Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4634 OF 2026

Sudhir Dalsukhbhai Kotadiya and Anr. .. Petitioners

Versus

Directorate of Enforcement and Anr. .. Respondents

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- Mr. Ajay Bhise a/w. T.V. Dhotre, Advocates i/by Mr. Aditya Pawar for Petitioners.
- Mr. Ashish Mehta a/w. Mr. Raj Dani, Advocates for Respondent No.1 – ED.
- Ms. Anuja S. Gotad, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 12, 2026.

P.C.:

1. Heard Mr. Bhise, learned Advocate for Petitioner; Mr. Mehta, learned Advocate for Respondent No.1 – ED and Ms. Gotad, learned APP for Respondent No.2 – State.

2. There are two Petitioners before me. They were arrested on 11.03.2026 by Respondent No.1 in connection with investigation concerning alleged offences under the Prevention of Money Laundering Act, 2002 (for short "**PMLA**") and scheduled offences. On 12.03.2026, they were produced before the Special Court, on which date, they were remanded to the custody of Respondent No.1 until 20.03.2026.

3. On 20.03.2026, the Special Court remanded the Petitioners to judicial custody until 02.04.2026. On 24.03.2026, judicial custody of Petitioners was extended from time to time during the course of remand proceedings. Thereafter, within 60 days on 06.05.2026, prosecution complaint was filed by Respondent No.1 before the Special Court, which was registered as Special Case No.843 of 2026.

4. On 14.05.2026, Special Court recorded filing of prosecution complaint and disposed of Remand Application while recording that judicial custody of Petitioners would continue under Section 346 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "**BNSS**"). This order is appended at page No.44 - Exhibit 'E' to the Petition. It reads that henceforth judicial custody remand of applicant/accused (both Petitioners) shall continue as per Section 346 of BNSS.

5. Mr. Bhise would vehemently argue that if invocation of Section 346 (2) is required to be applied for extension of judicial custody of Petitioners, then in that case, it can only be done after cognizance of the offence is taken by the Special Court. He would submit that case of the Petitioners is at the pre-cognizance stage and without cognizance being taken, the provision of Section 346 (2) of BNSS have been invoked by the order dated 14.05.2026 passed by the Special Court, which cannot be invoked.

5.1. He would submit that in that view of the matter, Petitioners filed Application below Exhibit '12' seeking their immediate release on the ground that their further detention in prison is illegal, void and *non-est*. He would submit that by virtue of the order dated 19.08.2026, copy of which is appended at Exhibit 'A', the said Application below Exhibit '12' has been rejected. Hence, the present Petition.

6. Mr. Mehta, learned Advocate appearing on behalf of Respondent No.1 would draw my attention to the Affidavit-in-Reply filed by the Assistant Director of Respondent No.1 dated 08.10.2026 and would contend that the issue whether custody can lawfully continue under Section 346 of the BNSS after filing of complaint / chargesheet, but before cognizance is taken is the only limited issue to be decided by this Court. He would submit that this issue is directly answered by this Court in the case of ***Hari Sankaran Vs. Serious Fraud Investigation Office, Through Assistant Director***[1] arising out of a similarly placed investigation.

6.1. He would submit that the submission of the Petitioners that their continued custody has become unlawful because cognizance has not been taken is also contrary to the decision of the Supreme Court in the case of ***Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra***[2]. He would submit that the Supreme Court has expressly held that

1 2022 SCC OnLine Bom 858
2 (2013) 3 SC 153

Section 346 of BNSS (formerly Section 309 of Cr.PC) governed the custody of the accused through the transition period and that an accused has to remain in custody of some Court throughout, there being no hiatus, gap or vacuum in the power to continue custody, merely because cognizance has not been not been formally recorded. He has drawn my attention to paragraph No.18 of the decision of the Supreme Court in support of his aforesaid submission.

6.2. He would submit that in that view of the matter, custody of Petitioners post filing of the chargesheet / prosecution complaint is required to be continued and the question of passing a fresh remand order does not arise. He would submit that validity of the custody of the Petitioners has to be examined with reference to the substance and effect of the judicial orders passed from time to time and production of Petitioners before the Special Court and their continuity of judicial custody as reflected in various orders passed over a period of time.

6.3. He would submit that Petitioners have remained in judicial custody pursuant to a chain of successive orders passed by the Special Court at every remand date upon their due production and upon Application of judicial mind by the Special Court in Special Case No.843 of 2026. He would submit that even otherwise, Petitioners cannot claim default bail since they are governed by the mandatory twin conditions under Section 45(1) of the PMLA, namely that the

prosecutor would be given an opportunity to oppose the Application for release and the Court must be satisfied that there are reasonable grounds for believing that the accused persons are not guilty of the offence and are not likely to commit any offence while on bail.

6.4. He would vehemently argue that the twin conditions apply to Petitioners' case irrespective of the procedural route through which their release on bail is sought by them which cannot be circumvented by characterising their continuous custody as illegal or *non-est* on a purely technical / procedural ground. He would submit that the prosecution has been successful in demonstrating and disclosing a *prima facie* case of money laundering running into approximately Rs.200 crores supported by extensive documentary, banking and witness evidence material including admissions of Petitioner No.1 under Section 50 of the PMLA.

6.5. He would submit that in that view of the matter, Petitioners have not showed their *bonafides* before the Special Court, either before this Court to satisfy the twin conditions under Section 45(1) of the PMLA for securing their release on bail. He would submit that both Petitioners are a flight risk and in the past Petitioner No.1 has demonstrated such conduct of having fled India on 17.03.2024 in anticipation of criminal proceedings alongwith Petitioner No.2.

6.6. He would submit that both Petitioners have a dubious conduct in as much as they have already absconded once and re-entered the country clandestinely, evading immigration and law enforcement scrutiny and therefore cannot be treated as amenable to ordinary bail conditions such as bond, surety or passport surrender because their conduct objectively demonstrates that such conditions would be wholly ineffective to secure their presence for trial. He would submit that both Petitioners have a primary and central role in the PMLA offence exceeding Rs.200 crores whereby they have defrauded over 135 investors and are responsible for layering of the proceeds of crime through approximately 60 third party accounts and have also been involved with an overseas entity in Dubai and through cryptocurrency investment.

7. He would submit that the charge against Petitioners is extremely serious in as much as the scale, gravity and public interest involved in the Ponzi / digital investment fraud scheme perpetrated by Petitioners exceeds an amount of investment of Rs.200 crores from 135 identified investors and therefore provisions of MPID are also invoked. He would therefore submit that on effective consideration of the Affidavit-in-Reply filed by Respondent No.1, this Court be pleased to reject the present Application and allow continued custody of Petitioners.

8. Mr. Mehta has referred to and relied upon the following three

decisions of the Supreme Court and this Court in support of his aforesaid submissions:-

(i) ***Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Anr. (supra)*** ;

(ii) ***Hari Sankaran Vs. Serious Fraud Investigation Office, Through Assistant Director (supra); and***

(iii) ***Serious Fraud Investigation Office Vs. Rahul Modi and Ors.***[3]

9. I have considered the submissions made by both the learned Advocates at the bar and perused the material placed on record.

10. At the outset, it is seen that order dated 14.05.2026 forms the basis of the impugned order dated 19.08.2026 passed by the learned Special Court. In paragraph No.15 of the impugned order, the Special Court holds that the order passed by this Court on 14.05.2026 cannot be said to be without any legality or validity and has held that the indefeasible right of Petitioners would become absolute only in the event if an Application for bail would have been filed after the expiry of the statutory period stipulated by the statute, but before filing of the chargesheet. Therefore, the Application filed below Exhibit '12' has been rejected.

11. It is seen that the learned Special Court has failed to appreciate that power to remand an accused person to custody is a

3 (2023) 15 SCC 311

statutory power and is required to be traced and must be traceable to a specific provision of law. It is also seen that there cannot be an indefinite or un-regulated detention merely by reason of the accused having been earlier remanded to custody during investigation.

12. It is seen that filing of the prosecution complaint and the authority of law to continue detention are two distinct separate legal matters and in order to continue detention of the accused persons, it must be supported by a valid order passed in exercise of a legally recognized power of remand. Though Mr. Mehta would otherwise be right, but then the foundation of Mr. Mehta's submissions is not found in the order dated 14.05.2026, which is the order relied upon by the prosecution for continuing the custody of Petitioners before me. The said order dated 14.05.2026 is an order passed with complete non-application of mind without giving any reasons whatsoever and once that is so, the same cannot be taken cognizance of. The said order continues the custody, the judicial custody remand of Petitioners under Section 346 of BNSS. Section 346 of the BNSS itself contemplates that it can be invoked only if cognizance is taken by the Special Court under the provisions of Section 223 (1) and not otherwise. Admittedly, cognizance has not been taken by the Special Court.

13. Mr. Mehta, in the course of his submissions on behalf of Respondent No.1 has twice repeated the agreement that the Special

Court is about to take cognizance on the next adjourned date and therefore in view of the gravity of the offence, this Court should not allow bail to the Petitioners on the ground of such technicality. It is also seen that the order dated 14.05.2026 after disposal of the Remand Application No.360 of 2026 did not expressly set out any fresh period of judicial custody nor did it record any independent reasons necessitating the continued custody of Petitioners. Therefore, the mere observation, rather bald observation that judicial custody of Petitioners would continue under Section 346 BNSS in the order dated 14.05.2026 cannot be treated as an unlimited authorization for further detention of Petitioners before me.

14. Petitioners before me are challenging the continuing legality of their custody and the absence of a valid subsisting judicial order authorizing such custody required to be noted by Court. The order dated 14.05.2026 is a non-speaking order and it neither records any reasons for continued detention, nor does it specify the period for which the Petitioners are / were remanded to custody.

15. Further, it needs to be reiterated that Petitioners' continued custody cannot be justified merely by reference to or invoking the seriousness of the allegations and the gravity of the offence against them or by alleging their possibility of absconding. These submissions made on behalf of the prosecution may undoubtedly be relevant while

deciding a prayer for bail on merits of the matter, but these submissions cannot substitute the requirement of a lawful statutory authority for continued detention of Petitioners without authorization.

16. In that view of the matter, the impugned order dated 19.08.2026 fails to recognize the aforesaid legal principle and proceeds on the basis that continuity of custody must necessarily be maintained between investigation stage and the stage of cognizance. However, in the absence of a legally sustainable order, the aforesaid finding of the Special Court in the impugned order dated 19.08.2026 is not sustainable.

17. Considering the order dated 14.05.2026 and the findings returned in the order dated 19.08.2026, it is *prima facie* seen that the legality of the Petitioners' detention after 14.05.2026 requires independent scrutiny, particularly when cognizance of the prosecution complaint has admittedly not been taken by the Special Court. Once that is the position, Petitioners are entitled to the relief which has been prayed for by them in the present Petition and for release from prison forthwith in connection with ECIR No. ECIR/MBZO-II/23/2025 dated 11.06.2025.

18. In view of my aforesaid observations and findings, I am inclined to accept the submissions made on behalf of Petitioners by Mr. Bhise and allow the present the present Writ Petition. The Writ Petition

stands allowed in terms of prayer clauses (b) and (c).

19. Resultantly, both Petitioners are directed to be released from prison forthwith in connection with ECIR/MBZO-II/23/2025 dated 11.06.2025. All parties are directed to act on the basis of a sever / certified copy of this order downloaded from the website of the Bombay High Court.

20. Needless to state that the release of Petitioners from prison is subject to the condition that they shall make themselves available before the Special Court on the date of taking cognizance of the offence against them on the next date before the Special Court.

21. All contentions of Petitioners as well as Respondent No.1 are otherwise kept expressly open.

22. Any observations made in the above order shall not come in the way of the prosecution to hold the hearing for taking cognizance of the offence in accordance with law.

23. Writ Petition is allowed and disposed in the above terms.

24. All parties to act on a server copy of this order downloaded from the Bombay High Court website.

[MILIND N. JADHAV, J.]

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