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Corrected as per order dated 30/4/2024.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1101 OF 2024**

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Sagar Maruti Suryawanshi	]	
Age- 46 years, Occ: Advocate	]	
Having its office at C-66, New Lawyers	]	
Chamber, Shivaji Nagar Court Camp,	]	
Shivaji Nagar, Pune.	]	
(At present Mumbai Central Prison)	]	 Petitioner.

V/s

1] State of Maharashtra	]	
Through Senior Police Inspector	]	
Pimpri Police Station, Pimpri-Chinchwad,	]	
Pune.	]	
	]	
2] Economic Offence Wing,	]	
Through Investigating Officer,	]	
CID, Pune.	]	 Respondents.

Mr. Ajay Bhise a/w Ms. Deepali K. Kedar for the Petitioner.
Mr. Ajay S. Patil, APP for the Respondent-State.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the arguments were concluded : 24.04.2024
Date on which the judgment is pronounced: 29.04.2024

ORAL JUDGMENT: (Per A. S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith and heard learned Counsel
for the parties.

2] By this writ petition filed under Article 226 of the Constitution of India the Petitioner seeks a declaration that his detention beyond twenty four hours is illegal and hence he is entitled to be released in connection with First Information Report No.806 of 2019 registered with Pimpri Police Station, Pune. The Petitioner has also raised the challenge to the order dated 29/03/2024 passed by the learned Judge of the Special Court, Pune remanding the Petitioner to police custody.

3] Mr. Ajay Bhise, the learned Counsel for the Petitioner submitted that in connection with Special Prevention of Money Laundering Case No.673 of 2023, he was under judicial custody of the Special Court, Mumbai. The Senior Police Inspector, Pimpri Police Station during the course of investigation in FIR No.806 of 2019 registered under Sections 420, 406, 409, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code as well as Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, the Act of 1999) sought his custody. In that context the Petitioner was arrested on 27/03/2024 at 5.10 p.m. Under the provisions of Section 167 of the Code of Criminal

Procedure, 1973 (for short, the Code) the Petitioner ought to have been produced before the learned Magistrate within twenty four hours of his arrest so as to authorize his detention. The Petitioner was not produced before the learned Magistrate within twenty four hours and he was so produced after twenty four hours. On this count the detention of the Petitioner beyond twenty four hours from 5.10 p.m. on 27/03/2024 was illegal. Referring to the provisions of Section 57 of the Code it was urged that for failure to comply with the mandatory provisions the Petitioner's detention was illegal. Inviting attention to the judgment of learned Single Judge in *Ashak Hussain Allah Detha @ Siddique and another vs The Assistant Collector of Customs (P) Bombay and another*, **1990 Cri.L.J. 2201** it was submitted that since there was a restraint placed on the liberty of the Petitioner from 5.10 p.m. on 27/03/2024 and he was not produced before the learned Magistrate prior to expiry of twenty four hours his detention was illegal. He was liable to be released forthwith. The learned Counsel for the Petitioner thereafter referred to various provisions of the Act of 1999 to urge that the Petitioner ought to have been immediately produced before the learned Judge of the Special Court and not the learned Judicial Magistrate, First Class as offence under Sections 3 and 4 of the Act of 1999 was

also registered. Relying upon the provisions of Section 6(2) and 13 of the Act of 1999 and by referring to the judgment of the Supreme Court in *A.R. Antulay vs. Ramdas Srinivas Nayak and Another*, (1984) 2 SCC 500 it was urged that since there was reference to offences under the Act of 1999 in FIR No.806 of 2019, the Petitioner's production before the learned Magistrate was of no avail to indicate compliance of the provisions of Section 167 of the Code. It was then submitted that though the Petitioner objected to the issuance of production warrant before the learned Judge of the Special Court on the grounds of violation of Article 22(2) of the Constitution of India as well as Section 57 of the Code, the said aspects were not considered by the learned Judge of the Special Court. Since there had been breach of the provisions of Article 22(2) of the Constitution of India the Petitioner was entitled to be released forthwith. Reference was also made to the decisions in *Manoj vs. State of MP* (1999) 3 SCC 715, *CBI vs. Anupam J. Kulkarni*, (1992) 3 SCC 141, *Gautam Navlakha vs. National Investigation Agency*, (2022) 13 SCC 542 and *V. Senthil Balaji Vs. State* (2024) 3 SCC 51 in that regard. The learned Counsel also placed reliance on the decision in *Nazir Ahmad and The King-Emperor*, ILR – Indian Appeals 372 to urge that the procedure prescribed by statute

had to be scrupulously followed. It was thus urged that the prayers made in the writ petition be granted and the Petitioner be directed to be released forthwith.

4] Mr. Ajay S. Patil, the learned Additional Public Prosecutor opposed the aforesaid submissions. According to him, the Petitioner was in judicial custody of the Special Court under the Act of 1999 at the relevant time. The Petitioner was not arrested immediately on 27/03/2024 at 5.10 p.m. in connection with FIR No.806 of 2019 but he was actually arrested on 28/03/2024 at 2.30 a.m. The period of twenty four hours as contemplated by Section 167 of the Code would commence from 2.30 a.m. on 28/03/2024. Prior to expiry of that period and after excluding the time taken for travelling from Mumbai Central Prison to the Special Court, the Petitioner had been produced before the learned Magistrate in accordance with Section 167 of the Code. Since the Petitioner's arrest was duly authorized within twenty four hours of his arrest, no relief could be granted to the Petitioner. The learned Additional Public Prosecutor in fact submitted that in the present proceedings seeking declaration of his illegal arrest, the

Petitioner could not challenge the order passed by the learned Judge of the Special Court with regard to his remand. The Petitioner was produced before the learned Magistrate within twenty four hours of his arrest and hence the prayer made by the Petitioner was not liable to be granted. In that regard reliance was sought to be placed on the decision in *Radhey Shyam and Another vs. Chhabi Nath and Others*, **(2015) 5 SCC 423** to urge that under Article 227 of the Constitution of India the order passed by the learned Judge of the Special Court could be challenged. Reference was also made to the decision in *Subhashree Das alias Milli vs. State of Orissa and Others*, **(2012) 9 SCC 729** as well as the judgment of the Division Bench in Criminal Writ Petition No.1168 of 2023 (*Anil Jaisinghani and Anr. Vs. The State of Maharashtra and Anr.*) decided on 03/04/2023. It was thus open for the Petitioner to challenge the remand orders in accordance with law by approaching the proper forum. Since there was no breach of Article 22(2) of the Constitution of India or the provisions of Section 167 of the Code, there was no reason to interfere with the impugned order. The writ petition was thus liable to be dismissed.

5] We have heard the learned Counsel for the parties and with their assistance we have gone through the documentary material on record. To consider the prayers made in the Criminal Writ Petition, it would be necessary to first refer to the relevant factual events that have transpired:

(a) Pursuant to registration of ECIR/MB20-II/10/2021 Special PML Case No.673/2023 at the instance of the Enforcement Directorate, the Petitioner was in judicial custody at the Mumbai Central Prison.

(b) On 21/03/2024 an application was moved on behalf of the Economic Offences Wing before the learned Judicial Magistrate, First Class seeking custody of the Petitioner with regard to FIR No.806 of 2019 registered at Pimpri Police Station.

(c) On 22/03/2024 the learned 3rd Judicial Magistrate, First Class issued a production warrant for producing the Petitioner in connection with FIR No.806 of 2019. A request was also made to the learned Judge of the Special Court that no objection

be given for taking custody of the said accused.

(d) On 26/03/2024 the learned Judge of the Special Court passed an order below Exhibit-84 in Special Case No. 673 of 2023 thereby directing the custody of the Petitioner to be handed over to the Investigating Officer, EOW, Pune.

(e) The Investigating Officer, EOW was handed over the custody of the Petitioner at 5.10 p.m. on 27/03/2024 by the Jail Authorities, Mumbai Central Prison. At 23.40 p.m, the Police Authorities reached their Pune Office after which the Petitioner was medically examined on 28/03/2024 at 1.15 a.m.

(f) The Petitioner was arrested on 28/03/2024 at 2.30 a.m. Notice in accordance with Section 50 of the Code came to be issued to the Petitioner's Counsel.

(g) On 28/03/2024 at about 3.00 p.m. the Petitioner was produced before the learned Judicial

Magistrate, First Class. However, it was directed that the Petitioner be produced before the Special Court. At 5.20 p.m. on the same day, an application was moved before the learned Judge of the Special Court who passed an order that the Investigating Officer should produce the Petitioner and another accused before the Court of the learned Judicial Magistrate, First Class and obtain necessary orders on the basis of which production of the Petitioner could be entertained by the Special Court. Accordingly, the Court of the learned Judicial Magistrate, First Class was moved and on the same day it was directed that the Investigating Officer should produce the Petitioner before the Special Court.

(h) On 29/03/2024 at 1.05 a.m. the learned Judge of the Special Court passed an order remanding the Petitioner to police custody till 04/04/2024.

6] The aforesaid sequence of events would indicate that the Petitioner had been arrested on 28/03/2024 at 2.30 a.m. and an order

remanding the Petitioner to police custody came to be passed at 12.30 a.m. on 29/03/2024. This would indicate that within twenty four hours of the Petitioner's arrest he was produced before the jurisdictional Court which remanded him to police custody. The notice issued under Section 50 of the Code dated 28/03/2024 discloses the date and time of the Petitioner's arrest as 28/03/2024 at 2.30 a.m. while the remand order passed by the learned Judge of the Special Court indicates that it was passed at 1.05 a.m. on 29/03/2024. On the basis of these documents on record it is evident that the order of remand under Section 167 of the Code was passed within twenty four hours of the Petitioner's arrest. The ratio of decisions in *Manoj, Anupam J. Kulkarni* and *Gautam Navlakha* (supra) is not shown to have been violated.

7] Once it is found that the order of remand has been passed within twenty four hours of the Petitioner's arrest, the requirement of Section 167 of the Code stands satisfied. The decision of learned Single Judge in the case of *Ashak Hussain Allah Detha* (supra) relied upon by the learned Counsel for the Petitioner is distinguishable in the facts of the

present case inasmuch as Petitioner was in judicial custody at the relevant time when his production was sought in connection with FIR No.806 of 2019. In that sense therefore there was already a restraint on the Petitioner's personal liberty by virtue of his earlier arrest. Thus during the process of seeking the Petitioner's custody on 27/03/2024 at 5.10 p.m. it cannot be said that he was deprived of his personal liberty till his arrest on 28/03/2024 at 2.30 a.m. The Petitioner had already been arrested and was under judicial custody. Hence the ratio of this judgment is not applicable to the facts of the present case.

8] Coming to the production of the Petitioner initially before the learned Judicial Magistrate, First Class and thereafter before the learned Judge of the Special Court and yet again before the learned Judicial Magistrate, First Class only to be finally produced before the learned Judge of the Special court, it is to be noted that all these events have transpired within twenty hours of the Petitioner's arrest. On this basis it cannot be said that though offence under Sections 3 and 4 of the Act of 1999 had been registered vide FIR No.806 of 2019, the Petitioner was produced before the learned Judicial Magistrate,

First Class who had no jurisdiction to issue the remand order. It would have been a different matter had the period of twenty four hours expired in the meanwhile. In these facts therefore the ratio of the decision in *A. R. Antulay* (supra) is not found to be disregarded.

It is also to be noted that even otherwise under Section 57 of the Code time that is necessary for undertaking the journey from the place of arrest to the Magistrate's Court is liable to be excluded while determining the period of twenty four hours. We therefore find that there is no substance in the grievance of the Petitioner that he was illegally detained without a valid order authorizing his detention as required under Section 167 of the Code.

9] The learned Counsel for the Petitioner sought to contend that the grievance with regard to violation of the provisions of Article 22(2) of the Constitution of India and Section 57 of the Code was urged before the learned Judge of the Special Court and the same ought to have been gone into. It is found that the said aspect was kept open by the learned Judge of the Special Court as referred in the order dated 29/03/2024. In the light of our finding that the Petitioner was legally

detained pursuant to the order dated 29/03/2024 passed at 1.05 a.m. by the learned Judge of the Special Court which was within twenty four hours of the Petitioner's arrest on 28/03/2024 at 2.30 a.m., we do not find that there has been any violation of the provisions of Article 22(2) of the Constitution of India. The question of issuance of writ of habeas corpus would arise only in the event of the Petitioner's detention being found to be illegal as held in *V. Senthil Balaji* (supra).

10] For the aforesaid reasons, we do not find any case made out to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. Suffice it to observe that it would be open for the Petitioner to challenge the order of remand dated 29/03/2024 passed by the learned Judge of the Special Court by availing appropriate remedy. It is clarified that all points in that regard are kept open for being raised before the appropriate forum.

11] The Criminal Writ Petition is thus dismissed with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]