

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

CRIMINAL WRIT PETITION NO.6683 OF 2024

Nagani Akram Mohammad ShafiPetitioner
Versus
Union of India and anotherRespondents

Mr. Subodh Desai, Senior Advocate i/b. Ajay L. Bhise for the
Petitioner.

Mr. H.S. Venegavkar, Standing Counsel for Union of India a/w.
Aayush Kedia a/w. Diksha Ramnani for the Respondent No.1-
ED.

Smt. M.M. Deshmukh, APP for the Respondent No.2-State.

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

DATE : 28th JANUARY, 2025

P.C. :

1. This is a Petition for declaration that the detention of the Petitioner was illegal and beyond 24 hours which is in gross violation of the fundamental rights of the Petitioner guaranteed under Articles 21 & 22 of the Constitution of India; and after such declaration to issue further directions to release the Petitioner forthwith in connection with ECIR bearing No.ECIR/MBZO-II/2024 registered with the Directorate of

Enforcement, Mumbai Zonal Office-II, Mumbai. Apart from this prayer, the other interim prayer is for direction to produce the CCTV footages and other records.

2. Heard Mr. Subodh Desai, learned Senior Counsel for the Petitioner and Mr. H.S. Venegavkar, learned Standing Counsel for the Respondent No.1 Union of India [ED].

3. Learned Senior Counsel for the Petitioner has submitted the timeline, which would be the basis of his submissions. According to him in the intervening night between 19.11.2024 and 20.11.2024, the Petitioner was detained at Ahmedabad International Airport by the Airport Authorities in pursuance of the look out circular issued at the behest of the Respondent No.1 i.e. the Directorate of Enforcement, Mumbai. He was detained at 00.04 hours in the midnight. According to the Petitioner, his custody was handed over by the Airport Authorities to the officers of the Respondent No.1 at 12.57 p.m. on 20.11.2024. It is his case that the Petitioner was taken into custody by the officers of the Respondent No.1. On the same day i.e. 20.11.2024 at about

3.30 p.m., the Petitioner was taken by the Officers of the Respondent No.1 from Ahmedabad to Mumbai via flight. They reached the office of the Respondent No.1 at around 7.00 p.m. on 20.11.2024. The Petitioner was interrogated and his statement was recorded. Around 10.00 p.m., they stopped the interrogation and the Respondent No.1's officers along with the Petitioner stayed in a hotel near Agripada, Mumbai. On 21.11.2024, at around 9.30 a.m. to 10.00 a.m. the officers of the Respondent No.1 took the Petitioner to their office for further interrogation and for recording his statement. On 21.11.2024 at 5.00 p.m., the Petitioner was formally shown to be arrested. Within an hour i.e. at 6.00 p.m. on 21.11.2024, the Petitioner was produced before the learned Special Judge designated under the Prevention of Money Laundering Act, 2002 [for short, 'PMLA'], Mumbai. The learned Judge directed the Respondent No.1's officers to produce the Petitioner on the next day after conducting his medical examination. The Petitioner was so produced on 22.11.2024; when he was remanded to custody of the Respondent No.1 till 29.11.2024.

Further remands are not of much importance as far as the present Petition is concerned. The basic submission of the learned Senior Counsel for the Petitioner is that since 00.04 hours on 20.11.2024, the Petitioner was in custody and he was admittedly produced before the learned Special Judge for his first remand at 6.00 p.m. on 21.11.2024, which was a period beyond 24 hours which is in violation of the provisions mandated under the Constitution of India as well as under the Bharatiya Nagarik Suraksha Sanhita. Hence, his custody becomes illegal custody and the Petitioner deserves to be released forthwith.

4. Learned Senior Counsel for the Petitioner made the following submissions :

- i. Though the Petitioner had raised a similar issue before the Special Judge and it was rejected by the learned Special Judge, since the issue involves the alleged breach of his fundamental rights, the present Petition is maintainable. He referred to the affidavit-in-reply filed by the Assistant Director, Zonal Office-II, Directorate of

Enforcement, Worli, Mumbai in the context of the averments made in the Remand Application No.1359/2024 dated 21.11.2024. In that remand application, it was stated on behalf of the Respondent No.1 that the Petitioner was detained from Ahmedabad Airport at 0.04 hours on 20.11.2024 from where he was handed over to the officers of Enforcement Directorate [ED] at 12.57 hours on 20.11.2024.

- ii. Therefore, according to the learned Senior Counsel he was in custody of the ED officers. The Airport Authorities handed over his custody to the Respondent No.1's Officers. According to the Petitioner, he was always under restraint imposed by the Respondent No.1's officers which is evident from the fact that the officers and the Petitioner travelled in the same flight from Ahmedabad to Mumbai. It also indicates that throughout that journey the Petitioner was in custody of the officers. The purported reason given was that the Petitioner had no family in Ahmedabad. By the same reasoning, it has

to be considered that the Petitioner does not have a family in Mumbai as well.

- iii. He submitted that the sequence of events further underlines that the Petitioner was in their custody because from the Mumbai Airport the Petitioner was taken to ED office and after 10.00 p.m. he was taken to a hotel in Agripada. Two officers also stayed in the same hotel throughout the night which indicates that his movements were restricted.
- iv. Therefore, according to the learned Senior Counsel, it was incumbent on the officers to have produced the Petitioner before the nearest Magistrate in Ahmedabad itself because he was arrested, according to the Petitioner, at 12.57 hours on 20.11.2024. In fact his arrest relates back to 00.04 hours on 20.11.2024.
- v. On 21.11.2024, when the Petitioner was produced for the first time before the learned Special Judge he was not remanded to the police custody remand or magisterial

custody remand but he was directed to be taken for medical examination and then he was produced only on the next day i.e. 22.11.2024 at about 10.00 a.m. when the first remand order was passed. He submitted that for more than 24 hours, there was no valid remand order. The Petitioner was not produced within the stipulated period of 24 hours before the nearest Magistrate.

- vi. To support his contention, learned Senior Counsel relied on a Division Bench judgment of this Court in the case of **Hem Prabhakar Shah Vs. State of Maharashtra**¹, the judgments of the Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Dinesh Kumar**² and in the case of **Niranjan Singh & Anr. Vs. Prabhakar Rajaram Kharote and others**³

5. The learned Special Prosecutor Shri Venegavkar, on the other hand, submitted his own time-line. Both the time-lines matches except for the contention whether he was arrested or whether he was in the custody or whether he was

1 2024 SCC OnLine Bom 3006

2 [2008] 1 S.C.R. 281

3 Decided on 10.3.1980 in Special Leave Petition (Cri) No.393/1980

arrested for the first time at 5.00 p.m. on 21.11.2024. The fact that the Petitioner was stopped at Ahmedabad International Airport at about 00.04 hours is not disputed. Similarly the officers of the Respondent No.1 reaching Ahmedabad Airport at 12.57 p.m. is also not disputed. The flight from Ahmedabad to Mumbai taken by both, the Petitioner as well as the officers, is also not denied.

6. The basic difference in the arguments of Shri Venegavkar is regarding the fact whether the Petitioner's movements were restricted, whether he was in custody or whether he was arrested. Shri Venegavkar seriously disputed the Petitioner's claim in that behalf. He submitted that the Petitioner was neither arrested nor was in custody in Ahmedabad. He was accosted by the Airport Authorities based on a valid look out document in the nature of Look Out Circular [LOC]. The immigration authority had only stopped the Petitioner from travelling abroad. This does not amount to arrest. Since the LOC originated at the behest of the Respondent No.1, it was the duty of the immigration officers to

inform the officers of Respondent No.1.. Accordingly they were informed and they reached Ahmedabad. The officers served a summons under Section 50 of the PMLA on the Petitioner.

7. Shri Venegavkar submitted that at the time of service of the summons, a person need not be an accused but some information may be required from him and that is the purpose of serving the summons under Section 50 of PMLA on such a person. Thereafter, pursuant to that summons, the Petitioner was duty bound to attend the office of ED. Accordingly, he travelled in the same flight with the officers but he was not put under any restraint. He was not in custody. He was not arrested. He submitted that arresting a person under PMLA is pursuant to a specific procedure provided under Section 19 of the PMLA. It is on a high threshold. Unless the conditions mentioned in Section 19 of PMLA are fulfilled, the officers cannot arrest any person. Therefore, at the first instance, the Petitioner's statement is recorded in their office on 20.11.2024 till about 10.00 p.m.. After that, he was allowed to go and stay in a hotel at Agripada. Shri Venegavkar fairly

submitted that two of the officers also stayed in the same hotel but that was not to restrict or restrain the petitioner's movement but looking at his history, they had to keep a watch so that he did not abscond. The circumstances show that a lookout circular was necessary to prevent him from leaving the country and his presence was necessary for the purposes of investigation. Only to that extent and for that purpose the officers had stayed in the same hotel. His statement was recorded further on 21.11.2024 in the morning at around 10.00 a.m. onwards and only when there was sufficient material available with the officers of ED on the basis of which they were convinced that his arrest was necessary; he was arrested at 5.00 p.m.. After that, he was immediately produced at 6.00 p.m. before the Special Court. The Special Court then directed the ED to take him for medical examination and then on the next day the custody was given to the officers through the remand order dated 22.11.2024.

8. Shri Venegavkar submitted that the issues raised in this Petition were raised by the Petitioner in an application

before the Special Court which was rejected vide order dated 4.12.2024. There was no challenge to that order and, therefore, the Petition is not maintainable.

9. We have considered these submissions. Since the Petitioner has raised the issue of breach of his fundamental rights, we have entertained this Petition inspite of the order dated 4.12.2024 not having been challenged by the Petitioner. Before proceeding further it is necessary to refer to the basic facts leading to the arrest of the Petitioner. The affidavit-in-reply mentions that the concerned ECIR dated 11.11.2024 was recorded based on the FIR No.295/2024 dated 7.11.2024 registered at Malegaon Chavvani police station, District- Nashik under Sections 318(4), 338, 340(2) of the Bharatiya Nyaya Sanhita [for short, 'BNS'] regarding unknown deposit of huge amounts of more than Rs.100 Crore in fourteen newly opened accounts with Nashik Merchant Co-operative Bank. The FIR was registered on the basis of the written complaints mentioning that one Siraj Ahmed Mohammad Harun Memon and his accomplices had used the identity of the first informant

by using forged documents. Even his brother's identity was used to carry out the transaction of huge amounts in the bank accounts. The major portion of these amounts were transferred in various accounts and then thereafter the money was siphoned off. During investigation it was revealed that the Petitioner actively worked for one Mohmood Abdul Samad Bhagad and his associates. They had used WhatsApp Groups in respect of those transactions. The aforementioned Siraj actively worked with the Petitioner for routing those funds from these bank accounts maintained with that bank. In short, the allegations regarding execution of crime are quite serious. The investigating agency is satisfied about the Petitioner's involvement in the crime. They are satisfied that the Petitioner is connected with the proceeds of the crime including its concealment, possession, acquisition and use attracting provisions of PMLA.

10. In this background, it has to be seen whether the Petitioner was kept in custody illegally without producing him before the nearest Magistrate within 24 hours of his arrest. In

that connection, a brief reference can be made to the judgments cited by the learned Senior Counsel on behalf of the Petitioner.

11. In the case of **Hem Prabhakar Shah** (supra), the facts mentioned show that the Petitioner therein was detained by the immigration officers around 10.00 p.m. on 13.8.2024 upon landing in Ahmedabad from Singapore. This detention was based on the lookout circular issued at the insistence of ED. He was then transferred to the custody of Sardar Vallabhbhai Patel International Airport Police Station. From 10.00 p.m. on 13.8.2024 till 1.00 p.m. on 14.8.2024, the Petitioner was detained in the police lockup at Airport police station at Ahmedabad. Thereafter the officers of ED arrived at Ahmedabad at around 3.00 p.m. and then he was brought to Mumbai. Thus, quite clearly, the Petitioner in that case was kept in police lockup for more than 24 hours; which on the face of it, is a clear violation of the mandate of the law and, therefore, the Petitioner was held to be in illegal detention. The judgment refers to the other judgments including **Niranjan**

Singh's case (supra), wherein the concept of arrest and custody was discussed.

12. As mentioned earlier, the judgment of **Hem Prabhakar Shah** has to be read in the context of the facts of that case in which admittedly the Petitioner was kept in lockup for more than 24 hours without producing him before the nearest Magistrate.

13. **Dinesh Kumar's** case extensively relies on **Niranjan Singh's** case. **Niranjan Singh's** case specifically considers the issue of grant of bail when the accused surrendered before the Court. In that case, the question of being in custody of the police was not an issue. Therefore, all these three judgments do not help the submissions on behalf of the Petitioner.

14. On the other hand, there is nothing to show that the Petitioner's movements were restricted by the Officers of the Respondent No.1. The submissions of Shri Venegavkar that two officers stayed in the same hotel at Agripada for the purpose to keep watch on the Petitioner, is also acceptable. The

past history of the Petitioner showed that it was necessary to issue the lookout circular to restrict the Petitioner from leaving the country and, therefore, it was necessary to keep track of his movements. That was necessary so that there was no further possibility of the Petitioner absconding. But that did not mean that he was put under restraint.

15. The immigration authority at the Ahmedabad Airport were also bound to stop the Petitioner from leaving the country and to inform the officers of the ED. That also does not mean that the immigration officers at Ahmednagar International Airport had arrested the Petitioner.

16. From this factual background, the submissions of Shri Venegavkar that the Petitioner was arrested at 5.00 p.m. on 21.11.2024 is acceptable. His statement was recorded on 20.11.2024 in the evening and then, in the morning, on 21.11.2024. Thereafter, only on being satisfied that his arrest is necessary and only after the conditions mentioned under Section 19 of PMLA were satisfied, the Petitioner was arrested. Therefore, the date and time of arrest has to be taken to be

5.00 p.m. on 21.11.2024. Within one hour from that arrest the Petitioner was produced before the learned Special Judge. This satisfies the requirement of law under Bharatiya Nagarik Suraksha Sanhita [for short, 'BNSS'] as well as under the Constitution of India.

17. The next argument of learned the Senior Counsel for the Petitioner was that on the first occasion there was no specific order granting police custody remand or the magisterial custody remand. As per the requirement of law, the Petitioner was produced before the Special Court within 24 hours of his arrest then all his further detention was subject to the order passed by the competent Court that was the Special Judge under PMLA. The learned Judge rightly directed the officers of the ED to take the Petitioner for medical examination. The officers of ED were thereafter bound to follow the directions of the learned Special Judge. Section 58 of the BNSS requires the arrested person to be produced before the concerned Magistrate within 24 hours. Section 187(2) of the BNSS then provides that the Magistrate can authorize

detention of the accused in such custody as he thinks fit. In this case, the Special Court directed the ED to take the Petitioner for medical examination. Therefore, this detention from that point onwards was subject to the orders from the learned Special Judge. Therefore, it cannot be said that the detention even after 6.00 p.m. on 21.11.2024, was illegal.

18. Thus, considering all this discussion, we do not find that the detention of the Petitioner was in any manner illegal; and, therefore, no relief can be granted to the Petitioner in this case. The Petition is accordingly dismissed.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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