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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.560 OF 2025

Rohan S/o. Mohan Shinde,
Age: 26 years, Occu.: Agril.,
R/o. Rashin, Tqal. Karjat,
Dist. Ahmednagar.

... Petitioner

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
3. The Police Station, Karjat,
Tal. Karjat, Dist. Ahmednagar
4. Kamaldev S/o. Amabadas Gaikwad,
Age: 45 years, Occu.: Agril.,
R/o. Raje Vasti, Rashi, Tq. Karjat,
Dist. Ahmednagar.

... Respondents

.....
Mr. Yuvrj S. Choudhari, Advocate for Petitioner
Mr. V.K. Kotecha, APP for Respondents No.1 to 3
Mr. Shashikant Shekade, Advocate for Respondent No.4
.....

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 18 SEPTEMBER, 2025

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. **Rule.** Rule made returnable forthwith. With the consent of all the parties, the present petition is taken up for final hearing and final disposal at the stage of admission itself.

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2. The present criminal Writ Petition is instituted under Article 226 of the Constitution of India r/w Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS”) by the petitioner who is an arrested accused in C.R. No. 0512 of 2024 registered with Karjat Police Station, Dist. Ahmednagar at the instance of the father of the victim. The Petitioner has raised grievance about violation of his fundamental rights guaranteed under Article under 21 and 22 of the Constitution of India and also violation of the statutory mandate under Section 47 of BNSS. The petitioner has thus sought reliefs, including a declaration that his arrest is illegal on account of (a) detention beyond 24 hours before he was produced for remand, and (b) failure to communicate the grounds of arrest to him, thereby violating Section 47 of BNSS.

2. The prosecution case in brief concerns offences under Sections 137(2), 64(1), 64(2)(a), 64(2)(i), 64 (2)(m) of the BSS and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). The first information was lodged by the victim’s father alleging that the victim’s date of birth as 23.04.2007 and on the date of FIR, the victim was about 17 years and 3 months old.

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3. The essential chronology that can be drawn from the pleadings and records placed before us is not seriously in dispute. On 11.08.2024, FIR under Section 137(2) BNS was registered when the girl did not return home from her college. On 06.10.2024, at about 06.00a.m., the petitioner and the victim were found together at a village Ganegaon, Tq. Bhoom, Dist. Dharashiv. They were taken to first Bhoom Police Station and from there at around 09.10 a.m. the police and the petitioner along with the victim proceeded towards Karjat Police Station. Upon reaching Karjat at around 12.00 noon on the same day, the record shows that the statement of the victim was then taken up for recording. The record shows that the victim in her statement narrated that the petitioner under the pretext and promise of marriage had committed sexual intercourse with her on several occasions from 11.08.2024. On the basis of the statement of the victim which came to be recorded at 07.00 p.m. on 06.10.2024, the POCSO Section under 4 and 6 along with other penal provisions were added and the petitioner came to be arrested at about 10.37 p.m. The petitioner was then produced before the learned Special Judge (POCSO) at 03.00 p.m. on 07.10.2024, seeking police custody remand of seven days. We must clarify that in the reply the prosecution has stated he was taken to the jurisdictional Court at around 11.30 a.m. on 06.10.2024, while the remand was taken up by the learned Court at about 03.00 p.m.

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4. The learned Advocate for the petitioner argued that he was in fact detained from 06.00 a.m. on 06.10.2024 and was produced only on 07.10.2024 at 03.00 p.m. and thus he was not produced within the mandatory period of 24 hours as required under Section 47 of BNSS. He argued that non-production within 24 hours violates the fundamental rights of the petitioner guaranteed under Article 22(2) of the Constitution of India and also Section 58 of BNSS. He thus argued that his arrest is absolutely illegal and he is entitled to be released immediately from custody. He further argued that the Investigating Officer failed to communicate the grounds of arrest to him there by infringing his Article 22(1) and Section 47 of BNSS. According to the petitioner's Advocate, no grounds of arrest were even informed to the petitioner at the time of his arrest, and therefore, there was no effective communication as required under Section 47 of BNSS. He relied upon the judgment of Bombay High Court in Criminal Writ Petition No.54 of 2025 and also on the Supreme Court's decision in the case of ***Directorate of Enforcement vs. Subhash*** Sharma, (2025) SCC OnLine SC 240.

5. The learned APP along with the Advocate for Respondent No.4 vehemently opposed the present petition by arguing that the information pertaining to the accused and the victim being seen within the jurisdiction of Bhoom Police Station, and therefore, as per

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procedure, assistants of Boom Police was sought as a matter of territorial propriety. With the assistance of the Bhoom Police, the petitioner and the victim were located at village Ganegaon, Tq. Bhoom, District Dharashiv. After apprehending the victim and the accused they were first brought to Bhoom Police Station where the paperwork was completed and for the purpose of investigation, they were then brought to the Karjat Police Station at 12.00 noon. After initial investigation with the victim as well as with the petitioner, the victim showed her willingness to record her statement and therefore her statement was recorded wherein she alleged against the petitioner that he took her away by promising her to marry. From 11.08.2024 till 06.10.2024, he had penetrative sexual assault on her on several occasions. As the allegations made by the victim had come on record for the first time and as the victim was reported to be a minor, the offence under Section 4 and 6 of the POCSO Act along with other penal provisions were added and the present petitioner came to be arrested in connection with those offences at 22.37 Hrs. on 06.10.2024. The learned APP also informed that grounds of arrest were orally intimated to the petitioner and the same were reflected in the remand application furnished to the accused and also to the concerned Court. The learned APP further pointed out that the petitioner's bail application has been rejected and the trial has already commenced with the victim already being examined.

6. We must record that the prayers and the provisions under which the present petition is filed is not in the form of habeas corpus and therefore we cannot ignore the fact that petitioner is presently in judicial custody pursuant to the orders of the competent Courts. The bail applications of the petitioner have been rejected by the competent trial Court as well as by the High Court. The trial has also progressed to the stage of recording the victim's testimony. The principle which has been laid down by the Hon'ble Supreme Court consistently held that once an accused is remanded to custody by a competent Court, the focus of collateral constitutional challenge to arrest or detention narrows considerably. The defects in the manner of arrest do not by themselves vitiate the subsequent judicial custody or trial though they may warrant other remedies including compensation and departmental action. Reliance can be placed on the judgments of Hon'ble Apex Court in *Kanu Sanyal v. District Magistrate, Darjeeling* (1973) 2 SCC 674, *for Manubhai Ratilal Patel vs. State of Gujarat* (2013) 1 SCC 314 and also *Saurabh Kumar vs Jailor, Koneila Jail & Anr.*, (2014) 13 SCC 436.

7. Section 528 of BNSS, which corresponds to Section 482 of Cr.P.C. preserves the High Court's inherent powers "to make such orders so as to prevent abuse of process or otherwise to secure the ends of justice". Section 528 of BNSS reads as follows:

“528. Saving of inherent powers of High Court:

Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

8. That repository remains available, but its exercise must be calibrated in light of the stage of proceedings and the nature of grievance. The text of Section 528 is in terms - nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

9. The argument of petitioner’s Advocate in respect of non-production of the petitioner post his arrest before the competent Court for remand within 24 hours violates Article 22(2) of the Constitution of India. Article 22 (2) mandates.

10. Article 22 (2) mandates production within 24 hours of such arrest, excluding the time necessary for the journey. Section 58 of BNSS reproduces the same command, and therefore it can be said that the principles laid down in Section 58 of BNSS flee from the mandate of

Article 22 of the Constitution of India. The Hon'ble Supreme Court in the case of *Directorate of enforcement vs. Subhash Sharma*, 2025 INSC 141, has clarified that the computation does not hinge on when the arrest memo is drawn up; it starts from the moment the agency assumes physical custody, and production must then follow within 24 hours, excluding the time taken for the journey. In that case, the Court treated the custody taken at 11:00 a.m. on 05.03.2022 as the starting point and then considering the time consumed in travel and subsequent production before the nearest Magistrate within 24 hours was found to be excessive and hence declared the arrest illegal. While dealing with this argument, the reliance will also have to be placed upon Section 57 of Cr.P.C., which corresponds to Section 58 of BNSS, which reads as follows:

“58. Person arrested not to be detained more than twenty-four hours -

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

11. Applying these principles to the facts of the present case, we find from the contemporaneous record that the petitioner and the victim

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were traced at 6:00 a.m. on 06.10.2024 within the jurisdiction of Police Station, which is approximately 50 k.m. away from the jurisdiction of Karjat Police Station. After they were apprehended in village Ganegaon, Taluka Bhoom, they were first taken to Bhoom Police Station for completing the formalities and after completing the formalities, a memorandum prepared which is part of the record shows that the victim and the petitioner both were taken to Karjat Police Station for the purpose of investigation. The record shows that the journey from the Bhoom Police Station of victim along with the petitioner and the Karjat police officials started at around 9.10 a.m. and they reached Karjat police station at 12.00 noon on the same day. The record also reveals that the petitioner and the victim were then investigated and the victim thereafter showed her willingness to record her statement under section 161 of Cr.P.C. (corresponding Section 180 of BNSS). The recording of the victim's statement was concluded only at 7:00 p.m. on the same day, during which a serious offence such as sexual intercourse with a minor under the false pretext of marriage was revealed. The serious provision of the serious provisions of POCSO therefore was attracted along with other penal sections and hence the petitioner came to be arrested at 22.37 hrs. on 06.10.2024. The production of the petitioner as mandated under Section 58 of BNSS occurred on the next day at about 3:00 p.m.

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12. The State's explanation from the supporting record suggests that the immediate priority after recovery of a minor was to record the victim's statement, ensure medico legal steps and transport the victim and petitioner immediately to the investigating station for further proceedings. Though the explanation may not be an ideal substitute for strict adherence to the constitutional and statutory mandate, nevertheless in the facts of the present case the petitioner was shown to be arrested at 10:37 p.m. on 06.10.2024 only after the serious charges under POCSO were revealed. The initial FIR which was recorded for offence punishable under section 137 of BNS is punishable with seven years 7 years and therefore the prosecution is right in arguing that without following the mandate of section 41-A of Cr.PC. (corresponding Section 35 of BNSS), the petitioner cannot be said to have been arrested at 6:00 a.m. on 06.10.2024. There is definitely substance in the submission of the learned prosecutor that petitioner came to be arrested only after applicability of POCSO sections and help the arrest time as mentioned in the records is 10.37 p.m. which should be considered. Accepting this argument, the production at 06.00 p.m. on 07.10.2024 occurs within 24 hours of the formal arrest. The petitioner's Advocate insisted us to disregard the formal arrest timing relying on ***Subhash Sharma*** (supra) what that case arose in the context of deciding tale on the factual finding that the agency had taken custody a day earlier and

failed to produce him before the nearest Magistrate within 24 hours. Here, the States affidavit and the travel sequence present a materially different matrix; crucially, there is an intervening remand order and a commenced trial. On the scale of balance of convenience, we are not persuaded to issue the radical relief of releasing the petitioner in a POCSO prosecution on this arithmetic alone.

13. The second limb of the petitioner's argument concerns the communication of the grounds of arrest under Section 47 of BNSS (corresponding to Section 50 of the Cr.P.C.), wherein he argues that it is a mandatory obligation on the investigating officer to inform the arrestee forthwith of the grounds of arrest. Article 22(1) of the Constitution constitutionalizes this requirement. He notably relies upon the recent Supreme Court judgment in *Vihan Kumar vs. State of Haryana*, 2025 INSC 162, and emphasizes that informing the grounds of arrest is a meaningful obligation and not a mere ritual compliance. The Magistrate, upon the first production, has a duty to ensure compliance, ascertain complaints, and any failure to do so renders the arrest illegal. Thus, the argument basically asserts non-communication of the grounds of arrest. The learned prosecutor and the affidavit filed by the investigating officer address the petitioner's advocate's argument by stating that the grounds were conveyed orally and that the remand

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application, containing the particulars, was served upon the petitioner, who was effectively represented by a lawyer. The record before us is sparse, though the copies of the arrest memo are not annexed to the present petition. We categorically inquired with the Advocate for the petitioner whether at the time of his first production before the competent Court he raised this issue of illegal arrest for non-compliance of Section 47 of BNSS; the answer was "NO". Thus, the record demonstrates that at the time of the first remand hearing, the legality was not raised by way of an objection under article 22 (1); then, without challenging the remand orders, it cannot be said that the Magistrate has failed to address the state illegality. In the case of ***Vihan Kumar*** (supra), relied upon by the petitioner, the Court dealt with an absolute failure to inform the grounds of arrest to the arrestee therein; however, in the present affidavit filed by the State, a statement has been raised stating that the communication was made orally about the grounds of arrest and that they were specifically mentioned in the remand application occasion which was also supplied to the petitioner who was effectively represented by the Advocate before the remanding court. The petitioner has not challenged these averments by filing any additional affidavit and therefore there is nothing on record to controvert the statement of the investigating officer filed on oath before this Court. Whether the communication was sufficiently "meaningful" is

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a question of fact, at this advanced stage of the prosecution, we are not inclined to record a finding that would undercut the ongoing trial in a POCSO case on contested affidavit material.

14. The advocate for the petitioner has heavily relied upon the decision of the Bombay High Court in Criminal Writ Petition No. 54 of 2025, where a habeas corpus writ was issued immediately after the detention. That case is distinguishable on three counts; it was (a) a habeas corpus purpose invoking extraordinary remedy to test the very legality of custody at its inception, (b) decided prior to any remand in aid of investigation, and (c) on a record demonstrating non-compliance with constitutional timelines. The present petition seeks not a writ of habeas corpus but a collateral declaration of illegality long after the Magistrate's remand and after the victims examination. The doctrinal foundations of *Kanu Sanyal* (supra), *Manubhai Patel* (supra) and *Saurabh Kumar* (supra) makes that distinction diapositive for the remedial choice before us.

15. The learned APP has in aid of his argument relied on a recent order of this Court (Aurangabad Bench) in criminal writ petition No.770 of 2025 which was decided on 4th August 2025 (Smt. Vibha Kankanwadi and Sanjay A. Deshmukh, JJ.). Why we do not rest our

decision exclusively on this judgment and order? We affirm the product proposition that alleged infractions at the arrest stage must be examined with sensitivity to the stage of proceedings and the availability of efficacious remedies not destructive of a pending trial particularly in offences implicating sexual assault on a child. Finally, we are guided by the Hon'ble Supreme Court's caution in ***State of Karnataka vs. Shri Darshan and Others*** (Criminal Appeal Nos. 3528-3534 of 2025), decided on 14.08.2025, wherein the Hon'ble Supreme Court underscores that the Courts thus avoid trenching upon the merits of a case, they must keep the gravity of the accusation and societal interest in view and must not permit technical objections to eclipse the administration of criminal justice. That admonition is apposite in a case where the prosecutrix, a minor, has already entered the witness box. We, therefore, refrain from issuing any order that would delay the prosecution on a disputed factual substratum regarding arrest formalities. The dictum in ***Subhash Sharma*** (supra) and ***Vihan Kumar*** (supra) remains binding and they secure meaningful communication of grounds and faithful adherence to the 24-hour rule. However, in the present case our holding is confined to the remedial part in the present factual and procedural posture. If the petitioner believes there was actionable infringement at the time of arrest, is remedy lies in seeking appropriate reliefs by way of compensation or departmental

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accountability without disrupting a trial that has advanced and in urging any statutory consequences before the trial Court, where such pleas if established on evidences may be waived in accordance with law.

16. In the result and for the reasons recorded above, the petition stands dismissed.

17. All the observations herein are confined to the adjudication of the present petition and the issue involved of illegal arrest alone and shall not prejudice the trial on merits.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S P Rane