

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

WRIT PETITION NO.6810 OF 2025

Devki Dular Rajak & Anr. Petitioners

versus

The State of Maharashtra Respondent

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- Ms. Shabana Mashkooor A.G. Sayed, Advocate for Petitioners.
- Ms. S. S. Kaushik, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 11th MARCH, 2026

P.C. :

1. This is a Petition for issuance of writ in the nature of Habeas Corpus because according to the Petitioners, the Petitioner No.2 Chandra was illegally detained without following due procedure of law by the police authorities. The first Petitioner is the cousin of the Petitioner No.1. The Petitioner No.1 has filed the Petition along with the Petitioner No.2 because according to learned counsel for the Petitioner it was difficult to get the signature of the Petitioner No.2 for filing this Petition. In short, the relief sought is for release of Petitioner No.2 from custody.

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2. The main contention of the learned counsel for the Petitioner is that the Petitioner was arrested twice in the same offence. On the first occasion, he was granted bail by the learned Additional Sessions Judge, Greater Mumbai, because it was observed that his arrest was illegal and subsequently when he was released, pursuant to the said order, he was re-arrested in the same offence which according to the learned counsel for the Petitioner is not permissible.

3. The Petitioner was arrested in connection with C.R.No.1308/2025 registered with D.B. Marg Police Station, for the offences punishable u/s 141, 143(2), 143(3), 143(4), 96, 115(2), 3(5) of Bharatiya Nyaya Sanhita, 2023 and u/s 4, 8 and 17 of the Protection of Children from Sexual Offences Act, 2012 and u/s 3, 4, 5, 7 and 1(b) of Prevention of Immoral Trafficking Act.

4. The facts of this case are mentioned in the affidavit filed on behalf of the Respondents. A copy of the FIR dated

27/11/2025 is annexed at Ex.A to the affidavit-in-reply filed by the Assistant Commissioner of Police, Gavdevi Division. The FIR was lodged by one Stephen. He was associated with a social organization. He was helping minors and other women who were forced into prostitution. He was helping the victims in their rehabilitation. He was also helping to prevent human trafficking. He received information that one minor girl aged 15 years, who was originally from Bangladesh, was sold in a brothel in Mumbai. He conveyed this information to the Police Inspector attached to Dr. D. B. Marg Police Station. The Police Officers arranged to conduct a raid at that particular place at Grant Road, Mumbai. A bogus customer was arranged. He was sent with some money to that place. The raid was successful. The police found that one minor girl and 13 other women were forced into prostitution at that particular place. The FIR was lodged against the accused who were present there. One minor girl and 13 other women were rescued from that place.

5. During investigation it was revealed that one Saidul was bringing minor girls from Bangladesh to India and was

giving their custody to different people throughout India. The victim in this case was handed over to the Petitioner No.2. This is the case against him. Based on this material and allegations, the Petitioner No.2 was arrested on 15/12/2025 at 10.54 p.m. The learned Additional Sessions Judge, Greater Mumbai, passed an order on 16/12/2025 granting judicial custody. It was observed that the grounds of arrest were in Marathi, whereas the Petitioner No.2 was not able to understand Marathi. It was observed that there was no compliance in true spirit of communicating grounds of arrest in the language understood by the accused, and therefore, the arrest was illegal. Observing this, the Petitioner No.2 was granted judicial custody till 29/12/2025. The matter was, however, taken up on board on 18/12/2025. On this occasion, the following order was passed.

“SPP Sureeta Singh for the State present.

IO ACP Suman Chauhan present from D.B. Marg Police Station.

Accused not produced from JC.

Adv. Shabana Sayed for accused present.

On last occasion after this Court held that, compliance in true spirit of grounds of arrest

to be communicated in language of accused has not been complied with as per mandate and the arrest is illegal the Assistant IO had submitted that, they would freshly provide the grounds of arrest to the accused. Accused was taken in the JC. As per law on holding the arrest illegal accused should be set free. The matter was taken on board on 17.12.2025 and separate application for PC is preferred after compliance by giving the grounds of arrest in Hindi to the accused. Say of the advocate of accused was called. Say has been filed that, the accused cannot read or write Hindi Language also. However, the ACP of Gaondevi Division who is the IO has given affidavit on record stating that, she had communicated with accused in Hindi. He understands Hindi very well. He can comprehend questions statement and documents explained in Hindi without any assistance of translator or interpreter. She orally submitted that, the accused is residing in Mumbai for last 15 years which reflects that, the national language which is vastly spoken in Mumbai must have made the accused conversant with Hindi if not Marathi.

The question now arises of release order of accused for illegal arrest and right of the investigating officer for Police Custody. As the

arrest of the accused was held to be illegal the accused is released forthwith on PR Bond of Rs. 50,000/- the IO is directed to freshly arrest the accused after the due compliance which may be at the jail premises considering that, **procedural aspects cannot overcome gravity of the offence.** The pleading of accused being beaten while being taken to the jail are in the say by the accused. However, at that time accused was in JC and not in PC and the accused could seek addressal to his grievance by filing appropriate application.”

6. As can be seen, the Petitioner No.2 was directed to be released on bail by the order dated 18/12/2025 passed by the learned Additional Sessions Judge, Mumbai. Significantly, vide the same order, the learned Judge observed that the Investigating Officer was directed to freshly arrest the accused after due compliance, which may be at the jail premises. Pursuant to this direction, the accused executed the PR bond and was released on bail. On the other hand, the Investigating Officer, as per the same directions, arrested the Petitioner No.2. This time, the Petitioner No.2 was informed about the grounds of his arrest and involvement, through a Kannada speaking

citizen, namely Nandesh Mahabal Shetty, and strict compliance of the guidelines of the Hon'ble Supreme Court were followed as per section 47 of BNSS, 2023 and the Petitioner No.2 was arrested on 20/12/2025 at 20:43 hours. The arrest of the accused was informed to his friend, Vishwas Gowda. These are the specific averments made in paragraph No.12 of the affidavit-in-reply.

7. After that, the Petitioner No.2 was again produced before the learned Additional Sessions Judge, Mumbai, for remand. This time, it was contended on behalf of the Petitioner No.2 that as per Article 20(2) of the Constitution, no person could be prosecuted and punished twice for the same offence. But this time, the learned Judge did not accept that contention and police custody was granted on 26/12/2025. It was extended till 29/12/2025, and then he was remanded to Magisterial custody. In this background, the Petition is filed before us. The main contention of the learned counsel for the Petitioner is that he could not have been arrested twice in the same offence.

8. Learned APP, on the other hand, relied on the order passed by a Division Bench of this Court in ***Writ Petition No.1142 of 2018*** in the case of ***Kavita Manikikar Vs. CBI and another***, dated 10/05/2018, to contend that the Petitioner No.2 could be legally arrested after his release on bail by following due procedure of law.

9. We have considered these submissions. At the outset, it must be noted that the offence against the Petitioner No.2 is quite serious. A minor Bangladeshi girl was brought from there to India and was sold here in India. She was forced into prostitution. She was barely 15 years of age. Therefore, there is no doubt that the offence is grave and serious. The learned counsel for the Petitioner relied on the order dated 16/12/2025, under which the Petitioner No.2 was granted bail. Vide the same order it was held that the arrest was illegal. However, the order granting bail was dated 18/12/2025, and the same order directed the Investigating Officer to again arrest the accused. This particular part of the directions issued by the learned Additional Sessions Judge was never challenged by the Petitioner No.2.

10. In any case, the requirement was to communicate to the accused as to why he was arrested by making him understand the grounds of arrest. This procedural lapse was corrected on the next occasion when the Petitioner No.2 was arrested. This time, he was communicated the grounds of arrest in the language which he understood. Even his friend was informed about the same.

11. He was arrested on the next occasion, specifically pursuant to the directions issued by the Additional Sessions Judge, Greater Mumbai. Learned APP rightly relied on the observations of a Division Bench of this court in the case of Kavita Manikkar. In that case, the Division Bench had held that the Petitioner's arrest in that case was illegal because there was violation of Section 46 (4) of Cr.PC. Having observed that, the Division Bench further observed that the CBI was not precluded to arrest the Petitioner if investigation warrants so by following due procedure of law.

12. The learned judge, vide his order dated 18/12/2025, had adopted a similar procedure while granting bail to the Petitioner No.2. At the same time, directions were issued to the Investigating Officer to follow the due procedure of law and re-arrest him. This procedure was in consonance with the observations of the Division Bench in the case of Kavita Manikikar. We do not find any illegality in the procedure adopted by the learned Additional Session Judge or the Investigating Officer.

13. In the same context, the observations of the Hon'ble Supreme Court in the case of *Ahmed Mansoor & Ors vs The State Rep. By, Assistant Commissioner of Police & Anr. in Criminal Appeal No.4505 of 2025* in the order dated 14/10/2025, are important. In that case, the Hon'ble Supreme Court set aside the order of Arrest and Remand but at the same time granted liberty to the Respondent-Police Authorities to take recourse to law, to arrest, if a case was made out. The learned Additional Sessions Judge has adopted the same course, which is in consonance with the observations of the Hon'ble Supreme

Court in Ahmed Mansoor's case. Therefore, we do not find fault with the directions issued by the learned Additional Sessions Judge to arrest the Petitioner No.2 by the police authorities and the action taken by the Police Authorities pursuant to such directions.

14. With the result, it is not possible to hold that the Petitioner No.2's detention in custody is illegal, and therefore, no relief can be granted in this Petition. The Petition is accordingly dismissed.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)