IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1385 OF 2026

Shaikh Shahrukh @ Kabutar Shaikh Azgar,
Age : 29 Years, Occ. Labour,
R/o Khudbenagar Chaurasta,
Mahebubiya Colony, Nanded ... **PETITIONER**
(Orig. Accused No.4)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Bhagya Nagar Police Station,
Nanded, Tq. & Dist. Nanded ... **RESPONDENT**

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Mr. S. S. Gangakhedkar, Advocate for the Petitioner.
Mrs. Ashlesha S. Deshmukh, APP for Respondent – State.

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CORAM : HITEN S. VENEGAVKAR, J.
RESERVED ON : 28th OCTOBER, 2026
PRONOUNCED ON : 03rd NOVEMBER, 2026.

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned Advocates appearing for the parties, the petition is heard finally.

2. The petitioner, who is accused No.4 in Crime No. 172 of 2026 registered with Bhagyanagar Police Station, Nanded, challenges the order dated 3rd July, 2026 extending the period for completion of investigation and filing of the charge-sheet by sixty

days and the order dated 27th July, 2026 rejecting his application for default bail. He seeks release under Section 187(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 21(2)(b) of the Maharashtra Control of Organised Crime Act, 1999. Both the validity of the extension and the consequential refusal of bail are thus before this Court.

3. The brief facts is that the crime was registered on the report of Anita Gajanan Chavan following the death of her son, Prafull alias Arjitsingh, in an assault during the early hours of 4th April, 2026. The prosecution alleges that the deceased and his companions were returning after watching a film when Saisingh alias Sailala and members of his gang, including the petitioner, assaulted them with swords and knives near E-Square on Canal Road, Nanded, on account of previous enmity. Prafull sustained fatal injuries and his companions were also assaulted. Offences under Sections 103(1), 109, 118(1), 115(2), 189(2), 191(2), 191(3) and 190 of the Bharatiya Nyaya Sanhita, 2023 and the Arms Act were registered. According to the prosecution, investigation disclosed an organised crime syndicate. Sections 3(1)(i), 3(2) and 3(4) of the MCOC Act were consequently invoked after prior approval, which the impugned extension order records as having been granted on 28th May, 2026.

4. The petitioner was arrested on 21st April, 2026. The Investigating Officer submitted a request for extension, followed by the Special Public Prosecutor's separate report dated 29th June, 2026 seeking ninety additional days. The Special Judge granted sixty days by the order dated 3rd July, 2026. Claiming that his ninety-day period had expired on 20th July, 2026 without a valid extension applicable to him, the petitioner applied for default bail on 24th July, 2026 and expressed his readiness to furnish bail. That application was rejected on 27th July, 2026. The State's affidavit records that the charge-sheet was subsequently filed on 27th August, 2026. There is no dispute that it had not been filed when default bail was sought.

5. Learned Advocate for the petitioner submits that the extension request concerned the two other accused who were arrested on 5th April, 2026 and whose statutory period was approaching completion. The petitioner's period was to expire later and the application was premature against him. Merely including his name in a list, according to counsel, did not amount to seeking extension of his detention. He submits that the prosecutor reproduced the police records without independently explaining the progress of investigation and the necessity of detaining the

petitioner further. Awaiting forensic reports, telephone records, sanction and arrest of another accused could not justify prolonged detention when a charge-sheet could be filed and further investigation continued. The petitioner's remand to judicial custody is also relied upon to question the continued necessity of detention.

6. Learned Advocate further submits that the petitioner was not afforded an effective opportunity to oppose the extension through his advocate. His initial refusal to receive the papers in prison was accompanied by a request to consult his advocate. Counsel points to the investigating officer's records of copies being supplied to advocates and the Special Judge's finding that the petitioner himself acknowledged receipt and submits that these observations are contrary to each other and hence cannot be relied upon. He submits that acknowledgment of papers does not establish effective hearing. He also challenges the subsequent reasoning that the extension expressly and impliedly covered all accused, relying upon the case of ***Nayantara Gupta v. State of Maharashtra,*** *2020 DGLS (Bom.) 1671* and the requirement that extension affecting personal liberty must be judicially granted after compliance with the prescribed safeguards.

7. Learned Advocate for the petitioner relies upon ***Saquib Abdul Hamid Nachan v. State of Maharashtra***, AIR 2017 SC (Supp) 40, also reported in (2019) 16 SCC 707; ***Nayantara Gupta v. State of Maharashtra,*** *2020 DGLS (Bom.) 1671;* ***Shaikh Moin Shaikh Mehmood v. State of Maharashtra***, 2020 SCC OnLine Bom 968; ***S. Kasi v. State through the Inspector of Police***, (2021) 12 SCC 1; ***Mohsin Nasir Sheikh and others v. State of Maharashtra***, Criminal Appeal No. 23 of 2025, decided on 25th August, 2025; ***Jigar alias Jimmy Pravinchandra Adatiya v. State of Gujarat***, (2023) 6 SCC 484; and ***Md. Ariz Hasnain @ Ariz Hasnain v. State of Jharkhand***, 2026 INSC 456. These decisions are relied upon to emphasize that extension is subject to strict statutory conditions, that the prosecutor must apply his mind independently, and that the right to default bail cannot be defeated by an invalid extension.

8. Learned APP submits that the application and the prosecutor's report concerned the common investigation against all accused. The petitioner's name, arrest and investigation concerning him were disclosed. The reference to the earlier arrests explained the urgency and did not restrict the relief sought. Notice was issued to all twelve accused. After their initial refusal in prison, they were produced on 1st July, 2026 and supplied the papers. The application was heard on 2nd July, 2026 and decided

on 3rd July, 2026 after hearing the prosecution and the advocates who appeared during the hearing . Learned APP submits that the absence of the petitioner's advocate cannot defeat an otherwise valid extension, and that his application for default bail was filed while the extended period was subsisting. She thus prays for dismissing the Petition.

9. The objection concerning the availability of an appeal under Section 12 of the MCOC Act does not require rejection of the petition. In ***Abdul Rehman Abdul Latif Shaikh @ Sonu v. State of Maharashtra***, Criminal Appeal Nos. 509 and 518 of 2021, decided on 11th April, 2022, the Division Bench permitted the connected extension and bail prayers in one proceeding and directed conversion of the surviving appeal into a criminal application for bail. In ***Shehzada Khan v. State of Maharashtra***, Criminal Application (APL) No. 894 of 2022, order dated 15th September, 2022, this Court expressly entertained a challenge to extension with a consequential prayer for default bail. The present combined challenge is accordingly examined on merits.

10. Before proceeding to hear the merits and argument of both the side, it is necessary to consider the relevant provision of MCOCA which deals with the powers to extend the period of filing

charge-sheet. Under the proviso to Section 21(2)(b), the ninety-day period may be extended up to one hundred and eighty days on the Public Prosecutor's report indicating the progress of investigation and specific reasons for detention beyond ninety days. Invocation of the MCOC Act does not automatically confer the longer period. In ***State of Maharashtra v. Surendra Pundlik Gadling***, (2019) 5 SCC 178, the Supreme Court explained the prosecutor's duty of independent scrutiny, while emphasising that the substance of the report, rather than its description or form alone, must be examined.

11. In ***Saquib Abdul Hamid Nachan*** *(supra)*, the Supreme Court examined the grounds advanced for extension under the MCOC Act and restored the Special Judge's refusal of extension upon finding that those grounds did not justify it. The decision establishes that the prosecutor's request remains subject to judicial scrutiny. The subsequent filing of charge-sheet and commencement of trial did not render the earlier claim for statutory bail irrelevant. It does not, however, hold that every common extension request is impermissible or that different arrest dates necessarily require separate applications.

12. Learned Advocate's submission that the extension

necessarily excluded the petitioner cannot be accepted. The application at paper-book pages 34 onwards identifies him as accused No.4 and records the dates of arrest of the accused separately. It also refers to investigation concerning him, including the alleged recovery of a sword. The prosecutor's report at pages 51 to 55-A names him among the accused and describes investigation undertaken after invocation of the Act. The prayer seeks time to complete investigation and file the charge-sheet in the crime. The notice at page 106 expressly concerns all twelve accused. Read together, these documents disclose a common request for extending the period of filing charge-sheet which included the petitioner .

13. The reference in paragraph 24 of the police application to the two accused arrested on 5th April, 2026 explained why extension was then being sought. It did not confine the application to them. In ***Sandesh @ Papya Ananta Phadke v. State of Maharashtra***, 2023 DGLS (Bom.) 3440 : 2023:BHC-AS:25247, this Court recognised a common extension where the application and investigation concerned all the accused notwithstanding their different arrest dates. The statute does not require the prosecutor to await the final few days of each accused's period before seeking extension. Nevertheless, a common request must satisfy the

statutory requirements in relation to those whom it covers; it is not an automatic enlargement of custody against everyone named in an FIR.

14. The submission that the prosecutor acted merely as a forwarding agency also cannot be accepted on the contents of the report. His separate report identifies seizures, witness statements, investigation of the alleged syndicate, the alleged supplier of weapons who remained absconding, examination of telephone records and the source of the firearm. These were matters concerning the alleged common criminal activity, rather than a request founded only on the seriousness of the accusation. Pending forensic reports or sanction would not, standing alone, invariably justify extension. Equally, the possibility of further investigation after a charge-sheet does not abolish the statutory power to extend time on sufficient grounds. Remand to judicial custody does not amount to a concession that investigation is complete or that every ground for continued detention has ceased. The report relates the work already undertaken to the further investigation into the alleged common criminal activity. Read with the material already collected, these were relevant reasons for seeking continued detention during that investigation. The Special Judge identified those matters in paragraphs 6 and 7 of the extension order and

granted sixty days against the request for ninety days. The order thus records scrutiny of the request and a limited extension, rather than an automatic grant merely because the MCOC Act had been invoked.

15. The decisions in ***Shaikh Moin Shaikh Mehmood and Mohsin Nasir Sheikh*** (supra), reinforce the requirement of a genuine prosecutor's report showing independent consideration, progress of investigation and specific reasons for further detention. In Shaikh Moin, a police application presented through the prosecutor was found not to satisfy that requirement. In ***Mohsin Nasir Sheikh***, the Court found repeated grounds, replication of the police applications and failure to demonstrate the necessary progress and justification for continued detention. These decisions require examination of the contents of the report, rather than acceptance of its title or signature as sufficient compliance. The report here has therefore been examined on its own contents. The report cannot be rejected merely because some of the investigative facts necessarily also appear in the investigating officer's application. Its substance, the progress described and its assessment of the remaining work disclose the requisite scrutiny. The factual deficiencies identified in those decisions are not established here. Compliance with the safeguard governing the

opportunity to oppose extension must nevertheless be considered separately.

16. The submission concerning an implied extension also does not assist the petitioner. The order dated 3 July 2026 expressly grants sixty days. In ***Nayantara Gupta*** (supra), concerned an application which had not been adjudicated on merits and an attempt to infer extension from the Supreme Court's pandemic limitation orders. Here, the scope of an express order has to be understood from the common request it decided. The expression 'expressly and impliedly' used in the subsequent rejection order is unnecessary; the original documents themselves establish that the petitioner was included. The remaining question is whether the petitioner was afforded the opportunity recognised by law in the extension proceedings.

17. In ***S. Kasi*** (supra), the Supreme Court held that its general orders extending limitation during the pandemic did not extend the period for filing a charge-sheet under Section 167(2) of the Code. The protection of personal liberty could not be suspended through that construction of the limitation orders. That principle supports the requirement of a legally valid extension, but does not remove the express statutory power under Section 21(2)(b) of the

MCOC Act. The present case concerns the validity of an order made under that power, not an extension claimed automatically under the pandemic orders.

18. In ***Jigar alias Jimmy Pravinchandra Adatiya v. State of Gujarat***, (supra), the Supreme Court explained the requirement of producing the accused physically or virtually and informing him that extension is under consideration, so that he may raise the objections available to him. A written notice in a particular form is not indispensable. The purpose of production and intimation is to secure a real opportunity in proceedings which affect continued detention; the requirement is not an empty formality. In ***Md. Ariz Hasnain @ Ariz Hasnain v. State of Jharkhand*** (supra), the Supreme Court reaffirmed that safeguard and the obligation of the Court to examine and record justifiable reasons for extension.

19. These principles must be applied to the actual course of the present proceedings. The Special Court did not dispose of the extension request on its presentation or without taking steps to bring it to the accused. The notice dated 30th June, 2026, at paper-book page 106, directed service upon all twelve accused and their production before the Court on 1st July, 2026 for the extension proceedings. Paragraph 9 of the order dated 27th July, 2026

specifically records that all accused were produced on 1st July, that the petitioner received the application and that he acknowledged it. The State's affidavit also records his production and service. Thus, the petitioner's production was directly referable to the pending extension request. It was not a case in which an extension was obtained without bringing him before the Court or informing him of the proceeding.

20. Learned Advocate submits that the investigating officer's reference to copies being given to advocates contradicts the Special Judge's finding of acknowledgment by the petitioner. We do not find such a necessary contradiction. Supply of copies to advocates does not exclude supply to the accused as well. The judicial record positively states that the petitioner received and acknowledged the application. His initial refusal in prison, accompanied by a desire to consult his advocate, does not displace the subsequent production and acceptance. The argument that no notice of the request was received by the petitioner is therefore contrary to the recorded course of the proceedings.

21. After production and service on 1st July, the application was kept for hearing on 2nd July and was decided on 3rd July. The petitioner was therefore made aware of the request while it

remained pending, and time intervened before its disposal. The Special Judge records that the petitioner's advocate remained absent at the hearing, while the prosecution and advocates for other accused were heard. The opportunity afforded to the petitioner cannot be treated as non-existent merely because his advocate did not appear to advance his objections. Nor does the record disclose that an objection tendered on his behalf was refused consideration or that a request by him for reasonable assistance was rejected.

22. Paragraph 16 of the State's affidavit, which refers to the accused remaining absent on 2nd July, has also been considered. That statement cannot be read apart from paragraphs 10 and 11, which expressly record their production on 1st July for the pending application and its adjournment for hearing to the next day, or from the Special courts records of the petitioner's acknowledgment and his advocate's subsequent absence. I do not make a finding, by inference from the attendance of other advocates, that the petitioner was necessarily produced again on 2nd July. Equally, the expression in the affidavit does not erase the production and opportunity which had already taken place in the very extension proceedings. The question is whether the extension was obtained behind his back without the prescribed opportunity, not whether

every recital concerning attendance is expressed identically in the police reply and the subsequent order. On the record as a whole, the contention that the petitioner was excluded from the extension proceedings or denied an opportunity to oppose the request is not established.

23. In reaching that conclusion, this court have considered ***Qamar Ghani Usmani v. State of Gujarat***, (2023) 18 SCC 155. Which explains the object of notice and/or presence as securing the accused's knowledge that extension is sought and granted. The refusal of default bail in that case rested on its particular circumstances, including the unchallenged extensions and the accused's presence at the second extension. I do not treat the present challenge as barred by acquiescence, since the petitioner has challenged the extension itself. The relevance of the decision here is that the actual notice, participation and opportunity in the extension proceedings must be examined, rather than a conclusion drawn from an isolated circumstance. Here the petitioner was produced and supplied the pending request before extension was granted. His advocate's non-appearance on the adjourned date does not establish denial by the Court of the opportunity which had been afforded.

24. The Division Bench in ***Md. Mehrajuddin s/o Abdul Hai Ansari v. State of Maharashtra***, MANU/MH/3727/2023 : 2023:BHC-AUG:20166-DB, considered Qamar Ghani Usmani and rejected the challenge concerning non-production where notice and an opportunity to oppose the extension had been afforded. In that case the advocates had in fact opposed the application and there were also unchallenged extension orders. Those facts are not identical to the present case. Nevertheless, the decision illustrates the need to examine the proceedings as a whole. The conclusion by this court here rests upon the petitioner's actual production in relation to this request, his acknowledgment, the adjournment before disposal, and the Special Judge's finding that his advocate remained absent, rather than upon any proposition that the accused has no right to oppose extension.

25. In the case of ***Jigar and Md. Ariz Hasnain*** (supra) do not permit the Court to dispense with the safeguard, and this court have not done so. The factual distinction is that the present petitioner was brought before the Court in the pending extension proceedings, informed of the request and supplied the application before adjudication. The Special Judge also examined the prosecutor's report and stated the investigation undertaken and the further work which justified a limited extension. The extension

was thus neither an undisclosed order made without involving the petitioner in the proceedings nor an order supported only by the assertion that investigation remained pending. For the same reason, in case of ***Sagar Shrawan Bhosale v. The State of Maharashtra***, in Criminal Appeal No.560 of 2026 (Aurangabad Bench), in which this Court found non-compliance with notice, production and independent scrutiny, is distinguishable on the facts. The mandatory requirements recognised in that judgment are accepted; their breach is not established by the present record.

26. The Special Judge's subsequent reference to the extension covering all accused 'expressly and impliedly' is not the foundation on which the original extension is sustained. The common application, the prosecutor's report, the notice and the operative order themselves show its scope. Similarly, the petition is not dismissed merely because the petitioner first sought default bail before challenging the extension in this Court. Both orders have been examined on their merits. The extension was sought and granted before the petitioner's ordinary ninety-day period expired, covered his case, was supported by the prosecutor's assessment and the Special Judge's reasons, and followed the opportunity described above. No ground is made out to set it aside.

27. When the petitioner applied for default bail on 24th July, 2026, the period for investigation and filing the charge-sheet had already been extended by sixty days under the order dated 3rd July, 2026. His application was not founded upon expiry of those sixty days, but upon the contention that the extension was invalid or did not apply to him. Those contentions have not been accepted. Consequently, an enforceable right to default bail had not accrued on the ground advanced. The subsequent filing of the charge-sheet is not relied upon to extinguish an earlier accrued right or to render this petition infructuous. The refusal of default bail is sustained because the extension was operative and valid when that relief was sought. Nothing stated in this judgment decides an application for regular bail or expresses an opinion on the truth of the allegations and the evidentiary value of the material collected.

ORDER

(a) The Criminal Writ Petition is dismissed.

(b) The challenge to the orders dated 3rd July, 2026 and 27th July, 2026 is rejected.

(c) Rule is discharged.

(d) The petitioner is at liberty to seek regular bail, if so advised, and any such application shall be decided independently, in accordance with law and on its own merits, uninfluenced by observations in this judgment concerning the validity of the extension and the claim for default bail.

(HITEN S. VENEGAVKAR)
JUDGE

Tandale