail, New Delhi 1971 AIR SC 178.*
- (ix) *Sanjay Dutt V/s. State through C.B.I., Bombay 1995(1) Bom. C.R. 186.*
- (x) *Pranab Chaterjee V/s. State of Bihar 1970 (3) SCC 926.*
- (xi) *Sadhwi Pragyna Singh Thakur V/s. State of Maharashtra 2011 (6) AIR Bom R 802.*
- (xii) *Kailas Jagannathrao Kharjule V/s. State of Maharashtra & Ors. 2013 (1) Bom. C.R. (Cri.) 93.*

15. The learned APP representing for the Respondent-State has adopted the arguments of the learned Special P.P. representing respondent Nos.1 and 2.

16. The present petition is filed by the petitioner on 09.09.2019 seeking his release by issuance of Writ of Habeas Corpus when the petitioner alleges that he was illegally arrested on 27.08.2019 and was detained by the DRI Authorities who have forcibly brought the petitioner at Mumbai on 28.08.2019 and the petitioner was shown to be formally arrested and the Memorandum of Arrest at Exhibit-A dated 28.08.2019 was served on the petitioner. There is no dispute that the petitioner was remanded by the Competent Court in RA No.71 of 2019 for a period of two days vide order dated 29.08.2019 by the ACMM. Thus, when the present petition was filed the detention of the petitioner was authorized by the Competent Court. In this view of the matter the Writ of Habeas Corpus would not be maintainable.

17. The order below remand Application No.71 of 2019 records the submission on the part of the learned counsel for the petitioner. The submission so recorded is of gross violation of the procedure established in Cr.P.C. under Sections 154 to 157, 167, 172, 41(A), 41(B), no FIR was registered before arresting the petitioner, since the accused was arrested in violation of the mandatory procedure of the Cr.P.C. no valid remand can be granted under Section 167(2) of Cr.P.C. on these grounds a prayer was made

to reject the remand application filed by the DRI.

The learned ACMM further recorded the submissions on the part of the learned Special P.P. to the effect that accused was arrested after following due process of law. It is not necessary to lodge FIR before arresting accused and the accused has been arrested as per the provisions of the Customs Act 1961. Therefore, the learned Special APP prayed for rejection of the application of the accused and sought remand of the accused to the judicial custody.

18. The learned ACMM after hearing both the sides and after considering the authorities cited by both the sides, was pleased to grant remand by observing that the custody of the petitioner is necessary for recording the statement under Section 108 of the Customs Act, due to absence of his learned Advocate and DRI custody remand was sought for recording the statement of the petitioner. The learned ACMM being satisfied with the reason/ground for seeking custody was pleased to pass remand order, which cannot be faulted with.

19. So far as the case of the petitioner that he was arrested on 27.08.2019 and was detained till his formal arrest is shown on 28.08.2019 vide the Memorandum of Arrest, we are unable to

accept the same. After the arrest of the petitioner on 28.08.2019, the petitioner was produced before the Court of Competent jurisdiction on the next day though the petitioner alleges that in the night of 27.08.2019 the petitioner was taken from his place of work at Udaipur to DRI Office at Udaipur at 6.30 p.m. and at 9.45 p.m. the officers forcibly took the petitioner to undisclosed place in Udaipur. There is nothing on record to show that after the petitioner was taken to ED Office, the petitioner was arrested or detained, merely because inquiry was made with the petitioner, hence he could not leave the office or was not allowed to leave office of the ED does not make out his arrest or detention. The time spent for taking the petitioner to Special Court needs to be excluded. Hence, we are unable to accept that there was breach of safeguard laid down under Article 22(2) of the Constitution of India.

20. It is necessary to mention that when the petitioner was produced before the learned Magistrate, upon asking as to whether he has any grievance against the prosecuting agency the petitioner has not disclosed to the learned Magistrate that he was detained on 27.08.2019 and produced on 29.08.2019. This coupled with the fact that the order passed by the learned Magistrate remanding the

petitioner to the DRI custody for two days dated 28.08.2019 does not reflect that the point of illegal detention of the petitioner on 27.08.2019 was pressed into service on behalf of the petitioner at the time of opposing the remand application. In this view of the matter also we are not inclined to entertain the present Habeas Corpus Writ, as the petitioner is in custody in pursuance of the remand order passed by the Competent Court.

21. The DRI authorities, in their additional affidavit have re-iterated that enquiry was made with the petitioner in respect of the seizure of 185 Kg of smuggled gold by DRI at Mumbai. It is argued by the learned APP representing 1st and 2nd respondent that serious allegations are leveled against the petitioner and prosecuting agency has relevant material to justify the arrest of the petitioner. The detention of the petitioner in custody till the investigation is ongoing is necessary and if the petitioner is released the investigation will be seriously hampered. There is no dispute that the learned ACMM has passed remand orders from time to time and the detention of the petitioner in custody is in pursuance of the remand orders passed by the Competent Court.

22. This Court in ***Chhagan Chandrakant Bhujbal V/s. Union of India & Ors.*** (Supra) after considering various case laws including, paragraph No.14 of Madhu Limaye case and Kanu Sanayal came to the following conclusion.

“47. The bare perusal of these two Judgments; one in the case of Kanu Sanayal (supra) and the other in the matter of Madhu Limaye (supra), thus, make it clear that both the Judgments pertain to the preventive detention of the Petitioners therein under the provisions of Article 22 of the Constitution and not in respect of the arrest of a person accused of an offence punishable under IPC or under any other special law. Secondly, as per the Judgment in the case of Kanu Sanayal (supra), only when the detention of the Petitioner on the date of filing of the Writ Petition is illegal, it was held that the Writ of Habeas Corpus can lie and it cannot be granted where a person is committed to Jail custody by a competent Court by an order, which, prima facie, does not appear to be without jurisdiction or wholly illegal. Even the Judgment in the case of Madhu Limaye (supra) also makes it clear that it has to be shown that the arrest made by the Police Officer was illegal and further it has to be established that, at the stage of remand, the Magistrate directs detention in the custody without applying his mind to all the relevant matters. As held in the said authority, if the orders of remand are passed by the Magistrate without application of mind and they are patently routine and appear to have been made

mechanically, then only, such orders of remand would not cure the Constitutional infirmities in effecting arrest.

48. Thus, the necessary inference that can be drawn from the law laid down in both these authorities is that, in the first place, Petitioner has to show that his arrest is patently and manifestly illegal and null, being without jurisdiction. The Petitioner has to then further show that the Magistrate or the Special Court in this case, which has granted his remand, has not applied its mind to all the relevant matters and the remand orders are either patently routine or appear to have been made mechanically. Only when these essential two conditions are satisfied, the Petition for Habeas Corpus can lie, otherwise, as held in the above-said authority of Kanu Sanyal (*supra*), if the person is committed to Jail custody by a competent Court by an order, which, *prima facie*, does not appear to be without jurisdiction or wholly illegal, such Writ of Habeas Corpus can neither be asked for, nor can be granted.

49. This legal position has been further clarified and reaffirmed by the Hon'ble Apex Court in the recent decision of Manubhai R.P. Vs. State of Gujarat and Ors., (2013) 1 SCC 314. In this case, the complaint was lodged against the appellant-accused for the offences punishable under Sections 467, 468, 409 and 114 of IPC. He filed an application under Section 482 of the Code, challenging the registration of FIR and further investigation. On 16th July 2012,

the accused was arrested and produced before the Judicial Magistrate, First Class (JMFC) at 4:00 p.m. on 17th July 2012. The JMFC granted remand to custody of the appellant-accused upto 2:00 p.m. on 19th July 2012. On the same day, i.e. 17th July 2012, the High Court passed an interim order staying further proceedings in respect of the investigation. The interim order passed by the High Court was brought to the notice of an investigating agency on 18th July 2012. On 19th July 2012, an application was filed seeking bail by the appellant on the ground that the High Court had stayed further investigation and sought the release of the appellant-accused. The JMFC rejected the bail application holding that the High Court order was regarding stay on investigation. The appellant-accused unsuccessfully approached the Sessions Court. Then the appellant-accused filed a Habeas Corpus Petition under Article 226 of the Constitution before the High Court. It was rejected as the High Court did not find any infirmity in the remand order of the applicant-accused passed by the JMFC. The appellant, therefore, approached the Hon'ble Apex Court challenging the order of the High Court."

23. We further find support to our view from ratio of the Supreme Court in ***Sadhwi Pragyna Singh Thakur*** (Supra) wherein it

is held as follows :-

“26. The decisions relied upon by the learned counsel for the appellant do not support the plea that in every case where there is violation of [Article 22\(2\)](#) of the Constitution, an accused has to be set at liberty and released on bail. Whereas, an accused may be entitled to be set at liberty if it is shown that the accused at that point of time is in illegal detention by the police, such a right is not available after the Magistrate remands the accused to custody. Right under [Article 22\(2\)](#) is available only against illegal detention by police. It is not available against custody in jail of a person pursuant to a judicial order. [Article 22\(2\)](#) does not operate against the judicial order.

27. The decision in [Manoj vs. State of M.P. \(1999\) 3 SCC 715](#) relied upon by the learned counsel for the appellant was a case where the accused was not produced before the Magistrate in the second case and, therefore, was directed to be released. It was not a case where the person was produced before the learned Magistrate and remanded to custody and then directed to be released because there was infraction by the police.

Similarly, the decision relied upon in the case [In the matter of Madhu Limaye and Others \(1969\) 1 SCC 292](#) is not relating to arrest and detention without being produced before the Magistrate, but is relating to non-communication of the grounds of arrest. Further the decision in [Bhim Singh, MLA vs. State of J & K and](#)

Others (1985) 4 SCC 677, relied upon by the learned counsel for the appellant was a case where the person had already been released on bail and the Court finding that there was infraction of law by the police directed an amount of Rs.50,000/- to be paid to him by way of compensation.”

24. The competent court has remanded the petitioner to DRI custody by passing a detail order and hence the above ratio is squarely applicable to the facts of the present case. It is clear from the order that the learned ACMM has applied mind to the relevant facts and documents while passing the order of remand hence in our opinion the remand order cannot be said to be passed mechanically and without application of mind. In this behalf we rely on the following observations in **Chagan Bhujbal** (Supra).

63. Therefore, as held in above referred authorities, for the sake of arguments, even assuming that the arrest of the Petitioner was illegal, once it is established that, at the stage of remand of the Petitioner, the Special Court has directed detention of the Petitioner after applying its mind to all the relevant factors, the orders of remand having thus cured the alleged Constitutional infirmities and such orders, prima facie, being not passed without jurisdiction or wholly illegal, then, as per the law laid

down in the above cited authorities, the Writ for Habeas Corpus itself is not maintainable.

“66. It is pertinent to note that in the case of Madhu Limaye supra), on which much reliance is placed by learned Senior Counsel for the Petitioner, on the very day on which Madhu Limaye and others were arrested, they had addressed a Petition in the form of a letter to the Hon'ble Supreme Court, under Article 32 of the Constitution, mentioning that they had been arrested but not been communicated the reasons or the grounds for the arrest and in view thereof, the cognizance of their Petition seeking the Writ of Habeas Corpus was taken; particularly when the said assertion had remained uncontroverted in the 'Return' filed by the State. The perusal of paragraph No.10 of the order passed by the Hon'ble Supreme Court in the said matter reveals that the authorities wanted to invoke all kinds of provisions, like Sections 151, 107 and 117 of the Code, apart from Section 188 of IPC, and since no arrest could be effected for an offence under Section 188 of IPC by the Police Officers without proper orders, it was held that “these officers may have been naturally reluctant to comply with the mandatory requirements of Article 22(1) of the Constitution, by giving necessary information and that was the reason why the reasons of arrest were not told to Madhu Limaye and others”. In that backdrop, it was held that this infirmity being not cured in view of the routine remand orders passed by the Magistrate mechanically, without applying his mind to all the relevant matters, the

Petition for Habeas Corpus would lie.

67. As against it, in the present case, the Remand Report and the order of remand passed by the Special Court clearly state which offence is made out against the Petitioner and on the basis of which material. As stated above, all the Remand Reports are in detail, so also the remand orders, in which the Special Court has applied its mind to all the relevant matters. Therefore, in no way, it can be said that the impugned order of remand, which validated custody of the Petitioner on his alleged illegal arrest, suffers from any illegality. Once it is held to be so, then it follows that on this very ground itself, *Petition for Habeas Corpus* is bound to fail. On this very ground itself, this *Petition* is liable to be dismissed in limine at the threshold itself.

68. This is also for the reason that, the Hon'ble Apex Court has refused to issue such Writ of Habeas Corpus, even when it found that the Remand Order was passed by the Magistrate mechanically, without any application of mind, in a cavalier manner, betraying insensitivity.

69. The case in point is that of Saurabh Kumar through his father vs. Jailor, Koneila Jail & anr., (2014) 13 SCC 436, which is relied by learned Additional Solicitor General. In this case also, the writ of habeas corpus was sought by the petitioner alleging his detention to be illegal. It was contended by the Petitioner that he was unnecessarily and illegally detained by the police. When the matter came up before the Hon'ble Apex Court, the Hon'ble Apex Court took note of the two

counter affidavits filed by the Respondents, which showed that the petitioner was an accused in a Criminal Case which was registered for the offences punishable under Sections 147, 147, 149, 323, 427, 504, 379 and 386 of IPC and under Section 27 of the Arms Act and after such registration he was arrested and produced before the Additional Chief Judicial Magistrate and thereafter he was taken in judicial custody. It was however, contended by learned Senior Counsel for the Petitioner that direction be given to the jailor to produce the Remand Report of the Petitioner that itself would show the illegal detention. After hearing the arguments advanced by both the parties, the Hon'ble Apex Court in paragraph (13) of its judgment was pleased to hold as follows;

“13. It is clear from the said narration of facts that the petitioner is in judicial custody by virtue of an order passed by the Judicial Magistrate. The same is further ensured from the Original Record which this Court has, by order dated 9th April, 2014, called for from the Court of Additional Chief Judicial Magistrate, Dalsingsarai, District Samastipur, Bihar. Hence, the contention of the learned counsel for the petitioner that there was illegal detention without any case is incorrect. Therefore, the relief sought for by the petitioner cannot be granted. Even though there are several other issues raised in the Writ Petition, in view of the facts narrated above, there is no need for us to go into those issues. However, the petitioner is at liberty to

make an application for his release in Criminal Case No. 129/13 pending before the Court of the learned Addl. Chief Judicial Magistrate, Dalsingsarai."

(emphasis supplied)

76. Thus, the legal position as laid down in this authority makes it abundantly clear that even in respect of an illegal order of remand, which was passed mechanically in a cavalier fashion also, the remedy of writ of habeas corpus was not found to be appropriate remedy, but the only remedy which Hon'ble Apex Court considered appropriate was that of filing the application for bail."

25. We are therefore unable to accept the submission of the learned counsel for the petitioner that the learned ACMM passed the remand order mechanically and in routine manner without application of mind.

26. In ***Saurabh Kumar*** (Supra) the Hon'ble Supreme Court held that even if Magistrate has acted rather mechanically remanded the accused in judicial custody and has taken the process in a cavalier fashion which shows insensitivity towards denial of personal liberty of a citizen, the Writ of Habeas Corpus is not

maintainable, if there is order of remand, in which case the remedy lies elsewhere.

27. In *Serious fraud Investigation Office* (Supra) the Hon'ble Supreme Court has also held that the action of directing remand of accused is a judicial function and challenge the same is not to be entertained in Habeas Corpus petition. The same is the view in 1971 AIR SC 178.

28. The Hon'ble Supreme Court in *Sanjay Dutt's* case has also held that a Writ of Habeas Corpus filed on the basis of the absence of the valid order of remand or detention has to be dismissed, if on the date of return of rule, custody of the detenue is on the basis of a valid order.

29. If the above ratio is applied to the facts of the present case, we are of the considered view that even if for the sake of the argument, it is accepted that initially there was a violation of Article 22(2) of the Constitution of India, taking into consideration the facts of the present case and the serious allegations/accusations levelled against the petitioner, he need not be set at liberty. It is a matter of record that the detenue was remanded to judicial custody by the

orders of the Competent Court (ACMM), at the time of the filing of this petition. In these facts and circumstances and in the light of ratio of the Hon'ble Supreme Court as well as this Court quoted herein above. In our considered view this is not a fit case to exercise our extra ordinary jurisdiction.

30. Taking into consideration the overall facts and circumstances of the case and in view of the serious allegations levelled against the petitioner about his involvement in the multi crore scam of the smuggling of gold in which the petitioner has actively participated, we are not inclined to exercise our discretion in favour of the petitioner for issuance of Writ of Habeas Corpus. The petitioner has efficacious remedy of filing the Bail Application and seeking regular bail before the competent court. The legal position as laid down by the authorities of the Hon'ble Supreme Court and this Court makes it clear that even if the remand order is illegal, which is passed mechanically in a cavalier fashion, still the remedy of the Writ of Habeas Corpus cannot be said to be an efficacious remedy, but in terms of the Hon'ble Supreme Court filing of Bail Application in such circumstances is appropriate remedy.

31. The petitioner is entitled to avail appropriate remedy as available in law for seeking bail as per the advice. We are therefore not inclined to entertain this petition and hence pass the following order :-

ORDER

- (i) The Writ Petition is dismissed.
- (ii) Rule is discharged. There shall be no order as to costs.

(N.B. SURYAVANSHI, J.)

(S.S. SHINDE, J.)

Nilam
Kamble

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Nilam Kamble
Date: 2020.01.21
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