

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

CRIMINAL WRIT PETITION NO.996 OF 2025

Karan Ratan Rokade
and others

....Petitioners

Versus

The State of Maharashtra & Anr.

... Respondents

.....
WITH

INTERIM APPLICATION NO.850 OF 2025

IN

CRIMINAL WRIT PETITION NO.996 OF 2025

.....

Mr. Vivek V. Salunke, Advocate a/w. Vaibhav Jathar for the Petitioners.

Mr. S.V. Gavand, APP for the Respondent No.1-State.

Mr. Varun Thokal, Advocate i/b. Jayant Bardeskar for the Intervenor.

.....

**CORAM : SARANG V. KOTWAL, AND
S. M. MODAK, JJ.**

RESERVED ON : 03th APRIL, 2025

PRONOUNCED ON : 21st APRIL, 2025

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. This Petition is filed by the Petitioners for directions in the nature of *writ of habeas corpus* for release of the Petitioners from custody in connection with C.R. No.346/2023 dated 22.5.2023 registered at Chikhali police station, Pimpri Chinchwad, Pune which has resulted in Special Case (MCOC Act) No.1078/2023 on the file of the learned Special Court (MCOC Act), Pune. The other prayers are

for declaration that their arrest was illegal and in violation of their fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India; and for setting aside their remand orders dated 2.7.2023 and 7.7.2023.

2. The main contention of the Petitioners is that they were produced before a Magistrate, after more than 24 hours from their arrest at the time of seeking their remand on the first occasion, which is violative of Article 22(2) of the Constitution of India and which is also in violation of Section 57 of Cr.P.C..

3. Heard Mr. Vivek Salunke, learned counsel for the Petitioners, Mr. S.V. Gavand, learned APP for the Respondent No.1-State and Mr. Varun Thokal, learned counsel for the Intervenor.

4. Before referring to the submissions made by learned Counsel of both sides, it is necessary to refer to the brief facts, leading to the arrest of the Petitioners. These facts are mentioned in the affidavit filed by the Assistant Commissioner of Police Shri Sunil Kurade attached to Wakad Division of Pimpri Chinchwad Police Commissionerate, District-Pune. The FIR was lodged by the informant Rajendra Karle. In 2022, during the *Navratri* festival at

Patil Nagar, Chikhali there was some altercation between the Petitioner No.1 Karan Rokade and his friends on one hand and one Krushna @ Sonya Haribhau Tapkir and his friends on the other. The Petitioner No.1 Karan had threatened Krushna of dire consequences. The Petitioner No.1 Karan was having a grudge against Krushna as Krushna was gaining popularity in the vicinity. On 22.5.2023, at about 1.40 p.m. to 1.45 p.m. Saurabh Pansare and Sidharth Kamble came on a two-wheeler at the spot of offence. Saurabh Pansare fired bullets on the chest, neck and other parts of Krushna; who succumbed to death on 22.5.2023 while taking treatment. On that basis, the FIR was lodged vide C.R. No.346/2023 at Chikhali police Station under Sections 302, 120-B of IPC and under Sections 3(25)(27) of the Arms Act and under Section 37(1)(3) read with Section 135 of the Maharashtra Police Act. The investigation commenced. During the course of the investigation, it was revealed that Krushna's murder was committed by an Organized Crime Syndicate headed by the Petitioner No.1 Karan. The Senior Inspector of Police, Chikhali police station Shri Dnyaneshwar Katkar submitted a report dated 29.6.2023 to the Additional Commissioner of Police, Pimpri Chinchwad for applying the

provisions of the Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOC Act') against the Petitioners and other accused in connection with the said offence. The material collected during the investigation indicated that the Petitioners were involved in this offence. They were controlling the same by staying outside Maharashtra. From the date of offence they had absconded from their homes and they had abandoned their mobiles. It was with great difficulty a specialized squad started tracing their locations from different States. During that process, the squad intercepted the IP address of WhatsApp calls and the squad came to know that the Petitioners were hiding themselves in a small town called Madhuban near Nepal border. The squad reached there. The Petitioners saw the squad and tried to run away but they were intercepted and taken in custody. On 30.6.2023 at about 7.24 p.m., they were taken into custody within the jurisdiction of Madhuban police station, District Mau, Uttar Pradesh. The local police station of Madhuban was intimated. According to the said affidavit, the Petitioners were dangerous criminals with serious antecedents and, therefore, it was thought necessary to take them immediately to Pimpri Chinchwad and

to produce them before a competent Magistrate. Accordingly, the said squad took the Petitioners by road to come to Pimpri Chinchwad. They reached Pimpri Chinchwad at around 7.00 a.m. in the morning on 2.7.2023. They were produced before the learned J.M.F.C. at Pimpri Chinchwad at 2.00 p.m.. The learned Magistrate granted police custody of the Petitioners to the investigating officer. The provisions of the MCOC Act were applied on 5.7.2023; and in that connection they were shown arrested on 7.7.2023 and the subsequent remands were granted by the learned Special Judge (MCOC Act), Pune.

SUBMISSIONS OF SHRI VIVEK SALUNKE LEARNED COUNSEL FOR THE PETITIONERS:

5. The Constitutional mandate under Article 22(2) of the Constitution is that the arrested person has to be produced before the nearest Magistrate within a period of twenty-four hours excluding the time necessary for the journey to take the accused to the nearest Magistrate. He submitted that in the present case the Petitioners were not produced before the nearest Magistrate who would be in-charge of the jurisdiction of Madhuban police station, District-Mau, Uttar Pradesh. This is also required under Section 57 of Cr.PC.. He

submitted that there is clear violation of these provisions and, therefore, the arrest itself is illegal. The subsequent remands will not wash out the illegality of the arrest. There is no dispute that the Petitioners were arrested at around 7.30 p.m. on 30.6.2023 but were produced before the learned Magistrate at Pimpri Chinchwad on 2.7.2023 at 2.00 p.m.. This is beyond the stipulated period of twenty-four hours. He submitted that though the Petitioners were shown arrested formally at 10.00 a.m. on 2.7.2023, in fact they were already arrested at 7.20 p.m. on 30.6.2023. In support of his contentions, he relied on the following judgments :

1. **Hem Prabhakar Shah Vs. State of Maharashtra¹**. It is a Division Bench judgment of this Court.
2. **Manoj Vs. State of M.P.²**
3. **Ashak Hussain Allah Detha @ Siddique and another Vs. The Assistant Collector of Customs (P) Bombay and another³**. It is a Single Judge Bench judgment of this Court.
4. **Directorate of Enforcement Vs. Subhash Sharma⁴**
5. **Vihaan Kumar Vs. State of Haryana & another⁵**

1 2024 SCC OnLine Bom 3006

2 (1999) 3 SCC 715

3 1990 SCC OnLine Bom 3

4 Hon'ble Supreme Court dated 21.1.2025 in SLP (Cri) No.1136/2023)

5 Hon'ble Supreme Court dated 7.2.2025 in SLP(CRI) No.13320/2024.

SUBMISSIONS OF THE LEARNED APP SHRI GAVAND:

6. Learned APP submitted that as mentioned in the affidavit, the squad that arrested the Petitioners, did not comprise of the investigating officer and they did not carry the investigation papers with them. And, therefore, it was not possible for the Officers in the squad to produce the Petitioners before the learned Magistrate at Madhuban because the requirement under sub-section (1) of Section 167 of Cr.P.C. is that while transmitting the accused to the nearest Magistrate a copy of the entries in the case diary were required to be produced before the Magistrate. The squad was required to take immediate journey by road and it was necessary to bring the Petitioners back to Pimpri Chinchwad immediately. The Petitioners were absconding for a long time and with great efforts they could be traced and arrested.

7. According to Shri Gavand the travel time from 7.30 p.m. on 30.6.2023 till 10.00 a.m. on 2.7.2023 is required to be excluded as per Section 167(1) of Cr.P.C. and also under the provisions of Article 22(2) of the Constitution of India. The Petitioners had reached the jurisdiction of Pimpri Chinchwad at 7.00 a.m. on 2.7.2023. The

formalities were completed and the Petitioners were arrested at 10.00 a.m. on 2.7.2023. Thereafter they were produced before the competent Court at 2.00 p.m. on the same day i.e. on 2.7.2023 and, therefore, there was no violation of any of these provisions requiring production of the accused before the competent Magistrate within a period of twenty-four hours. When the Petitioners were produced before the learned Magistrate, he granted police custody till 7.7.2023. On 5.7.2023, the provisions of the MCOC Act were applied and then the further police custody was granted by the Special Court on 7.7.2023. All these subsequent remands are valid remands.

8. Shri Gavand submitted that, at the first instance, when they were produced before the learned J.M.F.C., Pimpri Chinchwad on 2.7.2023, the Petitioners were represented by a Lawyer and at no point of time any issue was raised by the Petitioners that they were produced after twenty-four hours from the time of arrest. It is at a much belated stage i.e. after more than one and a half year, this Petition was filed on 26.11.2024 taking exception to the fact of late production from their arrest on 30.6.2023. He submitted that this is a Petition for a writ of habeas corpus. It is a settled law that the Court

has to see the validity and legality of detention of the arrested accused on the date of deciding the Petition for writ of habeas corpus. In any case, at the highest, the date of filing of the present Writ Petition would be important and this Court will have to see whether on that date the remand of the Petitioners was valid.

9. In support of his contentions, Mr. Gavand relied on the judgments of the Hon'ble Supreme Court in the cases of **Kanu Sanyal Vs. District Magistrate, Darjeeling and others⁶**, **Ram Narayan Singh Vs. State of Delhi and others⁷** and **Col. Dr. B. Ramachandra Rao Vs. The State of Orissa and others⁸**.

10. Mr. Gavand further submitted that the Petitioners have approached this Court for this relief much belatedly and, therefore, the relief sought being a discretionary remedy, it cannot be granted to the Petitioners in view of the fact that they had approached this Court much belatedly. In support of this proposition, he relied on the judgment of the Hon'ble Supreme Court in the case of **Mrinmoy Maity Vs. Chhanda Koley and others⁹**.

11. Appearing for the intervenor, who is the first informant, Mr.

6 (1974) 4 SCC 141

7 (1953) 1 SCC 389

8 (1972) 3 SCC 256

9 AIR 2024 Supreme Court 2717

Varun Thokal supported the contentions of the learned APP. He submitted that this is a serious offence committed by an Organized Crime Syndicate. The investigating agency could arrest the Petitioners through great efforts. The Petitioners have approached this Court much belatedly. Therefore, it was not open for the Petitioners to contend that their fundamental rights were violated. Because of delay and laches in approaching the Court, the Petitioners cannot claim any relief on the ground of infringement of fundamental rights.

REASONS :

12. The first question which arises is as to whether the officers arresting the Petitioners were obliged to produce the Petitioners before the Magistrate having jurisdiction over Madhuban police station; which would have been the nearest Magistrate or before the Magistrate at Pimpri Chinchwad who had the jurisdiction over the offence registered in this case. This question is no more *res integra*.

. A Division Bench of this Court has already dealt with this issue in the case of **Vachhalabai Vs. State of Maharashtra, through the Secretary to Government of Maharashtra and others**¹⁰. The relevant portion from Paragraph-26 of the same judgment is as follows :

10 2019 SCC OnLine Bom 2937

“26. The period of 24 hours is given in relation to the term “nearest magistrate” and it cannot be read separate from this term. Further, as per the aforesaid reasoning given, “nearest magistrate”, cannot be presumed as the Magistrate having jurisdiction over the crime, in which the accused is arrested. Further, right to inform the Magistrate of the charge under which that man is arrested given in this Article shows that it was intention to see that the Magistrate within whose territorial jurisdiction the man is arrested is expected to be informed about such arrest and such Magistrate is expected to exercise the power, which can be like bail, remand etc.”

. This would clearly mean that the nearest Magistrate before whom the Petitioner should have been produced within twenty-four hours was the Magistrate having jurisdiction over Madhuban police station in Uttar Pradesh. Admittedly, the Petitioners were not produced before that Magistrate but were brought to Pimpri Chinchwad and were produced on 2.7.2023 at 2.00 p.m.. Therefore, they were produced beyond twenty-four hours from their arrest before any Magistrate. It cannot be contended that the time to travel from Uttar Pradesh to Pimpri Chinchwad should be left out of consideration. This consideration would have been important if the Petitioners were produced before the nearest Magistrate. In that case the time required for journey from the place of arrest to the nearest Magistrate is permissible to be excluded. In this case, the Petitioners were not produced before the nearest Magistrate within twenty-four

hours from their arrest.

13. The next question arises as to what is the effect of non-production of the Petitioners before the nearest Magistrate after their arrest within twenty-four hours.

14. The view taken in some of the judgments to that extent supports the contentions of Shri Vivek Salunke that in such cases the arrested accused were granted relief. It was held to this effect by a Division Bench of this Court in the case of **Hem Prabhakar Shah** and in the case of **Subhash Sharma** as decided by the Hon'ble Supreme Court. It was held in **Subhash Sharma's** case that when the accused was not produced before the nearest learned Magistrate within twenty-four hours, arrest of the accused was rendered completely illegal as a result of the violation of clause (2) of Article 22 of the Constitution of India and, therefore, his arrest gets vitiated on completion of twenty-four hours in custody.

15. The fact situation in the case of **Manoj** was different. In that case there were two cases against the accused. One was referred to as 'Rajasthan case' by the Hon'ble Supreme Court for the offence committed in Rajasthan and the other case was referred to as 'M.P

case' for the offence committed by the same accused in Madhya Pradesh. In these facts, bail was granted to that accused in Rajasthan case. While he was in custody in connection with 'Rajasthan case' he was never produced before the competent Court in connection with the 'M.P. case', and, therefore, he was granted bail. It was observed that, since in the 'M.P. case', after the arrest he was not produced before the nearest Magistrate within twenty- four hours, the detention made as a sequel to that arrest would become unlawful beyond the period of twenty-four hours.

16. Thus, it is the consistent view that if the accused is not produced before the nearest Magistrate within twenty-four hours after his arrest, his detention becomes unlawful.

17. In the case of **Ashak Hussain Allah Detha** it was observed that the putting restraint on the personal liberty would amount to arrest. However, that particular aspect is not an issue before this Court at this stage. It is an admitted fact that the Petitioners were arrested at 7.24 p.m. on 30.6.2023.

18. Shri Salunke relied on the observations in **Vihaan Kumar's** case, made by the Hon'ble Supreme Court that once it is held that the

arrest is unconstitutional due to violation of Article 22(1), hence the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing of a charge-sheet and order of cognizance will not validate an arrest which is *per se* unconstitutional being violative of Articles 21 & 22(1) of the Constitution of India.

19. Therefore, it is quite clear that if the accused is not produced before the nearest Magistrate within twenty-four hours from his arrest, the remand after that is not valid. Therefore, in the present case the first remand granted by the learned Magistrate on 2.7.2023 can be said to be in violation of this safeguard.

20. However, the question remains as to whether in the facts of the present case the Petitioners can be released on that ground today. There is a significant difference on facts in the present case before us. Though the Petitioners were arrested on 30.6.2023 in connection with the offence registered for commission of offence only under IPC, the provisions of MCOC Act were applied on 5.7.2023. The first police custody remand was granted by the learned Magistrate at Pimpri Chinchwad on 2.7.2023 upto 7.7.2023. The affidavit filed by

the Assistant Commissioner of Police Shri Sunil Kurade, Wakad Division, Pimpri Chinchwad Police Commissionerate, District-Pune mentions that the provisions of the MCOC Act were applied on 5.7.2023 and the Petitioners were arrested on 7.7.2023 for the offences under provisions of MCOC Act (emphasis supplied). Therefore, on 7.7.2023, the Petitioners were produced before the learned Special Court, MCOC Act, Pune for grant of further police custody and they were remanded to the police custody by that Court upto 14.7.2023. Thus, at least from 7.7.2023, there was no illegality in the arrest and remand of the Petitioners. From that day onwards, the Petitioners were in custody under the valid remand orders of a competent Court. They were also produced within twenty-four hours after their arrest on 7.7.2023 for the commission of offences under the MCOC Act. Significantly on 2.7.2023, the Petitioners were represented by an Advocate. From 2.7.2023 upto 7.7.2023, no such ground of illegal detention was raised by the Petitioners nor they had approached this Court for a writ of *habeas corpus* during that period.

21. In the aforementioned judgments, the fact situation was different. The investigating agency remained the same and the

investigating officers were from the same investigating agency. However, in the present case once the MCOC provisions were applied, the investigation was carried out by another superior officer who was separately empowered to investigate pursuant to the approval under Section 23(1) of the MCOC Act. The procedure of arrest of these Petitioners and producing them before the competent Court for remand was without any legal flaw.

22. In this context, a reference can be made to certain judgments relied on by learned APP Shri Gavand. In **Ram Narayan Singh's** case the Petitioners prayed for issuance of writ of *habeas corpus*. The Hon'ble Supreme Court had considered the question of issuance of writ of *habeas corpus* with reference to the date on which such writ can be issued. A Five-Judge Bench of the Hon'ble Supreme Court in that case observed that in *habeas corpus* proceedings the Court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceedings.

23. Another Three-Judge Bench of the Hon'ble Supreme Court in the case of **Col. Dr. B. Ramachandra Rao** has referred to **Ram**

Narayan Singh's and has further reiterated that in habeas corpus proceedings the Court has 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 A fortiori the Court would not be concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus.

. This would mean that we have to consider the fact situation and legality of the remand on the date of initiation of the proceedings for a writ of habeas corpus petition. In the present case, as mentioned earlier, this Writ Petition is filed on 26.11.2024.

24. The Hon'ble Supreme Court had again considered this aspect in the case of **Kanu Sanyal**. The relevant paragraphs from that judgment is paragraph-4 which reads thus :

"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* : AIR 1966 SC 816

"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*, AIR 1952 SC 106 and *Ram Narayan Singh v. State of Delhi*, AIR 1953 SC 277 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 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".

And yet in another decision of this Court in *Talib Husain v. State of Jammu*, (1971) 3 SCC 118 & *Kashmir 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 v. State of Orissa* (supra), "concerned with a date prior to the-initiation of the proceedings for a writ of habeas corpus."

25. Having regard to the aforesaid observations of the Hon'ble Supreme Court in various judgments including the judgment delivered by a Five-Judge Bench of the Hon'ble Supreme Court, we have to see

whether on the date of filing of this Petition or while deciding this Petition whether the Petitioners were in custody pursuant to the valid remand orders. Answer to this aspect will have to be in the affirmative. As mentioned earlier, from 7.7.2023 onwards the Petitioners were in custody pursuant to the valid remand orders passed by the learned Special Judge under the MCOC Act.

26. Another important aspect in this case is that the Petitioners have not approached any Court challenging the legality of their arrest and the remand granted by the Magistrate on 2.7.2023 except in the present Petition. The remand order from 2.7.2023 to 7.7.2023 was not challenged during that period of detention.

27. Learned APP relied on the case of **Mrinmoy Maity's** case. The relevant observations are made in paragraph-9 of the said judgment by the Hon'ble Supreme Court as follows :

“9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ Petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while

exercising discretionary powers Under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.”

28. In the present case, as mentioned earlier, there is no justification as to why this issue was never raised for considerable period between 2.7.2023 upto 26.11.2024 when this Petition was filed. The Petitioners were represented by an Advocate right from 2.7.2023. On this ground also we are not inclined to set aside the remand granted on the first occasion by the learned Magistrate on 2.7.2023 and set the Petitioners at liberty.

29. As mentioned earlier, the offence is quite serious. The Petitioners were absconding and were not traceable. It is with great efforts that they could be traced and could be arrested..

30. The present offence itself is very serious. The annexure to the affidavit filed by the RespondentNo.2 shows that there were twenty-one serious offences registered against the Crime Syndicate right from the year 2015 upto the year 2023. There are nine serious offences registered against the Petitioner No.1 Karan Rokade, there are eleven serious offences registered against the Petitioner No.2 Mungya

@ Rutik Rokade and there are two serious offences pending against the Petitioner No.3 Rinku Kumar.

31. As a result of the above discussion, we are not inclined to allow this Petition by issuing a writ of habeas corpus to release the Petitioners from custody. The Petition is accordingly dismissed. Interim Application is also disposed of.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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DESHMANE

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