2026:AHC:123102-DB

A.F.R

Reserved On :- 21.05.2026
Delivered On :- 27.05.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 218 of 2026

Neeraj And Another .....Petitioners(s)

Versus

State of U.P. and Another .....Respondents(s)

Counsel for Petitioners(s)	:	Krishn Kumar, Sandesh Niranjan, Shravan Kumar Yadav
Counsel for Respondent(s)	:	G.A.

Court No. - 44

HON'BLE SIDDHARTH, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered By Hon'ble Siddharth, J.)

1. Heard Sri Anupam Verma and Sri Shrawan Kumar Yadav, learned counsel for the petitioners; Sri Manish Goyal, learned Additional Advocate General assisted by Sri Rupak Chaubey, learned A.G.A.-Ist for the State and perused the pleadings brought on record of the writ petition, counter affidavit and rejoinder affidavit.

2. The brief facts of the petition are that an F.I.R bearing No. 20/2024, U/s 498A, 323, 304B, 302, 201, 120B IPC & 4 DV Act, Police Station- Kotwali Lalitpur, District- Lalitpur, was registered. Petitioner was arrested in connection with No. 20/2024 U/s 498A, 323, 304B, 302, 201, 120B IPC & 4 DV Act Police Station- Kotwali Lalitpur, District- Lalitpur. While making arrest, grounds of arrest were not communicated to him in writing nor were communicated to his family members, friends or to any person authorized by him. Such acts of arresting officer were, as per the petitioner, directly in the teeth of law laid down in the matter of ***Prabir Purkayastha Versus State (Nct Of Delhi) LAWS(SC)-2024-5- 46, Pankaj Bansal. Union of India LAWS(SC-2023-10-3, Vihaan Kumar v State of Haryana LAWS(SC)-2025-2-20 & Ashish Kakkar v U.T Chandigarh; Criminal Appeal No. 1518 of 2025 (@ SLP [Crl] No. 1662 of 2025 as well as Judgement & Order passed***

by this Hon'ble Court in Writ Petition No. 934 of 2025 Manjeet Singh @ Inder @ Manjeet Singh Chana v State of UP & Ors & Writ Petition No. 905 of 2025 Sachin Soni @ Aa:su (@ Sachin Kumar Soni v State of UP & Ors.

3. Learned Remand Magistrate without protecting the rights of the petitioner guaranteed under Article 22(1) of Constitution of India and without ensuring compliance of Section 50 & 50A of B.N.S.S remanded petitioner to judicial custody and he is in jail since then.

4. This Hon'ble Court in CRLP No. 905 of 2025 as well as CRLP No. 934 of 2025 has settled the controversy and gave directions to State of UP for strict compliance of the constitutional as well as statutory mandate. Not only above, the directions were also given to remand magistrate as per law laid down in the matter of *Mohammad Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra [2012] 8 S.C.R. 295*. Application was moved before concerned trial court for not extending the remand as all the remands will vitiate, even if given, but no heed has been paid and the application is pending.

5. Hence, it has been prayed that the arrest of the petitioner may be declared illegal and he may be set to liberty in view of the number of judgments passed in the cases noted above.

6. A counter affidavit has been filed in this case on behalf of state-respondents stating therein that the present habeas corpus petition is not maintainable as the corpus is not in illegal detention. Petitioner is named accused in F.I.R of the present case which was registered as Case Crime No. 0020/24, under sections- 498A, 323, 304B, 302, 120-B I.P.C and section 4 D.P. Act, at police station- Kotwali, District- Lalitpur. Allegations against the petitioner is that petitioner had murdered/committed dowry death of his own wife and also committed murder of his own daughter, who was aged about 1 year. It is relevant to note that prior to registration of FIR, on 8.1.2024 at about 10:57 hours, information regarding incident was provided by one Rakesh to concerned police station which was entered in GD no. 019 dated 8.1.2024 at 10:57 hours.

7. After registration of F.I.R dated 8.1.2024, investigation commenced. Moreover, in the present habeas corpus petition, petitioner has not challenged either initial remand orders or subsequent remand orders passed by the court concerned. It is relevant to note that remand order u/s 167 Cr.P.C became inoperative once the

magistrate took cognizance and passed order for judicial remand of accused u/s 209 Cr.P.C.

8. The charges were framed against the accused, including petitioner, on 12.8.2024 and trial commenced. At present trial is pending as Sessions Case No. 438/24 before the court of Sessions Judge, Lalitpur. Order-sheet would reveal that on 12.3.2026 remaining cross examination of P.W.-2, Vimla, was conducted. In the meantime, petitioner has filed bail application in the present case bearing Bail Application No. 217/25 before the learned Sessions Judge, Lalitpur which was rejected vide order dated 15.4.2025.

9. A perusal of bail rejection order dated 15.4.2025 would reveal that petitioner has not taken the plea of his alleged illegal arrest/illegal detention in bail application. Pleadings of present petition nowhere show that initial remand order/orders were ever challenged by petitioner. After lapse of more than two years from the date of his arrest, petitioner has filed the present habeas corpus petition alleging that his detention is illegal. The petitioner has miserably failed to explain inordinate delay in approaching this Hon'ble Court for redressal of his grievances.

10. It is well settled law that when the petitioner is invoking extraordinary remedy under Article 226 of Constitution of India, then he should come to the court at the earliest reasonably possible opportunity. The petitioner, in his petition or in supplementary affidavit, has nowhere explained inordinate delay in filing of present petition or raising his grievances against the alleged illegal detention (although not admitted) before any court of law. Therefore, the present writ petition is liable to be dismissed on the ground of latches and delay alone.

11. Petitioner has already filed his bail application in the present case before the Sessions Judge, which was rejected on 15.04.2025. As per the supplementary affidavit filed by the petitioner, no bail application of petitioner has been dismissed by this Hon'ble Court. Although, it has not been clearly mentioned in para-2 of the supplementary affidavit as to whether petitioner has filed any bail application before this Hon'ble Court in the present case or not. It is always open for petitioner to file bail application in the present case before this Hon'ble Court. The habeas corpus petition should not be entertained at such a belated stage.

12. A perusal of order-sheet of the present case would reveal (copy of which has been annexed as Anx.-SA-II to the supplementary affidavit) that after receiving record of the present case (committal proceeding), learned Sessions Judge, vide

order dated 17.5.2024 has directed to prepare warrant u/s 309 Cr.P.C against the applicant and other co-accused. It is well settled law that any infirmity in the detention of a person at the initial stage (although not admitted) cannot invalidate subsequent detention as subsequent or present detention has to be judged on his own merit.

13. In a writ petition praying for issuance of a writ of habeas corpus, the validity of the present detention can be examined and not the validity of initial detention. The order dated 17.5.2024 passed by the trial/Sessions Judge has also not been challenged in the present habeas corpus petition. It is relevant to note that in pursuance of order dated 17.5.2024 passed by trial court/Sessions Judge, Lalitpur, custody warrant u/s 309 Cr.P.C of petitioner was prepared which was duly signed by the Sessions Judge and was sent to District Jail, Lalitpur in accordance with law.

14. The order of remand is a judicial order and the judicial magistrate has granted remand. As the petitioner was committed to judicial custody by the competent court, his detention cannot be said as illegal, unless and until remand order is challenged before the High Court. Neither initial remand order is challenged in the present petition nor his initial remand order has been annexed in the present petition, hence the present habeas corpus petition is not maintainable, as it is not the case of petitioner that he was sent to judicial/police custody without any remand order passed by the Magistrate having jurisdiction to do so.

15. Order of remand is a judicial order and once the judicial magistrate grants remand of accused, his detention can not be said to be illegal, unless and until remand order is challenged before the higher court. In fact, accused is committed to judicial custody by the order of competent court. It is not the case of petitioner that the learned magistrate, who has granted initial remand, was not having jurisdiction to do so. As stated in previous paragraph, neither initial remand order nor the subsequent remand orders passed by the court concerned have been challenged in the present habeas corpus petition.

16. A supplementary counter affidavit has also been filed on behalf of state-respondents stating that Bail Application No. 217 of 2025 filed by the petitioner before the learned Sessions Judge, Lalitpur has been rejected on 15.04.2025 and cognizance of the offence have been taken by the learned magistrate on 04.05.2024 and the case was committed to the Sessions Court on the same day i.e., on 04.05.2024. On 17.05.2024 the petitioner was remanded by the Sessions Judge

under Section 309 Cr.P.C by canceling the earlier custody warrant. The remand under Section 309 was extended from date to date as per the procedure.

17. In the rejoinder affidavit filed on behalf of petitioner, averment has been made that the initial remand order of the petitioner shows that fundamental right of the petitioner guaranteed under constitution of India was willfully violated. Moreover no opportunity of hearing was afforded to the petitioner by the learned Remand Magistrate. From the order dated 06.03.2024 it is apparent on the face of record that warrant was not changed from section 167/187 to 209/309(2)/346(2) of Cr.P.C; which shows there was no valid remand after filling of charge sheet. Moreover, the warrant under section 309 Cr.P.C was prepared for the first time after committal of case to session which itself shows that the due process was not followed. Moreover, the counter affidavit filed on 20.03.2006 is materially inconsistent and at variance with the documents and pleadings subsequently filed along with the counter affidavit dated 10.03.2026. Such contradictions go to the root of the matter and render the stand of the respondents unreliable, self-contradictory and liable to be rejected outright.

18. The above warrant under Section 309 can not be issued for more than 15 days which is apparent from the statute itself which reads as under :-

"309. Power to postpone or adjourn proceedings.

-[(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded;

Provided that when the inquiry or trial relates to an offence under Section 376, [Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB of the Indian Penal Code, the inquiry or trial shall] [Substituted by Criminal Law (Amendment) Act, 2013] be completed within a period of two months from the date of filing of the charge sheet.] (2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing :

[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him,] [Inserted by Act 45 of 1978, Section 24 (w.ef. 18-12-1978).]

[Provided also that-(a)no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;(b)the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment; (c)where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks ft, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]Explanation l. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2. - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused. [Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 21 (b).]"

19. Learned counsel for the petitioner has submitted that Hon'ble Supreme Court in the matter of ***Vihaan Kumar v. State of Haryana, LAWS (SC)-2025-2-20*** has held that non-compliance with Article 22(1) will be violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1). In the matter of ***Kasireddy Upender Reddy v. State of Andhra Pradesh, LAWS (SC)-2025-5-148, has held that 18(e)*** the Apex Court has held that on the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would

stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second. In the matter of ***Mihir Rajesh Shah v State of Maharashtra" LAWS(SC) 2025-11-9*** Apex Court has held that the constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under Indian Penal Code / (now BNS 2023). The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands. In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it should be done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate. In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

20. In light of the authoritative pronouncements of the Hon'ble Supreme Court in ***Vihaan Kumar v. State of Haryana, Kasireddy Upender Reddy v. State of Andhra Pradesh, and Mihir Rajesh Shah v. State of Maharashtra***, it is unequivocally established that compliance with the constitutional mandate under Articles 21 and 22(1) is not a mere procedural formality but a *sine qua non* for a lawful arrest. The consistent judicial position is that failure to inform the grounds of arrest-promptly, effectively, and in writing-strikes at the very root of personal liberty and renders the arrest void ab initio. At the time of arrest, the grounds of arrest were neither communicated to the petitioner no. 1 nor to any of his family members. This constitutes a clear and unequivocal non-compliance with the mandatory provisions of Sections 47 and 48 of the B.N.S.S and is in direct violation of Article 22(1) of the Constitution of India. The arrest, therefore, stands vitiated and is illegal in the eyes of law.

21. Once the arrest stands vitiated, any subsequent remand order passed by the learned Remand Magistrate is rendered non est in the eyes of law and the continued custody of the accused becomes wholly illegal. The Hon'ble Court has gone to the extent of holding that in such circumstances, the detenu cannot be deprived of liberty even for a moment, thereby reinforcing the sacrosanct nature of constitutional safeguards.

22. It is, thus, prayed that this Hon'ble Court may be pleased to declare the arrest and subsequent remand as illegal and direct the immediate release of the applicant,

in the interest of justice, equity, and protection of fundamental rights guaranteed under the Constitution of India.

23. Learned Additional Advocate General appearing on behalf of State-respondents has referred to the judgments of the Apex Court in the cases of ***Kanu Sanyal Vs. District Magistrate, Dargeeling (1973) 2 SCC 674; Uday Mohanlal Acharya Vs. State of Maharashtra (2001) SCC 453; Pragyan Singh Thakur Vs. State of Maharashtra (2011) 10 SCC 445; Bikramjeet vs. State of Punjab (2011) 10 SCC 445 and judgments of the this Court in the case of Shashank Mishra Vs. State of U.P., passed in the Criminal Misc. Writ Petition No. 9733 of 2025 and Bal Mukund Jaiswal Vs. Superintendent of District Jail, Varanasi and Another, 1997 SCC Online All 960;*** and has submitted that the petitioner is in judicial custody on the basis of valid remand order passed under section 309 Cr.P.C. and, therefore, writ of habeas corpus cannot be issued on the ground that his initial detention was violative of Articles 21 and 22 of the Constitution of India. He has further submitted that the Apex Court has settled in the case of **Kanu Sanyal (supra)** that in dealing with the petition for habeas corpus, the court is to see whether the detention on the date the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the return of the rule. In habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the initiation of proceedings. The legality of detention on the date of hearing of the habeas corpus petition is relevant and not the date of initial detention.

24. Learned State counsel has further submitted that when the custody is lawful on the date of hearing of the habeas corpus petition, the writ of habeas corpus cannot be issued as held by the Apex Court in the case of ***Ranjan Singh Nathuwan Vs. State of Punjab (1952) 1SCC 118(Constitution Bench) and Sanjay Dutt Vs. State Through CBI Bombay (II) (1954) 5 SCC (Constitution Bench).*** He has further submitted that facts intervening between the date of filing of the petition and the date of hearing are relevant and if custody becomes lawful on the date of hearing, the writ of habeas corpus cannot be issued as held by the Apex Court in the case of ***A.K. Gopalan and Another Vs. Government of India and Another AIR 1966 SCC (Constitution Bench)***. There is legal presumption of custody being lawful when the Court is approached at the stage when the petitioner is under going sentence or at belated stage of trial or after filing of charge-sheet. In such a situation writ of habeas corpus cannot be issued in view of the judgment of the Apex Court in the

case of ***Col. Dr. B.R. Ram Chandra Rao Vs. State of Maharashtra and Others (1972) 3 SCC 556*** and judgment of this Court in the case o***f Shashank Mishra (supra)***. The allegation that initial detention was illegal does not calls for issuance of writ of habeas corpus when the subsequent stages of the case have arrived in view of the judgment of the Apex Court in the case of **Kannu Sanyal (supra)** and Full Bench judgment of this Court in the case of ***Balmukund (supra)***. Further no habeas corpus writ petition lies against judicial order as held by the Apex Court in the cases of ***Manuabhai Rati Taj Patel Vs. State of Gujarat and Another (2013) 1 SCC 314; Rajna and Another Vs. State of Another 2021 SCC Online All(Full Bench) and judgment of the Apex Court in the case of State of M.P. and Others Vs. Kusum Sahu,(Criminal Appeal No. 4710 of 2025).***

25. The Additional Advocate General appearing on behalf of State-respondent has further submitted that Constitution Bench of the Hon'ble Supreme Court in the case of his holiness ***Keshvanand Bharati Sripadagalvaru Vs. State of Agarwal and Another (1973) 4 SCC 225*** held that protection of guarantee of fundamental freedom must be adjudged in the light of the object of State action in relation to the individual's right and not upon its affect upon the guarantee of fundamental freedom. He has submitted that the recent judgments of Hon'ble Supreme Court in the cases of ***Vihaan Vs. State of Harayana (2025) 5 SCC 799; Prabir Purkayastha Vs. State (NCT Delhi) 2024 8 SCC 254; Pankaj Bansal Vs. Union of India 2024 7 SCC 576 and Mihir Rajesh Shah Vs. State of Maharashtra Laws SC-2025-11-9*** are hit by the doctrine of stare decisis since these judgments have been passed without considering the earlier binding precedents of the Hon'ble Supreme Court itself and are therefore ***per incuriam*** and have no binding effect.

26. Learned counsel for the petitioner no. 1 has submitted that in the case of ***Kanu Sanyal vs. District Magistrate Darjeeling***, the principle that the legality of detention has to be examined not with reference to the date of filing of the petition but with reference to the date of return was laid down in the peculiar facts and circumstances of that case. In the said matter, the corpus, namely, Kanu Sanyal, was initially arrested and detained at Darjeeling. During the course of such detention, he was summoned to Vishakhapatnam on a production warrant. The corpus challenged both, the detention at Darjeeling as well as at Vishakhapatnam. However, by the time the legality of the detention came to be examined, the detention at Darjeeling had already come to an end, and the detention at Vishakhapatnam was otherwise found to be lawful and valid. It was in those peculiar circumstances that the Hon'ble

Supreme Court observed that the legality or illegality of detention is required to be examined with reference to the subsisting detention on the date of consideration of the petition. The relevant portion of judgment is being reproduced here as under:

"Now the writ petition in the present case January 6, 1973 and on that date the petitioner was in detention in was filed the Central Jail, Vizakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is. therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling."

27. Under the guise of the aforesaid proposition, the Respondent-State has sought to contend that the initial illegality in the present detention stands cured by subsequent developments. Such an argument is wholly misleading, misconceived, and nothing but an attempt to divert and dilute the real controversy involved in the present matter, particularly when no material has been brought on record by the State to justify or validate the initial illegal detention. The question regarding the legality of detention with reference to a subsequent date ordinarily arises only in cases of preventive detention, where successive detention orders are periodically passed, such as after every three months, or in cases where the detenu is involved in multiple cases giving rise to separate and independent orders of custody. The said principle has no application whatsoever to the facts of the present case, where the foundational illegality in the initial detention itself continues to vitiate the entire proceedings of his detention. Filing of charge sheet or trial has no bearing on his illegal detention.

28. As far as the second judgment of ***Bal Mukund Jaiswal v. Superintendent, District Jail, Varanasi (supra)*** it concerned it is distinguishable on several legal and constitutional grounds, particularly in the context of subsequent constitutional jurisprudence protecting personal liberty and procedural safeguards under Articles 21 and 22 of the Constitution of India:

(a) The Full Bench proceeded on the premise that a subsequent valid remand order under Sections 209 or 309 Cr.P.C. cures the illegality attached to the initial arrest or detention. Such reasoning substantially dilutes the constitutional mandate under Articles 21 and 22, which require strict compliance at the very inception of deprivation of liberty. A detention which is unconstitutional at its inception cannot ordinarily be legitimized merely by subsequent judicial orders.

(b) The judgment treated violations of Article 22(1), such as non-communication of grounds of arrest and denial of procedural safeguards, as curable irregularities. However, constitutional protections are not empty formalities; they are mandatory safeguards against arbitrary State action. Subsequent judgments of the Hon'ble Supreme Court have consistently reiterated that procedural safeguards relating to arrest and detention must be strictly complied with.

(c) The judgment heavily relied upon the proposition that legality of detention is to be examined on the date of hearing or return. However, the authorities relied upon, judgment of Kanu Sanyal, which was continued to peculiar facts involving subsequent independent and valid custody. The principle cannot be stretched to validate an unconstitutional arrest where the foundational illegality continues to vitiate the entire detention.

(d) The Full Bench judgment of this court failed to appreciate the distinction between an irregularity in procedure and complete violation of constitutional requirements. Non-compliance with Articles 21 and 22 strikes at the root of jurisdiction and legality of custody itself, and therefore cannot be treated as a mere procedural defect capable of being cured by later remand orders.

(e) Inconsistency of old judgment with later Supreme Court judgments particularly those emphasizing mandatory communication of grounds of arrest in writing and strict adherence to arrest procedures, have expanded the scope of personal liberty and procedural fairness. To that extent, the reasoning adopted in ***Bal Mukund Jaiswal*** (supra) stands considerably weakened and may be said to have been impliedly diluted by later constitutional interpretations.

29. During the course of arguments, certain judgments were relied upon by the Respondent-State which are wholly inapplicable and distinguishable from the present controversy on facts as well as in law being summarized here as under;

30. The judgment in the case of ***A.K. Gopalan v. Government of India*** is in the context of preventive detention, where during the subsistence of detention, subsequent orders, including the opinion/order of the Advisory Board, had intervened and governed the continued custody of the detenue. It was in those peculiar facts and circumstances that the Hon'ble Supreme Court observed that the validity of the initial detention could not independently survive for consideration

after the subsequent statutory orders had come into existence. The said principle has absolutely no applicability to the present case, where the custody of the accused flows directly and continuously from the very initial arrest itself, the legality whereof is under challenge, and no independent or supervening order has intervened so as to efface or cure the foundational illegality.

31. Similarly, the case of ***Col. Dr. B.R. Ramachandra Rao v. State of Maharashtra*** is clearly distinguishable on facts and law. In the said matter, the detenue was involved in two separate cases in different States and had already suffered a conviction in one of the cases. During the period of such lawful conviction and sentence, the detention was challenged. In those circumstances, the Hon'ble Court held that the custody could not be termed illegal, inasmuch as after conviction the detention is sustained by the judgment of conviction itself and not by any order of remand. The ratio of the said judgment therefore has no bearing whatsoever upon the present controversy, where the challenge is to the legality of the very inception of arrest and continued pre-trial detention.

32. The third judgment, namely, ***Sanjay Dutt v. State through CBI***, Bombay, is wholly, irrelevant in the context of the present proceedings. The said judgment dealt exclusively with the issue of statutory/default bail under the procedural framework governing investigation and filing of charge-sheet. At no stage did the Hon'ble Court examine or adjudicate upon the issue of illegal arrest, unconstitutional detention, or violation of mandatory constitutional safeguards relating to personal liberty. Consequently, the said authority does not advances the case of the Respondent-State in any manner whatsoever. Following relevant Paras are important of recent judgments :-

(i) In ***Prabir Purkayastha (Supra)***, it was held that :

"22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused."

Meaning thereby, while adjudicating the issue of illegal detention arising out of an arrest, the Court is required to examine whether the arrest itself was lawful, valid,

and in conformity with the constitutional and statutory safeguards governing deprivation of personal liberty

(ii) Secondly, Hon'ble Supreme Court in the matter of ***Vihaan Kumar v. State of Haryana, LAWS (SC)-2025-2-20*** has held that -

Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

(iii) That the Hon'ble Supreme Court in the matter of ***Kasireddy Upender Reddy v. State of Andhra Pradesh, LAWS (SC)-2025-5-148***, has held that on the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

(iv) The Hon'ble Supreme Court in the matter of ***Mihir Rajesh Shah v State of Maharashtra" LAWS(SC) 2025-11-9*** has held that;

56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) in case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

33. Before entering into the merits of Habeas Corpus Petition, literal meaning of Habeas Corpus is that you shall have the body. It is oldest remedy against illegal detention which has evolved from English common law.

34. Literally roots of Habeas Corpus go back to pre-constitution period and point of beginning in Indian Law is from 1773. Habeas was first initiated at the Calcutta High Court for British subject which was essentially used for producing British subject who were absconding or missing. In 1861 "Habeas Corpus" was invoked under the High Court Act and High Court of Bombay. Calcutta and Madras had the power to issue "Habeas Corpus" under Section 491 Cr.P.C, 1861. From 1861 onwards "Habeas Corpus" was issued under Section 491 Cr.P.C where the High Court could direct production of illegality detained person within the High Court's criminal jurisdiction.

35. In ***Matthen vs. District Magistrate 1939,*** a privy counsel judgment it was held that "Habeas" is a high prerogative right. Above mentioned privy counsel ruling sums up the pre-constitution action of "Habeas".

36. In 1950 in the Indian Constitution Article 32 and Article 226 along with Article 21 and 22 were incorporated providing for power to issue writ of "Habeas Corpus" for violation of fundamental rights. Meanwhile High Court under 226 got wider power to issue "Writs" for enforcement of any legal right and not just fundamental rights. Article 32 and 226 were introduced as a safeguard for Article 21 and 22 whereby Article 22 expressly held that grounds were to be informed and given to accused before arrest and production before the Magistrate within 24 hours.

37. Thus, "Writ of Habeas" become a constitutional remedy after promulgation of constitution and not just statutory remedy under Section 491 Cr.P.C. This was basically the second stage of development of "Writ of Habeas" and notable case of post constitutional period was ***Gohar Begum vs. Suggi 1960 SC 93***. Basically it was for child custody and for the first time it was issued against the private person.

38. The further development in the modern context is the landmark judgment of ***Madhu Limaye vs. SDM Monghyr 1970 3 SCC 746.*** In this judgment sweeping powers were given for issuance of "writ of habeas" and it was held that alternative remedy is not a bar and writ of "Habeas Corpus" is maintainable, despite Section 491 of Cr.P.C which had the statutory force.

39. In 1973 another judgment of ***Kanu Sanyal vs. District Magistrate, Darjeeling 1973 (2) SCC 67*** the legality of detention was challenged which for the first time

went beyond physical production of corpus and in this matter the Supreme Court examined the legality of detention for the first time.

40. ***ADM Jabalpur vs. Shivkant Shukla 1976 (2) SCC 521*** was the judgment pronounced during emergency, when Article 21 was suspended wherein it was held that there could be no issuance of "writ of Habeas Corpus" but subsequently this judgment was over-ruled. After the 44th Amendment, Article 359 was amended and it was held that article 20 and 21 cannot be suspended even during emergency thus restoring the writ of "habeas corpus". The 44th amendment also deleted section 491 Cr.P.C in 1973 because it was held that article 32/226 was sufficient to safeguard the liberty of the individual and thus after this amendment "writ of habeas corpus" became purely constitutional.

41. Post Emergency 44th amendment, notable decision is ***Sunil Batra vs. Delhi Administration 1978 (4) SCC 494*** where it was held even prisoners were entitled for a "Writ of Habeas Corpus" as convicts have liberty inside jail. This judgment is notable because it expanded the limits of "Writ of Habeas Corpus".

42. In ***Maneka Gandhi Vs. Union of India, 1978 (1) SCC 248*** it was held that procedure followed under Article 21 & 22 must be fair and reasonable and "Habeas Corpus" can be issued for any unreasonableness thus giving the "Writ of Habeas Corpus" extensive powers.

43. In ***Veena Sethi Vs. State of Bihar 1982 (2) SCC 583*** writ of Habeas Corpus was issued for mentally ill who was in Jail and suo-moto action was taken by the Court.

44. In ***Rudal Shah Vs. State of Bihar 83 (4) SCC 141*** for the first time court directed compensation in writ of Habeas Corpus as accused was kept in jail for 14 years after acquittal

45. In ***Nilabati Behera Vs. State of Orissa 1993 (2) SCC 746*** Law evolved and Habeas was issued for compensation after release.

46. In the third stage of development of writ of habeas corpus, from 1990 – 2010 in the judgment of ***A.K. Roy Vs. Union of India 1982 (1) SCC 271*** writ of habeas corpus was mainly issued for preventive detention and for custody where it was held that grounds of arrest of detainee must be informed to him and also given to him.

47. In ***Tasneem Rizwan Siddiqui Vs. State of Maharashtra & Ors. 2018 (9) SCC 745*** writ of habeas corpus was issued to produce detenue and further to give grounds of detention.

48. The law further developed and in ***D.K. Basu Vs. West Bengal 1997 (1) SCC 416,*** where guidelines for arrest were formalized by the Hon'ble Apex Court.

49. In ***Manubhai Ratilal Vs. State of Gujarat 2013 (1) SCC 314*** Apex Court held that an infirmity in detention at initial Stage cannot invalidate subsequent detention.

50. The law further evolved from 2014 in ***Arnesh Kumar Vs. State of Bihar 2014 (8) SCC 273*** where it was held that in an arrest in compliance of section 41A CPC was not necessary meaning thereby that notice/ information has to be given before arrest.

51. In the case of ***Gautam Naviakha Vs. National Investigation Agency 2021 (7) SCC 729*** Apex Court laid down conditions when "Writ of Habeas Corpus" cannot be issued and when it can be issued.

52. Further in the Judgment of ***Sanjay Dutt Vs. Central Bureau of Investigation 1994 (5) SCC 410*** it was settled by Constitution bench that the "Writ of Habeas Corpus" has to be dismissed if on the date of return the custody or detention is on the basis of the valid order.

53. In ***Saurabh Kumar Vs. Jailor Konelia Jail & Anr. 2014 (13) SCC 436*** the Supreme Court has clarified that once the petitioner is produced before the Judicial Magistrate and he has passed an order of judicial custody, the writ of Habeas Corpus cannot be issued as he was not in illegal detention.

54. In the matter of ***SFIO Vs. Rahul Modi 2019 (5) SCC 266*** the distinction has been drawn where "Writ of Habeas Corpus" will not be maintainable.

55. In ***Dasrath Roop Singh Rathore 2019 (9) SCC 129*** it was held by the Apex Court that the High Court was not correct in entertaining a writ petition regarding challenge under the N.I. Act whereby it was held that process has to be followed.

56. The judgments of ***Vihaan kumar Vs. State of Haryana 2025 INSC 162*** and ***Mihir Rajesh Vs. State of Maharashtra 2025 INSC 1288*** are clarificatory judgments following ***Pankaj Bansal Vs. Union of India 2023 INSC 866*** and ***Prabir Purkayastha Vs. State (NCT of Delhi) 2024 INSC 414.*** Judgments of Vihaan kumar and Mihir Rajesh have not laid down any new law and also not taken into account

any previous Judgment of the Hon'ble Supreme Court on the issue of maintainability of "Writ of Habeas Corpus".

57. We have heard the learned counsel for the parties at length and perused the pleadings brought on record by the parties. There are two issues before this court which require attention :-

(i) whether it is open for the person arrested / detained to prefer a habeas corpus petition on the ground of violation of Article 21 and 22 of the Constitution of India any time after his remand, till the conclusion of trial, at any stage of investigation and trial.

(ii) whether there is no time line fixed for filing a habeas corpus petition before the court.

58. We are faced broadly with two sets of judgments of the Hon'ble Supreme Court, one set consisting of old law on the subject laid down by the Hon'ble Supreme Court in the cases of ***Naranjan Singh Natwan (Supra); Sanjay Dutt (Supra); A.K. Gopalan and Another (Supra); K. Ramachandra Rao (Supra); Kanu Sanyal (Supra)*** and few others and second set of recent judgment of the Apex Court in the cases of ***Vihan Kumar (Supra); Prabir Purkayastha (Supra), Pankaj Bansal (Supra)*** and ***Mihir Rajesh (Supra)*** and some other judgments considered hereinabove.

59. The old judgments of the Apex Court have held that while considering a habeas corpus petition, the court is to have regard to the legality or otherwise of the detention at the time of return of the rule and not with reference of the date of institution of proceedings. The court is to see the validity of detention on the date the application is made, if nothing has intervened between the date of application and date of hearing of the same. If the detention order made initially is replaced by subsequent detention order, the first detention order goes out of realm of consideration. The writ of habeas corpus cannot be granted where a person is committed to jail custody on the basis of an order which does not appears to be without jurisdiction or wholly illegal. There is presumption that custody is lawful when the court is approached with a habeas corpus petition during the pendency of trial after filing of charge sheet or while serving the sentence awarded by the court. The initial detention cannot be held to be illegal when the subsequent stages of investigation / trial have passed.

60. On the other hand, the second set of judgments of the Hon'ble Supreme Court do not put any fetter on the rights of a person to prefer habeas corpus petition

before the court at any stage of the investigation / trial on the ground that if the initial order of remand is illegal, the infirmity goes to the root and is incurable at subsequent stages of investigation / trial.

61. We have heard number of petitions on this issue and have found that in view of the second set of recent judgments of the Apex Court in the case of ***Vihan Kumar (Supra)*** and others, the flood gates have been opened for the persons in detention to approach the court at any stage of investigation / trial and even after cognizance of offence taken on charge sheet, framing of charge and during trial and after rejection of their bail applications by the trial court, High Court and the Hon'ble Supreme Court at any stage of investigation or trial on the ground that their initial remand order was illegal and, therefore, their rights guaranteed under Article 22 (I) of the Constitution of India have been violated. It is argued in such cases that there can be no waiver of the fundamental rights and it is open for the person in custody to seek enforcement of his fundamental rights at any stage of investigation / trial as per legal advise received by them. It is also argued that such a person was not aware of his rights earlier and after he has been given proper legal advise, he has preferred the habeas corpus writ petition which deserves to be allowed. In view of the second set of judgments of the Apex Court in the case of ***Vihan Kumar (Supra)*** and others, we are faced with queer situation on account of irreconcilable views of the Apex Court in two sets of the judgments considered hereinabove.

62. We also find that the argument of learned Additional Advocate General on behalf of State-respondents that the second set of recent judgments of the Hon'ble Supreme Court in the cases of ***Vihan Kumar (Supra); Prabir Purkayastha (Supra), Pankaj Bansal (Supra)*** and ***Mihir Rajesh (Supra)*** and some others are not binding precedents because they are hit by doctrine of *stare decisis.* The judgments have not considered earlier law laid down by the Apex Court in the case of first set of judgments in the cases of ***Kanu Sanyal (Supra)*** and others. The first set of judgments of the Hon'ble Supreme Court have laid emphasis on considering the legality of detention order at the time of return of rule and have held that if the initial detention order was not in accordance with law, but at the time of consideration of the petition a new detention order was passed which was in accordance with law the earlier order of detention is not required to be considered since it has lost its relevance.

63. The Apex Court in the case of ***Sanjay Dutt (Supra)*** held in paragraph 48, relying upon the judgments in the case of ***Naranjan Singh Nathan (Supra); Ram Narayan***

(Supra) and ***A.K. Gopalan (Supra)*** , that a petition seeking writ of habeas corpus on the ground of invalid order of remand or detention has to be dismissed, if on the date of return of rule the custody or detention is on the basis of valid order. In the case of ***Sanjay Dutt (Supra)*** the right of default bail accrued to the accused but he did not availed the same. The Apex Court held that had the accused applied for bail before filing of the challan it could have been granted but it was not open for the accused to prefer habeas corpus petition on the ground that the investigation was not completed within statutory period of 180 days and, therefore, he has right to be released from custody.

64. The Apex Court held that such a right accrues to an accused under Section 167(2) Cr.P.C in default of completion of investigation within statutory period; the right is enforceable by the accused only from time of default till the filing of challan and does not survives or remain enforceable on challan being filed. The enforcement of such a right after filing of challan is not in accordance with law. It is clear that once the challan is filed the ground of detention of accused on the ground of delay in completing investigation looses its force and is replaced by the challan filed in court. Therefore, the challan becomes a valid order which validates the custody of the accused.

65. The Apex Court in the case of ***A.K. Gopalan (Supra)*** held that the validity of detention order passed on 29.12.1964 was made and thereafter another detention order dated 04.03.1965 was passed. The Apex Court held that earlier order dated 29.12.1964 is no longer in force and since the subsequent order dated 04.03.1965 is legal, the writ of habeas corpus cannot be issued. The earlier case of ***Kanu Sanyal (Supra)*** was also on the same proposition.

66. This court in the Full Bench judgment in the case of ***Bal Mukund Jaiswal (Supra)*** was also faced with a situation where the detenu had approached this court after passing of valid remand orders under Sections 209 and 309 Cr.P.C by Magistrate pending trial and writ of habeas corpus was preferred on the ground that initial remand order was illegal.

67. This court held that where an accused is in judicial custody on the basis of a valid remand order passed under Sections 209 and 309 Cr.P.C by the Magistrate or by any other competent court, then such an accused cannot be set at liberty by issuing a writ of habeas corpus solely on the ground that his initial detention was violative of constitutional guarantee enshrined under Article 22(I) of the Constitution of India.

68. Learned Additional Advocate General has submitted that in case the second set of judgments of the Apex Court in the cases of ***Vihan Kumar (Supra)*** and other judgments are followed by this court it would lead to a very difficult situation. He has given an example that supposing an accused is remanded to judicial custody by means of a remand order which is alleged to be illegal, but not challenged. Thereafter he unsuccessfully applied for bail before the trial court, High Court and the Hon'ble Supreme Court. Then after investigation, charge sheet is submitted, cognizance is taken thereon, charges are framed after affording opportunity of hearing to the accused, then trial proceeds and after the evidence of the prosecution and defence is completed, the accused files a habeas corpus petition before the High Court or the Hon'ble Supreme Court on the ground, like in the present case, that since his initial arrest was illegal and, therefore, in view of the second set of judgments in the case of ***Mihir Rajesh Shah*** and other judgments, he is entitled to be set at liberty, then in such a situation the entire investigation and trial would become redundant. The Apex Court in the recent cases of ***Gautam Naulakha vs. NIA, (2022) 13 SCC 542*** and ***Mihir Rajesh Shah (Supra***) has held that on account of initial illegality in the remand order on account of failure of furnish the grounds of arrest, the arrest and detention of the petitioner shall be rendered illegal and filing of charge sheet as per ***Vihan Kumar (Supra)*** will not have any effect. Order of cognizance will not validate an arrest which is violative of Article 21 and 22 of the Constitution of India.

69. The second set of judgments of the Apex Court do not carve out any timeline for preferring habeas corpus petition challenging the arrest and detention of the accused on the grounds, like non-supply of “grounds of arrest”, non-supply of “reasons to believe” deprivation of opportunity to inform the relatives and friends and the right of accused to engage counsel, etc. Therefore, in the absence of any fetters on the right of accused to approach this court challenging his initial arrest, a pandoras box has been opened and the petitions are being filed after cognizance on charge sheet, framing of charge and remand orders under Sections 209 and 309 Cr.P.C and also during recording of evidence in trial. In the present case, the petitioner has approached this court, when the statement of P.W.-2 was recorded in the Sessions Trial against him on the ground that his remand under Section 309 Cr.P.C was not extended by reasoned order and therefore, he requires to be set at liberty by issuing a writ of habeas corpus.

70. Number of accused are filing habeas corpus petitions before this court after their bail applications are rejected by the trial court, this court and also the Hon'ble Supreme Court. All of them rely upon the second set of judgments of the Apex Court cited hereinabove where it has been held that the initial defect in remand of the accused is incurable and the fundamental rights are never extinguished and can always be enforced. The situation is chaotic. If it is permitted to continue the accused will file habeas corpus petitions before this court at will asserting their fundamental rights under Article 22(1) of the Constitution of India irrespective of the stage of investigation / trial.

71. We find that the old set of judgments of the Apex Court in the case of ***Kanu Sanyal (Supra)*** and other cases laid down the law that the challenge to the illegal arrest can only be seen with reference to the detention order in force at the time of hearing of petition. Validity of initial detention can only be considered if nothing has intervened between filing of petition and the return of the rule.

72. We are of the view that the validity of initial detention and subsequent detention orders passed in pursuance thereof can be considered as the basis of maintaining the habeas corpus petition only till the investigation is in progress by the investigating officer of the case. Once investigation is concluded, charge sheet is submitted an order of cognizance on charge sheet is passed, the right to challenge the initial illegality in the order of remand cannot be enforced. The order of cognizance of the court can always be assailed by resort to appropriate statutory remedy provided under the provisions of the Cr.P.C / B.N.S.S.

73. Of course, after investigation or after cognizance order is passed on the charge sheet submitted by the investigating officer, bail application can be moved before the appropriate court on the ground of violation of Article 21/22 of the Constitution of India. The habeas corpus petition challenging the initial arrest can be preferred before the High Court by an accused, claiming that his initial arrest and remand order were illegal till the cognizance is taken on the charge sheet submitted by investigating officer of the police before the court. It would be useful to refer to the various stages of investigation and trial of the cases :-

(i) Under Section 154 Cr.P.C (173 B.N.S.S) F.I.R is lodged and criminal law is set in motion.

(ii) After registration of F.I.R the accused may be arrested and, in case of failure to complete investigation within 24 hours, accused is produced before the Remand

Magistrate who passes remand order authorizing detention of an accused for 15 days.

(iii) Investigation is carried out by the investigating officer, by visiting crime scene, collecting evidence, examining witnesses and accused under Section 161 Cr.P.C., recording disclosure statements and preparing seizure memos and arresting of accused, if not made earlier.

(iv) Under Section 173(2) Cr.P.C either a charge sheet is submitted against the accused, finding sufficient evidence against the accused or in case of insufficiency of evidence, closure report is filed.

(v) Magistrate examines the police report and takes cognizance of the offence under Section 190 Cr.P.C and summons / issues warrant to accused to appear before the court, where the accused has not been arrested.

(vi) Regarding serious offence triable by court of sessions, the Magistrate commits the case to the court of Sessions after supplying copies of documents to the accused as per Section 209 Cr.P.C.

(vii) Court examines the material collected by the investigating officer and frames charges under Section 228 Cr.P.C for Sessions court and under Section 240 Cr.P.C for Magistrate's trial.

(viii) Thereafter prosecution presents witnesses and documents to prove the charges and then the statement of accused is recorded under Section 313 Cr.P.C giving him opportunity to explain the circumstances and evidence led against the accused by the prosecution.

(ix) Accused may produce witnesses and documents against the defence.

(x) Final arguments of both the sides are made and final judgment is delivered by the court as per Section 353 Cr.P.C after finding the accused guilty and sentencing him or acquitting him being not found guilty. Thus, it is clear that from the lodging of F.I.R to the passing of judgment of the trial court, there are nine intermediary stages.

74. The order of remand passed by the Magistrate under Section 167 Cr.P.C. remains operative only till cognizance of the offence is taken by the competent court on the police report. Once cognizance is taken, the remand order passed under Section 167 Cr.P.C. ceases to operate. Thereafter, where the offence is triable exclusively by the Court of Sessions, an order of committal under Section 209

Cr.P.C. is passed, which is again a judicial order subsequent to the order of court taking cognizance of offence on charge sheet. Further, upon consideration of the material available on record, if charges are framed against the accused, an order under Sections 228/240 Cr.P.C. comes into existence. After committal of the case to the Court of Sessions, detention/remand of the accused is governed by Section 309 Cr.P.C.

75. It is evident that the initial order of remand passed by the Magistrate loses its significance once cognizance is taken on the charge-sheet submitted by the Investigating Officer against the accused. The order taking cognizance is a judicial order and stands on a higher footing than an order of remand passed under Section 167 Cr.P.C., which is merely a pre-investigation judicial order. Upon completion of investigation, material is collected by the investigating officer, on the basis whereof cognizance of the offence is taken by the competent court. However, such order of cognizance remains open to challenge by the accused in accordance with the statutory remedies available under the Cr.P.C./B.N.S.S after the remand order passed under Section 167 Cr.P.C loses its efficacy.

76. The Apex Court in the case of ***Eastern Coalfields Ltd. v. Dugal Kumar [AIR 2008 SC 3000]*** has held that where a petitioner invokes extraordinary remedy under Article 226 of the Constitution of India, he should approach the Court at the earliest reasonable opportunity. Inordinate delay in filing a writ petition is, by itself, a sufficient ground for refusing to exercise discretionary jurisdiction in favour of the petitioner.

77. The filing of a writ petition for habeas corpus before the High Court, after passing of the judicial order of remand and subsequent orders taking cognizance of the offence, committal of the case and framing of charge cannot be justified, inasmuch as the initial remand order passed by the Magistrate becomes redundant at these stages, as discussed hereinabove. Such remand order cannot stand on a better footing than the judicial order taking cognizance of the offence upon submission of the charge-sheet by the investigating ifficer. Therefore, the order of remand passed by the Magistrate may be assailed in proceedings for under Article 226 only till the stage when cognizance has not been taken by the competent court on the charge-sheet. The first set of earlier judgments of the Apex Court, wherein it has been held that the legality of detention in a habeas corpus petition is to be examined with reference to the order subsisting on the date of return of the rule, were rendered after considering the entire scheme of criminal procedure and trial.

However, the second set of recent judgments do not appear to have considered the aforesaid earlier pronouncements of the Apex Court.

78. Now coming back to the fact of present case, it is clear that the petitioner was arrested more than 2 years ago. He has not disclosed in the petition anywhere his date of arrest nor has disclosed the date of passing of remand order in the writ petition. He has also not disclosed the stage of trial anywhere and has prayed for directing the issuance of writ of habeas corpus against the respondents.

79. In the counter affidavit filed on behalf of the State-respondents, it has been stated that the F.I.R. was lodged against the petitioner on 08.01.2024 in respect of the heinous offences of murder and dowry death of his wife and one-year-old daughter, on the basis of information furnished by a third person at the concerned police station. Thereafter, an order of remand under Section 167 Cr.P.C. was passed; however, the date of such remand order has not been disclosed anywhere in the counter affidavit.

80. It has been stated that charges were framed against the petitioner and the other accused persons on 12.08.2024 and the cross-examination of P.W.-2, namely, Vimla, was conducted on 12.03.2026. It has further been brought on record that the bail application preferred by the petitioner before the trial court was rejected on 15.04.2025. From a perusal of the said bail rejection order, it appears that neither the alleged illegality in the remand order nor the alleged violation of constitutional provisions was ever pleaded before the bail court.

81. Learned counsel for the petitioner has argued that the petitioner is a very poor person and was not aware of his fundamental rights. It has been submitted that, due to financial constraints, he could not engage counsel earlier and, therefore, was unable to approach this Court earlier by filing the present habeas corpus petition. Relying upon the second set of judgments of the Apex Court, as discussed hereinabove, learned counsel for the petitioner has contended that since the initial order of remand passed against the petitioner was illegal, the petitioner is entitled to be set at liberty.

82. However, it is evident that the trial has already commenced and prosecution witnesses are being examined. Thus, the stages of committal under Section 209 Cr.P.C and framing of charge already stand concluded and the proceedings are now being conducted after remand order passed under Section 309 Cr.P.C. The remand of the petitioner during trial is in process.

83. Learned counsel for the petitioner submits that while extending the remand under Section 309 Cr.P.C., the trial court was required to pass a reasoned order beyond period of fifteen days of remand, which has not been done in the present case and, therefore, the detention of the petitioner also becomes illegal on this count.

84. This court finds that on the remand sheet brought on record, the dates of extension of remand orders are mentioned which is general practice in the trial courts and further the habeas corpus petition cannot be maintained on the ground that the orders under Section 309 Cr.P.C passed by the trial court are not in accordance with law.

85. We have considered the second set of judgments and find that first set of judgments of the Hon'ble Supreme Court do not find consideration in most of the judgments :-

S. No.	**Recent Judgments of Supreme Court (second set)**	**Old judgments of Hon'ble Apex Court / (first set) referred while passing judgments**
1.	Pankaj Bansal v. Union of India, reported as 2023 SCC OnLine SC 1244 / (2024) 7 SCC 576 **The judgment was delivered on 03.01.2023**	(i) Vijay Madanlal Choudhary v. Union of India (2022) 10 SCC 386 (ii) V. Senthil Balaji v. State represented by Deputy Director 2023 SCC OnLine SC 934. (iii) Anesh Kumar v. State of Bihar (2014) 8 SCC 273 (Referred regarding necessity of arrest and judicial scrutiny at remand stage. (iv) Satender Kumar Antil v. Central Bureau of Investigation 2022 SCC OnLine SC825 / (2022) 10 SCC 51 (Relied upon concerning safeguards against unnecessary arrest and liberty jurisprudence) (v) Madhu Limaye v. Sub-Divisional Magistrate (1970) 3 SCC 746 (Considered on the scope of personal liberty and procedural safeguards). (vi) Maneka Gandhi v. Union of India (1978) 1 SCC 248 (Constitutional due process and fairness under Article 21 considered implicitly while

		interpreting arrest safeguards). (vii) D.K. Basu v. State of West Bengal (1997) 1 SCC 416 (Procedural protections during arrest and detention considered). (viii) Joginder Kumar v. State of Uttar Pradesh (1994) 4 SCC 260 (Referred on justification and necessity of arrest). (ix) Chhagan Chandrakant Bhujlal v. Union of India 2017 Cri. L.J (NOC) 301 (Bom) (Specifically discussed and held not laying down correct law insofar as oral communication of grounds of arrest was concerned. (x) Moin Akhtar Qureshi v. Union of India; 2017 SCC OnLine Del 121 (Considered and disapproved to the extent it accepted oral communication of grounds of arrest). (xi) Prabir Purkayastha v. State (NCT of Delhi) (2024) 8 SCC (Though subsequent, it expressly followed and reiterated the ratio of Pankaj Bansal regarding written grounds of arrest.
2.	**Prabir Purkayastha versus State (Nct of Delhi) LAWS(SC)-2024-5-46.** **The judgment was delivered on 24.05.2024**	(I) (2024) 7 SCC 599, Ram Kishor Arorav, Enforcement Directorate. (ii) (2024) 7 SCC 576, Pankaj Bansal v. Union of India. (iii) (2024) 3 SCC 51: (2024) 2 SCC (Cr) 1, v. Senthil Balaji v. State. (iv) (2023) 6 HCC (Del) 565, Criminal MC No. 7278 of 2023, Prabir Purkayastha v. State (NCT of Delhi) sub nom Amit Chakraborty v. State (NCT of Delhi) (v) 2021 SCC Online Del 5817, PPK Newsclick Studio (P) Ltd. v. Union of India (vi) 2017 SCC OnLine Del 12108, Moin Akhtar Qureshiv. Union of India (vii) 2016 SCC Online Bom 9938, Chhagan

		Chandrakant Bhey'v. Union of India (viii) (2000) 85CC 590: 2001 SCC(Cr) 42, Roy V.D. v. State of Kerela. (ix) (1981) 2 SCC 427; 1981 SCC (Cri) 463, Laliabhar Jogibhai Patel v. Union of India (x) 1962 SCC OnLine SC 117, Harikiran v. State of Maharashtra.
3.	**Vihaan Kumar v. State of Haryana** **LAWS(SC)-2025-2-20** Judgment was delivered on 07.02.2025	(i) (2024) 8 SCC 254; (2024) 3 SCC (Cri) 573, Prabir Purkayastha vs. State (NCT of Delhi) (ii) (2024) 7 SCC 576: (2024) 3 SCC (Cri) 450, Pankaj Bansal v. Union of India (iii) (2024) 3 SCC 51: (2024) 2 SCC (Cri) 1, V. Senthil Balaji v. State (iv) 2024 SCC OnLine P & H 15495, Vihaan Kumar v. State of Haryana (reversed) (v) 2024 SCC OnLine SC 4702, Vihaan Kumar v. State of Haryana (vi) 2024 SCC Online SC 4701, Vihaan Kumar v. State of Haryana of India (vii) (1981) 2 SCC 427: Lallubhai Jogibhai Patel v. Union (viii) 1968 SCC Online SC 136, Hadibandhu Das v. District Magistrate, Cuttack. (ix) 1962 SCC OnLine SC 117, Harikisan v. State of Harikisan v. State of Maharashtra.
4.	**Kasireddy Upender Reddy v. State of Andhra Pradesh** **LAWS(SC)-2025-5-148** The judgment was delivered on 23.05.2025.	**Appellant-** (i) Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 (ii) Vihaan Kumar v. State of Haryana, 2025 SCC OnLine SC 269 (iii) State of U.P. v. Abdul Samad; AIR 1962 SC 1 506 @ Para 14, (iv) Chaganti Satyarayana v. State of A.P. (1986) 3 SCC 141 @ Paral more recently reiterated in (v) Gautam Navlakhav NIA; (2022) 13 SCC 542

		@ Para 102. (vi) In Re Nagendranath Chakravarti, ILR (1923) 51 Cal 402, interpreting S. 61 & 167 Cr.P.C 1898 (equivalent to S. 58 BNSS) (vi) Priya Indoria v. State of Karnataka; (2024) 8 SCC 254 by the Petitioner (vii) State of Bombay v. Atma Ram, 1951 SCC 43 : AIR 1951 SC 157 (ix) Magan Lal Jivabhai, in re, AIR 1951 Bom 33 (D) (x) Christiev Leachinsky ([1947] A.C. 573 at p. 586(F) (xi) Glanvile L. Williams in his article "Requisites of a Valid Arrest" in (1954) Criminal Law Review (xii) McNabb v. United States America, 318 US 332 (1943) (H), (xii) United States . Cruikshank, 92 US 542 (1875) (xiv) Vimal Kishore Mehrotra v. State of Uttar Pradesh, AIR 1956 All 56)
5.	**Mihir Rajesh Shah v. State of Maharashtra, (2026) 1 SCC 500**	(i) Vihaan Kumar v. State of Haryana 2025 5 SCC 799 (ii)Ashok v. State of UP 2025 2 SCC 281 (iii) Ajit Atmaram Apraj v. State of Maharashtra 2025 SCC online SC 2532 (iv) Mihir Rajesh Shah v. State of Maharashtra 2025 SCC online SC 2531 (v) Suhas Chakma v. Union of India 2024 16 SCC 1 (vi) Prabir Purkayastha v. State(NCT Delhi) 2024 8 SCC 254 (vii) Pankaj Bansal v. Union of India 2024 7 SCC 576 (vii) V Senthil Balaji V. State 2024 3 SCC 51

		(ix) Mihir Rajesh Shah v. State of Maharashtra 2024 SCC online SC 5780 (x) Mihir Rajesh Shahv. State of Maharashtra 2025 SCC online Bomb 3660 (xi) Moin Akhtar Quereshi v. Union of India 2017 SCC Online Del 12108 (xii) Chhagan Chandrakant Bhujbal v. Union of India 2016 SCC Online Bomb 9938 (xii) Arnesh Kumar v. State of Bihar 2014 8 SCC 273 (xiv) Manuabhai Ratilal Patel v. State of Gujarat 2013 1 SCC 314 (xv) V.D. Roy v. State of Kerala 2000 8 SCC 590 (xvi) Joginder Kumar v. State of UP 1994 4 SCC 260 (xvii) Lallubhai Jogibhai Patel v. UOI 1981 2 SCC 427 (xviii) Harikrishan v. State of Maharashtra 1962 SCC Online SC 117. (xix) State of Bomnay v. Atma Ram Sridhar Vaidya 1951 SCC 43

86. The above consideration of the second set of judgments in the cases of ***Vihan Kumar; Prabir Purkayastha; Pankaj Bansal; Mihir Rajesh Shah; Kasi Reddy*** and ***Upendra Reddy*** appears to be hit by the principles of *stare decisis*. The Apex Court, in the case of ***Bengal Immunity Co. Ltd. vs. State of Bihar, 1955 SC 661*** held in paragraph 186 that the Apex Court should not differ from its previous decision merely because a view contrary to the one taken therein appears to be preferable. The Apex Court held in the said judgment that it is in the public interest that the law declared should be certain and final rather than that it should be declared in one sense or the other. This was the reason behind Article 141. The object of Article 141 is that the decisions of the Supreme Court on questions of law should settle the controversy and should be followed as law by all courts. If such decisions are allowed to be reopened merely because a different view appears to be a better one, then the very purpose for which Article 141 was enacted would be defeated. In such

a situation, litigants would subject the decisions of the Supreme Court to a continuous process of attack before successive Benches in the hope that changes in the personnel of the Court, which time must inevitably bring, might lead to the acceptance of a different view. The Apex Court held that nothing can be more damaging to the prestige of the Court or the value of its pronouncements than allowing a question settled by previous decisions to be reopened upon a mere suggestion that some or all members of a later Bench might arrive at a different conclusion. The Apex Court cautioned that there would be grave danger of lack of continuity in the interpretation of law if such a situation were allowed to prevail.

87. In view of the above consideration, we find respectfully that the second set of judgments of the Hon'ble Supreme Court are not binding precedents and hit by the principles of *stare decisis*.

88. On the basis of above considerations, our conclusions are as follows :-

(i) A habeas corpus writ petition under Article 226 of the Constitution of India can be preferred by an accused before the court, at the earliest, if his initial remand is illegal and consequently his detention is illegal.

(ii) The filing of habeas corpus petition shall not be affected by rejection of bail application of the accused by the trial court only. Rejection of bail application of accused by High Court or the Supreme Court, would be a bar to entertainment of habeas corpus writ petition before Hon'ble High Court or Hon'ble Supreme Court since the bail application has been considered by the Bench of Hon'ble High Court or the Hon'ble Supreme Court and it would not be proper for another coordinate Bench of the Hon'ble High Court or the Hon'ble Supreme Court, where the bail application was rejected, to entertain a habeas corpus writ petition by another Bench of the same court. It will amount to appeal / review of the judgment passed by the Bench deciding bail application of the accused.

(iii) However, once the charge sheet is submitted against an accused under Section 173(2) Cr.P.C / 154(2) B.N.S.S and judicial order of cognizance is passed thereon by the competent court, the right of the accused to prefer habeas corpus writ petition on the ground that the initial judicial order of remand under Section 167(2) Cr.P.C / 187(2) B.N.S.S passed by the Magistrate was illegal would not be maintainable, since after the passing of the second judicial order of the cognizance of offence on the charge sheet by the court would become relevant and not the initial order of remand. The remedy of assailing such an order of cognizance is

provided under the statute and filing of habeas corpus petition would not be permissible.

(iv) After the cognizance is taken on the charge sheet submitted by the investigating officer, the challenge to arrest of accused can be made on the grounds of violation of Article 21 and 22(1) of the Constitution of India by resorting to statutory remedy of bail provided under the statute.

(v) The remedy of filing habeas corpus petition will also not be available to an accused after the order of committal under Section 209 Cr.P.C. / 232 B.N.S.S or remand by the trial court under Section 309 Cr.P.C. / 346 B.N.S.S.

(vi) Even after framing of charge as per Section 228 Cr.P.C. / 240 Cr.P.C by the court, which is also a judicial order amenable to statutory challenge, the remedy of habeas corpus cannot be availed by an accused.

89. The arguments of the learned counsel for the petitioner that the old set of judgments are confined to the facts of the cases mentioned therein and have no application to the present case is misconceived. The ratio of the judgment is to be seen and not the facts of the case mentioned therein. The ratio of the first set of old judgments in the case of Kanu Sanyal and other judgments still hold good and have not been overruled.

90. We are of the view that the submissions made by learned counsel for the petitioner that the remand of the petitioner is illegal because his remand under Section 309 by the Sessions Court is illegal cannot be accepted as the basis of maintaining the habeas corpus petition. We have found no illegality in the order of remand under Section 309 Cr.P.C as considered hereinabove. The petitioner has approached this court at extremely belated stage questioning the illegality in the initial remand order, without even mentioning its date and bringing the same on record of the writ petition, when the trial has commenced and statements of prosecution witnesses are being recorded. The challenge of the petitioner to his initial arrest is neither bona fide nor legal. The habeas corpus petition has no merit and deserves to be dismissed.

91. Before parting, we wish to appreciate the assistance given by learned counsel for the petitioner, Sri Anupam Verma, to the court. We also acknowledge the valuable assistance given by Sri Manish Goyal, learned Additional Advocate General and his assisting counsel, Sri Roopak Chaubey, learned A.G.A.-Ist in deciding this habeas corpus writ petition after number of hearings.

92. The habeas corpus writ petition is without merit and is hereby, ***dismissed***.

Order Date:- 27.05.2026

Rohit

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)