



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1299 OF 2025

- 1) Ranganth Tulshiram Galande
Age:- 40 years, Occ. Agri,
R/o. Deulgaon Galande, Tq. Shrigonda,
Dist. Ahilyanagar
- 2) Anil Zumbarrao Darekar
Age:- 32 years, Occ. Agri,
R/o. Hiradgaon, Tq. Shrigonda,
Dist. Ahilyanagar

.... **PETITIONERS**

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Shrigonda Police Station,
Tq. Shrigonda, Dist. Ahilyanagar

Advocate for the Petitioners :Mr.Rahul R. Karpe a/w Mr. S. R. Nikat
APP for Respondent-State : Mr. S. M. Ganachari

CORAM : SACHIN S. DESHMUKH, J.

Date : 7th October, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. The petitioners raise challenge to the order dated 09.09.2025 rendered by the learned Additional Sessions Judge,

Shrigonda, rejecting the application presented by the petitioners seeking default bail under Section 187(3) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS" for short)

3. The petitioners are accused in Crime No. 673 of 2025 registered with Shrigonda Police Station under Sections 316(2), 318(2), 318(4) read with 3(5) of the Bhartiya Nyaya Sanhita (hereinafter "BNS" for short) and under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter "MPID Act" for short).

4. The petitioners were arrested on 07.07.2025. In the wake of arrest in connection with offence for which petitioners were initially charged, the charge-sheet ought to have been filed within 60 days i.e. by 05.09.2025 as mandate under Section 187(3) of the BNSS. Owing to non-compliance of the same, the petitioners sought default bail before the Sessions Court.

5. In the interregnum, the Investigating Officer, submitted an application invoking of Section 316(5) of the BNS. On the said application, the concerned Court recorded the remark "seen". Although it was incumbent upon the concerned Court to pass a

reasoned and speaking order extending further judicial remand, as is required under sub-Section (3) of Section 187 of the BNSS recording satisfaction that adequate ground exists to do so. However, except recording the remark "seen", as per mandate of Sub-section (3) of Section 187 is not complied with.

6. On account of such departure, the petitioners presented an application seeking relief of default bail under Section 187(3) of the BNSS contending that the investigation into the alleged offences necessarily ought to have been concluded within a period of 60 days from the date of first remand of the petitioners, which period eventually expired on 05.09.2025.

7. Mere invoking Section 316(5) of the BNS, automatically would not by itself extend the period of investigation to 90 days. There must be a specific and reasoned order to that effect by the Magistrate extending the judicial custody of the petitioners. In any case, the indefeasible right of the petitioners to be released on default bail under Section 187(3) of the BNSS cannot be disregarded.

8. The learned Additional Sessions Judge, Shrigonda

rejected the request of the petitioners for default bail, holding that the invocation Section 316(5) of the BNS is sufficient since, the punishment prescribed for the added section includes the imprisonment for life. Therefore, according to the learned Judge, the period of filing of charge-sheet automatically stands extended from 60 days to 90 days. Resultantly, rejected the petitioners' claim of the default bail which is indefeasible right of the petitioners.

9. In the aforesaid backdrop, the petitioners have approached this Court by filing the present writ petition under Article 226 and 227 of the Constitution of India, contending the petitioners have an indefeasible right to claim default bail under Section 187(3) of the BNSS, owing to failure on the part of Investigating Officer to submit charge-sheet within a period of 60 days from the date of first remand of the accused / petitioners.

10. Mere invoking additional section 316(5) of the BNS, would not by itself extend the period of further custody of the petitioners in absence of specific order of the Magistrate under Section 187(3) of BNSS to that effect.

11. The learned counsel for the petitioners has placed reliance on the order dated 23.08.2016 passed by Coordinate Bench of this Court in the case of **Pankaj Sundarlal Yadav Vs. State of Maharashtra and Anr. (Criminal Writ Petition No. 475 of 2016)**, to contend that in the event of infraction with the right to liberty, petition is maintainable. Further reliance is placed on the order dated 03.05.2023 of Coordinate Bench of this Court in the case of **Irfan Moiuddeen Saiyyed and Others Vs. The State of Maharashtra (Bail Application No. 712 of 2023)**, in order to contend that right of default bail is indefeasible one and cannot be defied in a casual manner.

12. Per contra, the learned APP with his usual vehemence has raised an objection regarding the maintainability of the present petition, contending that petitioners should file appropriate proceeding for bail before this Court instead of writ petition. As such, the petition is not maintainable. However, the learned APP fairly concedes with legal position laid down by this Court in case of **Irfan (supra)**. The learned APP further submitted that the necessary request for adding or invoking Section 316(5) of BNS was duly made before the concerned Court which eventually endorsed the same with remark "seen" by the concerned Court.

The invocation of additional section was duly approved by the competent Court thereby extending the period of filing the charge-sheet stands extended to 90 days. Consequently, same would disentitle the petitioners to claim the relief of default bail.

13. Having heard the learned counsel for litigating sides, the right to claim the default bail is premised on the anvil of Article 21 of the Constitution of India. Once the arrest is effected and the accused persons are produced before the concerned Magistrate for the purpose of remand, the computation period of 60 days in the wake of the offences with which initially the petitioners were charged, expire within 60 days in the light of provisions of Section 187 of BNSS.

14. The non-compliance on the part of Investigating Officer with the mandate of Section 187 of BNSS cannot be permitted. The accused has every right to know the allegations those are subsequently added against him and equally the Court is under obligation to hear the accused.

15. Undoubtedly, Section 187 of BNSS prescribes the period of investigation and further provid the time limit for filing

the charge-sheet to the Court. It further empowers the Court to extend the same under certain circumstances. In unequivocal terms, the concerned Magistrate or the Court may extend judicial custody which essentially shall not exceed statutory prescribed 60 or 90 days period as prescribed in Section 187 of the BNSS.

16. Upon expiry of the aforesaid period, as the case may be, the entitlement of the accused persons to be released on default bail is indefeasible right, if the charge-sheet is not been filed between the said period corresponds to Section 187(3) of the BNSS.

17. Equally, the judicial remand or police custody is not a mere formality. In the event, the Investigating Officer, during the course of judicial custody, discovers additional material constituting new or additional offences under the particular section, it is incumbent upon the Officer to issue notice to the accused before presenting the fresh remand application to the concerned Court.

18. This procedure is rather mandatory in the wake of statutory regime to ensure that the accused is conferred with an

opportunity to resist the request for further extension of judicial custody. Particularly, in relation to the additional offences based on new material gathers during the investigation, such due procedure safeguards the rights of the accused and ensure judicial control over the detention of the custody of the accused persons.

19. After registration of crime, when the petitioners were remanded before the Magistrate, the police custody was extended. Eventually, the petitioners were remanded in judicial custody, however, in absence of presenting the remand application confronting the same to the accused i.e. present petitioners, it is not open for the prosecution to merely communicate to the Court to seek the extension of remand beyond the prescribed period prescribed under Section 187 of BNSS.

20. Undoubtedly, the extension of remand, predominantly after invoking new offences is not an empty formality and must be undertaken in strict compliance with the procedural and statutory requirements.

21. Resultantly, when the Court extends the detention of

the accused beyond the prescribed period under the law, it was obligatory upon the Court to render a speaking and reasoned order after affording an opportunity of hearing the prosecution vis-a-vis the accused / present petitioners. When confronted with this position, the learned APP has fairly conceded that this exercise had not been undertaken while extending the period of the judicial remand of the present petitioners. However, it was submitted by the learned APP that the concerned Magistrate has endorsed the application as is evident from the remark "seen". Therefore, same satisfies the requirement of Section 187 of BNSS.

22. In order to invoke Section 316(5) of BNS, it was incumbent upon the Investigating Officer to seek an extension of time for filing the charge-sheet. While doing so, Investigating Officer was required to offer an adequate opportunity to the the petitioners to contest such extension.

23. The necessary reference can be made to the verdict of the Hon'ble Apex Court in case of **Municipal Corporation of Greater Mumbai Vs. Abhilash Lal [(2020)3 SCC 2341]**, mandates that if statute prescribes a particular act was performed

in a specific manner and not in any other way, in deviation to the statutory procedure would render such act null and void.

24. Admittedly, the provision of Section 187(3) of BNSS are mandatory in nature. Resultantly, any slightest departure with the statutory mandate has impact of impairing the constitutional right of liberty of an individual although facing the accusations. Nonetheless, the provisions of Chapter XIII of the BNSS are mandatory at every stage after effecting arrest. Essentially, same is predominantly controlled and regulated by the statutory regime on the touchstone of Article 21, therefore, same ought to be complied with full rigors. Any departure results into infraction of the constitutional right, thereby creating an indefeasible right of the petitioners to claim default bail.

25. The reliance is placed by the learned counsel for the petitioners on the verdict of Division Bench of this Court in the case of **Rajkumar Bhagchand Jain Vs. Union of India and Ors. (MANU / MH / 3290 / 2017)** in order to contend that the detention beyond the period of 60 days is in violation of Section 187(3) of the BNSS, illegal detention of the petitioners cannot be

sustained as it is violative of the right to life and liberty guaranteed by Article 21 of the Constitution of India. Consequently, the undisputed facts that the Division Bench regarded the further detention as illegal one.

26. Undoubtedly, in the present case, the charge-sheet is not filed within 60 days in the wake of registration of offences under Sections 316(2), 318(2), 318(4) read with 3(5) of the BNS and Section 3 of MPID Act. Resultantly, the Magistrate seizes its power to extend the remand beyond the prescribed period for filing the charge-sheet. Therefore, same entails the petitioners to claim the indefeasible right to claim default bail. Resultantly, accused persons are entitled to be released on bail, which is a indefeasible right and cannot be infringed in any eventuality.

27. The objection raised by the learned APP that since the petitioners are claiming to be enlarged on bail, as such, the necessary application ought to be presented before the Court concerned, does not warrant any consideration in the light of the fact that indefeasible right of the petitioners to claim the default bail on account of failure of the Investigating Officer to file a

charge-sheet within a period of 60 days, which is on the anvil of Article 21 of the Constitution of India and under any eventuality, gloss cannot be created on the fundamental rights of the petitioners. This Court is conscious of its obligation to protect and safeguard the right to life and liberty of individual emanating from Article 21 of the Constitution of India cannot be defeated under any eventuality. Thus, the present petition succeeds. Hence, following order :

ORDER

- (a) The criminal writ petition is **allowed**.
- (b) The order 09.09.2025 rendered in Default Bail Application in Crime No. 673 of 2025 by the learned Additional Sessions Judge, Shrigonda, thereby rejecting the application presented by the petitioners seeking default bail, stands quashed and set aside and the application of petitioners is hereby allowed.
- (c) The petitioners shall be enlarged on default bail forthwith, subject to furnishing bail bonds / surety to the satisfaction of the Trial Court, in case, the petitioners are not required in any other offence, if any, pending against these petitioners.
- (d) Rule is made **absolute** in the above terms.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi