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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5722 OF 2025

Shazaib Sabir Patel .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

...

Ms.Payoshi Roy with Ms.Palak Dubey and Mr.Ulkesh Gangurde
for the Petitioner.

Mr.Tanveer Khan, Addl.P.P. for the State/Respondent.

**CORAM: BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.**

DATE : 24th NOVEMBER, 2025

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JUDGMENT:-

1. The Writ Petition is filed by the relative and next kin, being the cousin brother of Safvan Abdul Rauf Patel and Afnan Abdul Rauf Patel, who are arraigned as Accused Nos.2 and 3 in F.I.R.No.0274 of 2025 and arrested by Taloja Police Station.

The Petition seek a direction to the Superintendent of Taloja Central Prison to produce them before the Court, either physically or through video conferencing.

A declaration is also sought that their continued detention in Taloja Central Prison is illegal, arbitrary and in

violation of Section 187 of the Bhartiya Nagarika Suraksha Sanhita, 2023 (for short, “**BNSS**”) as well as Article 21 of the Constitution of India.

2. Pleadings in the Petition being complete, we have taken up the same for hearing at the stage of admission, and, hence, we issue ‘Rule’, which is made returnable forthwith.

3. We have heard learned Advocate Ms.Payoshi Roy with Ms.Palak Dubey for the Petitioner and learned Additional Public Prosecutor, Mr.Tanveer Khan for the State.

4. F.I.R.No.274 of 2025 is registered with Taloja Police Station on 08/08/2025 on the complaint filed by one Ammar Harun Madar, with four persons being named as accused alongwith one unknown person. The Complainant alleged that on 08/08/2025 at around 14.50 hours, four named accused persons alongwith 8 to 10 unknown persons, in order to revenge the act of CIDCO in removing the encroachment of motor mechanic garage on a complaint filed by the Sayyed family, mounted assault with means of knife, iron and wooden rods, with an intention to kill. When the Complainant went to the rescue of the injured persons, even he was assaulted and the assailants questioned their act of removing the garage through CIDCO.

The accusation resulted in invocation of Sections 109, 118(1), 189(1), 189(2), 191(3), 190, 352, 351(2) of BNSS and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

5. The persons on whose behalf the present proceedings are filed, were arraigned as Accused No.2-Safnan and Accused No.3-Afnan and both were arrested on 09/08/2025 at 16.41 hours.

Pursuant to the production before JMFC, Panvel Court, Panvel, they were remanded to police custody on finding substance in the application seeking remand by the police, for the purposes of investigation.

6. In the subject C.R, Accused No.1 was arrested on 08/08/2025 and produced before the JMFC, Panvel Court, Panvel on 09/08/2025, who granted his Police Custody Remand (PCR) till 14/08/2025. As far as Accused Nos.2 and 3 are concerned, they were arrested on 09/08/2025 and produced before the JMFC, Panvel Court, Panvel on 10/08/2025 and they were remanded in PCR till 14/08/2025. All the three Accused were produced before the JMFC, Panvel on 14/08/2025 and the PCR was extended till 18/08/2025, which was further extended by one day.

According to the Petitioner, the Magistrate remanded Accused Nos.1 to 3 to Magisterial Custody Remand (MCR) till 01/09/2025, but it is the specific contention advanced on behalf of the Petitioner that thereafter, there is no order passed by the Magistrate, extending the remand of Accused Nos.2 and 3. It is also specifically pleaded that they were not produced physically or through video conferencing before the Magistrate, which is gross violation of Article 21 of the Constitution of India and as a result, the accused continue to be incarcerated in Talaja Central Prison from 01/09/2025, without their remand being extended.

7. The Petitioner, a close relative of the accused, through an Advocate obtained certified copies of all the remand applications and the corresponding orders to find that there is no order extending the Magisterial Custody Remand (MCR) of the accused persons after 01/09/2025. It is also pleaded that the Petitioner visited Talaja Central Prison to submit a written application seeking information regarding the current status of the accused persons and the details entered in the warrant register to find whether the accused were produced physically or through video conferencing, but the application was not accepted and repeated correspondence made by him to seek

necessary information did not yield any result and, therefore, the Petitioner is constrained to file the present Petition seeking production of Accused Nos.2 and 3 in C.R.No.274 of 2025 to secure their release, as their detention without further remand order after 01/09/2025, is pleaded to be illegal.

8. Ms.Roy, the counsel for the Petitioner, on taking us through the remand orders, would submit that the detention of the accused persons is illegal and it lacks the sanction of law and, hence, they are entitled to be set at liberty. She would submit that judicial custody just like police custody can only be imposed by way of a remand order and it deserve extension from time to time, but in its absence, it becomes illegal. According to her, the judicial custody cannot be considered to be extended by default under Section 187 of BNSS and necessarily there has to be an order sanctioning judicial custody and even extending the same as the extension of judicial custody cannot be assumed and it should be extended by way of a lawful order.

According to Ms.Roy, extension of judicial custody can never be considered as formality, as an accused loses his liberty, if he is detained illegally. According to her, BNSS does

not distinguish between the first remand and subsequent remand and at either stage, it contemplate application of mind by the judicial officer and passing of an order, by keeping in mind the rigors of the procedure set out in the Code/BNSS and on failure to adhere to the same, according to her, must result in the accused being released on bail.

9. By relying upon the decision in the case of ***V. Senthil Balaji Vs. State represented by Deputy Directors & Ors.***¹, she would urge that writ of habeas corpus is maintainable, when the accused is seeking release from custody, which is without a sanctioning order i.e. a remand order, though the Court may not issue a writ of habeas corpus to release a person in judicial custody pursuant to a valid remand order, however, when the remand is without jurisdiction or passed without application of mind, definitely writ court shall intervene. She would also place reliance upon the decision of the Apex Court in the case of ***Ram Narayan Singh Vs. State of Delhi & Ors.***², with reference to Section 167 of the Criminal Procedure Code, 1898, where it is held that detention without remand order is illegal and the custody of the four accused persons depriving them to their personal liberty was frowned upon and they were held

¹ (2024) 3 SCC 51

² (1953) 1 SCC 389

entitled for their release, when the procedure of remand was not followed. She would also place reliance upon the decision of this Court in the case of *Sonu Madanlal Yogi Vs. The State of Maharashtra & Anr. (Writ Petition No.3651 of 2011 decided on 13/12/2011)*, where the Division Bench has taken a view, that in absence of the respondents producing any valid remand order passed against the petitioner for continued detention in connection with the alleged offence, the detention is liable to be declared illegal, resulting into his release from such detention.

10. Learned Additional Public Prosecutor, Mr.Tanveer Khan, would place reliance upon the statutory scheme and submit that the non extension of remand and specifically in judicial custody is different than the non existence of a remand order itself and though it is not disputed by him that there is no further extension of the remand, he would submit that the accused persons would be produced before the Magistrate soon, as their release on bail is possible and in any case, being in judicial custody, the accused have not deemed it appropriate to file any bail application, by this route, they cannot secure their release. Mr.Khan, therefore, would submit that the Petition do not deserve any indulgence and is liable to be dismissed.

11. In the wake of the arguments advanced, we have perused the scheme comprised in the Bharatiya Nagarik Suraksha Sanhita, 2023 contained in Chapter XIII, commencing from Section 173 in form of 'Information in Cognizable Offences' being provided to the police and the power of the police officer to investigate.

The police officer, who is empowered to investigate a cognizable offence, shall complete the investigation in the manner prescribed in Section 176 and on completion of investigation, he shall forward his report, without unnecessary delay to the Magistrate, who is empowered to take cognizance of the offence on a police report in the prescribed format.

During the course of investigation, when a police officer arrest any person, without an order from Magistrate and without warrant, if he has reason to believe on the basis of the complaint, information or suspicion that such person has committed an offence, then it is imperative for him to produce him before the Magistrate and he shall not detain him in custody for a period extending twenty-four hours, excluding the time necessary for journey from the place of arrest to the Magistrate's Court.

12. Section 187 of BNSS prescribe the procedure, when a person is arrested and detained in custody and it appears to the Investigating Officer that the investigation cannot be completed within twenty-four hours and there are grounds for believing that the accusation or information is well-founded, then he shall produce him before the Magistrate.

The Magistrate to whom the accused person is forwarded under sub-section (2) irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody, as such Magistrate thinks fit and if has no jurisdiction to try the case and consider the further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Sub-section (3) of Section 187 which is a slight deviation from the existing procedure in Section 167 of the Code of 1973, reads thus :-

“(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every persons released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.”

Sub-section (4) of Section 187 significantly provides that no Magistrate shall authorise the detention of the accused in custody of the police unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police. However, the Sanhita permits the Magistrate to extend further detention in judicial custody on production of the accused, either in person or through the audio-video electronic means.

A proviso appended to sub-section (5) of Section 187 imposes a restriction in detaining a person otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

13. The procedure prescribed in Section 187, necessarily requires production of an accused before the Magistrate and application of mind by the Magistrate, as to whether he deserves to be remanded to police custody or judicial custody.

While authorising the detention of the accused in custody

of police for the first time and subsequently every time till the accused remains in the custody of the police, the accused shall be produced before the Magistrate in person, but once he is remanded to judicial custody, there can be extension of judicial custody on his production, through audio-video electronic means. Sub-section (7) of Section 187 makes it mandatory for the Magistrate authorising detention in the custody of police to record his reasons for so doing..

14. From the statutory scheme incorporated in Section 187, it appears with clarity that no person, who is arrested and detained in custody, shall be so detained beyond period of twenty-four hours and the Investigating Officer shall present him to the nearest Magistrate and the Magistrate to whom the accused person is forwarded, is empowered to authorise, from time to time, his detention in such custody as he thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days, out of detention period of sixty days or ninety days, as the case may be. The Magistrate may, however, authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but in no case, his detention shall be authorised in custody for a total

period exceeding ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more; sixty days when the investigation relates of any other offence and, on expiry of the said period of ninety days or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to furnish bail.

15. From reading of the aforesaid provision, it becomes clear that an indefeasible right accrues to an accused person, if the investigation is not completed within a period of ninety days/sixty days and accused still continue to be in detention. The legislature has, therefore, necessarily provided for the consequences, when the investigation is not complete and if the accused is prepared to and does furnish bail, he shall be released on bail.

When the legislature intended to provide for the consequences, it did so. However, we find that there was no provision in the Code of 1973 or in BNSS providing for the consequences for non extension of the judicial custody remand of the accused and according to us, it is too far fetched to hold that because there is no extension of judicial custody by any remand order, the accused is entitled to be released on bail.

In fact, sub-section (4) of Section 187 makes it clear that whenever an accused is produced from police custody, he shall be physically presented before the Magistrate on every occasion whenever such extension is granted, but as far as the judicial custody is concerned, the Magistrate may extend further detention on production of accused, either in person or through the audio-video electronic means.

Whenever a police custody remand is granted by the Magistrate, he shall verify whether the police custody is necessary and whether by remanding the accused to police custody, he would render any assistance in investigation of the offence, and also when the police custody remand is extended to ascertain whether the accused has complaints of any type, while he was in their custody. However, when an accused is remanded to judicial custody, he is placed in a prison, where he is under the control and supervision of the Judicial Magistrate and not subjected to investigation in the jail premises by the Investigating Officer, without permission of the Magistrate, and in a sense, he is in safe environment and, therefore, it is permissible to have his production, while extending the remand through audio-video electronic means.

16. In the scheme of the Code of Criminal Procedure as well as BNSS, on accused being arrested in connection with an offence by a police officer, he can be detained beyond twenty-four hours only with the permission of the Judicial Magistrate. While granting police custody, the need of his custody shall be specifically ascertained by the Magistrate. However, when he is not to be remanded to police custody, an accused shall be remanded in judicial custody where he remains under the authority of the Judicial Magistrate and is lodged in Central or State prison.

Though, there is no timeline prescribed for completion of investigation of a crime, the accused shall remain in judicial custody till such time the Magistrate take cognizance of the offence and the Court, after taking cognizance of the offence, or commencement of trial, if find it necessary to postpone the proceedings, he may do so for such time as he considers reasonable and may by warrant, remand the accused in custody, subject to a proviso that no Magistrate shall remand the accused to custody for a term exceeding fifteen days at a time. Since, there is no maximum timeline prescribed for completion of investigation, but by restricting the maximum period, when the accused can be detained in custody, there

exists a provision of he being released on default bail, if the charge-sheet is not filed within 60/90 days, i.e. the investigation is not continued within that period. It is not that the investigation of an offence cannot be continued beyond the period of 60/90 days as contemplated under Section 167 of Cr.P.C./Section 187 of BNSS, but in such a contingency, since the power of the Magistrate of detention gets exhausted and the accused cannot be further detained in custody, by way of a mandate, the accused shall be released on bail, if he is prepared to and does furnish bail.

Therefore, after the police custody of fifteen days, as contemplated under the Code of 1973 the initial fifteen day, but the specific provision under BNSS where the police custody can be availed in parts, at any time during initial 40 days or 60 days of the period of detention, the accused shall remain in judicial custody, with a time limit specified. It is during the period when the accused is in judicial custody, he is entitled to seek his release on bail by filing application under Section 483 of BNSS and considering the merits of the accusations and several other factors, the application shall be considered. Since the accused continue to remain in custody till he is released on bail either by securing the bail or when he deserve

his release on bail, since the investigation is not completed within 60/90 days, he remains in judicial custody.

It may be true that the judicial remand has to be further extended by every fifteen days on production of accused, but the question that arises for our consideration is, whether in absence of such extension, the accused is entitled to be released on bail and our answer to the said question is in the negative, in absence of any specific provision to that effect, either in the Code of 1973 or BNSS 2023.

17. Ms.Roy has heavily relied upon the decision of the Apex Court in the case of *Ram Narayan Singh* (supra) and we must note that the said decision involves the old Criminal Procedure Code, 1898, and the facts itself disclose that the detention of the accused was sought to be justified on the basis of two remand orders; the one alleged to have been passed by the Additional District Magistrate, Delhi on 06/03/1953 and the second alleged to have been passed by the trying Magistrate at about 3.00 p.m., on 9th March, while adjourning the case.

It can thus be seen that the first remand order is by the Magistrate and it expired on 9th March. It appears that thereafter the accused was produced before the trying Magistrate on 9th March and the Magistrate was proceeding at

that stage under Section 344 of the Code of Criminal Procedure and when he decided to adjourn the case pending before him, it was necessary for him " to remand by warrant the accused if in custody,". The trying Magistrate adjourned the proceedings till 12th March and there was no order on record, though some documents in form of chits were produced extending the remand, but the Court refused to observe the same. The trying Magistrate issued warrant with an endorsement, "Remanded to judicial till 11th March, 1953".

The facts of the case are clearly distinguishable as it deal with Section 344 of the Code of Criminal Procedure, which is the corresponding Section 309, which is a power to adjourn the proceedings and sub-section (2) of Section 309, contemplate a stage after taking cognizance of an offence or commencement of trial and the Court consider it necessary to postpone or adjourn the proceedings and while it is so done, the Court may by warrant, remand accused if in custody, with a proviso being appended that no Magistrate shall remand a accused person for a term exceeding fifteen days at a time.

The decision in ***Ram Narayan Singh*** (supra) is, therefore, dealing with the production before the trying Court and when the proceedings were adjourned, the accused is remanded to

judicial custody on the further date. Thus, in our opinion, the aforesaid decision is not of any succour to the Petitioner, who has sought release of Accused Nos.2 and 3 in the subject F.I.R.

18. In ***Sonu Madanlal Yogi*** (supra), we find that the said case deal with a non production of valid remand order passed against the petitioner, for continued detention in connection with the alleged offence and when the learned A.P.P. canvassed the argument that the order passed by the Sessions Court may be construed to mean that the petitioner would be continued in judicial custody upto a further date, we find that this case is also a case under Section 309 of the Code of Criminal Procedure, as it was urged that a formal remand order was not necessary and non mentioning of the fact in the order of the court cannot enure to the benefit of the Petitioner.

The said decision is also in relation to Section 309 and does not take the case of the Petitioner any further.

19. In ***V.Senthil Balaji*** (supra), it is held that a writ of habeas corpus shall only be issued when detention is illegal and as a matter of rule, remand order by judicial officer, culminating into a judicial function cannot be challenged by way of writ of habeas corpus, as it is open to the person aggrieved to seek other statutory remedies.

Making out a very strong case of non compliance of the mandatory provisions, when there is complete non application of mind, it is held that the Court may entertain the petition, seeking writ of habeas corpus. Upon non following the mandatory legal requirements, the detention may be illegal but it is categorically held that there is difference between the detention being illegal for not following the statutory mandate and wrong or inadequate reasons, being provided in the judicial order and it is only in the former case, a writ of habeas corpus may be entertained. A challenge to an order of remand on merit shall be made in tune with the statute, when non compliance of a provision may entitle a party to invoke extraordinary writ jurisdiction.

20. The present case is not a case of no valid remand order, as Accused Nos.2 and 3 on being remanded to police custody, were further remanded to judicial custody by a validly passed remand order, which continued till 01/09/2025, but admittedly there is no further extension.

It is not in dispute that there has to be an extension of the judicial custody every fifteen days by the Magistrate and the Magistrate is required to apply his mind. However, the nature of enquiry, which is contemplated when the accused is

to be remanded to police custody and in absence thereof, when he is remanded to judicial custody, and its further extension are completely different tasks, as while remanding an accused to the police custody, on an application made by the Investigating Officer, the Magistrate shall apply his mind, whether there is a necessity for police remand or he can be send to judicial custody. It is also well accepted that it is obligatory on part of the Magistrate to apply his mind and not to pass the order automatically or in a mechanical manner.

In absence of any provision in the Code or the Sanhita prescribing the consequence of not extending the judicial custody remand on account of non production of the accused before the Magistrate, we do not find any legal basis for the submission advanced by Ms.Roy that the accused persons are entitled to be released on bail or to be released from custody.

In fact, upon being remanded to judicial custody, it was open for them to file application for bail, which could have been duly considered, but instead, the Petitioner has chosen to file a writ of habeas corpus on the ground that the detention of the accused persons is illegal.

In any case, since we are of the view that there is no provision in BNSS contemplating the release of an accused

because there is no extension of judicial custody by the Magistrate beyond the first remand and which would secure their release, finding no merit and substance in the Petition, we dismiss the same.

However, at the same time, we direct that Accused No.2-Safvan Abdul Rauf Patel and Accused No.3-Afnan Abdul Rauf Patel in C.R.No.274 of 2025 shall be produced before the Magistrate forthwith for appropriate order being passed, extending their judicial custody.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)