

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

CRIMINAL WRIT PETITION NO. 3162 OF 2023

Naresh Goyal, Aged 74 years,
through his next of kin i.e. wife
Anita Goyal,
72, Jupiter Apts, Anstey Road,
Off Altamount Road,
Mumbai – 400 026
(Arthur Road Jail)

...Petitioner

Versus

1. Directorate of Enforcement,
Mumbai Zone II Office,
Ceejay House, Unit Nos. 301-303,
402-403, Dr. Annie Besant Road,
Worli, Mumbai 400 018

2. Assistant Director,
Directorate of Enforcement, Mumbai,
Mumbai Zone II Office,
Ceejay House, Unit Nos. 301-303,
402-403, Dr. Annie Besant Road,
Worli, Mumbai 400 018

3. State of Maharashtra
Through the Public Prosecutor

...Respondents

Mr. Amit Desai, Sr. Advocate a/w Mr. Aabad Ponda, Sr. Advocate, Mr. Ameet Naik, Mr. Abhishek Kale, Mr. Karan Kadam, Mr. Gopalkrishnan Shenoy, Mr. Harish Khedkar, Ms. Arya Bile, Mr. Parikshith K, Ms. Anjali Sharma and Mr. Aditya Ajgaonkar i/b Naik Naik & Co. for the Petitioner

Mr. H. S. Venegavkar a/w Mr. Aayush Kedia and Ms. Diksha Ramnani for the Respondent Nos.1 and 2-ED

Ms. P. P. Shinde, A.P.P for the Respondent No.3-State

Mr. Sudhanshu Srivastava, I.O. is present

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
RESERVED ON : 26th OCTOBER 2023
PRONOUNCED ON : 7th NOVEMBER 2023

JUDGMENT (Per Revati Mohite Dere, J.) :

1 By this petition preferred under Articles 226 and 227 of the Constitution of India, the petitioner seeks the following reliefs :

“(a) That this Hon'ble Court issue a Writ of Habeas Corpus and/or a writ, order or direction in the nature of Habeas Corpus and/or any other Writ, Order and/or Direction, to forthwith release the Petitioner from the abjectly unlawful and arbitrary custody and incarceration.

(b) This Hon'ble Court be pleased to issue a writ of certiorari and/or a writ, order or direction in the nature of certiorari and/or any other writ, order or direction and/or any other order to quash and/or set aside Arrest Memo dated 1st September 2023 issued by the Respondent No. 2, along with its effect, implementation, and all consequent actions take thereunder, Arrest Order dated 1st September, 2023 issued by the Respondent No.2, along with its effect, implementation, and all consequent actions taken and also Remand Applications dated 2nd September 2023 and 11th September, 2023, along with its effect, implementation, and all consequent actions take thereunder;

(c) This Hon'ble Court be pleased issue a writ of certiorari and/or a writ, order or direction in the nature of certiorari and/or any other writ, order or direction and/or any other order to quash and/or set aside Remand Orders dated 2nd September, 2023 and 11th September, 2023 passed by the Hon'ble Designated Court under the PMLA Act, Sessions Court, Mumbai along with its effect, implementation, and all consequent actions take thereunder;

(d) Pending the disposal of the present writ petition, this Hon'ble Court be pleased to temporarily release the Petitioner from the abjectly unlawful and arbitrary custody and incarceration in connection with E.C.I.R/MB ZO-II/29/2023/378 registered on 10th May, 2023 on such terms and conditions as this Hon'ble Court may deem fit and proper;

(e) Pending the disposal of the present writ petition, this Hon'ble Court be pleased to stay the effect, implementation,

and operation of Arrest Memo dated 1st September, 2023 issued by the Respondent No.2, along, and all consequent actions take thereunder, Arrest Order dated 1st September, 2023 issued by the Respondent No.2, and all consequent actions take thereunder and Remand Applications dated 2nd September, 2023 and 11th September, 2023, along with its effect, implementation, and all consequent actions take thereunder;

(f) Pending the disposal of the present writ petition, this Hon'ble Court be pleased to stay the effect, implementation, and operation of Remand Orders dated 2nd September, 2023 and 11th September, 2023 passed by the Hon'ble Designated Court under the PMLA Act, Sessions Court, Mumbai along all consequent actions and orders passed taken or passed thereunder;

(g) That pending the final hearing and disposal of the Petition, the Petitioners prays that his verification may be dispensed with.

(h) Interim and ad interim relief in terms of prayer clause (c), (d), and (e), (f), and (g);

(i) Any such other and further reliefs as this Hon'ble Court may deem fit and proper.”

(emphasis supplied)

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.

3 Although, learned senior counsel Mr. Amit Desai raised several grounds i.e. physical copy of the grounds of arrest not being served on the petitioner, illegality of the arrest order, passing of mechanical remand orders without application of mind and the petitioner not being produced before the competent Court within 24 hours of arrest, as statutorily mandated, we had at the very outset, made it clear to the parties, that we would first decide whether the petition filed by way of a writ of habeas corpus is maintainable / not, in the facts of the present case, and if maintainable, then proceed to decide the other prayers.

4 Mr. Desai, learned senior counsel vehemently submitted that the present petition seeking writ of habeas corpus is maintainable, considering that the arrest of the petitioner was ex-facie illegal, being without jurisdiction; and that the remand orders passed by the Competent Court were without application of mind, passed in a routine and mechanical manner. According to Mr. Desai, the petitioner was also detained beyond 24 hours, contrary to the statutory mandate. He submitted that there was a complete violation of Articles 21 and 22(1) of the Constitution of India and that no remand orders could rectify the illegality committed by the prosecution. He submitted that it was the duty of the remanding Court to satisfy itself, as to whether the constitutional and statutory safeguards were complied with and that the Competent Court had failed in its duty to do so. He submitted that the aforesaid petition seeking a writ of habeas corpus can be entertained, having regard to the same. Mr. Desai also relied on the latest judgment of the Apex Court in the case of

Pankaj Bansal v. Union of India¹ to buttress his submission that the grounds of arrest i.e. physical copy was not furnished to the petitioner. Mr Desai also relied on the ***V. Senthil Balajii v. State***² to show that in the light of violation of the mandatory safeguards under Section 19 of the Prevention of Money Laundering Act, 2002 ('PMLA'), a writ of habeas corpus was maintainable. He brought to the Court's notice, the order dated 17th July 2023 of this Hon'ble Court (Coram : G. S. Patel & Neela Gokhale, JJ.) passed in Writ Petitions (Lodging) No. 17004/2023 and 17034/2023 filed by the petitioner herein, by which this Court, placing reliance on Apex Court's judgment in ***State Bank of India & Ors. v. Rajesh Agarwal & Ors.***³, had granted stay on Canara Bank's order dated 29th July 2021 classifying petitioner's account as fraud. Mr. Desai submitted that the Court had further held that any preceptitative steps by the investigating agency on the basis of the findings under the RBI Master Circular, will be stayed. It was vehemently argued by Mr. Desai that since, the

1 Cri. Appeal Nos. 3051-3052/2023 Dated 3/10/2023

2 2023 SCC OnLine SC 934

3 (2023) 6 SCC 1 : 2023 SCC OnLine SC 342

present criminal proceeding i.e. E.D case against the petitioner was initiated on the basis of the forensic audit conducted as per the Master Circular, the FIR would be rendered toothless and respondent Nos. 1 and 2 could not have proceeded with the ECIR, as the predicate offence was stayed.

5 Per contra, Mr. Venegavkar vehemently opposed the petition. He submitted that the present petition seeking writ of habeas corpus was, in the facts, clearly not maintainable. He does not dispute the fact, that the aforesaid petition has been placed before this Court, only having regard to prayer clause (a) i.e. the prayer seeking a writ of habeas corpus. He submitted that a writ of habeas corpus would be maintainable only if it is found that the person is in custody without any authority of law or has been illegally detained. He submitted that in the facts, several remand orders have been passed, and that the petitioner is presently in judicial custody. He submitted that it is always open for the petitioner to challenge the remand orders before the appropriate

forum. According to Mr. Venegavkar, another reason for not entertaining a writ of habeas corpus is, that on the date of return of rule, the person i.e. the petitioner was found to be in lawful custody, by virtue of the judicial orders. Mr. Venegavkar has set-out the dates and events to show that on the date of return of rule, the petitioner was in the custody of a Competent Court of law; and, that even before and after the filing of the present petition, several judicial orders have been passed by the Competent Court extending the custody of the petitioner from time to time. He submitted that it is settled principle of law that once the person is found to be in the custody of the Court, by a judicial order i.e. on the date of return of rule (12th October 2023 i.e. when the affidavit-in-reply of the Enforcement Directorate was placed before the Court), then, the said person cannot be said to be in illegal custody or illegal detention.

6 Mr. Venegavkar further submitted that admittedly, the three issues raised by the petitioner in the present petition i.e. the

legality of his arrest, non-supply of grounds of arrest and having been kept in detention beyond 24 hours, were never raised by the petitioner before the remand courts i.e. during the first and second remand. Mr. Venegavkar submitted that admittedly, the competence and jurisdiction of Enforcement Directorate or that of the Special Judge, PMLA, has not been challenged and as such, if jurisdiction and competence is not challenged, then, the scope for challenge falls outside the scope of the writ of habeas corpus and that it would be open to the petitioner to avail of other remedies, as permissible in law.

7 With respect to maintainability of the writ of habeas corpus, Mr. Venegavkar relied on the following judgments:

*(i) Ram Narayan Singh v. State of Delhi*⁴;

*(ii) Kanu Sanyal v. District Magistrate Darjeeling*⁵;

*(iii) Manubhai R.P. v. State of Gujarat*⁶;

(iv) V. Senthil Balaji (supra).

4 (1953) 1 SCC 389

5 1974 (4) SCC 141

6 2013 (1) SCC 314

8 Mr. Venegavkar submitted that neither is the arrest of the petitioner ex-facie illegal, nor are the remand orders passed mechanically, routinely or without application of mind and that the same is evident from the remand orders passed by the Special Court. Mr. Venegavkar further submitted that reliance placed on *Pankaj Bansal (supra)* is misconceived, inasmuch as, the words used in the said judgment in para 35 are that “**henceforth** that a copy of such written grounds of arrest is furnished to the arrested person, as a matter of course and without exception”. Emphasis was laid down on the word ‘henceforth’ used in para 35 of the said judgment. He submitted that the law holding the field before *Pankaj Bansal (supra)*, was that of *Chagga Bhujbal v. State of Maharashtra*⁷ and that the petitioner was informed and served on the grounds of arrest. Mr. Venegavkar produced before us, a copy of the grounds of arrest served on the petitioner, duly signed by the petitioner. As far as merits are concerned, Mr. Venegavkar submitted that whether or not there was a stay on the predicate

7 (2016) SCC OnLine Bom 9938

offence, cannot be gone into, in view of the maintainability of the petition itself, which seeks a writ of habeas corpus.

9 Both, learned senior counsel for the petitioner and learned counsel for the respondent have submitted their written submissions in support of their contentions and judgments relied upon by them.

10 Before we proceed to decide the question/issue of maintainability of this petition seeking a writ of habeas corpus, it would be apposite to consider the following judgments, which have a bearing on the issue in hand.

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 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*⁸, 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

8 1969 (1) SCC 292

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.”

13 In ***Kanu Sanyal (supra)***, the grounds raised by the petitioner therein were (i) that he was not informed of the

grounds of arrest and (ii) the Magistrate had no jurisdiction to try the case, and hence, the remand could not be granted. The Apex Court held that the earliest date with reference to which the legality of the detention can be challenged is the date of filing of the writ and not any other date; that on the date of filing of habeas corpus, the detention of the petitioner was in district jail and therefore, the legality of his earlier detention cannot be considered; and that a writ of habeas corpus cannot be granted when the person is jailed and is in judicial custody.

Para 4 of this judgment, being relevant, is reproduced herein-under :

“4. These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling. We think it unnecessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court. This Court speaking through Wanchoo, J., (as he then was) said in A. K. Gopalan v. Government of India, (1966) 2 SCR 427: "It is well settled that in dealing with the petition for habeas

corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of hearing". In two early decisions of this Court, however, namely, Naranjan Singh v. State of Punjab, 1952 SCR 395 and Ram Narain Singh v. State of Delhi, 1953 SCR 652 a slightly different view was expressed and that view was reiterated by this Court in B. R. Rao v. State of Orissa, (1972) 3 SCC 256, where it was said : "In habeas corpus 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". And yet in another decision of this Court in Talib Husain v. State of Jammu & Kashmir, (1971) 3 SCC 118, Mr. Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that "in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing". of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as- having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus. But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and the Court is not, to quote the words of Mr. Justice Dua in B. R. Rao (supra), "concerned with a date prior to the-initiation of the

proceedings for a writ of habeas corpus". Now the writ petition in the present case was filed on 6th January, 1973 and on that date the petitioner was in detention in the Central Jail, Visakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the petitioner in the Central Jail, Visakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Visakhapatnam. See para 7 of the judgment of this Court in B.R. Rao (supra). The legality of the detention of the petitioner in the Central Jail, Visakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them."

14 In *Sanjay Dutt v. State*⁹, 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, [1952] SCR 395; Ram Narayan Singh v.

9 1994(5) SCC 410

The State of Delhi, [1953] SCR 652 and A.K. Gopalan v. Government of India, [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)

16 Reliance was also placed by Mr. Venegavkar on the judgment of the Apex Court in *Saurabh Kumar v. Jailor, Koneila Jail & Anr.*¹⁰. It was the petitioner’s case, that he was detained by the police, without any lawful justification, whatsoever and hence, his detention was illegal. Whereas, according to the police, the petitioner was arrested on 30th June 2013 and produced before the Additional Chief Judicial Magistrate, Dalsingsarai, Samastipur on 1st July 2013, who remanded him to

10 2014 (13) SCC 436

judicial custody by an order dated 1st July 2013 and thereafter, from time to time, by the Court concerned. In the meantime, charge-sheet was filed against the petitioner on 27th August 2013 followed by a subsequent charge-sheet filed against the remaining accused persons on 3rd December 2013. On 19th December 2013, the Magistrate took cognizance of the offences punishable under Sections 147, 148, 149, 323, 447, 504, 379 and 386 of the Penal Code read with Section 27 of the Arms Act against the petitioner therein and others.

In the facts as aforestated, the Apex Court in paras 21, 22 and 23 observed as under :

“21. Two things are evident from the record :

Firstly, the accused is involved in a criminal case for which he has been arrested and produced before the Magistrate and remanded to judicial custody;

Secondly, the petitioner does not appear to have made any application for grant of bail, even when the remaining accused persons alleged to be absconding and remain to be served. The net result is that the petitioner continues to languish in jail.

22. *The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody.*

23. *We are also of the view that the Magistrate has acted rather mechanically in remanding the accused petitioner herein to judicial custody without so much as making sure that the remaining accused persons are quickly served with the process of the court and/or produced before the court for an early disposal of the matter. The Magistrate appears to have taken the process in a cavalier fashion that betrays his insensitivity towards denial of personal liberty of a citizen who is languishing in jail because the police have taken no action for the apprehension and production of the other accused persons. This kind of apathy is regrettable to say the least. We also find it difficult to accept the contention that the other accused persons who all belong to one family have*

absconded. The nature of the offences alleged to have been committed is also not so serious as to probabalise the version of the respondent that the accused have indeed absconded. Suffice it to say that the petitioner is free to make an application for the grant of bail to the court concerned who shall consider the same no sooner the same is filed and pass appropriate orders thereon expeditiously.”

(emphasis supplied)

It is pertinent to note that the Apex Court despite coming to the conclusion that the order passed by Magistrate was mechanical, still refused to issue writ of habeas corpus, as is evident from para 23 aforesaid.

17 The Apex Court in ***Gautam Navlakha v. National Investigation Agency***¹¹ in para 67 examined the question “whether a writ of habeas corpus lies against an order of remand under Section 167 Cr.P.C.” Accordingly, the Apex Court in para 71 of its judgment, held as under :

11 2021 SCC OnLine SC 382

“71. Thus, we would hold as follows :

If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie.”

18 In the present case, it cannot be said that the remand orders are absolutely mechanical or suffer from the vice of lack of jurisdiction, warranting our interference in this writ petition, which seeks a writ of habeas corpus.

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 before 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 1st or 2nd remand of the petitioner. Both the remand orders i.e. dated 2nd September

2023 and 11th 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 **1st 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 **2nd 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 **11th September 2023**, in the second remand, further **4 days'** custody was granted to the Enforcement Directorate.

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

On **15th September 2023**, the aforesaid petition was filed.

On **20th 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 **27th September 2023, 4th 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 **6th 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 **11th October 2023**, the respondent-Enforcement Directorate filed their affidavit-in-reply.

On **12th 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. **12th 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.

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 **2nd September 2023** and **11th 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 3rd October 2023, post filing of the aforesaid petition.

22 As far as applicability of the judgment of *Pankaj Bansal (supra)* with regard to handing over a physical copy of the grounds of arrest is concerned, the same will not apply to the facts in hand. The relevant para of *Pankaj Bansal (supra)* reads thus :

“35. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law.”
(emphasis supplied)

23 The petitioner was arrested on 1st September 2023 and was served with the grounds of arrest on 1st September 2023.

The petitioner has acknowledged receipt of the same. The law that held the field till *Pankaj Bansal (supra)*, with respect to serving the grounds of arrest was *Chaggan Bhujbal (supra)*. As noted above, the Apex Court vide judgment dated 3rd October 2023 in *Pankaj Bansal (supra)*, has used the words 'henceforth' and has held that the decision of the Bombay High Court in *Chaggan Bhujbal (supra)* and Delhi High Court in *Moin Qureshi* does not lay down the correct law. Thus, in the facts, having regard to the same, there is no merit in the petitioner's submission, that he ought to have been furnished with a physical copy of the grounds of arrest. The petitioner was not orally read out the grounds of arrest but was served a copy of the grounds of arrest which he acknowledged by signing thereon.

24 For the reasons as stated aforesaid, we are of the view that the petition seeking writ of habeas corpus, in the facts, cannot be entertained and as such, dismiss the petition.

25 Needless to state, that it is always open for the
petitioner to avail of other statutory remedies, as permissible in
law to him, vis-a-vis other prayers raised in this petition.

26 We make it clear, that the observations made in this
order, are restricted to the challenge before us i.e. maintainability
of the petition seeking a writ of habeas corpus and as such keep
all contentions of the petitioner open, on all other points raised in
this petition.

27 Petition is accordingly disposed of.

28 All concerned to act on the authenticated copy of this
order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.