*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

***THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR**

+WRIT PETITION No.19332 OF 2026

% 16.10.2026

CHRISTIAN JOINT ACTION COMMITTEE(CJAC), REP. BY ITS FOUNDER AND PRESIDENT, ARCH BISHOP, DR. ASHOK BABU CHEGUDI @ JOSHUA DANIEL S/O LATE SEKHAR and another

……Petitioners

And:

THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF HOME, SECRETARIAT BUILDINGS, VELAGAPUDI, AMARAVATI – 522237 and others.

….Respondents.

!Counsel for the petitioners : Sri D. Prasad Kumar

^Counsel for the respondent No.1 : Sri Advocate General

Counsel for the Respondent No.2 : Addl Advocate General.

Gist:

>Head Note:

? Cases referred:

1.(2001) 6 Supreme Court Cases 181
2.(1997) 1 SCC 416
3.2026 INSC 1022
4.(2026) 1 SCC 500
5.(2019) 5 Supreme Court Cases 266
6.(2024) 3 Supreme Court Cases 51

7.(2013) 6 SCC 384
8.(2025) 11 SCC 446
9.(2022) 6 SCC 308
10.(1999) 8 SCC 728
11.(2021) 1 SCC 1
12.(2014) 8 SCC 273
13.(1972) 3 SCC 256
14.(1974) 4 SCC 141
15.(2022) 13 Supreme Court Cases 542
16.(2014) 14 SCC 434
17.(2022) 14 SCC 766
18.(2001) 6 SCC 181
19.(2008) 2 Supreme Court Cases 95

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No.19332 OF 2026

DATE OF JUDGMENT PRONOUNCED:16.10.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE ALAPATI GIRIDHAR

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3.	Whether Your Lordships wish to see the fair copy of the Judgment?	Yes/No

RAVI NATH TILHARI, J

ALAPATI GIRIDHAR,J

Date of reserved for orders : 29.09.2026
Date of pronouncement : 16.10.2026
Date of uploading : 16.10.2026

APHC010349852026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3624]**
(Special Original Jurisdiction)

FRIDAY, THE 16th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 19332/2026

Between:

1. CHRISTIAN JOINT ACTION COMMITTEE(CJAC), REP. BY ITS FOUNDER AND PRESIDENT, ARCH BISHOP, DR. ASHOK BABU CHEGUDI @ JOSHUA DANIEL S/O LATE SEKHAR, AGED ABOUT 45 YEARS. BEARING REGISTRATION NO. 215/2021, D.NO. 4-27-2A, JAYANTHI PET, PERALA, CHIRALA MANDAL, BAPATLA DISTRICT, ANDHRA PRADESH. 523157
2. BHANU MURTHY MEKALA,, S/O ISSAK, AGED ABOUT 35 YEARS, OCC ACCREDITED JOURNALIST, R/O IBRAHIMPATNAM, NTR DISTRICT, ANDHRA PRADESH - 521456.

...PETITIONER(S)

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF HOME, SECRETARIAT BUILDINGS, VELAGAPUDI, AMARAVATI - 522237.
2. THE DIRECTOR GENERAL OF POLICE DGP, AP STATE POLICE HEADQUARTERS, MANGALAGIRI - 522503.
3. THE SUPERINTENDENT OF POLICE, ELURU DISTRICT, PIN CODE

- 534001. 4.

4. THE SUPERINTENDENT OF POLICE, KAKINADA DISTRICT, PIN CODE - 533001.
5. THE SUPERINTENDENT OF POLICE, KRISHNA DISTRICT, MACHILIPATNAM - 521001.
6. THE STATION HOUSE OFFICER, PITHAPURAM TOWN POLICE STATION, KAKINADA DISTRICT-533450.
7. THE STATION HOUSE OFFICER, SARPAVARAM POLICE STATION, KAKINADA DISTRICT-533005.
8. THE STATION HOUSE OFFICER, INAGUDURU POLICE STATION, MACHILIPATNAM, KRISHNA DISTRICT-521001.
9. THE STATION HOUSE OFFICER, PAYAKARAOPETA POLICE STATION, ANAKAPALLI DISTRICT-531126. 10
10. THE DEPUTY SUPERINTENDENT OF POLICE DSP, GANNAVARAMSUB-DIVISION,KRISHNA DISTRICT-521101. 11
11. THE STATION HOUSE OFFICER, GANNAVARAMPOLICE STATION, KRISHNA DISTRICT-521101.
12. THE SUPERINTENDENT, CENTRAL JAIL, NELLORE-524320.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased Writ of Habeas Corpus, or any other appropriate Writ, Order, or Direction, particularly one in the nature of a Writ of Certiorari a) CALL FOR THE RECORDS from the files of the Respondent Police Authorities and the learned XII Additional Junior First Class Magistrate, Gannavaram, relating to the First Information Report (FIR) No. 188/2026 of Gannavaram Police Station, Krishna District, including the arbitrary and malicious Remand Report dated 05.07.2026 b) DECLARE AND QUASH the Judicial Remand Order dated 05.07.2026 passed by the XII Additional Junior First Class Magistrate, Gannavaram, in F.I.R. No. 188/2026, as an absolute nullity. Coram Non Judice, and void ab initio for complete want of territorial jurisdiction, and for patent non-compliance with the mandatory constitutional guarantees of Article 22(1) and Article 22(2) of the Constitution of India c)

DIRECT THE RESPONDENTS, specifically Respondent No. 11 (The Station House Officer, Gannavaram P.S.) and Respondent No. 12 (The Superintendent, Central Jail, Nellore), to produce the body of the Detenu, namely Sri Batchalakuri Joseph @ Ravan, S/o Chinna Daniel, before this Honble Court, and immediately release him from his unlawful, unauthorized judicial detention, setting him at absolute liberty and pass

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

IA NO: 2 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

IA NO: 3 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to take this Additional Affidavit on record and consequently: Direct the Respondents to forthwith release the Detenu (Sri Batchalakuri Joseph @ Ravan) from Central Jail, Nellore, and pass

IA NO: 4 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to take this Additional Affidavit on record and consequently: Declare the Judicial Remand Order dated 05.07.2026 passed

Counsel for the Petitioner(S):

1. DONDAPATI PRASAD KUMAR

Counsel for the Respondent(S):

1. THE ADVOCATE GENERAL
2. ADDL ADVOCATE GENERAL

The Court made the following:

ORDER: :-*(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri Rana Sandeep Bussa, learned counsel for the petitioners and Sri Siddharth Luthra, learned Senior Counsel, assisted by Sri T.Vishnu Teja, learned Special Government Pleader attached to the office of learned Additional Advocate General, for the respondents.

2. This Writ Petition for Habeas Corpus under Article 226 of the Constitution of India has been filed by the Christian Joint Action Committee (CJAC), represented by its Founder and President (petitioner No.1) along with one Bhanu Murthy Mekala (petitioner No.2), to declare and quash the initial remand order dated 05.07.2026 passed by the XII Additional Junior First Class Magistrate, Gannavaram, in FIR No.188 of 2026 and to set free the alleged detenu, namely Sri Batchalakuri Joseph @ Ravan son of Chinna Daniel.

3. The main prayer under this Writ Petition is being reproduced hereunder:

> *"pleased to issue an appropriate Writ of Habeas Corpus, or any other appropriate Writ, Order, or Direction, particularly one in the nature of a Writ of Certiorari:*
>
> *a) CALL FOR THE RECORDS from the files of the Respondent Police Authorities and the learned XII Additional Junior First Class Magistrate, Gannavaram relating to the First Information Report (FIR) No.188/2026 of Gannavaram Police Station, Krishna District, including the arbitrary and malicious Remand Report dated 05.07.2026;*
> *b) DECLARE AND QUASH the Judicial Remand Order dated 05.07.2026 passed by the XII Additional Junior First Class Magistrate, Gannavaram in F.I.R.No.188/2026 as an absolute nullity, Coram Non Judice, and void ab initio for complete want of territorial jurisdiction, and for patent non-compliance with the mandatory constitutional guarantees of Article 22(1) and Article 22(2) of the Constitution of India;*

> c) *DIRECT THE RESPONDENTS, specifically Respondent No.11 (The Station House Officer, Gannavaram P.S.) and Respondent No.12 (The Superintendent, Central Jail, Nellore), to produce the body of the Detenu, namely Sri Batchalakuri Joseph @ Ravan, S/o Chinna Daniel, before this Hon'ble Court and immediately release him from his unlawful, unauthorized judicial detention, setting him at absolute liberty, and pass such other order or orders."*

4. The petitioners' case is that, previously W.P.No.18440 of 2026 was filed on 04.07.2026, but due to some technical defects and omissions, that writ petition was dismissed as withdrawn with permission, to file fresh writ petition.

5. The petitioners' case is that the detenu is running a social awareness YouTube platform named "**PRASHNA**" since 11.05.2020. The channel commands an active, verified subscriber base of over 2.40 Lakhs and has garnered over 8.38 Crore collective views across 913 uploaded videos. The said channel, it is alleged, is in fact a structural reform, exposing financial frauds, highlighting the plight of missing women and checking administrative corruption. From 11.05.2020 until 28.06.2026, the detenu has maintained a pristine record with absolutely no criminal antecedents anywhere in India.

6. The FIR No.188 of 2026 of Gannavaram Police Station, Krishna District, was lodged on 04.07.2026 under Sections 147, 148, 152, 192, 197 (1) (d) and 353(1)(b) of the Bharatiya Nyaya Sanhita (BNS) and under Sections 13 and 39 of the Unlawful Activities (Prevention) Act (UAPA). In connection with the said FIR No.188 of 2026, the detenu was apprehended on 04.07.2026 at around 07:00 p.m. near Vempadu Toll Plaza, Nallapalli, Anakapalli District and was produced before the Magistrate at Gannavaram only between 07:30 p.m.

and 08:00 p.m. on 05.07.2026. The XII Additional Junior First Class Magistrate, Gannavaram has granted judicial remand on 05.07.2026.

7. It is the further case of the petitioners in the writ petition that during the material date and time in the FIR, the detenu was physically present at St.Xavier High School grounds under the limits of Eluru III Town Police Station, Eluru District, and was participating in a public meeting titled “Dalita Sankharavam”. The primary FIR No.136 of 2026 was registered at Eluru III Town Police Station for that event. The plea of Alibi has been taken for the offence in FIR No.188 of 2026. The petitioners’ further case is that eight parallel authentical FIRs across various territorial jurisdictions Eluru, Krishna, Kakinada, Anakapalli and NTR within a span of 5 days for a single, solitary speech were registered in Haprant violation of “sameness test” as laid down by the Hon'ble Apex Court in ***T.T.Antony v. State of Kerala***[1]. Registration of FIR No.188 of 2026 dated 04.07.2026 is alleged to be malicious, manufacturing and false narrative in bad faith and with denial of utterances in it, link or seditious words.

8. While challenging the remand order and seeking release of the detenu, Sri Rena Sandeep Bussa, learned counsel for the petitioner submitted that there is violation of the constitutional mandate that the person arrested and detained in custody, shall be produced before the nearest Magistrate within 24 hours, of such arrest, as guaranteed by Article 22(2) of the Constitution of

[1] (2001) 6 Supreme Court Cases 181

India as also under Sections 57 and 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The submission is that, the detenu was arrested on 04.07.2026 at around 07:00 p.m. near Vempadu Toll Plaza, Nakkappalli, Ankapalli District, but was produced before the Magistrate at Gannavaram only between 07:30 p.m. - 08:00 p.m. on 05.07.2026. So, the detenu was produced after 24 hours of his arrest. This being a violation of the fundamental rights under Article 22(2) and the provisions of the BNSS, the Magistrate ought not to have granted remand, but ought to have released the detenu. For that reason, the learned counsel for the petitioners submitted that the order of remand is invalid and without jurisdiction.

9. The further submission is that though Article 22(2) provides 24 hours time “excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate”, but the travel time is not to be excluded in the present case, as the detenu was in a sound and perfect health condition and he had fully cooperated with the respondents. The submission is that the ‘exclusion of travel time’ “applies to physically incapacitated or incapable accused persons who require medical drugs or hospitalization during journey due to health incapacities”. The detenu, reaching Gannavaram police station around 12:00 midnight on 04.07.2026 but the production before the Magistrate on 05.07.2026 between 07:30 p.m. and 08:00 p.m., is beyond 24 hours time from which the travel time is not to be excluded. It was further submitted that, “as per Google Maps, the actual transit time from the location from where the

detenu was apprehended and to Gannavaram police station, is only 4 hours and 43 minutes". It was submitted that the 24 hours period shall commence from the exact moment the person is arrested / detained, and so, the production before the Magistrate was clearly beyond 24 hours of arrest of the detenu. It was further submitted that within 24 hours of arrest, the detenu could be produced before the Magistrate on route. It was submitted that the time of production before the Magistrate for remand, was not mentioned. Referring to the guidelines in ***D.K.Basu v. State of West Bengal***[2], it was submitted that 24 hours rule is not a mere formality but is an integral part of the right to life and personal liberty under Articles 21 and 22 of the Constitution of India. The judgment in ***T.Rama Devi v. State of Telangana*** in W.P.No.21912 of 2024 dated 26.09.2024, was also referred to contend that 24 hours period commences from the exact moment of physical restraint / detention by the police.

10. Another ground raised is that there is nothing in the remand report, counter-affidavit or written arguments of the respondents, to show that, the grounds of arrest were furnished in writing to the detenu upon apprehending at Vempadu Toll Gate at 07:00 p.m. on 04.07.2026 and for the failure to provide written ground of arrest, the arrest was illegal and the Magistrate, in view thereof ought not to have granted the remand mechanically. Reliance was placed in the judgment of Hon'ble Apex Court in ***Jaskaran Jeet Singh***

[2] (1997) 1 SCC 416

Deol vs State of Punjab[3] in Criminal Appeal No.4234 of 2026, dated 21.09.2026 to contend that the communication of the grounds of arrest in writing, in language understood by the person arrested is mandatory and is a fundamental right under Article 22(1) of the Constitution of India. ***Mihir Rajesh Shah v. State of Maharashtra & Another***[4] was also referred to contend that the failure to provide written grounds of arrest vitiates the arrest, entitling the detenu for release. According to the petitioners' case, the arrest was communicated to the wife (Smt. Batchalakuri Anusha) of the detenu only on 05.07.2026 via telephone and submitted the same, it was emphasized that the written grounds of arrest were required to be communicated to the detenu at the time of arrest.

11. The order of remand was also questioned on the ground of lack of territorial jurisdiction. The FIR was lodged at Gannavaram Police Station, Krishna District. The detenu was apprehended from Vempadu Toll Plaza, Anakapalli District. So the submission is that the arrest was outside the territorial jurisdiction of the Gannavaram Police Station. The police, therefore, must have obtained transit permission (from Anakapalli District nearest Magistrate) and transporting the detenu from the place of arrest to the jurisdictional police station without transit permission, is prohibited which makes the remand order by the jurisdictional Magistrate, invalid.

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[3] 2026 INSC 1022
[4] (2026) 1 SCC 500

12. Sri Siddharth Luthra, learned Senior Advocate appearing for the respondents, submitted that Writ of Habeas Corpus is not maintainable. The detenu is in detention pursuant to the remand order passed by the Jurisdictional Magistrate. The order of remand is not void *ab initio* or invalid for the want of alleged territorial jurisdiction or the alleged non-compliance with the provisions of Articles 22(1),(2) of the Constitution of India.

13. Placing reliance in ***Serious Fraud Investigation Office v. Rahul Modi and another***[5] and ***V.Senthil Balaji v. State, represented by Deputy Director and others***[6], learned Senior Counsel submitted that the remand being valid the detention, would be legal and no writ of habeas corpus could be maintainable. The petitioners may have their remedies in such other proceedings but not in a writ of habeas corpus.

14. Learned counsel submitted that as per Article 22(2) of the Constitution of India and also Section 57 read with 167 of the Code of Criminal Procedure, 1973 (Cr.P.C) (Sections 58 and 187 of BNSS), the person arrested, has to be produced within a period of 24 hours of his arrest before the jurisdictional Magistrate. In such period of 24 hours, the time necessary for the journey from the place of arrest to the Court of the Magistrate shall be excluded. He submitted that even if it be taken that the time of production of the detenu before the jurisdictional Magistrate is not mentioned, it does not affect the compliance. The petitioners' own case is that the detenu was arrested on

[5] (2019) 5 Supreme Court Cases 266
[6] (2024) 3 Supreme Court Cases 51

04.07.2026 at 07:00 p.m. near Vempadu Toll Plaza, Nallapalli, Anakapalli District and was produced before the jurisdictional Magistrate on 05.07.2026 between 07:30 p.m. and 08:00 p.m. So even by going the case of the petitioner, such production is only after half to one hour (1/2 – 1 hour) of the arrest and considering the distance between the place of arrest and the Gannavaram police station which is almost 250 and odd kms, the journey time would be almost 4 to 4½ hours. When that time is excluded, the production of the detenu before the jurisdictional Magistrate is within 24 hours of his arrest. There is no infringement of the fundamental right of the detenu under Article 22(2) of the Constitution of India. The remand order, therefore, is valid and not invalid on the ground that the detenu was not produced within 24 hours.

15. Sri Siddharth Luthra, learned Senior Counsel for the respondents submitted that the FIR No.188 of 2026 dated 04.07.2026, relates to the content uploaded by the detenu to the digital platforms, specifically his YouTube channel "**PRASHNA**" extolling a Banned Terrorist Organization (CPI-Maoist) Party and leaders such as MadviHidma and Kesava Rao, members of the CPI-Maoist Party, which is a banned terrorist organization under the First Schedule of the Unlawful Activities (Prevention) Act, 1967. He submitted that the contents of the FIR No.188 of 2026 are distinct than the contents of the previous FIRs i.e. FIR No.117 of 2026, dated 29.06.2026, FIR No.481 of 2025, dated 12.12.2025, FIR No.155 of 2026, dated 02.07.2026, FIR No.168 of 2026, dated 02.07.2026, FIR No.91 of 2026, dated 02.07.2026,

FIR No.138 of 2026, dated 30.06.2026, FIR No.139 of 2026, dated 01.07.2026 and FIR No.76 of 2026, dated 04.07.2026 which relate to a public speech made by the detenu on 28.06.2026 whereas the FIR No.188 of 2026 pertains to a speech made by the detenu, which is available on digital platforms. The principle laid down in ***T.T.Antony case*** (supra) is not attracted as there is a distinction between the ambit of FIR No.188 of 2026 and the other previous FIRs. He placed reliance in ***Anju Chaudhary v. State of U.P.***[7] and ***State of Rajasthan v. Surendra Singh Rathore***[8]. The digital platform has more than 28,000 views, 2900 likes and has multiple supportive comments. Such reach is evident of the fact that, the said speech is widely accessible throughout the State of Andhra Pradesh including the sub-division of Gannavaram, Krishna District. Consequently, in the facts and circumstances, in the present case, where the contents could be accessed anywhere, the provision under Section 178 of Cr.P.C. (Section 198 of BNSS) would be applicable. Lodging of FIR at Gannavaram Police Station is within the jurisdiction of that police station and consequently the jurisdictional Magistrate at Gannavaram had the jurisdiction to pass the remand order which cannot be said to be without territorial jurisdiction. Learned Senior Counsel further submitted that the Magistrate Court was competent to grant

[7] (2013) 6 SCC 384
[8] (2025) 11 SCC 446

remand while the State Police was investigating, placing reliance in ***Naser Bin Abu Bakar Yafai v. State of Maharashtra***[9].

16. Placing reliance in ***Satvinder Kaur v. State (Government of NCT of Delhi)***[10] and ***Amish Devgan v. Union of India***[11] learned Senior Counsel submitted further that the FIR includes the offence under Section 39 of UAPA, 1967, as well, which is punishable with imprisonment for a term not exceeding 10 years, or with fine, or with both. He submitted that the organization namely Communist Party of India (Maoist) is the banned terrorist organization under the First Schedule of UAPA, 1967. The service of the notice to the detenu before the arrest under Section 41A of Cr.P.C. equivalent to Section 35(3) of BNSS, as laid down in ***Arnesh Kumar v. State of Bihar***[12], would not be required. ***Arnesh Kumar*** case (supra) applies to an offence punishable up to seven years of imprisonment.

17. We have considered the aforesaid submissions advanced by the learned counsels for the parties and perused the material on record.

18. The points for our consideration in view of the submissions made are as follows:

1. Whether the writ for habeas corpus seeking release of the detenu, namely Batchalakuri Joseph @ Ravan, is maintainable?

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[9] (2022) 6 SCC 308
[10] (1999) 8 SCC 728
[11] (2021) 1 SCC 1
[12] (2014) 8 SCC 273

2. Whether the remand order dated 05.07.2026 passed by learned XII Additional Junior First Class Magistrate, Gannavaram, is legal and valid?

19. Before proceeding further, we consider it necessary to place on record that the written submissions vide USR No.114033, dated 29.09.2026 were filed in the registry, signed and filed by Sri Dandapati Prasad Kumar, counsel for the petitioners. On 29.09.2026 itself, Sri Rana Sandeep Bussa, learned counsel submitted that “he is the arguing counsel and he has not filed any written arguments. He is also not aware of the filing of any such written arguments in the Registry.” Sri Dondapati Prasad Kumar, the learned counsel for the petitioner was also present in Court. He submitted that he filed the written arguments and when we asked Sri Dondapati Prasad Kumar, to address the Court with respect to the submissions contained in the written arguments, he failed to advance any argument and most strangely submitted that the written arguments were not prepared by him. He only signed and filed in the Registry. He is not aware as to what it contained. Sri Rana Sandeep Bussa did not advance any arguments, based on the said written arguments dated 29.09.2026, but submitted that he was withdrawing the said written arguments.

20. On 29.09.2026, Sri Siddhartha Luthra, learned Senior Advocate for respondents requested for three days’ time to submit written brief of his

submissions advanced, after serving copy on the other side. Permission was granted and the writ petition was reserved for Order/Judgment.

21. On behalf of the respondents 1, 2, 5, 10 and 11, learned Government Pleader has filed a memo dated 30.09.2026 enclosing the written submissions. In response, the learned counsel for the petitioners has also filed another memo dated 01.10.2026 of written arguments.

Point No.1:

Maintainability of Habeas Corpus:

22. In ***Rahul Modi*** (supra), the Hon'ble Apex Court held that a fact of directing remand of an accused is in judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition. It was held as follows:

> *"20. At this stage we may also deal with three recent cases decided by this Court:*
>
> *20.1. In Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] a Division Bench of this Court extensively considered earlier decisions in the point including cases referred to above. It also dealt with an issue whether habeas corpus petition could be entertained against an order of remand passed by a Judicial Magistrate. The observations of this Court in paras 20 to 24 and para 31 were as under: (SCC pp. 323-324 and 326)*
>
> > *"20. After so stating, the Bench in Kanu Sanyal case [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] opined that for adjudication in the said case, it was immaterial which of the three views was accepted as correct but eventually referred to para 7 in B. Ramachandra Rao [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] wherein the Court had expressed the view in the following manner: (SCC p. 259)*

'7. … in habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings.'

Eventually, the Bench ruled thus: (Kanu Sanyal case [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , SCC p. 148, para 5)

'5. … The production of the petitioner before the Special Judge, Visakhapatnam, could not, therefore, be said to be illegal and his subsequent detention in the Central Jail, Visakhapatnam, pursuant to the orders made by the Special Judge, Visakhapatnam, pending trial must be held to be valid. This Court pointed out in B. Ramachandra Rao v. State of Orissa [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] (SCC p. 258, para 5) that a writ of habeas corpus cannot be granted

"5. … where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal".'

21. The principle laid down in Kanu Sanyal [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , thus, is that any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the same has to be judged on its own merits.

22. At this juncture, we may profitably refer to the Constitution Bench decision in Sanjay Dutt v. State [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] wherein it has been opined thus: (SCC p. 442, para 48)

'48. … It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.'

23. Keeping in view the aforesaid concepts with regard to the writ of habeas corpus, especially pertaining to an order passed by the learned Magistrate at the time of production of the accused, it is necessary to advert to the schematic postulates under the Code relating to remand. There are two provisions in the Code which provide for remand i.e. Sections 167 and 309. The Magistrate has the authority under Section 167(2) of the Code to direct for detention of the accused in such custody i.e. police or judicial, if he thinks that further detention is necessary.

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

*

31. Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of the order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order of the High Court regarding stay of investigation could only have a bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court [Manubhai Ratilal Patel v. State of Gujarat, 2012 SCC OnLine Guj 4541 : (2012) 117 AIC 810] as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order of remand cannot be regarded as untenable in law. It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramachandra Rao [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] and Kanu Sanyal [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise the legality or

otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear-cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law."

20.2. In Saurabh Kumar v. Jailor, Koneila Jail [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] the issue was dealt with in para 13 of the leading judgment as under: (SCC p. 440)

13. It is clear from the said narration of facts that the petitioner is in judicial custody by virtue of an order passed by the Judicial Magistrate. The same is further ensured from the original record which this Court has, by order dated 9-4-2014 [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436, 440 (footnote 3)] , called for from the Court of the Additional Chief Judicial Magistrate, Dalsingsarai, District Samastipur, Bihar. Hence, the contention of the learned counsel for the petitioner that there was illegal detention without any case is incorrect. Therefore, the relief sought for by the petitioner cannot be granted. Even though there are several other issues raised in the writ petition, in view of the facts narrated above, there is no need for us to go into those issues. However, the petitioner is at liberty to make an application for his release in Criminal Case No. 129 of 2013 pending before the Court of the learned Additional Chief Judicial Magistrate, Dalsingsarai."

Thakur, J. (as the learned Chief Justice then was) who agreed with the leading judgment authored by Ramana, J., also dealt with the matter in para 22 of his concurring opinion as under: (Saurabh Kumar case [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] , SCC p. 442)

"22. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent court. He is presently in custody

pursuant to the order of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody."

20.3. A Bench of three learned Judges of this Court in State of Maharashtra v. Tasneem Rizwan Siddiquee [State of Maharashtra v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386] concluded as under: (SCC pp. 751-52, paras 10-12)

"10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.

11. Reverting to the prayer for expunging the scathing observations made in the impugned judgment [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] , in particular paras 4-6, reproduced earlier, it is submitted that the said observations were wholly unwarranted as the Deputy Commissioner of Police concerned who was present in Court, could not have given concession to release Rizwan Alam Siddiquee in the teeth of a judicial order passed by the Magistrate directing police

remand until 23-3-2018. Moreover, it is evident that the High Court proceeded to make observations without giving any opportunity, whatsoever, to the police officials concerned to explain the factual position on affidavit. The writ petition was filed on 18-3-2018/19-3-2018 and was moved on 20-3-2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2708] when the Court called upon the advocate for the appellants to produce the record on the next day i.e. 21-3-2018. The impugned order came to be passed on 21-3-2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] , notwithstanding the judicial order of remand operating till 23-3-2018. The High Court, in our opinion, should not have taken umbrage to the submission made on behalf of the Deputy Commissioner of Police that the respondent's husband could be released if so directed by the Court. As aforesaid, the DCP has had no other option but to make such a submission. For, he could not have voluntarily released the accused who was in police custody pursuant to a judicial order in force. The High Court ought not to have made scathing observations even against the investigating officer without giving him an opportunity to offer his explanation on affidavit.

12. Suffice it to observe that since no writ of habeas corpus could be issued in the fact situation of the present case, the High Court should have been loath to enter upon the merits of the arrest in the absence of any challenge to the judicial order passed by the Magistrate granting police custody till 23-3-2018 and more particularly for reasons mentioned in that order of the Magistrate. In a somewhat similar situation, this Court in State v. N.M.T. Joy Immaculate [State v. N.M.T. Joy Immaculate, (2004) 5 SCC 729 : 2004 SCC (Cri) 1722] deprecated passing of disparaging and strong remarks by the High Court [N.M.T. Joy Immaculate v. State, 2002 SCC OnLine Mad 265 : (2002) 1 MWN (Cri) 237] against the investigating officer and about the investigation done by them. Accordingly, we have no hesitation in expunging the observations made in paras 4 to 6 of the impugned judgment [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] against the police officials concerned in the facts of the present case."

21. The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition. The first question posed by the High Court, thus, stands answered. In the present case, as on the date when the matter was considered by the High Court and the order was passed by it, not only were there orders of remand passed by the Judicial Magistrate as well as the Special Court, Gurugram but there was also an order of extension passed by the Central Government on 14-12-2018. The legality, validity and correctness of the order or remand could have been challenged by the original writ petitioners by

> *filing appropriate proceedings. However, they did not raise such challenge before the competent appellate or revisional forum. The orders of remand passed by the Judicial Magistrate and the Special Court, Gurugram had dealt with merits of the matter and whether continued detention of the accused was justified or not. After going into the relevant issues on merits, the accused were remanded to further police custody. These orders were not put in challenge before the High Court. It was, therefore, not open to the High Court to entertain challenge with regard to correctness of those orders. The High Court, however, considered the matter from the standpoint whether the initial order of arrest itself was valid or not and found that such legality could not be sanctified by subsequent order of remand. Principally, the issue which was raised before the High Court was whether the arrest could be effected after period of investigation, as stipulated in the said order dated 20-6-2018 had come to an end. The supplementary issue was the effect of extension of time as granted on 14-12-2018. It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on 14-12-2018. Additionally, there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpus petition, the High Court was not justified in entertaining the petition and passing the order."*

23. The Hon'ble Apex Court referred to ***Dr. B. Ramachandra Rao vs The State of Orissa***[13], and ***Kanu Sanyal vs District Magistrate, Darjeeijng***[14], in which it was held that unless the Court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted.

24. In the said case, the orders of remand passed by the Judicial Magistrate and the Special Court which deal with merits of the matter and the accused were remanded to the police custody, were not put to challenge before the High Court. The Hon'ble Apex Court, therefore, held that it was not open to the High Court to entertain challenge with regard to the correctness of those

[13] (1972) 3 SCC 256
[14] (1974) 4 SCC 141

orders. It was further held that there were judicial orders remanding the accused to custody in the exercise of jurisdiction in respect of a habeas corpus petition. The High Court was not justified in interfering in the petition and passing the order.

25. In ***Senthil Balaji*** case (supra), the Hon'ble Apex Court, on the point of maintainability of the Writ of Habeas Corpus, held that Writ of Habeas Corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer conveniently into a judicial function cannot be challenged by way of a writ of habeas corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions, along with total non-application of mind, there may be a case for entertaining a writ of habeas corpus and that too, by way of a challenge. Paras 28 to 30 read as under:

> *"28. A writ of habeas corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of habeas corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of habeas corpus and that too by way of a challenge.*
>
> *29. In a case where the mandate of Section 167CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of habeas corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of habeas corpus may be entertained, in the latter the only remedy available is*

to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the court as mandated under sub-section (3), since it becomes a judicial custody thereafter and the court concerned would be in a better position to consider due compliance.

30. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. State of Maharashtra v. Tasneem Rizwan Siddiquee [State of Maharashtra v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386] : (SCC p. 751, para 10)

> *"10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued."*
>
> *(emphasis supplied)*

26. It is further apt to refer para 90 in ***Senthil Balaji*** case (supra), which is as follows:

> *"90. We shall first consider the maintainability of the writ petition filed. A writ of habeas corpus was moved questioning the arrest made. When it was taken up for hearing on a mentioning, the next day by the Court, the appellant was duly produced before the learned Principal Sessions Judge in compliance with Section 19 of the PMLA, 2002. The custody thus becomes judicial as he was duly forwarded by the respondents. Therefore, even on the date of hearing before the High Court there was no cause for filing the writ petition being HCP No. 1021 of 2023. Added to that, an order of remand was passed on 14-6-2023 itself. The two remand orders passed by the Court, as recorded in the preceding paragraphs, depict a clear application of mind. Despite additional grounds having been raised, they being an afterthought, we have no hesitation in holding that the only remedy open to the appellant is to approach the appropriate court under the statute. This was obviously not done. We may also note that the appellant was very conscious about his rights and that is the reason why, by way of an application he even opposed the remand."*

27. In ***Gautam Navlakha v. National Investigation Agency***[15], the Hon'ble Supreme Court held that an order under Section 167 Cr.P.C. (order of remand) is purely an interlocutory order. No revision is maintainable under Section 397 of Cr.P.C. against the order of remand. It was held that a petition under Section 482 Cr.P.C. cannot be ruled out. When a person arrested in a non-bailable offence, is in custody subject to the restrictions contained therein, a Court other than the High Court or Court of Session before whom he is brought, *inter alia*, can release him on bail under Section 437 of Cr.P.C.. Section 439 of Cr.P.C. deals with special powers of High Court and Court of Session to grant bail to a person in custody. The said Courts may also set

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aside or modify any condition in an order by a Magistrate. Thus, ordinarily, when the Court considers a request for remand, there would be an application for the bail. The Hon'ble Apex Court held that ordinarily, the accused would seek bail and legality and the need for remand would also be considered in an application under Section 439 of Cr.P.C. However, at the same time, the Hon'ble Apex Court further held that a habeas corpus petition is one seeking redress in the case of illegal detention. It is intended to be most expeditious remedy as personal liberty is at stake. It was further held that, unless the Court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted.

28. In ***Gautam Navlakha*** (supra), it is held as follows in paras 71 to 80:

"The remedies open to an accused in the case of remand under Section 167 Cr.P.C."

> *"71. In State v. N.M.T. Joy Immaculate [State v. N.M.T. Joy Immaculate, (2004) 5 SCC 729 : 2004 SCC (Cri) 1722] , a Bench of 3 learned Judges considered the question of maintainability of a revision under Section 397CrPC against an order of remand. We notice para 13 which reads as follows : (SCC p. 739)*
>
> *"13. Section 167CrPC empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. Section 209CrPC confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309CrPC confers power upon a court to remand an accused to custody after taking cognizance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the*

progress of the trial or its decision in any manner. Therefore, applying the test laid down in Madhu Limaye case [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] it cannot be categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397CrPC, a revision against the said order is not maintainable. The High Court, therefore, erred [N.M.T. Joy Immaculate v. State, 2002 SCC OnLine Mad 265] in entertaining the revision against the order dated 6-11-2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."

72. Thus, an order under Section 167 is purely an interlocutory order. No revision is maintainable. A petition under Section 482 cannot be ruled out. Now at this juncture we must notice the following dimension. When a person arrested in a non-bailable offence is in custody, subject to the restrictions, contained therein, a court other than the High Court or the Court of Session, before whom he is brought, inter alia, can release him on bail under Section 437CrPC. Section 439CrPC deals with special powers of the High Court and the Court of Session to grant bail to a person in custody. The said courts may also set aside or modify any condition in an order by a Magistrate.

73. In CBI v. Anupam J. Kulkarni [CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141 : 1992 SCC (Cri) 554] , we may notice the following statement : (SCC p. 149, para 4)

"4. … Now coming to the object and scope of Section 167 it is well settled that it is supplementary to Section 57. It is clear from Section 57 that the investigation should be completed in the first instance within 24 hours; if not the arrested person should be brought by the police before a Magistrate as provided under Section 167. The law does not authorise a police officer to detain an arrested person for more than 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Sub-section (1) of Section 167 covers all this procedure and also lays down that the police officer while forwarding the accused to the nearest Magistrate should also transmit a copy of the entries in the diary relating to the case. The entries in the diary are meant to afford to the Magistrate the necessary information upon which he can take the decision whether the accused should be detained in the custody further or not. It may be noted even at this stage the Magistrate can release him on bail if an application is made and if he is satisfied that there are no grounds to remand him to custody but if he is satisfied that further remand is necessary then he should act as provided under Section 167."

(emphasis supplied)

74. Thus, ordinarily, when the court considers a request for remand there would be an application for bail. It is for the court to grant bail failing which an order of remand would follow.

75. No doubt, while the remand report is considered by the Magistrate the application for bail may be moved under Section 439 instead of moving under Section 437 in view of the restrictions contained therein. Though an application under Section 397 would not lie against the remand, as already noticed, an application for bail would lie under Section 439. Therefore, ordinarily the accused would seek bail and legality and the need for remand would also be considered by the High Court or the Court of Session in an application under Section 439. No doubt the additional restrictions under Section 43-D(5) of the UAPA are applicable to citizens of India in cases under the said law.

Whether a writ of habeas corpus lies against an order of remand under Section 167CrPC

76. A habeas corpus petition is one seeking redress in the case of illegal detention. It is intended to be a most expeditious remedy as liberty is at stake. Whether a habeas corpus petition lies when a person is remanded to judicial custody or police custody is not res integra. We may notice only two judgments of this Court. In Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] , we may notice para 24 : (SCC p. 324)

"24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner."

(emphasis supplied)

77. However, the Court also held as follows : (Manubhai Ratilal Patel case [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] , SCC p. 326, para 31)

"31. … It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramachandra Rao [B. Ramachandra Rao v. State of Orissa, (1972) 3

SCC 256 : 1972 SCC (Cri) 481] and Kanu Sanyal [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted."

(emphasis supplied)

78. One of us (U.U. Lalit, J.) speaking for a Bench of two, followed the aforesaid line of thought in the decision of Serious Fraud Investigation Office v. Rahul Modi [Serious Fraud Investigation Office v. Rahul Modi, (2019) 5 SCC 266 : (2019) 2 SCC (Cri) 516] and held as follows : (SCC p. 289, para 21)

"21. The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition."

79. We may also notice para 19 from the same judgment : (Rahul Modi case [Serious Fraud Investigation Office v. Rahul Modi, (2019) 5 SCC 266 : (2019) 2 SCC (Cri) 516] , SCC p. 285)

"19. The law is thus clear that 'in habeas corpus proceedings a court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings'."

80. Thus, we would hold as follows : If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a habeas corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of habeas corpus. Barring such situations, a habeas corpus petition will not lie."

29. There is challenge to the remand order in the present writ for habeas corpus. So, we are of the view that the writ for habeas corpus is maintainable. If there was no challenge to the order of remand, basically the custody or detention are being pursuant to the remand order which is a judicial order. Simple writ for habeas corpus without putting the order of remand under challenge would not have been maintainable. We hold that writ for habeas corpus is maintainable, there being challenge to the remand order. In other

words, there being challenge to the custody / detention being illegal, the writ is maintainable.

30. Therefore, the submission of Sri Siddharth Luthra, learned Senior Counsel for the respondents that the present writ petition for habeas corpus in view of the order of the remand is not maintainable, is unsustainable.

31. Whether the writ for habeas corpus would be issued for the release of the detenu or not, would depend on the answer to the question if the remand order is valid or invalid, which we will discuss shortly.

Point-2:

Whether remand order is valid?

32. Sri Rana Sandeep Bussa, learned counsel for the petitioners submitted about the violation of the fundamental right of the accused under Article 22(2) of the Constitution of India. He submitted that the accused was not produced before the Magistrate, within 24 hours of his arrest. The accused was arrested on 04.07.2026 at about 7.00 pm from toll plaza, Nallapalli, Anpapalli but was produced before the jurisdictional Magistrate on 05.07.2026 at 7.30 p.m - 8.00 p.m, which was beyond 24 hours of arrest i.e beyond half an hour to one hour.

33. In the written submission, it has been added that the time taken for journey from the place of arrest to the jurisdictional Magistrate, shall not be excluded which exclusively applied to physically incapacitated or immobile

accused persons who require medical breaks or hospitalization during a 24 hour journey due to health incapacities. The accused was in sound and perfect health and did not require any medical checkup. So, the travel time was not to be excluded.

34. However, the travel time according to the petitioner's own case, on record is that, as per Google map, from the place of arrest to the Police Station, Gannavaram it is 4 hours 43 minutes in terms of time distance.

35. Learned senior counsel submitted that Article 22(2) of the Constitution of India, provides for exclusion of travel time. In calculating 24 hours time for production of the accused before the Magistrate, the travel time is to be excluded, in view of the clear language of Article 22(2) of the Constitution of India.

36. The question, is whether the travel time is to be excluded or not?.

37. Article 22 of the Constitution of India reads as under:

> **"22. Protection against arrest and detention in certain cases**
>
> (1)No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
>
> (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
>
> (3). Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

……..”

38. A bare reading of Article 22(2) of the Constitution of India makes it evident that “every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. Article 22(2) of the Constitution of India uses the expression “every person who is arrested and detained in custody”. The language is very clear. It is unambiguous. It admits of no exceptions. ‘Every person’ means every person arrested and detained in custody. Every such person is to be produced within a period of 24 hours of the arrest. The time necessary for journey from the place of arrest to the court of Magistrate which is to be excluded shall also apply to every person arrested and detained in custody, irrespective of health or any other condition or situation. It cannot be that, in the case of healthy person the travel time shall not be excluded and only in case of physically incapacitated persons or persons requiring medical breaks, the travel time is to excluded. To read that, as per the submission of the petitioner’s counsel, would be doing violence to the clear language of Article 22(2) of the Constitution of India and reading something in it which is not there.

39. In **Satyajit Ballubhai Desai and others vs. State of Gujarat[16],** the Hon'ble Apex Court held that the Article 22(2) of the Constitution of India and Section 57 Cr.P.C gives a mandate that every person who is arrested and detained in police custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person can be detained in the police custody beyond the said period without the authority of a Magistrate. Para 10 of **Satyajit Ballubhai Desai** (supra) reads as under:

> "11. It may, therefore, be noted that Article 22 (2) of the Constitution of India and Section 57 of the Cr.P.C. gives a mandate that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person can be detained in the police custody beyond the said period without the authority of a magistrate. These two provisions clearly manifest the intention of the law in this regard and therefore it is the magistrate who has to judicially scrutinise circumstances and if satisfied can order detention of the accused in police custody. The resultant position is that the initial period of custody of an arrested person till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed by a Magistrate. In fact, the powers of remand given to a Magistrate becomes exercisable only after an accused is produced before him in terms of sub section (1) of Section 167 Cr.P.C."

[16] (2014) 14 SCC 434

40. We are of the view that, the travel time is to be excluded. The accused was produced within 24 hours of his arrest on the own case of the petitioner after excluding travel time.

41. Any judgment that the travel time shall not to be excluded in case of the accused who is not suffering from any illness or not in medical need during journey could not be placed before us by the learned counsel for the petitioner.

42. We therefore, do not find force in submission that the time necessary for journey from the place of arrest to the place of the Court of jurisdictional Magistrate shall not to be excluded in the case of accused. Such journey time shall be excluded. As per the petitioner's own case via Google map distance is being 4 hours 43 minutes, in terms of travel time, the accused being apprehended at 7.00 p.m on 04.07.2026 obut having being produced on 05.07.2026 at 7.30 p.m – 8.00 p.m, the production of the accused, is within 24 hours of the time of his arrest.

43. Sri Rena Sandeep Bussa, learned counsel for the petitioner next submitted that the order of remand has been passed without jurisdiction by the Magistrate. We, during his oral submission put a specific query as to how it was without jurisdiction? He submitted that since the accused was produced after 24 hours, the Magistrate had no jurisdiction. However, the stand in the written submission is that, the incident related to District Eluru, the FIR was lodged at Gannavaram, Krishna District, where the FIR could not be lodged

and so the Magistrate which granted the remand at Police Station, Gannavaram lacked the jurisdiction. It has been stated in the writ petition that every offence shall ordinarily be inquired into and thereby a court within whose local limits it was committed will only have the jurisdiction.

44. Learned senior counsel for the respondents submitted that the offence involved under the FIR No.188 of 2026, pertains to speech made by the detenu which is available on digital platform, which has more than 20,000 views, 2,900 likes and has multiple supportive comments. Such reach is evident of the fact that the speech is widely accessible throughout the State of Andhra Pradesh including the sub division of Gannavaram, Krishna District and therefore, the FIR could be lodged at Police Station, Gannaravam as well from where such content can be accessed. The Magistrate who granted remand did not lack the territorial jurisdiction as the FIR was lodged at Police Station Gannavaram.

45. In our view, the FIR being lodged at Police Station, Gannavaram, it cannot be said that the Magistrate which granted the remand lacked the territorial jurisdiction. Whether the FIR ought not to have been or could not be lodged at Police Station, Gannavaram is a question which cannot be determined at this stage in the exercise of the jurisdiction for writ of Habeas Corpus, particularly when the submission of the respondents is that, the speech, which is the subject matter of FIR No.188 of 2026, attracting the offences, including Sections 39 Unlawful Activities (Prevention) Act, 1967 is

on the digital platform and can be accessed from anywhere throughout the State of Andhra Pradesh, including from the sub division of Gannavaram, Krishna District, where the complaint was submitted.

46. In **Satvinder Kaur** (supra) the Hon'ble Apex Court held that "It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the Officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the Officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which

crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or refuse to investigate it.

47. The Hon'ble Apex Court further held that Chapter XIII of the Code provides for "Jurisdiction of the Criminal Courts in inquiries and trials". It is to be stated that under the said Chapter there are various provisions which empower the Court for inquiry or trial of a criminal case and that there is no absolute prohibition that the offence committed beyond the local territorial jurisdiction cannot be investigated, inquired or tried. It was further held that Section 178 inter alia provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed, or where an offence is continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the Station House Officer does not have territorial jurisdiction to investigate the crime.

48. In **Satvinder Kaur** (supra), it has been held as under:

> "10. It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the Officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After

investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the Officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it.

11. Chapter XIII of the Code provides for "Jurisdiction of the Criminal Courts in inquiries and trials". It is to be stated that under the said Chapter there are various provisions which empower the Court for inquiry or trial of a criminal case and that there is no absolute prohibition that the offence committed beyond the local territorial jurisdiction cannot be investigated, inquired or tried. This would be clear by referring to Sections 177 to 188. For our purpose, it would be suffice to refer only to Sections 177 and 178 which are as under :-

"177, Ordinary place of inquiry and trial - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial. - (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

12. A reading of the aforesaid sections would make it clear that Section 177 provides for `ordinary' place of inquiry or trial. Section 178 inter alia

> provides for place of inquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in other and where it consisted of several acts done in different local areas, it could be inquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that S.H.O. does not have territorial jurisdiction to investigate the crime."

49. We are therefore of the view on the aforesaid aspect that, at this stage it cannot be said that the FIR could not be lodged at Police Station, Gannavaram and it had no territorial jurisdiction to register FIR or/and to investigate the crime nor that the Magistrate court at Gannavaram had no territorial jurisdiction for the production of the accused for remand in compliance of Article 22(2) of the Constitution of India.

50. Even from another view, it is settled position in law that the accused, can be produced, within 24 hours of arrest excluding the travel time before a non-Jurisdictional Magistrate as well, which has the same power of remand as jurisdictional Magistrate, under Section 167 Cr.P.C. The production of an accused for remand within 24 hours for the first time is not necessarily related to the jurisdictional Magistrate. Even if it be taken that the FIR could not be lodged at Police Station, Gannavaram, (though we are not expressing that view) still the Magistrate had the jurisdiction to consider and grant remand. Therefore, on the aforesaid point, the order of remand is by the Magistrate having jurisdiction.

51. Learned counsel for the petitioner further submitted that the failure to provide an arrest notice and the written grounds of arrest vitiated the arrest and that the detenu was, therefore, entitled to be released. The remand ought

to have been rejected. The supply of written grounds of arrest is mandatory under Article 22(1) of the Constitution of India and, subject to the applicable statutory provisions, under the BNSS as well. Reliance as placed on ***Thwaha Fasal v. Union of India***[17]. In ***Thwaha Fasal*** (supra) It was reiterated that the arrested person must be informed of the grounds of his/her arrest. The communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution of India, is intended to serve a fundamental right guaranteed to the arrested person. The mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose.

52. There cannot be any dispute regarding the proposition of law that an accused must be informed of the grounds of his arrest. However, in the present case, what we find is that, this ground has been taken for the first time in the written submissions. There is, no such averment in the writ petition as to whether the grounds of arrest were communicated to or brought to the notice of the detenu. The affidavit filed in support of the petition is silent on this aspect. Whether the grounds of arrest were communicated or not is a factual aspect that is necessarily required to be pleaded. If the grounds were not communicated at all, or if they were communicated at what particular time, which may not necessarily be at the time of arrest but may be at least two hours before remand, are factual aspects for which a foundation must first be laid in the affidavit. Only on the basis of such pleadings it can be considered it

[17] (2022) 14 SCC 766

a legal ground alleging violation of the fundamental right under Article 22(1) of the Constitution of India, as well as the statutory provisions providing for communication of the grounds of arrest. The remand report mentions that the particulars were communicated to the spouse of the detenu under Section 48(2) of BNSS, and the same has not been disputed. In the order of remand it is mentioned that the grounds of arrest was communicated. The same has not been questioned.

53. Further, FIR No.188 of 2026 includes offences under Sections 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (UAPA), which relate to offences concerning the support given to a terrorist organisation specified in the First Schedule to the UAPA. The punishment prescribed for such offences is imprisonment for a term not exceeding ten years, or fine, or both. Therefore, the legal proposition regarding the mandatory service of notice to an accused before arrest under Section 41A of the Code of Criminal Procedure, 1973 (CrPC), now corresponding to Section 35 of BNSS, would not be applicable in the circumstances of the present case and for that reason, the judgment in ***Arnesh Kumar*** *(supra)*, on which reliance was placed by learned counsel for the petitioner, would not be attracted.

54. In **T.T. Antony vs. State of Kerala and others**[18], upon which the learned counsel for both sides placed reliance on the point of successive FIR(s), the Hon'ble Apex Court held that the sweeping power of investigation

[18] (2001) 6 SCC 181

does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. It was held that a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, that may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.

55. In **Anju Chaudhary** (supra), the Hon'ble Apex Court has held as under:

> "44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.
>
> 45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons

> involved can be accused of the same or different offences "committed in the course of the same transaction".

56. In **Surendra Singh Rathore** (supra), the Hon'ble Apex Court held as under:

> "17. From the above conspectus of judgments, inter alia, the following principles emerge regarding the permissibility of the registration of a second FIR:
>
> 17.1 When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.
>
> 17.2 When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.
>
> 17.3 When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.
>
> 17.4 When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.
>
> 17.5 Where the incident is separate; offences are similar or different."

57. From **T.T. Antony** (Supra), to invoke the power under Section 482 Cr.P.C or under Article 226/227 of the Constitution of India either for quashing of the successive FIRs or for direction to stop the investigation pursuant to the successive FIRs, what is required to be determined is whether the, second or successive FIRs are in connection with the same or connected cognizable offences, in the course of some transaction and also if, in respect thereof either investigation is under way or final report, has been filed pursuant to the first FIR. It requires determination of fact, comparing to all the FIRs as to whether they are connected with the same cognizable offence in the course of the same transaction. If it be so, then only that may be a case for exercise of power under Section 482 Cr.P.C or under Article 226/27 of the Constitution of

India for either quashing of the FIR or the investigation based on successive FIRs. The present writ petition is only for Habeas Corpus, challenging the remand order. It does not pray for quashing of a successive FIR or for the investigation pursuant to the successive FIRs. Even if the submission of the petitioner's counsel be that the present FIR is in succession of the previous one and on the same subject, which has been denied by the learned counsel for the respondents submitting that, the offences are distinct and there is distinction between the ambit FIR No.188 of 2026 and the other previous FIRs, we are of the view that in such a case also, it shall be open for the petitioner to seek such appropriate remedy inappropriate proceedings either under Section 482 Cr.P.C or such other remedy as may be open to him.

58. The order of remand clearly mentions that the accused was produced before the Court within the period prescribed. The accused was informed of the grounds of arrest. There was no complaints, regarding any custodial ill-treatment or violation of the statutory safeguards at the time of production. The learned Magistrate was of the view and rightly so that at that stage the Court was not required to examine the truth or otherwise of the allegations or to appreciate the evidence, as would be done during trial. The limited scope was whether there existed sufficient grounds to authorize further detention pending investigation and upon consideration of the material placed before it the court recorded its satisfaction that the allegations disclosed the commission of cognizable offences of a serious in nature requiring further

investigation. The learned Magistrate without expressing any opinion on the correctness of the allegations and the counter allegations made, recorded its prima facie satisfaction based on the material that there was justification for judicial custody to ensure an effective and unhindered investigation. Consequently the order of remand was passed.

59. On perusal of the remand order, we are satisfied that the Magistrate satisfied itself regarding the compliance of the mandatory provisions under Article 22(1) and (2) and on the satisfaction that the production was within 24 hours of the time of arrest as also that the accused was informed of the grounds of arrest, to ensure FIR effective and unhindered investigation, granted remand to judicial custody. It cannot be said that the order of remand is invalid or mechanical or passed in routine manner.

60. The additional submissions, as contained in the written submissions relating to the bar on the second FIR; multiple FIRs across various territorial jurisdictions; the offences not being made out in the FIR; mens rea under the UAPA; the distinct scope of FIRs; sedition and freedom of speech; medical ethics and association; administrative transfers and arbitrariness; the right against self-incrimination; striking down Section 66A of the Information Technology Act, 2000; the involuntariness of scientific tests; the reliability of scientific evidence; and the statutory bar vis-à-vis fundamental rights, which have been incorporated under different heads, along with citations, in the memo of written submissions filed on behalf of the petitioner, except those

which have already been dealt with in this judgment, in our view fall outside the scope of consideration in a Writ for Habeas Corpus.

61. The scope of writ of Habeas Corpus is confined to examining whether the detention is legal or illegal. The detention may be with or without the authority of law. The authority of law to detain arises pursuant to the registration of an FIR and the production of the arrested person before the jurisdictional Magistrate, followed by the passing of a remand order. Once a remand order has been passed, it cannot ordinarily and generally be said that the detention pursuant to such judicial remand order, passed in the exercise of judicial power, is illegal. Unless it is shown that the remand order suffers from a violation of fundamental principles of law or want of jurisdiction, or that there has been a violation of the fundamental rights guaranteed under Articles 22(1) and 22(2) of the Constitution of India.

62. Upon consideration of the matter as stated above, we are satisfied that the accused was produced before the jurisdictional Magistrate within 24 hours from the time of his arrest. The time taken for travel is liable to be excluded while computing the period of 24 hours. Excluding such travel time, the production of the accused before the jurisdictional Magistrate was well within the prescribed period of 24 hours. The period of police custody of the accused from the time of arrest until his production before the Magistrate was not beyond 24 hours. Therefore, there was no violation of the fundamental right guaranteed under Article 22(2) of the Constitution of India. Consequently, the

remand order cannot be said to be illegal. The custody of the detenu is not illegal, and a writ of *Habeas Corpus* cannot, be issued for his release.

63. At this stage, we raise an issue of growing tendency that, during the oral submissions, few points are raised and either some judgments are cited or even not cited, but the written arguments are filed in the Registry containing so many submissions, which were never advanced during the oral arguments and also containing so many citations, with the copies of those citations. The written submissions, is no substitute of the oral submissions. The written submissions can be filed, if the Court requires or the Court permits. Even in such a case, it should be confined to the oral submissions advanced, and the citations placed at the time of arguments. The written submissions should not be beyond, the pleadings. In the present case also, in the written submissions, so many grounds have been added which were never advanced at the time of oral arguments. Many times, it appears to us that the written submissions or even the drafting of the writ petition is AI generated.

64. We, therefore, issue the direction to the Registry of this Court that, henceforth any written submission/argument in any form and/or the compilation of the judgments at the instance of any party, without the order of the Court shall not be accepted.

65. The Hon'ble Apex Court has in various judgments, including ***Mohd. Akram Ansari Vs. Chief Election Officer and Others***[19] has held that a Judge will naturally deal only with the points which are pressed before him or in the arguments and it will be presumed that the appellant gave up the other points. If a point is not mentioned in the judgment of the Court, the presumption is that the point was never pressed before the learned Judge. The Hon'ble Apex Court further observed that, that was a rebuttable presumption. In case, the petitioner contends that he had pressed that point also which has not been dealt with in the impugned judgment, it is open to him to file an application before the same learned Judge or Bench which delivered the impugned judgment and if he satisfies the Judge or Bench that the other points were in fact pressed, but were not dealt with in the impugned judgment, it shall be open to the Court concerned to pass appropriate orders, including an order of review.

66. We may observe that if an argument is not raised during oral submissions, but contained, in the written submissions and if that is not dealt with, that may be taken as the ground either for review or in appeal that the learned judge did not deal with that argument though it was in the written submissions and also that the judgment was not referred, though the compilation of judgment was filed. We do not approve such practice. It would tend to shake the confidence and the trust of the litigant, in the judicial system and in the dispensation of justice.

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[19] **(2008) 2 Supreme Court Cases 95**

67. The writ petition lacks merit and deserves to be dismissed.

68. If the petitioner is aggrieved by the remand order on other grounds other than dealt within this order, it shall be open to the petitioner/detenu to initiate appropriate proceedings before the appropriate Forum in accordance with law, if so advised, to challenge for remand order.

69. With the aforesaid observations, the Writ Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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RAVI NATH TILHARI, J

_____

ALAPATI GIRIDHAR, J

Date: 16.10.2026

L.R. copy to be marked.

B/o.

ARR

Whether the order is :

Speaking Yes/No / Reasoned Yes/No

Reportable Yes/No / Non-Reportable Yes/No

44

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 19332/2026

Date: 16.10.2026

ARR