



Gokhale

1 of 44

wp-1100-26 (J)

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

CRIMINAL WRIT PETITION NO. 1100 OF 2026

Shaibaz Kaiser Ateeq Shaikh & Anr.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Milan Desai a/w. Sudeep Sharma, Rohan Naidu and Pooja Pandey for Petitioners.

Ms. M. M. Deshmukh, APP for State/Respondent.

Mr. Anil Singh, ASG a/w. Kuldeep Patil, SPP, Adarsh Vyas, Digvijay S. Kachare, Krishnakant Deshmukh, Anay Joshi, Yukta Sawant, Sanika Joshi, Saili Dhuru and Sumitkumar Nimbalkar for CBI-Respondent No.2.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

**RESERVED ON : 08 OCTOBER 2026
PRONOUNCED ON : 21 OCTOBER 2026**

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. The arguments were heard at length, Rule. Rule is made returnable forthwith with consent of the parties.

2. Heard Mr. Milan Desai, learned counsel for the

Petitioners, Ms. M. M. Deshmukh, learned APP for the State-Respondent No.1 and Mr. Anil Singh, learned ASG with Mr. Kuldeep Patil, learned Special PP for the CBI-Respondent No.2.

3. The Petitioner No.1 Shaibaz Shaikh is the original accused No.5 and the Petitioner No.2 Sameer Siroha is the original Accused No.3 in R.C.C.No.77 of 2026 before the court of J.M.F.C., Igatpuri, Dist. Nashik. The petition is filed for their release, as according to the Petitioners, they are illegally detained.

4. In this case, the charge-sheet is already filed and the case is at the stage of framing of the charges. At the outset, we may mention that the allegations in the charge-sheet are quite serious. The FIR was lodged at CBI, EOB, Mumbai, on 08.08.2025 vide the FIR No. RC0682025E0005, under sections 61(2) r/w. 318(2), 319(2), 336(3), 338, 340(2) and 351 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), under sections 7(a) and 12 of the Prevention of Corruption Act, 1988 (as amended in 2018) (hereinafter referred to as 'PC Act'), under sections 66C and 66D of the Information Technology Act, 2000 and under sections 3(1) and

42(1) of the Telecommunications Act, 2023.

5. The gist of the FIR is that the investigating agency received a credible information from a reliable source that a group of private persons including the Petitioners entered into criminal conspiracy and committed financial fraud by impersonation by making phishing calls/deceptive calls, from an illegal call centre, posing as Amazon Support Services Call Centre. They cheated senior citizens of US, Canada and other countries and fraudulently obtained the proceeds of crime via Gift Cards, Cryptocurrency. The call centre was located at Igatpuri, Nashik. It was alleged that the Cyber fraudsters were helped by various unknown public servants of various Public and Private Sector banks in India for opening/operating of various mule accounts, for transferring the Cyber fraud proceeds through the means of various laptops, mobiles, computers and other electronic devices and network devices.

6. The charge-sheet gives details of the investigation carried out. According to the investigating agency, as mentioned in

the charge-sheet, Sandeep Singh and Vishal Yadav were the main persons running this fake call centre with the active assistance of both the Petitioners and few others. The *modus operandi* of the Cyber fraud was as follows:

Initially, a message/voice mail is broadcast to the unknown innocent foreign nationals of USA and Canada through cloud servers purportedly at the behest of Amazon Service and support Centre. In response to the said message by trusting the said message, the foreign nationals call back the provided contact details mentioned in the message/voice mail. The International VOIP calls made by the foreign nationals were routed through the cloud servers/exchanges like VICI Dial. The agents present at the fake/illegal call centre attended the calls and by gaining their confidence they used to obtain their financial details and convinced them to transfer the funds for cancellation of orders which otherwise were not placed by those foreign nationals. Thus, the funds were then transferred through Cryptocurrency or gift vouchers in the wallets provided by the accused persons. The accused used digital means in the call centre to extort money and

thus, committed Cyber fraud. It is alleged that, they were helped by various unknown public servants of various public and private sector banks in India for transferring the Cyber fraud proceeds through the means of various laptops, mobiles, computers and other electronic devices and network devices.

7. On 09.08.2025 at 12:15a.m., a team of CBI officers along with independent witnesses conducted a raid at the fake call centre running from Rain Forest Resort, Igatpuri, Nashik, where around 63 operators comprising of dialers, verifiers, closers and supporting staff/team leaders and Management were running the said illegal call centre. It was found that one application namely VICI Dialer was installed in the 49 laptops available on workstation of the said call centre and they used to manage the calling functionality and were cheating the foreign citizens. During the searches, huge cash to the tune of Rs.1.20 crores and 600gms of gold ornaments were recovered from the premises of Vishal Yadav. The Petitioners were operating at fake call centre. They were arrested from the call centre on 09.08.2025. They were produced before the learned Magistrate at Igatpuri. He granted

transit remand to produce them before the Special Judge for CBI cases, at Pune. They were produced before the said Court on 10.08.2025. They were granted police custody remand till 16.08.2025. After that, they were remanded to Judicial Custody till 29.08.2025. Subsequently, the Special Court extended the judicial custody of the accused from time to time. They were in judicial custody at Yerwada Central Jail, Pune. Specific roles of different accused were mentioned in the charge-sheet story.

8. The Accused No.3 i.e. the Petitioner No.2 Sameer was a crucial team member of Vishal Yadav. He used to look-after the information technology part of the call centre and provided I.T. solution, installation, maintenance of computer hardware and software in the fake call centre. He provided technical assistance to dialer/verifier/closer. He ensured proper working of call centre set up, internet connection and other technical instruments. He provided a few employees to Vishal Yadav and Abhay Singh.

9. The Petitioner No.1. i.e. the Accused No.5 was associated with Sandeep Singh. His work was to arrange and provide

employees to work in these fake call centres. He was also involved in running illegal fake call centre at Green Resort, Alibaug and DDS Resort, Brahmanpada, Borigaon road, near Umargaon. He was working as a team leader in the call center. He provided eight callers/dialers/closer to Sandeep Singh and Vishal Yadav to work in the call center at Igatpuri. He was actively recruiting and employing other individuals for illegal gain.

These, in short, are the allegations against the Petitioners. It has to be mentioned without any doubt that the allegations are serious, and specific roles are attributed to them.

10. Both the Petitioners had filed bail applications at Exhibits-65 and 66 in R.C.C.No.77 of 2026 before the learned Additional Chief Judicial Magistrate, Igatpuri, Nashik. Both these applications were rejected vide the order dated 07.09.2026. After that, the Petitioner No.1 (Accused No.5) has preferred bail application vide Criminal Bail Application No.3701 of 2026 before Single Judge Bench of this Court having assignment of bail matters. That application was filed in September 2026 and it is still

pending. The Petitioner No.2 (Accused No.3) Sameer has preferred an application for bail before the Sessions Court at Nashik. That application is also pending. However, it must be noted that, these are the subsequent developments. The present writ petition is filed much prior to filing of these pending bail applications.

11. In this case, the charge-sheet was filed on 03.11.2025 in the Court of Special Judge for CBI Case, at Pune. The charge-sheet was filed under sections 61(2), 318(2), 319(2), 336(3), 338 and 340(2) of the BNS and under sections 66C and 66D of the Information Technology Act, 2000. Significantly, it was not filed under the PC Act, 1988. This is of some significance. The noting on the first page of the charge-sheet mentions that, as per instructions of the accused produced on V.C., they accepted that the copy of the charge-sheet could be given to their Advocate on their behalf. It is noted on 13.11.2025. There is no dispute that the accused have received the copies of the charge-sheet. Acknowledgment of both the petitioners to that effect is dated 18.11.2025.

12. The Accused No.2 Vishal Yadav preferred bail application before the learned Additional Sessions Judge, Pune in Special Case No.1492 of 2025. After filing of the charge-sheet, the special case was numbered as Special Case No.1492 of 2025 before the learned Special Judge. The said application was rejected by the learned Judge vide the order dated 24.12.2025 by referring to the merits of the matter. This was after filing of the charge-sheet.

13. After that, the Petitioner No.1 Shaibaz (Accused No.5) preferred an application for grant of bail vide Exhibit-19 and the Petitioner No.2 Sameer (Accused No.3) filed an application for temporary bail for four weeks vide Exhibit-27. Arguments were advanced on behalf of the Accused No.5 Shaibaz, which were adopted by the learned counsel for the Accused No.3 Sameer. The learned Special Judge noted these facts and then observed that the Court decided to pass the order below Exhibit-1 instead of deciding those bail applications. The learned Judge heard both the sides and specifically discussed the meaning of 'cognizance' of an offence. He observed that, though, the FIR was registered for the offences punishable under P.C. Act, but the charge-sheet was not

filed under the P.C. Act and, therefore, that Court was not empowered to take the cognizance against the arrested accused. The learned Judge went on to observe that, in view of the provision of Section 361 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') the custody of the accused could be treated as legal because after filing of the charge-sheet, during enquiry and even during trial the case can be transferred to the Magistrate having jurisdiction to try the case. He observed that, after filing of the charge-sheet, the custody of the accused was legal under the provision of Section 361 of the BNSS. He observed that, there was no offence under the P.C. Act against the arrested accused and no public servant was charge-sheeted before that Court and, therefore, it was necessary to transfer that case to the learned J.M.F.C., Igatpuri for taking cognizance/trial in accordance with law. He also observed that, it would be just and proper to keep the bail applications pending for disposal by the concerned Magistrate. It was further observed that the proceedings were required to be stayed as envisaged U/s.361 of the BNSS and to transfer the case. The operative part of the order dated 12.02.2026

passed by the Special Judge, CBI-ACB, Pune, below Exhibit-1 in Special Case No.1492 of 2025 is of some significance. Therefore, we are reproducing it as under:

- i) The present case bearing Special Case No.1492/2025 (The State of Maharashtra through CBI, EO, Mumbai Vs. Durgesh Singh and others), arising out of RC0682025E0005, dated 08/08/2025 registered by CBI, EO, Mumbai, is hereby transferred to the Court Ld. Judicial Magistrate First Class, Igatpuri, Dist. Nashik, as per provision under section 361 of the BNSS for taking cognizance/trial in accordance with law.
- ii) The entire record and proceedings of this case be transmitted forthwith to the Court of Ld. Judicial Magistrate First Class, Igatpuri, Dist. Nashik under proper acknowledgment.
- iii) The muddemal/property articles, if any, be sent to the transferee Court in sealed condition along with proper inventory and acknowledgment.
- iv) Since the accused No.1 to 5 in this case are presently in judicial custody lodged at Yerwada Central Prison, Pune, the Superintendent of the said Jail is directed to produce the accused persons before the Ld. Judicial Magistrate First Class, Igatpuri, Dist. Nashik on 18/02/2026 or as per production warrant issued by the transferee Court. Accordingly, all the accused (A1 to A5) are remanded to Judicial Custody until then.
- v) The necessary intimation to the concerned Jail Authority be issued.
- vi) The copy of this order be forwarded to the Superintendent of Yerwada Central Prison, the Public

Prosecutor of CBI EOW, Mumbai, the Investigating Officer and Ld. transferee Court.

- vii) Accordingly, proceedings in the present matter are stayed pending transmission of the record to the Ld. Judicial Magistrate First Class, Igatpuri, Dist. Nashik.
- viii) Ld. Judicial Magistrate First Class Igatpuri is hereby directed to dispose of pending bail applications of accused persons at earliest as per Law.
- ix) It is clarified that this order shall not prevent Ld. Judicial Magistrate First Class Igatpuri to commit/transfer present case to this Court, if the offence under PC Act is made out against public servant during further investigation and supplementary charge-sheet is filed, in present crime, against public servant(s).

14. The Investigating Officer has filed his Affidavit in reply. The background of the case and the allegations against each of the Petitioners are mentioned. It is further mentioned that the investigation concerning the role of the concerned public servant was kept pending, so that, further evidence could be collected and appropriate legal steps could be taken thereafter. It is contended in the Affidavit that, not arraying the public servant at that particular stage did not divest the Special Court of its jurisdiction. It is further contended that, U/s.187 of the BNSS, the Court before whom the accused person is produced during the investigation is

empowered to authorize the detention in judicial custody or police custody, depending on the facts and circumstances of the case. Since the charge-sheet was filed before the Special Court, the Special Court was fully competent to consider the police report and pass the orders extending the judicial custody of the accused and, hence, remand orders passed by the Special Court were lawful. It is further mentioned that the procedural transfer of a case from one competent Court to another did not invalidate earlier judicial orders passed by the transferring court. Section 193(9) of the BNSS permits further investigation even after filing of the police report and, hence, continuing investigation against the public servant was fully consistent with the statutory scheme of criminal investigation.

15. Vide Additional Affidavit, the wife of the Petitioner No.1 produced the *roznama* of the case before the Special Judge up to 12.02.2026 and after that the *roznama* of R.C.C.No.77 of 2026 before the J.M.F.C., Igatpuri, up to 27.03.2026.

16. The Respondent No.2 filed Additional Affidavit in reply

dated 25.05.2026. It was contended that the Petitioners had filed successive and multiple bail applications before various Courts and these facts were suppressed from this Court. There is a reference to previous bail applications till filing of the charge-sheet and thereafter filing of the charge-sheet. There is a reference to the order dated 13.03.2026 whereby their bail application at Exhibit-41 in R.C.C.No.77 of 2026 was rejected by the learned J.M.F.C. Igatpuri, vide the order dated 13.03.2026. After that, the Petitioner No.1 had filed the Bail Application No.489 of 2026 before the learned Sessions Judge, Nashik and in that application it was also prayed for release of the Petitioner No.1 by exercising power U/s.187(3) of the BNSS. It was specifically contended that, transferring the custody of the present petitioners to judicial custody from time to time were valid and legal orders.

17. In the meantime, the Investigating Officer had filed an application at Exhibit-44 in RCC No.77 of 2026 before the J.M.F.C. Igatpuri, seeking permission to conduct further investigation U/s.193(9) of the BNSS. That application was allowed and the Investigating Officer was granted permission to conduct further

investigation. It was directed that the investigation shall be completed within a period of 90 days. That order was passed on 13.04.2026.

18. In the background of this factual matrix and pendency of the trial, we have considered the contentions raised by both the parties.

SUBMISSIONS OF MR. MILAN DESAI, LEARNED COUNSEL FOR THE PETITIONERS:

19. Learned counsel for the Petitioners submitted that, in this case, after filing of the charge-sheet, no Court has taken cognizance of the offence and, therefore, all subsequent remand orders are invalid. The learned Special Judge, Pune has specifically recorded that he was not empowered to take cognizance because the charge-sheet was not filed under the provisions of the PC Act and, therefore, he transferred the case to the Court of J.M.F.C., Igatpuri. Quite clearly, therefore, he has not taken cognizance of the offence. Therefore, it was necessary for the prosecuting agency to show that the learned J.M.F.C. at least had taken cognizance of the offence. However, in the entire record, there is no such order

taking cognizance of the offence. Though, no specific format is provided for passing the order of cognizance, Section 227 of the BNSS requires an order of issuance of summons to the accused to show that cognizance is taken by the Court. In the present case, there is no such order. After filing of the charge-sheet, the remand orders can be passed only after taking cognizance U/s.232 or U/s. 346 of the BNSS. Since the cognizance was not taken, the remand orders could not be passed.

20. During the course of the arguments, this Court wanted to see nature of the remand orders, because the validity of the remand orders was under challenge. The Court granted leave to the learned counsel for the Petitioners to raise a specific ground about the remand orders. Accordingly, the petition was amended and the new ground was added that, in the present case, there were no remand orders passed either by the learned Special Judge or by the learned Magistrate remanding the Petitioners to judicial custody, from time to time.

21. In support of his contention, learned counsel Shri. Desai

relied on the Judgment of the Hon'ble Supreme Court in the case of *State through CBI New Delhi Versus Jitender Kumar Singh*¹. He specifically relied on paragraph-38 of the said Judgment; which reads as follows:

“A Special Judge exercising powers under the PC Act is not expected to try non-PC offences totally unconnected with any PC offences under Section 3(1) of the PC Act and in the event of a Special Judge not trying any offence under Section 3(1) of the PC Act, the question of the Special Judge trying non-PC offences does not arise. As already indicated, trying of a PC offence is a jurisdictional fact to exercise the powers under Sub-section (3) of Section 4. Jurisdiction of the Special Judge, as such, has not been divested, but the exercise of jurisdiction, depends upon the jurisdictional fact of trying a PC offence.”

22. In paragraph-45 of the said Judgment, the Hon'ble Supreme Court considered the fact that, no offence under the PC Act was committed by any of the non-public servants and, therefore, the Special Judge under the PC Act had no occasion to try any case under the PC Act, and therefore, the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No.88 of 2001 in the Court of Chief Metropolitan Magistrate for trying the case in accordance with law, was upheld.

1 Criminal Appeal No.943 of 2008 : Decided on 05.02.2014.

Shri. Desai relied on this Judgment to contend that the learned Special Judge had no jurisdiction to take cognizance of the offence where the charge-sheet was not filed under the PC Act against any of the accused.

23. Shri. Desai submitted that, there is no order of taking cognizance. He relied on the Judgment of the Hon'ble Supreme Court in the case of *Lalankumar Singh & Ors. Versus State of Maharashtra*², in which, it was observed that, the order of issuance of process was not an empty formality. The Magistrate was required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion was required to be stated in the order itself.

SUBMISSIONS OF MR. ANIL SINGH, LEARNED ASG AND MR. KULDEEP PATIL, SPP FOR THE RESPONDENT NO.2-CBI

24. Learned ASG Shri. Anil Singh and Shri. Patil, learned SPP appearing for the CBI submitted that, there is no illegality in detention of both the Petitioners. The offence is very serious. Their bail applications were rejected by the trial Courts on multiple occasions. One bail application is pending before this Court and,

² Criminal Appeal No.1757 of 2022 : Decided on 11.10.2022.

therefore, no relief can be granted to the Petitioners in this case. They relied on the observations of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh & Ors. Versus Kusum Sahu*³. In the said case, the accused therein had filed four bail applications before the High Court and all of them were dismissed. After that, a *habeas corpus* petition was filed on behalf of the said accused and this time, the writ petition was allowed and the accused was directed to be released on bail. The Hon'ble Supreme Court set aside that order passed in the *habeas corpus* petition releasing the accused.

25. Learned ASG relied on the order dated 13.04.2026 passed by the learned J.M.F.C., below Exhibit-43 in R.C.C.No.77 of 2026. Vide that order, the Investigating Officer was permitted to interrogate the Accused No.2 Vishal Yadav and Accused No.3 Sameer Siroha (Petitioner No.2). In that order, it was mentioned that, considering the submissions made and the grounds stated in the application, the request for interrogation was necessary. Learned ASG submitted that, this shows application of mind and

3 Criminal Appeal No.4710 of 2025 : Decided on 03.11.2025.

would mean that the trial Court had taken the cognizance.

26. Learned ASG further relied on the order dated 13.04.2026 passed below Exhibit-44 in R.C.C.No.77 of 2026 whereby the Investigating Officer was granted permission to conduct further investigation U/s.193(9) of the BNSS. In that order, there is a reference that, the learned Judge had perused the record and the contents of the application. It was observed that, the object of the proposed further investigation was to supplement the evidence already placed on record and to bring forth all relevant facts necessary for the just adjudication of the case. Learned ASG submitted that, this again shows application of mind and hence, it can be said that the cognizance was taken.

27. In support of his contention, the learned ASG relied on the observations of the Hon'ble Supreme Court in the case of ***State of Gujarat Versus Afroz Mohammed Hasanfatta***⁴. In paragraph-23, it is observed that, in cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is

4 (2019) 20 Supreme Court Cases 539

based upon subjective satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there was sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate was not required to record any reasons.

28. Learned ASG then relied on the observations of the Hon'ble Supreme Court in the case of ***S. K. SINHA, Chief Enforcement Officer Versus Videocon International Ltd. and others***⁵. In paragraph-33, it was observed that, taking cognizance does not involve any formal action or indeed action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, thus, takes place at a point when a Magistrate first takes judicial notice of an offence.

29. Learned ASG further relied on the observations of the Hon'ble Supreme Court in the case of ***Kallu Nat alias Mayank Kumar Nagar Versus State of U.P. and another***⁶. In paragraph-52, it was observed that, whether cognizance of an offence was taken or

5 (2008) 2 Supreme Court Cases 492

6 2025 SCC OnLine SC 1606.

not taken or yet to be taken, depends on the peculiar context of the case and the stage of proceedings therein, and lodestar for answering the same had to be discerned from the procedure adopted by the Magistrate. Nevertheless, when a Magistrate, upon receiving a police report, proceeds further, by complying with the procedural requirements laid down in Section 207 of the Code, he was deemed to have taken cognizance of the offence. For there could be no need or question of supplying the documents envisaged under Section 207 to the accused, if cognizance of the offence was not taken, and more importantly, there could be no situation where the accused was compelled to appear before the Magistrate, or made a part of the proceedings in connection with any case instituted, if cognizance of the offence, involved therein was not yet taken. This is because prior to taking cognizance of an offence, the person alleged to be the accused, has no *locus* in the proceedings.

In paragraph-54 it is mentioned that, there can be no compliance of the requirements envisaged under Section(s) 207 or 208 of the Code, as the case may be, if a person was not yet

arrayed as an accused to the case instituted before the Magistrate. As both these provisions mandate the requirement to furnish the copies of the documents enumerated therein, to the accused, thereby indicating that when the Magistrate proceeds under the provisions of Sections 207 or 208 and then 209 of Chapter XVI of the Code, cognizance of the offence was already taken, and further that the Magistrate has also applied its mind to find out who the offenders really are.

30. Shri. Patil, learned SPP for CBI while assisting the learned ASG, relied on the observations of the Division Bench of the Gujarat High Court, at Ahmedabad, in the case of *Vinodbhai Tilakdhari Tiwari Versus State of Gujarat and others*⁷ to contend that, once the accused is already in custody, all that the Court is required to do is to remand him once again in custody by issuance of a warrant and there is no question of setting a timeline for the remand.

31. Learned APP was also directed to submit the documents showing the remand orders whereby the Petitioners were

⁷ 2026 SCC OnLine Guj 997

remanded to prison. In response thereto, the learned APP submitted the copy of the directions given by the Court of Special Judge, Pune issued to the jail authorities. Those directions were in the nature of stamps, but there were clear directions for producing the accused on the next date which was mentioned therein before the Court. Learned APP produced a copy of the roznama before the learned J.M.F.C., Igatpuri, in R.C.C.No.77 of 2026 from March 2026 onwards. The roznama reported what transpired in the Court and the last column mentions the next date. There is no direction to the jail authorities to remand the accused to jail. There is another chart of the same corresponding dates, wherein, the date of that particular roznama is mentioned and the next date is mentioned in the last column. In the middle column, there is a noting that the accused were produced through video conferencing and were intimated the next date. This is merely a noting mentioning that the accused were given the next date when they were produced through video conferencing. Again this particular noting does not show any direction to the jail authorities indicating that the accused were remanded to further custody. This

is extremely important in the context of the present case.

REASONS AND CONCLUSION

32. Mr. Anil Singh, the learned ASG submitted that the Petitioner No.1's bail application is pending before this Court and the Petitioner No.2's bail application is pending before the Sessions Court at Nashik and, therefore, the present petition may not be entertained. The learned ASG relied on the Judgment of the Hon'ble Supreme Court in the case of **Kusum Sahu**.

We have considered this contention seriously. However, there is a crucial difference in the present case. The present petition was filed much prior to filing of the bail applications before this Court and before the Sessions Court. The applications were filed during the pendency of this petition. Those bail applications are still pending. More importantly, the Petitioners have raised important issues such as lack of jurisdiction of the learned Special Judge in remanding the Petitioners, absence of order of taking cognizance by either the learned Special Judge or by the learned Magistrate and the issue that there are no remand

orders passed at all by the learned Magistrate before whom the case is pending as of today. All these issues go to the root of the matter. The learned counsel for the Petitioners did not make submissions on merits of the matter. The Petition raises serious issues about the illegality of the continued detention of the Petitioners without remand orders. Therefore, there is no impediment in deciding the present petition.

33. This is a very peculiar case and has given rise to some important issues regarding taking cognizance, remanding the accused, question of illegal detention and the procedure adopted by the learned Special Judge and the learned Magistrate. The FIR in this case mentioned various offences and there was a reference to the offence under the PC Act, therefore, after obtaining transit remand of the Petitioners and the other accused, they were produced before the learned Special Judge for CBI Cases at Pune, who had territorial jurisdiction in respect of the offences under the PC Act investigated by the CBI. During the pendency of the investigation, the stand of the investigating agency was that the offence under the PC Act was committed and, therefore, the

learned Special Judge at Pune passed remand orders from time to time concerning the accused including the present Petitioners. The charge-sheet was filed on 03.11.2025 and the copies of the charge-sheet were given to the accused and the Petitioners on 13.11.2025. Very significantly, the charge-sheet was not filed for commission of any offence under the PC Act, therefore, the learned Special Judge trying the offence under the PC Act had no jurisdiction; even to take cognizance of the police report. In this connection, Sections 3(1), 4, 4(1), 4(2) and 4(3) of the PC Act are important; which read thus:-

3. Power to appoint Special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

- (a) any offence punishable under this Act; and
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

4. Cases triable by Special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by Special Judges only.

(2) Every offence specified in sub-section (1) of Section 3 shall be tried by the Special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the case, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a Special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.”

While trying a case involving the offence under the PC Act, the learned Special Judge had jurisdiction to try any other offence specified in Section 3 of the PC Act with which the accused could be charged at the same trial. However, when there was no offence under the PC Act, then the learned Special Judge appointed U/s.3 of the PC Act had no jurisdiction to try the case or even to take cognizance. In the present case, it is more prominent because none of the accused is a public servant and the charge-sheet is not filed for commission of any offence under the PC Act.

34. Initially, the learned Judge did not realize that, he did not have the jurisdiction and, therefore, he kept on remanding the accused. As mentioned earlier, copies of the charge-sheet were

furnished to the accused including the Petitioners.

35. The learned Special Judge vide his order dated 12.02.2026 passed below Exhibit-1 in Special Case No.1492 of 2025 has categorically observed in paragraph-15 as follows:

“In this case, though the FIR was registered for the offences punishable under PC Act, but charge-sheet has not been filed under PC Act, therefore, I found substance in the argument of Ld. Advocate for accused No.5 that at this stage, this Court is not empower to take the cognizance against the arrested accused, but in view of the provision under section 361 of BNSS the custody of the accused can be considered legal because after filing of charge-sheet during enquiry and even during trial the case can be transferred to Magistrate having jurisdiction to try the case.”

Thus, there is hardly any doubt that the learned Special Judge had no jurisdiction to take cognizance of the offence. He did not realize the said fact initially when the charge-sheet was filed, but while considering the bail applications, he realized that he was not empowered to take cognizance. This is reflected in his order dated 12.02.2026.

36. The learned ASG relied on the observations of the

Hon'ble Supreme Court made in *Kallu Nat alias Mayank Kumar Nagar's case*. In paragraph-45 of the said Judgment, it was observed that, where a police report is received, the proceedings are said to be initiated i.e. cognizance is affirmately said to be taken after the Magistrate had applied his mind to the contents of the police report, and thereafter he had either issued process to the accused under Section 204 of the Code, on the basis of such report, or where the accused was present before it, either on his own or on being produced by the police, the Magistrate had complied with the requirement envisaged under Section 207 of the Code.

In the present case, undoubtedly, the learned Special Judge, Pune had complied with the requirement U/s.207 of the Code. However, the learned Special Judge did not have jurisdiction to take cognizance. This is a crucial difference in the present facts before us. His lack of jurisdiction is accepted by the learned Special Judge in paragraph-15 of his order dated 12.02.2026.

37. Thereafter, the learned Special Judge transferred the case to the Court of J.M.F.C., Igatpuri. The clause (iv) of the operative part of his order directed the Superintendent of Yerwada Central Prison, Pune to produce the accused before the learned J.M.F.C., Igatpuri on 18.02.2026 or as per the production warrant issued by the transferee court and directed that all the accused be remanded to the judicial custody till they were produced before the J.M.F.C. Igatpuri. Till he transferred the case to the learned J.M.F.C., Igatpuri, he gave specific directions on every date to the Jail Superintendent informing him regarding the next date of hearing and specifically directed him to produce the accused before the Court on the next date. This, at least, authorized the Jail Superintendent to keep the accused in custody. The legal lacuna in this case was that the learned Special Judge had no jurisdiction to take cognizance of the offence.

38. While transferring the case, the direction in Clause (i) of the operative part of the order dated 12.02.2026 was important. He had transferred the case to the learned J.M.F.C., Igatpuri, Dist. Nashik, 'for taking cognizance/trial in accordance with law'

(emphasis supplied). Thus, the learned Special Judge was aware that the learned Magistrate had to perform the important step of taking cognizance.

39. When the case was transferred to the Court of learned J.M.F.C., Igatpuri; from the record, it is clear that no specific order for taking cognizance was passed by the learned Magistrate. The roznama noted what transpired in the Court and also mentions the next date of hearing. The case was numbered as RCC No.77 of 2026 before that Court. The roznama starts from 25.02.2026. It makes a reference to the letter of the learned Special Judge, Pune, transferring the case before the learned J.M.F.C., Igatpuri. Significantly, there were no specific directions issued by the learned J.M.F.C. to the Superintendent of Jail authorizing custody of the accused in connection with the said case. An extract of the register mentions the date of hearing when the *roznama* was written and the next date for hearing. There were references that the accused were produced through the video conferencing and that they were given the next date. Thus it is just an intimation to the accused regarding the next date of hearing. There is neither

any specific warrant remanding the accused nor any specific direction to the Jail Superintendent to keep the accused in custody. Thus, this is not a case where the remand orders are invalid, but this is a case where the learned Magistrate has not taken cognizance and then has not passed the remand orders.

40. As mentioned earlier, there is no reference to any specific order of taking cognizance. What is the meaning of 'cognizance' is dealt with by the Hon'ble Supreme Court in many cases. In **Kallu Nat's case**, the term 'cognizance' is discussed by the Hon'ble Supreme Court in paragraphs-19, 20 and 21; which are as follows:-

“19. The term “cognizance” has nowhere been defined under the Code, but the word itself is of indefinite import. The word itself is derived from the Latin word ‘*cognoscere*’, and the French Word “*conoissance*” which means “*to know*”, “*to become acquainted with*”, or “*to recognize*”. The *Black's Law Dictionary* defines the term “cognizance” as “*Judicial notice, knowledge or acknowledgement*” or “*the judicial hearing of a cause*”.

20. In criminal law, the term “cognizance” has no esoteric or mystic significance, and the same is reflected by the omission of any formulaic definition of the term under the Code. However, over time, the term “cognizance” has come to acquire a special and distinct connotation, through a catena of decisions and authoritative exegesis rendered by this Court. The

expression “cognizance” means to ‘become aware of’ or ‘to take notice of judicially’. The special connotation that has been ascribed to the term denotes or indicates the stage at which a judicial authority such as a Court of Sessions or a Magistrate is said to have taken judicial notice of the commission of an offence, with a view to initiate proceedings against the person or persons alleged to have committed such offence. [See: *Chief Enforcement Officer v. Videocon International Ltd.*, (2008) 2 SCC 492].

21. Cognizance is, at its heart, always an act of the court. It entails not merely the receipt of information or the mechanical act of acknowledgement of a particular offence by a judicial authority, but a conscious application of mind by it, to the information disclosed or received, as the case may be, and the subjective element of its satisfaction that **i)** an offence has indeed occurred and **ii)** the circumstances necessitate setting into motion criminal proceedings in respect of the said offence, or at the very least take steps for ascertaining if there is any basis for initiating such proceedings. Cognizance is attended by the assumption of jurisdiction for proceeding further.”

41. As observed in paragraph-20, ‘cognizance’ indicates the stage at which a judicial authority such as a Court of Session or a Magistrate is said to have taken judicial notice of the commission of an offence, with a view to initiate proceedings against the person or persons alleged to have committed such offence. The learned Magistrate has not passed any order indicating that he had taken judicial notice of the commission of an offence “with a view

to initiate proceedings” against the accused. The learned Magistrate has simply adjourned the case from time to time as if it was continuation of the trial. There was no starting point of initiating the proceedings before him.

42. The Hon’ble Supreme Court in the case of **S. K. Sinha, Chief Enforcement Officer (supra)**, has observed that, taking cognizance is the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence. ‘Taking cognizance’ does not involve any formal action of any kind. It occurs as soon as a Magistrate applies its mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus, a *sine qua non* or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender.

In the present case, the learned Magistrate proceeded as if the criminal proceedings had already commenced. He had not taken judicial notice ‘with a view to initiating proceedings’.

43. In the case of **Afroz Hasanfatta**, the Hon'ble Supreme Court has observed that, in cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order is based on the subjective satisfaction of the Magistrate considering the police report and other documents satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason.

In the present case, though, reasons were not expected, but we do not find any order issuing process or taking cognizance by the Magistrate.

44. Learned ASG submitted that, various orders passed by the learned Magistrate would indicate his application of mind, which would mean that he had taken cognizance of the offence. Learned ASG referred to the common order passed below bail applications Exhibit-65 and 66 in RCC No.77 of 2026, whereby the Petitioners' bail applications were rejected vide the order dated

07.09.2026. He also referred to the order passed below Exhibit-44 in RCC No.77 of 2026 whereby the Investigating Agency was permitted to conduct further investigation. The said order was passed on 13.04.2026.

We are unable to agree with the submissions of learned ASG. Those orders were passed in completely different context. As discussed above, taking cognizance is an order passed with a view to initiating proceedings against the accused based on a police report. The observations made by the learned J.M.F.C. in the orders referred to by the learned ASG do not satisfy this criteria.

45. Even otherwise, we do not find order taking cognizance and subsequent remand orders directing the Jail authorities to keep the accused in custody. The accused, at present, are detained in Nashik Road Central Prison. As per Section 346 of the BNSS, the Court is empowered to adjourn the proceedings and to remand the accused, if in custody. Section 346 of the BNSS reads as follows:

346. Power to postpone or adjourn proceedings.—(1)
In every inquiry or trial the proceedings shall be continued from day-to-day basis 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 64, Section 65, Section 66, Section 67, Section 68, Section 70 or Section 71 of the Bharatiya Nyaya Sanhita, 2023 the inquiry or trial shall be completed within a period of two months from the date of filing of the chargesheet.

(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 Court 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:

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) where the circumstances are beyond the control of a party, not more than two adjournments may be granted by the Court after hearing the objections of the other party and for the reasons to be recorded in writing;

(c) the fact that the advocate of a party is engaged in another Court, shall not be a ground for adjournment;

(d) where a witness is present in Court but a party or his advocate is not present or the party or his advocate though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, 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 1.—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.

46. Sub Section 2 of Section 346 of the BNSS is in two parts. The first part is about adjourning the trial and the second important part is about remanding the accused. The exact wording used is “and may by a warrant remand the accused if in custody”. In the present case, no record was produced before us showing that the learned Magistrate had remanded the accused by a warrant. There are not even directions issued to the Jail Superintendent to keep the accused in custody. The custody of the

Petitioners is without any authorization by the learned Magistrate as he has not taken cognizance and has not passed subsequent remand orders.

47. Shri. Patil, learned SPP tried to rely on the Judgment of the High Court of Gujarat in the case of **Vinodbhai Tiwari**, to contend that, if a person is already in custody, no such time limit can be ascribed when remanding him to custody. He relied on paragraph-108 of the said Judgment; which reads as follows:

“108. It is to be noticed here that the proviso contemplates remanding *“an accused person to custody”* as compared to the expression in S. 346(2) which is *“remand the accused if in custody”*. This Proviso which stipulates a maximum remand period of 15 days would basically come into operation only if the Court, while adjourning or postponing the trial, is remanding the accused who is not in custody and for the first time is ordered to be taken into custody while adjourning or postponing the trial. It is only in such a situation that the remand can only be for a period of 15 days. However, if a person is already in custody, no such time limit can be ascribed when remanding him to custody.”

We are unable to agree with the submissions of learned SPP that, no order remanding the accused is necessary, if the accused is already in custody. The same judgment in paragraph-116 mentions thus:

“116. It is this period of 15 days, which is contemplated during the investigation stage, that is incorporated in the first proviso to S. 346(2) when the trial is being postponed or adjourned. This period of 15 days can apply only when the Court decides to remand an accused *to* custody while adjourning the matter. If the accused is already *in* custody, all that the Court is required to do is to remand him once again in custody by issuance of a warrant and there is no question of setting a timeline for the remand.”

48. Thus, the Gujarat High Court was considering whether the timeline of 15 days was applicable in that case. But there are clear observations that, if the accused is already in custody, the Court is required to remand him once again in custody by issuance of a warrant and there was no question of setting a timeline for the remand. The Judgment is only about the outer limit of the timeline. It cannot be interpreted to mean that the Magistrate need not remand the accused after taking cognizance if he is already in custody.

49. As a result of the above discussion, we find that the detention of the Petitioners in jail is without any authorization by a competent Court and, hence, their detention is illegal. Consequently, they will have to be released from their detention.

At the same time, it has to be noted that the offence is quite serious and, therefore, if the investigating agency so desires, and if it is necessary to arrest the accused, they can take steps in accordance with law to rearrest the Petitioners by following due procedure established by law.

50. Before parting with the order, we make it clear that, it is the duty of the prosecutors, investigating and prosecuting agencies and even the Jail Superintendents to point out to the Court taking cognizance, if there is no remand order from the Court to continue detention of the accused who is already in custody, unless he is to be released under the orders of the Court.

51. Hence, the following order:

ORDER

- i) The continued detention of the Petitioners in connection with RCC No.77 of 2026 before the learned J.M.F.C., Igatpuri, District Nashik, is declared to be illegal.
- ii) The Petitioners are directed to be released on bail on their executing PR Bond in the sum of Rs.1 lakh each with one or two sureties each in the

like amount, on the following conditions:

- I. The Petitioners shall deposit their passports, if any, with the Investigating Officer, before being released.
 - II. They shall report to the office of the investigating agency on every Saturday between 3:00p.m. to 5:00p.m. till conclusion of the trial.
 - III. They shall provide their residential address and the contact numbers where they would be residing; to the investigating officer, before being released.
 - IV. They shall attend all the dates in RCC No.77 of 2026 before the learned J.M.F.C., Igatpuri, Nashik.
 - V. They shall not tamper with the evidence and shall not influence the witnesses.
 - VI. They shall not leave Maharashtra without prior permission of the trial Court.
 - VII. They shall cooperate in expeditious disposal of the trial.
- iii) The investigating agency would be at liberty to

rearrest the Petitioners, if found necessary; by following the due procedure established by law.

- iv) Rule is made absolute in the aforesaid terms.
- v) The Writ Petition is disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)