

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 6204 OF 2025

Santosh Balkrishna Nadgaonkar .. Applicant

Versus

State of Maharashtra & Anr .. Respondents

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Mr.Aabad Ponda, Senior Counsel with Ms.Harshada Shrikhande and Mr.Prathamesh Mandlik for the petitioner.

Mr.S.R. Agarkar, Addl. Public Prosecutor for the respondent State.

PI Dattatray Bhapkar attached to EOW, Thane, present.

**CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ**
DATED : 8th DECEMBER, 2025.

JUDGEMENT :- (Per Bharati Dangre, J)

1 The petitioner Santosh Balkrishna Nadgaonkar, has approached this Court by filing a Writ Petition under Article 226 and 227 of the Constitution of India, along with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, (BNSS), 2023 inter alia, seeking direction for issuance of writ in the nature of Habeas Corpus, for his release from the abjectly unlawful detention, and arbitrary custody, and incarceration.

 The petition also raise a challenge to the orders remanding him to judicial custody, which is urged to be in blatant violation of settled principles of law of Remand;

alleging that the said orders being ex-facie illegal without jurisdiction, and passed in mechanical and routine manner without application of mind, they are sought to be quashed and set aside.

2 Heard learned Senior Counsel Mr. Aabad Ponda, for the petitioner, and the learned APP, Mr. Agarkar, for the State.

By consent of the respective counsel, we deem it appropriate to issue Rule, which is made returnable forthwith.

The prayers in the Petition has its genesis, in an FIR which came to be registered at the instance of the complainant Ramadevi Nagraju Chillapareddy, alleging that the named accused persons and other partner of “AS Agri and Aqua Limited Liability Partnership” defrauded the investors of INR 350 crores, by promising the investors high returns on their investment in the new project started by the LLP. The accusations invoked offence under Sections 406, 420, 427, Section 34 read with 120 B of the IPC and Section 4 and Section 5 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

Upon completion of the investigation, a charge sheet bearing number 66(A) dated 28/8/2023 was filed before the Sessions Court, Thane, in Special MPID Case No. 728/2023. It is the petitioner’s case that he was not arraigned as an accused in the said charge sheet; however, in a supplementary charge- sheet bearing number 66(B) dated 29/01/2024, he was named as an accused.

3 During the course of investigation of the offence, the Investigating Officer issued a notice under section 41A(1) dated 19/7/2023, directing the petitioner to remain present for investigation.

Apprehending the arrest, the petitioner preferred an Anticipatory Bail Application No.2253/2023 before the Additional Sessions Judge, Thane on 24/7/2023, but it was withdrawn immediately.

As per the petitioner, he complied with the notice received by him under section 41A(1), and rendered his cooperation in investigation, and because of this, he was never arrested during the course of investigation.

This fact, according to the petitioner, is affirmed by way of letter dated 27/1/2024 issued by the respondent, which mentioned that the investigation of the offence qua the petitioner is completed, and additional charge-sheet was filed before the Special Judge.

4 The petitioner faced difficulty when, after filing of the charge sheet, on 19/1/2024, the Sessions Judge, Thane issued summons to him in special case No. (MPID) 728/2023 on 2/3/2024.

The petitioner filed an application for grant of anticipatory bail along with the application for interim Anticipatory Bail on 5/11/2024 since he was apprehending arrest. On the very same day, the Sessions Judge directed the Investigating Officer not to take any coercive steps, qua the

petitioner as he had rendered his cooperation pursuant to the notice being received by him under section 41A.

Pursuant to the summons, the petitioner presented himself before the Sessions Judge, Thane, and attended the proceedings of the special case on several occasions, and a roznama, depicting his presence is annexed to the petition.

However, on 4/11/2025, when the petitioner was present in the court, the learned Judge directed arrest of the petitioner on the ground that he has not obtained bail order.

Upon such direction of arrest, the petitioner who was present before the Sessions Judge, preferred bail application for his release on interim bail after completing due compliance.

However, instead of releasing him on bail, the say of the investigating officer was called for, and the proceedings were adjourned to 18/11/2025 i.e. after 14 days, and the petitioner was remanded to judicial custody for 14 days.

The Investigating Officer submitted his say, and during hearing of the bail application of the petitioner, when he was produced on 18/11/2025, the Special Judge put it to the advocate for the petitioner to make a statement about depositing the alleged funds received by him, forming the subject matter of the offence, but when the petitioner refused to do so, the proceedings were adjourned to 20/11/2025 on the ground of non-availability of Investigating Officer, though the reply was already filed. On the further date of hearing, once

again, the petitioner was directed to either deposit the amount or furnish security against the said amount, and the proceedings were adjourned to 25/11/2025, but as the petitioner refused to deposit any amount or furnish the security, by stating that a stipulation of pre-condition of deposit for releasing on bail cannot be saddled, the learned Judge did not insist for the same.

5 On hearing of the bail application, on 25/11/2025, the Application is rejected, and while doing so, the Court focussed upon the conduct of the petitioner and recorded that initially he had applied for anticipatory bail, but it was withdrawn, even though interim protection was granted to him. Thereafter, he again filed an application for anticipatory bail, but chose not to press the same, and therefore, it was well within his knowledge that he was duty bound to obtain bail order, but he avoided hearing of the bail application on merits.

Describing the conduct of the accused as abusing the process of law by filing Anticipatory Bail Application and withdrawing it without reason, the Bail Application came to be rejected.

6 The present petition is filed not raising a challenge to the rejection of bail order, but being aggrieved by the unlawful and arbitrary detention of the petitioner by the Sessions Judge, as it is urged before us that the learned Judge has adopted a novel way, as the petitioner was remanded to judicial custody, though the prosecution did not seek his

custody and it is also urged that this is done after the Court has taken cognizance, on filing of the charge-sheet, pursuant to the investigation being completed, although he was not arrested at any time during investigation, since no need was expressed to arrest him.

As per the petitioner, he appeared before the Court on receipt of summons and continued to attend the proceedings on various dates and was not required to seek bail and therefore, his remand in judicial custody in a mechanical manner is ex-facie illegal.

7 Mr.Ponda, representing the petitioner submit before us that when the petitioner was never arrested during investigation and the charge-sheet was filed and the Investigating Officer never sought remand, the act on part of the learned Judge in remanding him to judicial custody, without affording an opportunity of hearing to him, the act is liable to be declared as arbitrary and illegal.

8 Submitting that the order of remand is ex-facie illegal in absence of any reasons being recorded justifying the remand and particularly, when not applying for bail or not being on bail, is not a reason to remand a person. Mr.Ponda would submit that when an accused person appeared before the Court, and is neither arrested nor in custody, in absence of he being in custody, no question of remand arises in the given case.

It is therefore, urged that the custody of the petitioner in terms of order dated 4/11/2025, 18/11/2025 and 20/11/2025, and his detention in judicial custody, is in complete disregard to the statutory provision, as on completion of investigation, the charge-sheet is filed and at no point of time, during investigation, the Investigating Officer deemed it necessary to arrest the petitioner, but rather on a notice issued under Section 41A, he rendered co-operation in the investigation.

Mr.Ponda would urge before us that liberty of an individual is a paramount consideration and the trial courts are guardian angels of liberty, who are cast with a duty to preserve and protect the liberty and by infringing the fundamental right of the liberty of the petitioner by mechanical exercise of power, unsupported by any reason or material, the petitioner's continued incarceration be declared as illegal and arbitrary and he shall be released forthwith.

9 The learned APP Mr.Agarkar fairly make a statement that the respondent did not seek custody of the petitioner and he do not dispute the fact that during the course of investigation, the petitioner was never arrested.

10 For determination of the issue that arises before us, we need not get into the details of the accusations or the material compiled in the charge-sheet, so as to establish the charge against the petitioner, and we would restrict ourselves only to the issue of the detention of the petitioner and whether

it confirm to the procedure prescribed in the Code of Criminal Procedure, 1973.

The roznama of the Special Case record that from the date of filing of charge-sheet on various dates, the petitioner, arraigned as accused no.5 marked his attendance before the Court in combination of some of the other accused persons or to their exclusion.

On his appearance on 4/11/2025, the Court passed the following order :-

“Supplementary charge-sheet is filed against accused no.4 Jamil Altaf Shaikh, accused no.5 Santosh Balkrishna Nadgaonkar, accused no.6 Rafiq Imajuddin Shaikh and accused no.7 Avinash Vijay Nimonkar. Accused no.4 was arrested and he was released on bail. Accused nos.5 to 7 were not arrested by Investigating Officer. He issued them intimation letter to remain present in Court on 29/01/2024. Predecessor of this Court issued summons against accused nos.5 to 7 by order dated 02/03/2024.

Today, accused no.4 Santosh Balkrishna Nadaonkar appeared. He has not obtained bail orders from this Court or any other Court. Learned Advocate for accused submitted that earlier he applied for anticipatory bail and interim protection was granted to him, but afterwards, said application was withdrawn. Today, neither bail application is filed nor bail order is produced. Hence, it is necessary to take accused no.5 in custody. Hence, following order is passed :-

ORDER

Accused no.5 viz. Santosh Balkrishna Nadgaonkar is remanded to judicial custody till 18/11/2025.

11 From reading of the above, it can be seen that when the petitioner appeared before the Court, on the ground that he had not obtained bail order from the Court or any other Court,

although Anticipatory Bail Application was filed, but which was withdrawn, the Court arrived at a conclusion that neither Bail Application is filed nor Bail Application is produced and therefore, it is necessary to take him in custody.

It is to be noted that when the petitioner was never arrested during investigation, but he appeared before the Court, pursuant to the summons being issued, we fail to understand as to on what basis, the learned Judge formed an opinion that he ought to have been applied for bail, as it is not in dispute that he was never arrested and was never in custody.

12 As per Section 88 of the Code of Criminal Procedure, upon marking appearance in any Court, pursuant to summons/warrant, the Presiding Officer may require such person to execute a bond with or without sureties, for his appearance in the Court, or any other Court to which the case may be transferred for trial. Upon such bond being executed, a person shall be bound to appear before the Court and if he fail to appear, a warrant may be issued against him, directing the arrest of the person and for production in the Court.

From the aforesaid provision, it becomes clear that pursuant to the summons when an accused appear, and if he is not under arrest, or in custody, the Court shall only ask him to execute a bond to ensure his appearance on the next date of hearing.

We see no reason why the petitioner ought to have preferred an application for bail. It is not in dispute that the

petitioner was not arrested during the course of investigation and when responding to the summons, he marked his presence before the Court, the Court should only ensure that he shall mark his appearance during the proceedings and for facilitating his appearance, the Court may ask him to execute a bond.

13 In **Tarsem Lal Vs. Enforcement Directorate**¹, the Apex Court distinguished in a situation contemplated in furtherance of Section 82 and/or Section 83 and Section 88 which is considered to be a discretionary power and with reference to an accused, who is not arrested by Enforcement Directorate under PMLA till filing of the complaint, it is held that the Special Court may direct the accused to furnish bond in accordance with Section 88 of Cr.P.C.

The relevant observations in the law report record thus :-

“24 Now, we come to the issue of whether an order of the Court accepting bonds under Section 88 amounts to grant of bail. If an accused appears pursuant to a summons issued on the complaint, he is not in custody. Therefore, there is no question of granting him bail. Moreover, even if the accused who appears before the Court does not offer to submit bonds under [Section 88](#) of the CrPC, the Court can always direct him to do so. A bond furnished according to Section 88 is an undertaking to appear before the Court on the date fixed. The question of filing bail bonds arises only when the Court grants bail. When an accused furnishes a bond in accordance with [Section 88](#) of the CrPC for appearance before a Criminal Court, he agrees and undertakes to appear before the Criminal Court regularly and punctually and on his default, he agrees to pay the amount mentioned in the bond. [Section 441](#) of the CrPC deals with a bond to be furnished by an accused when released on bail. Therefore, in our considered view, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail.”

1 (2024) 7 SCC 61

It is clarified that a person who is not in custody, and if he mark his appearance, responding to a summons issued on complaint, there is no question of granting him bail.

When he furnishes a bond under Section 88 of the Code of 1973, to appear before the Court on the date fixed which is different from bail bond when a person is released on bail, which is distinct than a bond being furnished under Section 88, where an accused agree and undertake to appear before the Criminal Court regularly and punctually. It is therefore, clarified that an order accepting bond under Section 88 from the accused do not amount to grant of bail.

14 The cognizance was taken by the Court of the information furnished by the bar, that some special courts under PMLA were following the practice of taking the accused into custody, after they appear pursuant to the summons issued and they are compelled to apply for bail or anticipatory bail apprehending arrest upon issuance of summons, and the Apex Court frowned upon such practice and held thus :-

“30 Once cognizance is taken of the offence punishable under Section 4 of the PMLA, the Special Court is seized of the matter. After the cognizance is taken, the ED and other authorities named in Section 19 cannot exercise the power of arrest of the accused shown in the complaint. The reason is that the accused shown in the Complaint are under the jurisdiction of the Special Court dealing with the complaint. Therefore, after cognizance of the complaint under 44(1)(b) of the PMLA is taken by the Court, the ED and other authorities named in Section 19 are powerless to arrest an accused named in the complaint. Hence, in such a case, an apprehension that the ED will arrest such an accused by exercising powers under Section 19 can never exist.

31 We are informed across the Bar by the learned counsel of the appellants that some of the Special Courts under the PMLA are following the practice of taking the accused into custody after they

appear pursuant to the summons issued on the complaint. Therefore, the accused are compelled to apply for bail or for anticipatory bail apprehending arrest upon issuance of summons. We cannot countenance a situation where, before the filing of the complaint, the accused is not arrested; after the filing of the complaint, after he appears in compliance with the summons, he is taken into custody and forced to apply for bail. Hence, such a practice, if followed by some Special Courts, is completely illegal. Such a practice may offend the right to liberty guaranteed by [Article 21](#) of the Constitution of India. If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.

15 In light of the aforesaid observation, coupled with the fact that when the Magistrate remand an accused to custody under Section 167 of the Code of Criminal Procedure, 1973 he has to be satisfied that the arrest made is legal, and in accordance with law, and all the constitutional rights of the persons are satisfied. Unless and until the Magistrate is satisfied with the reasons offered by the police officer, justifying his arrest, the Magistrate is duty bound not to authorise his further detention, and release the accused.

The procedural safeguards are in place both in the Constitution itself and also in the Code of Criminal Procedure, 1973 and now the BNSS, 2023 to ensure that the police officers do not arrest the accused unnecessarily, and Magistrate do not authorise the accused casually and mechanically. The

Magistrate, while authorising the detention of the accused is duty bound to peruse the report furnished by the police officer and its terms, and only after recording such satisfaction, the Magistrate shall authorise his detention.

As a word of caution in **Satender Kumar Antil versus Central Bureau of Investigation**,² it is held that failure to comply with the directions issued in the **Arnesh Kumar**, we shall call for a strict action against the police officer, who shall be liable for contempt of court.

16 In the present case, wrongly assuming that the petitioner has not secured a bail order, despite the fact that he was never arrested, the learned judge is persuaded by the fact that on two occasions, he had filed anticipatory bail applications, seeking protection from arrest, but ultimately upon the charge sheet being filed, he withdrew the applications.

There is no justification in taking the petitioner in custody, as even the Investigating Officer did not choose to take him in custody for the purpose of investigation.

Even today, a statement is made by the learned APP that the custodial interrogation of the petitioner is not necessary as the charge sheet is already filed against him.

The remand of the petitioner being contrary to the procedure prescribed, and since we find that when the petitioner was not at all under arrest, there was no question of he being remanded to custody, as the provision in form of

² (2022) 10 SCC 51

Section 167, which permit the Magistrate to remand an accuse to custody, itself highlight the applicability of the provision, as it state “whenever any person is arrested and detained in custody”, and it appear that the investigation could not be completed within a period of 24 hours, within which it is imperative to produce an accused before the Magistrate, and there are grounds for believing that the accusations or information is well founded, then the officer in charge of a police station forward the accused to the Magistrate. The Magistrate will authorise the detention of the accused person, either in police custody or to the judicial custody, as per the requirement, but as per Section 167, the remand is only of a person who is arrested and detained in custody, and since the petitioner was neither arrested nor detained in custody, the learned Magistrate is completely unjustified in taking him into custody merely because he has not filed the bail application, nor did he produce the bail order.

Apart from this, since the petitioner was never arrested during the course of investigation, the Magistrate suo motu took him into custody, and not only that when he preferred an application for bail, on the merits of the matter, rejected the bail application, by recording about his involvement as a Director/Partner of the Financial establishment, by keeping in mind the spirit of the MPID Act to protect the interest of the depositors of financial establishments.

17 In any case, we do not do not intend to go into the merits of the matter, as we are convinced that the procedure and method adopted by the learned judge of taking the Petitioner into custody, merely because he has not filed bail application, cannot sustain, and we therefore, set aside the order dated 4/11/2025 passed by the Magistrate, and the subsequent orders of remand dated 18/11/2025 and 20/11/2025.

The petitioner who is still detained on his bail application, being rejected by the very same Judge vide order dated 25/11/2025, is entitled for his release forthwith, by quashing and setting aside the order dated 4/11/2025, 18/11/2025 and 20/11/2025.

Needless to state that the Special Judge shall obtain a bond from him, ensuring his appearance on the subsequent dates, in the trial.

The respondent Jail Authorities shall ensure for forthwith release of the petitioner.

Writ Petition is made absolute. No order as to costs.

Jail Authorities and the concerned parties to act on an authenticated copy of this order.

(SHYAM C. CHANDAK,J)

(BHARATI DANGRE, J.)