

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.970 OF 2022

Sushil Lohiya
Resident of 1003/1004 Awing,
Vastu Tower, Evershine Nagar,
Malad West, Mumbai-400 064.
(for his son Brijesh Lohiya -
currently, detained in Mumbai Central Prison) ... Petitioner

Versus

1. Central Bureau of Investigation
(EOB) Mumbai, through its Joint Director,
CBI Building, 11th Floor, Plot No.C-35A,
'G' Block, Bandra Kurla Complex (BKC)
Near MTNL Exchange, Bandra East,
Mumbai-400 051.
- 2 State of Maharashtra
Through Superintendent (Prisons)
Mumbai Central Prison, Sane Guruji Marg,
Mumbai-400 011. ... Respondents

Mr. Abad Ponda, Senior Advocate a/w Mr. Sajal Yadav, Mr. Shalabh K. Saxena, Mr. Mitul Shah, Mr. Harsh Ghangurde, Mr. Karma Vivan and Mr. Sudarshan Khawase i/b Mr. Raj Raut for the Petitioner.
Mr. Kuldeep Patil for Respondent No.1-CBI.
Mrs. M.H. Mhatre, APP for Respondent No.2-State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 5 APRIL, 2022

JUDGMENT : (Per S.M. Modak, J.)

. In this Petition, we are dealing with a short but an important issue

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of seminal importance relating to personal liberty of son of the Petitioner. Brijesh Lohiya is one of the accused in an offence registered under Sections 120-B read with 420 of Indian Penal Code and Section 13(2) read with 13(1)(d) of PC Act 1988 with CBI, EOB, Mumbai. He was duly arrested, produced before the Special Court and remanded to police custody initially. On 8 March 2022 he was sent to Magisterial custody and due date for production was 22 March 2022. On 22 March 2022, the son of the Petitioner was neither produced physically nor virtually. The Special Judge, CBI extended the period of Magisterial custody till 5 April 2022.

2 On this background, the Petitioner has filed this *habeas corpus* Petition for setting aside the impugned remand Order dated 22 March 2022 in RC-04/E/2017 and direct Respondent No.2 to forthwith release the Petitioner's son Brijesh Lohiya from the continued illegal detention at the Mumbai Central Prison. Whereas the Respondents' submission is that the detenu's judicial custody was extended by Special Judge and hence no reliefs can be granted. We have heard Mr. Ponda, learned Senior Advocate for the Petitioner, Mr. Patil for Respondent No.1 and Mrs. Mhatre, APP for Respondent No.2-State.

3 So issues involved before us are :-

- a) Whether reliefs can be granted when judicial custody was extended by the Special Judge, CBI without producing the arestee either physically or virtually on 22 March 2022?

Writ of *habeas corpus*

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4 Both the sides relied upon various judgments given by this Court, other High Courts and Hon'ble Supreme Court. Writ of *habeas corpus* can be issued by this Court in exercise of power under Article 226 of the Constitution of India. The purpose for issuing writ is also mentioned therein. It is for the purpose of "enforcement of any of the rights conferred by Part III and for any other purpose". Part III of the Constitution deals with "Fundamental Rights". The relevant Articles for our consideration are Article 21 and Article 22. Article 22 gives following protection to an arrested person.

- a) to know grounds of arrest.
- b) right to consult and to be defended by legal practitioner.
- c) to be produced before the nearest Magistrate within 24 hours.
- d) insist for authorization for further detention from the Magistrate only.

Article 22(3), (4), (5), (6) deals with detention when it is by way of preventive detention. In this Petition, we are not concerned for those clauses. There is no grievance in this Petition that the Petitioner has been denied of protection guaranteed under Clauses (1) and (2) of Article 21.

5 Whereas Article 21 gives protection to a person to protect his life and property. He has right to insist that procedure established by law need to be followed when he is deprived of his life/personal liberty. That is how the provisions of Code of Criminal Procedure will come into picture.

Provisions of Code of Criminal Procedure

6 Provisions of Section 167 and Section 309 of the Code are relevant.

Admittedly, the chargesheet is not filed. The provisions of Section 309 of the Code will come into picture when the Court is conducting an inquiry/trial. If we read the provisions, we may find that when an investigation is pending provisions of Section 309 of the Code will not be applicable. Learned Senior Advocate Shri Ponda referred to the provisions of proviso (b) to sub-section (2) of Section 167 of the Code. It is reproduced below :-

Proviso (b) :

“no Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.”

substituted by Act No.45 of 2009. Before substitution, proviso (b) reads as follows :-

“no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.”

The above provisions exist as per amendment brought by an Act of Parliament. Earlier to this there was Maharashtra Amendment brought as per Act No.8/2005 (w.e.f. 25/11/2004). It reads thus :-

Proviso (b) :

“no Magistrate shall authorize detention of any custody, of the accused person under this section unless, the accused person is produced before him in person, and for any extension of custody otherwise than the extension in the police custody, the accused person may be produced either in person or through the medium of electronic video linkage.”

7 Earlier to both these amendments, there was no bifurcation just like police custody and judicial custody. For both the kinds of custody, it was necessary to produce the accused physically before the Magistrate. The Law which stands after above amendments can be enumerated as follows :-

a) Physical production

is mandatory so long as the accused is in police custody, whether it is first time production and subsequent production.

b) Physical/virtual production

for detention in judicial custody-production can be either physical or through medium of electronic video linkage.

8 In this petition, we are concerned with the production of the Petitioner before the Special Judge, Mumbai at the time of extension of judicial custody. As such Law permits physical/virtual production. Unfortunately, the Petitioner was not produced on the relevant date, i.e. in both the manner. That is why, we have to decide whether personal liberty of the Petitioner is taken away illegally.

Submissions

9 Learned Senior Advocate Shri Ponda strenuously argued that there is no justification for non-production of the Petitioner in either modes and extending the judicial custody without production of the Petitioner was in violation of the mandate given in Section 167(2) proviso (b) of the Code. According to him non-production will be justified only when there are reasons beyond control. He submitted that neither the Special Judge nor the Jail Authorities have understood and followed the additional mode of production of the accused 'virtually'. He submitted that in City like Mumbai, there is no hurdle atleast producing the accused virtually.

10 In support of his contention, he relied upon the following judgments/authorities :-

Judgments relied upon by the Petitioner

- 1 **Gautam Navlakha Vs. National Investigation Agency, 2021 SCC OnLine SC 382**
- 2 **Sonu Madanlal Yogi Vs. State of Maharashtra, 2021 (2) AIR Bom R.573**
- 3 **Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 Supreme Court Cases 272**
- 4 **A. Narayana Reddy Vs. State of Andhra Pradesh, C.P. NO.161/91 etc. Decided on 26 February 1991**
- 5 **K. Anandan Vs. K. Manoharan, Assistant, O/o. District Munsif-cum-Judicial Magistrate, Valparai, Coimbatore District, 2015(1) MWN (Cr.) 416**

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- 6 Tmt. Jayalakshmi W/o. Madhavna Vs. State of Tamil Nadu Rep. by Secretary to Government Home, Prohibition and Excise Department, 2010 SCC OnLine Mad 3886
- 7 Suo Motu Writ (Civil) No.5/2020, In Re : Guidelines for Court Functioning through Video Conferencing During COVID-19 Pandemic, Order dated 6 April 2020 (SC)
- 8 Arrest and Investigation-Maharashtra Criminal Manual, Advocatetanmoy Law Library
- 9 Video Conferencing Rules
- 10 W.P. No.7338/2020, CJ & SVSJ : 15.06.2020

11 Whereas learned Advocate Shri Patil for Respondent No.1-CBI submitted that writ of *habeas corpus* is not maintainable and merely because the Petitioner is not produced in either way, does not give any right to the Petitioner to seek release forthwith.

12 Whereas learned AGP Mrs. Mhatre, for Respondent No.2-State submitted that physical production was not done as there was lack of sufficient escort. There were 145 prisoners required to be produced on 22 March 2022. But escort for only 47 prisoners was provided. Hence all the prisoners could not be produced physically. However she has not given any justification for non-production of the Petitioner virtually. She has made feeble attempt in justifying virtual non-production by contending that jail authorities produces accused persons virtually, only when it is specifically ordered by the concerned court and this has not happened in this case.

13 By way of reply, learned Senior Advocate Shri Ponda contended that

even lack of sufficient escort is not justifiable reason and it is deprecated by the constitutional courts. He also submitted that in fact on the relevant date, there were other accused persons produced virtually.

14 After hearing both sides, what we find is that the entire problem can be looked from two perspectives. One is whether Special Judge was justified in extending judicial custody mechanically, i.e. without verifying reasons for non-production in both the ways and second whether this Court can interfere in exercise of jurisdiction under Article 226 of the Constitution of India ?

15 On the point of effect of extending the judicial remand without following the procedure, Shri Ponda relied upon few of the judgments of this Court and of other High Courts. It will be material to see which were the *lacunae* pointed out in those judgements. They can be categorized as follows :-

a) when the case appeared before the Court of Sessions for the first time (after commitment), the accused was not produced and matter was simply adjourned. (i) There was no valid Order for extending judicial custody, and (ii) IO has also not submitted judicial custody remand report – were the *lacunae* considered and *habeas corpus* was allowed (Sonu Madanlal Yogi's case referred above)

b) Passing an Order of remand under Section 309(2) of Criminal Procedure Code would not legalize earlier detention if passed without accused being produced (In case A.A. Narayana Reddy supra)

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c) Accused was not produced before the Court of JMFC having jurisdiction due to lack of escort due to local election. The jail authorities produced the accused before different Magistrate as per the Order of CJM. Notice was issued to jail authorities. He challenged that notice and HC observed that “accused was remanded to custody without producing him mechanically and without seeing the record”, such detention is illegal. (K. Anandan’s case)

d) while dealing with the Petition challenging preventive detention grievance was made about mechanical extension of judicial custody in an offence. The Order reads “accused not produced. Inform authorities to produce the accused on 8/2/2010”.

This practice of extending remand without production was deprecated. (This was in the case of Jayalaxshmi Vs. State of Tamil Nadu para-7).

Virtual Production

16 Apart from other instances, reliance is also placed on direction about virtual production and particularly during Corona Virus. They are as follows :-

a) Order passed by Hon’ble Supreme Court in Suo Moto Writ (Civil) No.5 of 2020 dated 6/4/2020. Direction No.(ii) reads as follows :-

“The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust

functioning of the judicial system through the use of video conferencing technologies.”

b) Draft of Video Conferencing Rules. Relevant Rule No.11.1 reads as follows :-

“The Court may, at its discretion, authorize detention of an accused, frame charge in a criminal trial under the Cr.PC by video conferencing. However, ordinarily judicial remand in the first instance or police remand shall not be granted through video conferencing save and except in exceptional circumstances for reasons to be recorded in writing.”.

c) an Order passed by Division Bench of High Court of Karnataka in Writ Petition No.7338 of 2020. After taking overview of Corona virus situation and guidelines issued by the Hon’ble Supreme Court, even Video Conferencing was permissible even at the time of first time production and it was observed :-

“Therefore, in a very exceptional case, where the learned Magistrate is of the considered view that there is a serious apprehension that the accused may be infected with Novel Corona Virus (COVID-19) and therefore, for the purpose of following the best health practice, physical production of the accused for the first time before the Court should be avoided, he can for the reasons specifically assigned, authorize the production of accused through video conferencing”.

17 When we have read above references, we may find that directions for production through Video Conferencing were issued considering exceptional case of corona virus. Even High Court of Karnataka was pleased to permit production through video conferencing when accused is

produced on first occasion. Even though as per the provisions of Code of Criminal Procedure, first time virtual production is not allowed, it was allowed considering the exemplary situation. In above Orders passed by various High Courts, we do not find that any of the observations of Hon'ble Supreme Court was cited. There cannot be any dispute about requirement of production of the accused at the time of extension of judicial remand. We will have to see how the Hon'ble Supreme Court has dealt with this issue and about maintainability of writ of *habeas corpus*. Respondent No.1 relied upon following judgments

Judgments relied upon by CBI

- 1 Col. Dr. B. Ramachandra Rao Vs. The State of Orissa, (1972)(3) SCC 256
- 2 Manubhai Ratilal Patel through Ushaben Vs. The State of Gujarat, (2013) 1 SCC 314
- 3 Saurabh Kumar through his father Vs. Jailor Konelia Jail, (2014) 13 SCC 436
- 4 State of Maharashtra Vs. Tasneem Rizwan Siddhique, (2018) 9 SCC 745
- 5 Serious Fraud Investigation Office Vs. Rahul Modi, (2019) 5 SCC 266
- 6 Amol @ Avikumar Dhondiram Dhule Vs. The State of Maharashtra, Criminal Writ Petition no.2071 of 2021
- 7 Raj Narain Vs. The Superintendent, Central Jail, New Delhi, 1971 Cri. L.J. 244 (Supreme Court)

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- 8 Lakshmanrao Vs. The Judicial Magistrate First Class, Parvatipuram, 1917 Cri. L.J. 253 (Supreme Court)
- 9 Bambasiya Rao Vs. The Union Of India, 1973 Cri. L.J.663 (Supreme Court)
- 10 Rameshkumar Ravi @ Ram Prasad Vs. The State of Bihar, 1987 Cri.L.J. 1489 (Patna High Court)
- 11 Manehari Vs. The State of Rajasthan, 1983 Cr. L.J. 1231 (Rajasthan High Court)
- 12 Dasaratha Ramsiah Vs. The of Andra Pradeh, 1992 Cri.L.J.3485
- 13 Raju Vs. The State of Madhya Pradesh, (1990) 2 Crimes (HC) 344 (Madhya Pradesh High Court.)

18 It will be relevant to consider the issues raised in above judgments.

a) Petitioner undergoing sentence in Secunderabad jail was transferred to Bhubaneshwar jail under the production warrant. *Habeas Corpus* Petition was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court refused to entertain it as there was detention as per the Order of Competent Court and it was not without "jurisdiction/wholly illegal." (Col. Dr. B. Ramchandra Rao's case, para-5).

b) More serious grievance was made before the High Court of Gujrath in case of Manubhai Patel Vs. State of Gujrath. There was an Order of stay to the investigation granted by the High Court on 17/07/2012. Whereas the said Petitioner was arrested on 16/07/2012 and produced before the Court and police custody was granted till 19/07/2012. Hence, grievance was made that detention is illegal. The Hon'ble Supreme Court

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refused to entertain writ petition for the reason that “the Order of stay of investigation will have bearing on action of the investigating agency. The Order of the remand is judicial act and it does not suffer from any infirmity”. It has further been observed that “writ of *habeas corpus* is not to be entertained when a person is remanded to police/judicial custody by the Competent Court by an order which *prima facie* does not appear to be without jurisdiction, passed in an absolutely mechanical manner or wholly illegal. (para 31).

c) The Petitioner has visited the Police Station in respect of the inquiry about his passport. He was arrested and then produced before the learned JMFC in his house. The Petitioner directly approached to the Hon’ble Supreme Court under Article 32 of the Constitution of India. The Supreme Court has personally seen the record and came to the conclusion that the Petitioner was in judicial custody by virtue of an Order passed by the Judicial Magistrate (paragraph 13 in case of Saurabh Kumar.)

d) Whereas more serious issue was raised before the Hon’ble Supreme in case of **State of Maharashtra Vs. Tasneem Rizwan Siddhique, (2018) 9 SCC 745**. The said Tasneem was given a notice initially under Section 160 of Code of Criminal Code and subsequently under Section 41-A of the Code of Criminal Code. Lateron, he was arrested. He filed writ of *habeas corpus* before the Division Bench of this Court. It was allowed and direction was given to set him at rest. When State went to Hon'ble Supreme Court, the Order was set aside. As the petitioner was in judicial custody by virtue of an order passed by the Judicial Magistrate, writ of *habeas corpus* held not maintainable (paragraph-10).

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e) In case of **Serious Fraud Investigation Office Vs. Rahul Modi, (2019) 5 SCC 266**, the Petitioners were arrested for violation of the provisions of the Companies Act. They were produced before the Judicial Magistrate, First Class, Gurugram on 11 December 2018. They were remanded to police custody till 14 December 2018. There was an Order to investigate the affairs of Adarsh Group of Companies issued under Section 212(1)(c) of the Companies Act. The period of investigation was three months. It was to start from 20 June 2018 and was about to over on 19 September 2018. When the accused were produced for the second time for extension of the police custody remand, an objection was taken that the period for completion of investigation is already over. On 13 December 2018 proposal for extension of time for completion of investigation was sent. When the accused were produced on 14 December 2018, the approval was not received. The learned Magistrate has extended period of police custody remand. The issue was raised before the Hon'ble High Court that proceedings carried out without giving extension is illegal. The High Court granted interim relief but it was set aside by the Hon'ble Supreme Court.

19 The High Court of Delhi granted interim bail. Same Order was challenged before the Hon'ble Supreme Court. It was set aside. It was observed that when matter was considered by the High Court, not only were there Orders of remand passed by the Judicial Magistrate as well as Special Judge, but there was an Order of extension passed by the Central Government on 14 December 2018. These Orders were not put under challenge before the High Court. Principal issue which was raised before the High Court was whether arrest will be affected after a period of investigation had come to an end. The Hon'ble Supreme Court observed

it will go purely by the law laid down by this Court in 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 (paragraph-21).

20 In all above judgments of the Hon'ble Supreme Court has held that the presence of the accused is not required in case of extension of remand by Magistrate. It was a case when the Petitioner was produced when inquiry under Section 107 of the Code of Criminal Procedure was initiated but he was not been produced when he was remanded to jail. When the question of extension was arisen he was not produced. It was in a case of **Raj Narain Vs. The Superintendent, Central Jail, New Delhi, 1971 Cri. L.J. 244 (Supreme Court)**. Whereas similar are observations in case of **Lakshmanrao Vs. The Judicial Magistrate First Class, Parvatipuram, 1971 Cri. L.J. 253 (Supreme Court)** (At that time Code of Criminal Procedure 1898 was in force.) Similar are observations in case of **Bambasiya Rao Vs. The Union Of India, 1973 Cri. L.J.663 (Supreme Court)**. It was observed that the Order of remand cannot be considered to be invalid merely because the accused has not been produced before the Magistrate.

21 Similar are the views expressed by the High Court of Patna, High Court of Rajasthan and High Court of Andhra Pradesh. The Learned Senior Advocate Mr. Ponda, submitted that the observations in case of **Dasaratha Ramsiah Vs. The of Andra Pradeh, 1992 Cri.L.J.3485**, non-availability of the escort was not considered as a valid ground for non-production. According to him, these are the observations when virtual production was not permissible. He relied upon the observations in para-23. He submitted that if for some reasons the accused could not be

produced, jail authorities ought to have submitted a report thereby explaining the circumstance why the production is not possible. The Judicial Magistrate has dealt with such report after arriving at such satisfaction. According to him, in the present case this has neither been done by the Jail Authorities nor by Special Judge.

22 To counter all the submissions, learned Senior Advocate Mr. Ponda, heavily relied upon the observations of the Hon'ble Supreme Court in case of **Gautam Navlakha Vs. National Investigation Agency, 2021 SCC OnLine SC 382**. He specifically read observations in paragraphs 67 to 71. In that case, the issue before the Hon'ble Supreme Court was whether the period of house arrest is required to be included in computing period for filing of the charge-sheet. While answering that issue, the issue about maintainability of the writ of *habeas corpus* against the Order of remand under Section 167 of the Code of Criminal Procedure is decided by the Hon'ble Supreme Court. In paragraphs 68 and 69, earlier judgments given by the Hon'ble Supreme Court were dealt with. After taking overview of the said decisions, according to the learned Senior Advocate Mr. Ponda, the Hon'ble Supreme Court reiterated the need for justifiable judicial remand. He emphasized that if an order of remand is passed in a absolutely mechanical manner, the person affected can seek remedy of *habeas corpus*. Those are the observations in paragraphs-71. According to him, these observations still holds the field. According to him, the Order passed by the Special Judge cannot be said to be an Order passed after considering all factors. If we read the Order, according to him, there is neither satisfaction why the accused is not produced in either manner nor there is justification given by the jail authorities for production of the accused in either manner.

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23 Learned Senior Advocate Mr. Ponda, brought to our notice that in case of **Serious Fraud Investigation Office Vs. Rahul Modi, (2019) 5 SCC 266**, the Hon'ble Supreme Court has referred to all judgements as referred earlier.

24 Even Division Bench of this Court in case of **Amol @ Avikumar Dhondiram Dhule Vs. The State of Maharashtra, Criminal Writ Petition no.2071 of 2021** has rejected *habeas corpus* petition. The grievance was raised that the petitioner accused was not produced before the Judicial Magistrate on 39 occasions and judicial custody of the accused was extended. The High Court took note of the fact that there is no grievance that the judicial custody remand is not extended. Accordingly, the petition was dismissed.

25 There cannot be any dispute about the proposition of law that writ of *habeas corpus* is maintainable in certain contingencies. It includes extension of the remand mechanically or whether the Order is passed without jurisdiction or whether the Court is not empowered to pass that Order. It is true that the provisions of Section 167 are mandatory. By advancement of technology, the Legislatures have also recognized the virtual mode for production of the accused person. The intention is that the production of the accused should not be delayed. At the same time it is true that if there is non-compliance of that provision, there is no corresponding provisions for grant of bail as it consists when the charge-sheet is not filed within the mandatory period.

26 In nutshell, the Hon'ble Supreme Court has not accepted the grievance for writ of *habeas corpus* if the detention is as per the Order of

the Court. We also feel that in this case too, there is an Order passed by the Special court on 22 March 2022. It is also true that on the date, the learned Special Judge has also dealt with some of the requests made by the accused for facility of home food or medicines. At the most, we may say that there is irregularity in passing that Order. That is to say that the report filed by the Investigating Officer does not give some satisfactory reason for non-production of the accused. At the same time, the learned Special Judge has also not given reason why he has extended remand even when the accused was not produced before him. Even though there are certain defects, we feel that they are not of such nature, so as to issue of writ of *habeas corpus*. So we do not think that writ can be entertained. It is liable to be dismissed.

27 At the same time, we are inclined to make certain observations about manner, in which the Superintendents of Jail are performing their duties and how Judges are dealing with the issue. Every one is aware that for judicial custody virtual production is recognized by Code of Criminal Procedure. So, why Superintendents of Jail can wait for the Orders from the Courts allowing the virtual production. At the same time, we also feel that a Judge seized of the matter may also mention in the Order that virtual production is permitted when physical production is not possible for some reasons. We are saying this only when there is an extension of remand till filing of the charge-sheet. Similar directions can also be given when there is extension of remand under Section 309 of the Code of Criminal Procedure. We are restraining ourselves in issuing those directions in that contingency, as we have not dealt with those provisions.

28 It is also true that the Courts in Maharashtra are scattered to

various districts depending upon topography. It may also be true that in some of the remotest talukas, there may not be facility of internet. We are also aware that during this COVID-19 pandemic period, Courts could not function to their fullest extent. So there is a need to revive all the existing systems. Even we are told that in some Courts in State of Maharashtra, State of Maharashtra through Home Department has made available Video Conferencing setup.

29 It is also true that there are directions given by this Court on administrative side to all PDJs to conduct meetings with Jail Authorities, so as to secure more and more escorts. It is also communicated to Trial Courts in State of Maharashtra vide letter dated 30 December 2013 by learned Registrar (Inspection). Even PDJs are expected to give periodical reports about meetings conducted with Jail Authorities. Hence, following directions :-

: DIRECTIONS :

- (a) Learned PDJs to verify whether these meetings about availability of escort are being conducted at present or not. We are saying so because during COVID-19 pandemic period, the Courts were not functioning with fullest extent.
- (b) If such meetings are conducted, learned PDJs to verify whether reports are sent to the High Court Administration or or if the meeting having been discontinued for some reasons, PDJs are directed to see that such meetings are periodically held.
- (c) We also direct all Principal District Judges in State of Maharashtra to verify whether Video Conference Facility in place is working/not working and if it is not working, then to take steps for their functioning.

30 With these observations, Writ Petition stands dismissed.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)