



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 907 OF 2025

Santosh Baburao Jadhav
VERSUS
The State Of Maharashtra and Others

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- Mr. Y. S. Choudhari, Advocate for the Petitioner
- Ms. P. R. Bharaswadkar, APP for Respondent Nos. 1 to 3 – State

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

DATED : SEPTEMBER 22, 2025

ORDER : (PER HITEN S. VENEGAVKAR, J.)

1. The petitioner before this Court has filed the present Criminal Writ Petition seeking declaration that his arrest in connection with Crime No. 339 of 2024, registered with Mirajgaon Police Station, Tal. Karjat, Dist. Ahmednagar, is illegal and contrary to the provisions of law. The grievance urged is that the mandatory safeguards under Article 22(1) of the Constitution of India and Section 47 and 48 of *Bhartiya Nagarik Suraksha Sanhita*, 2023 (in short, 'BNSS'), were not complied with by the investigating agency at the time of effecting his arrest. The petitioner, therefore, seeks appropriate directions from this Court to declare the arrest null and void and to set aside all consequential proceedings.

2. The learned Assistant Public Prosecutor, appearing for the State, has opposed the petition and filed a detailed reply, placing before the Court a comprehensive list of events pertaining to the petitioner's arrest and subsequent judicial custody. It is submitted that the petitioner was already under lawful arrest and in custody in connection with another crime bearing No. 805 of 2024, registered at Karjat Police Station. During the subsistence of that custody, another offense being Crime No. 339 of 2024, came to be registered with Mirajgaon Police Station.

3. Since the petitioner was already in judicial custody in connection with the earlier offence, the police, following due procedure of law, moved an application before the learned Additional Sessions Judge seeking a transfer warrant to secure the petitioner's presence in the present case. The application was made on 01.01.2025, and another communication to that effect was made on 04.01.2025, which was duly forwarded by the learned Additional Sessions Judge to the Judicial Magistrate First Class on 06.01.2025. Upon consideration of the said application, the Judicial Magistrate First Class, by order dated 14.01.2025, issued the transfer warrant, and the same was executed on the very day upon the petitioner. The petitioner thus came to be arrested in Crime No. 339 of 2024, not by

an independent act of arrest, but by virtue of a judicially sanctioned transfer warrant while he was already under detention in another case.

4. It is further submitted by the learned Prosecutor that at the time of execution of the transfer warrant and arrest of the petitioner, all procedural safeguards, as contemplated by the Honorable Supreme Court and statutory provisions, were scrupulously followed. The petitioner was informed of the reasons for his arrest and the grounds on which the police sought to take him into custody in the present case.

5. The Human Rights Arrest Register maintained at the concerned police station was produced before this Court for perusal, which records the petitioner's signature acknowledging receipt of the notice and communication of the grounds of arrest. The police also informed one of the close relatives of the petitioner regarding his arrest and the reasons thereof, in consonance with the guidelines laid down in *D.K. Basu Vs. State of West Bengal; (1997) 1 SCC 416*.

6. The learned Prosecutor has further pointed out that, before the petitioner was taken into custody, notices under Section 47 and 48 of the BNSS were duly served, setting out in detail the grounds of

arrest. The said notice enumerates its specific reasons, namely:

- i. the petitioner's alleged involvement in the abatement of suicide of a minor girl;
- ii. the possibility of creating terror and harassment among local residents;
- iii. apprehension that the petitioner may influence or pressurize witnesses;
- iv. the petitioner's non-cooperation with the investigation;
- v. the necessity of obtaining his fingerprints and conducting further forensic analysis;
- vi. the pendency of in-depth investigation into the offense;
- vii. the possibility of his absconding if not detained; and
- viii. the need to restrain his continued criminal activities.

7. Although the notice inadvertently mentions Section 35 of the BNS due to a typographical error, the same was explained to the petitioner and his signature was obtained on the notice under Section 48 of the BNSS. The learned Prosecutor submits that such clerical error does not affect the substantive legality of the procedure followed.

8. The record further shows that, after his arrest pursuant to the transfer warrant, the petitioner was produced before the Competent Court on 15.01.2025. The Court, upon being satisfied with the grounds of arrest and the necessity of custodial interrogation, granted

police custody remand. Thereafter, the petitioner was remanded to judicial custody from time to time by Competent Courts. The charge-sheet in the present case came to be filed on 27.02.2025, and at every stage of remand and bail proceedings, the petitioner was represented by counsel.

9. It is significant to note that on none of these occasions did the petitioner raise any grievance or allegation regarding illegal arrest, non-communication of arrest grounds, or violation of his constitutional rights. Even in the bail application filed by the petitioner after submission of the charge-sheet, no such ground was raised. The learned Prosecutor, therefore, contends that, having failed to object before the Competent Courts earlier and having participated in the proceedings without demur, the petitioner cannot now be permitted to turn around and challenge the legality of his arrest at this belated stage. It is submitted that the custody of the petitioner, having been repeatedly and validly regularized by judicial orders, any technical irregularity, if at all in initial stage of the arrest, stands cured.

10. We have carefully heard the learned counsel appearing for the petitioner as well as the learned Assistant Public Prosecutor for the State. We have also examined the documents placed on record,

including the FIR, transfer warrant, arrest memo and notices issued under Section 47 and 48 of the BNSS.

11. The petitioner's counsel has relied upon the decision of the Hon'ble Supreme Court in ***Vihaan Kumar Vs. State of Haryana and Another; (2025) SCC Online SC 269***, to contend that communication of the grounds of arrest is a fundamental constitutional right under Article 22(1) and a statutory right under Section 47 of the BNSS. He has submitted that non-compliance with this requirement renders the arrest illegal.

12. On the other hand, the learned Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in ***State of Karnataka Vs. Sri Darshan and Others*** (Criminal Appeal Nos. 3528-3534 of 2025), decided on 14.08.2025, to submit that a person who has been regularly produced before Competent Court and who has never raised the plea of non-communication of arrest grounds at any earlier stage cannot be allowed to challenge the arrest later on unless prejudice is specifically shown.

13. The question that arises for our consideration is whether, in the facts and circumstances of the present case, the arrest of the petitioner in Crime No. 339 of 2024 can be termed as illegal on account of alleged non-communication of the grounds of arrest.

14. There can be no doubt that the right of an arrested person to be informed of the reasons for his arrest is both a constitutional and statutory safeguard. Article 22(1) of the Constitution mandates that no person who is arrested shall be detained without being informed, as soon as may be, of the grounds of such arrest. Section 47(1) of BNSS reiterates this mandate by requiring every police officer making an arrest to inform the person arrested of the full particulars of the offense for which he is arrested or the other grounds for such arrest. Section 48 further obliges the police to notify a relative or friend of the arrested person about the arrest and the place of detention. These safeguards are intended to ensure transparency, prevent arbitrary exercise of power, and uphold the dignity and liberty of the individual.

15. However, as observed by the Honorable Supreme Court in *Vihaan Kumar (Supra)*, a mere technical lapse or omission in formality will not automatically vitiate an arrest unless it is shown that the omission has resulted in prejudice to the accused or has rendered the arrest oppressive or mala fide.

16. In the present case, the record discloses that the petitioner's arrest was not a fresh or sudden act of taking him into custody, but rather a judicially sanctioned transfer from one case to another,

though the mechanism of a transfer warrant duly issued by a competent Magistrate. The entire process was carried out under the supervision of the Court, thereby ensuring judicial oversight.

17. The petitioner's signature appears on the arrest register and the Human Rights Arrest Register, and the notices under Sections 47 and 48 of BNSS bear all the necessary information. The contemporaneous record produced by the prosecution substantiates the fact that both the petitioner and his close relatives were informed of the arrest and its reasons. The petitioner was thereafter produced before the Magistrate and subsequently before the Sessions Court, where his remand was extended upon judicial scrutiny.

18. At no stage did the petitioner allege that he was unaware of the reasons for his arrest. In fact, even after filing of the charge-sheet and during the pendency of his bail application, he did not raise any such grievance. It is only after a considerable lapse of time and after his custody has been duly regularized by a series of judicial orders, that he has approached this Court by way of the present petition.

19. In our view, such belated invocation of the writ jurisdiction cannot be permitted, particularly when the record reveals substantial compliance with the procedural requirements. The petitioner has not demonstrated any prejudice caused to him by the alleged irregularity

in mentioning the wrong Sections in the notice. The error appears to be purely clerical in nature and does not go to the root of the arrest.

20. The purpose of Sections 47 and 48 is to ensure that person arrested understands the reason for his arrest and that his family or friend is notified of the same. The petitioner's acknowledgment of the receipt of notice, his production before the Court and the repeated judicial remand orders are clear indications that these requirements were fulfilled in substance.

21. We are guided by the Hon'ble Supreme Court's caution in ***State of Karnataka vs. Sri Darshan (Supra)***, 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, the Supreme Court has categorically held that when an accused person has been continuously under judicial custody pursuant to valid remand orders and has not raised any objection regarding the legality of his arrest at the earliest opportunity, the Court should be slow to entertain such challenges at a later stage, especially when no demonstrable prejudice has been shown. We find this reasoning fully applicable to the facts of the present case.

22. In light of the above discussion, we are of the considered opinion that the arrest of the petitioner in Crime No. 339 of 2024 was carried out in due compliance with the law and cannot be said to be illegal or arbitrary. The petitioner has failed to show any violation of his constitutional rights or any prejudice suffered by him.

23. The judicial orders passed from time to time granting remand have regularized his custody, and the same has never been challenged by the petitioner on the ground that the Courts have failed to consider the ground of his illegal detention. No fault can be found with the actions of the investigating agency. The petition, therefore is devoid of substance and is liable to be dismissed.

24. The Criminal Writ Petition No. 907 of 2025 stands **dismissed**.

25. There shall be no order as to costs.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)