



2026:AHC:60537-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 204 of 2026

Mohd Harun And Another

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Anurag Tripathi, Garima Chauhan, Rahul Kumar Mishra
Counsel for Respondent(s)	: G.A.

Court No. - 44

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

1. Heard Sri Gopal Krishna Dixit, learned counsel for the petitioner and Sri Sushil Kumar Pandey, learned AGA for the State.

2. Compliance affidavit has been filed by the learned AGA on behalf of the Superintendent of Police, Pilibhit. In the personal affidavit of the aforesaid police officer, it has been mentioned that a letter dated 10.03.2026 has been issued to the Additional Superintendent of Police, Pilibhit to conduct an inquiry against the Investigating Officer for violating the judgment of this Court in the **Habeas Corpus Writ Petition No. 35 of 2026, Umang Rastogi Vs. State of U.P. & Ors., dated 22.01.2026** and the order of the Hon'ble Supreme Court in **Mihir Rajesh Shah Vs. State of Maharashtra and another (2025) SCC Online 2356**.

3. A reply has also been sent by the Civil Judge (J.D)/FTC (Crime Against Women), Pilibhit, in compliance of order dated 10.03.2026 assuring the Court that in future this mistake shall not be committed by her.

4. We have come across number of cases where the remand orders have been passed by the learned Magistrate, without application of mind and sometimes on printed proforma. Because of this conduct of the Magistrate in this case, direction was issued for furnishing explanation for non-compliance of the orders passed by this Court and the Hon'ble Apex Court.

5. The Hon'ble Apex Court in the case of **Manubhai Ratilal Patel Vs. State of Gujarat and Others, (2013) 1 SCC 314** has held in paragraph 24 that the order of remand is a judicial function of the Magistrate and while exercising such powers, the Magistrate is required to apply his mind and thereafter pass the order.

For ready reference Paragraph Nos. 24 to 26 are being quoted herein below:

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

25. It is apt to note that in **Madhu Limaye (1969) 1 SCC 292**, it has been stated that once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters.

26. In **Central Bureau of Investigation, Special Investigation Cell-I v. Anupam J. Kulkarni, (1992) 3 SCC 141**, it has been stated that where an accused is placed in police custody for the maximum period of fifteen days allowed under law either pursuant

to a single order of remand or more than one order, when the remand is restricted on each occasion to a lesser number of days, the further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. Thus, the exercise of jurisdiction clearly shows that the Magistrate performs a judicial act".

6. Therefore, it is clear that Magistrate is required to consider whether the remand of accused being sought by police is in accordance with law or not.

7. Learned counsel for the petitioner submits that the petitioner has already been released from custody.

8. However, the respondents are free to proceed against the petitioners in accordance with law.

9. The Registrar General of this Court is directed to send a copy of this order to all the District & Sessions Judges of the State to ensure necessary compliance of law and remand by the Remand Magistrates.

10. The petition stands **disposed of with aforesaid directions.**

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

March 24, 2026

NSC