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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1008 OF 2025

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| 1. | Saad s/o Anwar Tamboli
Age - 23 years, Occ - Business
R/o Kasar Galli, Shivaji Road,
Akole, Taluka - Akole,
District - Ahmednagar | PETITIONERS |
| 2. | Sadik Esan Ulla Pathan
Age - 47 years, Occ -Business
R/o Kazi Pura, Akole
Taluka - Akole, District - Ahmednagar | |

VERSUS

- | | | |
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| 1. | The State of Maharashtra
Through its Chief Secretary
Home Department, Mantralaya,
Mumbai - 32 | RESPONDENTS |
| 2. | The Superintendent of Police
Ahmednagar | |
| 3. | Sub-Divisional Police Officer
Sangamner, Taluka - Sangamner
District - Ahmednagar | |
| 4. | The Police Inspector,
Akole Police Station, Akole
Taluka - Akole, District - Ahmednagar | |

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Mr. K. N. Shermale, Advocate for the Petitioners
Mrs.S. N.Deshmukh, APP for Respondents - State
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[CORAM : NITIN B. SURYAWANSHI, &
SANDIPKUMAR C. MORE, J. J.]

RESERVED ON : 1st AUGUST, 2025
PRONOUNCED ON: 8th AUGUST, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioners seek relief of declaration that, their arrest on 13th July, 2025 is arbitrary, illegal and unconstitutional, as they were not produced before the learned Magistrate within 24 hours of their arrest. They also seek quashing of the remand reports and their release on bail in connection with Crime No. 354 of 2025, registered with Akole Police Station.

3. Brief facts of the case are that:

Police Inspector, Akole Police Station, District - Ahilyanagar, conducted a raid at the godown of Accused No.1 Shoyeb Shavid Kazi on 13th July, 2025 at 2.30 a.m., situated at Kotul, Taluka - Akole. From the godown, prohibited articles i.e. 77 bags of Hira Pan Masale and 33 bags of Roayl 717 Tobacco were seized. Thereafter, the vehicles standing in the said premises were checked and prohibited items i.e. 110 bags of Hira Pan Masala worth Rs.46,46,400/- and 51 bags of Roral 717 Tobacco worth Rs.10,56,000/- (total Rs.57,02,400/-) were seized along with the vehicles. From Petitioner No.1, one bag each of Hira Pan Masala

and Royal 717 Tobacco was seized. From Petitioner No.2, 2 bags of Hira Pan Masala and 1 bag of Royal 717 Tobacco were seized.

4. Thus, including the valuation of prohibited items, vehicles, mobile phones etc. of the Accused and cash amount, there is recovery of articles worth Rs.1,01,74,750/-.

5. FIR is registered by the Drug Inspector at 03.40 a.m. on 14th July, 2025 against the Accused Persons. After registration of the FIR, the Accused persons were sent for pre-arrest medical examination and they were arrested at 04.18 a.m. on 14th July, 2025. Accused, including the Petitioners, were produced before the learned Magistrate at 04.30 p.m. on 14th July, 2025. The Petitioners raised a grievance before the learned Magistrate that they were in fact arrested at 02.30 p.m. on 13th July, 2025 and since they are produced before the Court beyond the period of 24 hours, their arrest and detention beyond 24 hours, is illegal and therefore, they should be released on bail.

Learned Magistrate rejected the said ground holding that the Accused were arrested on 14th July, 2025 at 04.18 hours and they were produced before him within 24 hours. Therefore, the Accused were remanded to police custody up to 18th July, 2025. On 18th July, 2025, the Accused were remanded to Magisterial custody. However, bail application filed by them was rejected by

the learned Magistrate. The Petitioners have thereafter preferred bail application before the Sessions Court.

6. It is the case of the Petitioners that, they were in fact arrested at 02.30 p.m. on 13th July, 2025 and since they were produced before the learned Magistrate for remand at 04.30 p.m. on 14th July, 2025, which is beyond 24 hours, as contemplated under Article 22 of the Constitution of India and section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), their arrest is illegal and, therefore, they are entitled to be released forthwith.

7. By relying on decisions of this Court at Principal Seat, in Writ Petition No. 54 of 2025 (***Hanumant Jagganath Nazirkar V/s The State of Maharashtra***) and Writ Petition No. 2989 of 2025 (***Hemang Jadavji Shah V/s The State of Maharashtra and Others***), learned Advocate for the Petitioners strenuously contended that since the Petitioners were arrested at 02.30 p.m. on 13th July, 2025 and they were produced for remand before the learned Magistrate at 04.30 p.m. on 14th July, 2025, their custody beyond 24 hours is illegal and hence the arrest itself is vitiated. He submits that the learned Magistrate has failed to appreciate this argument in the proper perspective and has erred in not declaring the arrest of the Petitioners as illegal in terms of Article

22 of the Constitution of India and Section 58 of the BNSS. He submits that, since Petitioners' constitutional right, guaranteed under Article 22 of the Constitution of India, is violated, their arrest is rendered illegal and the Petitioners are entitled to be released forthwith by declaring their arrest illegal and the remand reports are liable to be quashed on this ground alone.

8. Per contra, learned APP, by relying on the affidavit of Respondent No.4 / Police Inspector, Akole Police Station, submitted that, the raid continued from 02.30 p.m. til 06.10 p.m. as huge quantity of prohibited items were seized during the said raid. Thereafter, the Accused voluntarily accompanied the raiding party to the Akole Police Station. Then, as per the statutory requirement, Drug Inspector was called at the Police Station. He came at 10.00 p.m. and thereafter conducted Panchanma of the seized articles. He, then lodged FIR at 03.40 a.m. on 14th July, 2025. The Accused were thereafter sent for pre-arrest medical check up and were arrested at 04.10 a.m. on 14th July, 2025, by drawing arrest Panchanamas.

The Accused were taken out of Jail at 02.40 p.m. on 14th July, 2025 for production before the learned Judicial Magistrate, First Class, Akole and they were brought in the Court at 02.45 p.m., however the Court was busy in daily work and, therefore,

the Accused persons were taken in the Court Hall at 04.30 p.m. He, therefore, submits that there is no merit in the Petition and the same may be dismissed.

9. Heard learned Advocate for the Petitioners and learned APP for the Respondents – State, at length. Perused the memo of Petition, documents annexed with it, papers of investigation and the report submitted by the Police Inspector, Akole Police Station.

10. It is apposite to reproduce relevant provisions i.e. Article 22 (2) of the Constitution of India and Section 58 of the BNSS:

“22 (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

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. The Investigating Officer has admitted that the raid was conducted at 02.30 p.m. on 13th July, 2025. It is the contention of the Investigating Officer that since huge quantity of contraband articles were found, raid continued from 02.30 p.m. to 06.10 p.m. and thereafter the Accused were called for preliminary inquiry and they voluntarily came at Akole Police Station at 06.50 p.m.

There is no merit in the said submission of the Investigating Officer, since prohibited items were seized from the custody of the Petitioners and co-accused, obviously, they were detained by the Investigating Officer at the time of the raid.

12. In **“Hanumant Nazirkar”**, (supra), this Court, on the point of arrest / custody has observed

“17. The phrase “arrest” is neither defined under the Code of Criminal Procedure, 1973, nor defined under the Indian Penal Code, 1860 (IPC) or the Constitution of India. We have not been shown any statutory definition or meaning of the word “arrest.”

18. The word “arrest” is derived from the French word “arrater” which means “to stop or stay.” It signifies a restraint of a person. Therefore, “arrest” would mean a restraint of a man’s person, obliging him to be obedient to law thereby amounting to the execution of the command of a duly authorised officer. The word “arrest” would mean a restraint or the deprivation of one’s personal liberty.

19. The question of whether a person is under arrest or not must be decided based on whether they have been deprived of their personal liberty to go where they please. In the legal sense, an “arrest” would consist of taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. It starts with the arrester taking a person into his custody by action or words, “restraining him” from moving anywhere beyond the arrester’s control, and it continues until the person so restrained is either released from custody or brought before a Magistrate. The ‘arrest’ is complete when such restraint by an authority commences. The arrest commences with the restraint placed on the liberty of the person and not with the time of “arrest” recorded by the Arresting Officer.

20. “Arrest” consists in the actual touching of a person's body with a view to his restraint. The words may, however, amount to an "arrest" if they are calculated to bring to a person's notice that he is under compulsion and he, thereafter, submits to such compulsion. An authority is said to arrest another person if it prevents the latter from freely making their movements and moving according to their will. To constitute an arrest, it is necessary that the officers should assume custody and control over the person, either by force or with his consent. “Arrest” is when one is taken and restrained from their liberty. Even if a person is touched with a view to detaining, it would amount to an arrest.”

13. Applying aforesaid observations to the facts of the present case, it is clear that, at the time of the raid, all the Accused persons, including the Petitioners, were present at the spot and it is the contention of the Investigating Officer that from the

Petitioners and other Accused persons, prohibited articles were seized. Obviously, therefore, the Petitioners and other Accused were detained by the Investigating Officer at the time of the raid itself. There were restrictions on their movements and, therefore, they were in the custody of the Investigating Officer. We find substance in the contention of the Petitioners that they were arrested and/or taken in custody at 02.30 p.m. on 13th July, 2025.

14. In the peculiar facts of the present case, statement of the Investigating Officer that the Petitioners voluntarily came at the police station after the raid, is therefore, unacceptable. In the report submitted by the Investigating Officer, he has stated that the Petitioners were taken in custody at 06.10 p.m. on 13th July, 2025. For the aforestated reasons, we are unable to accept the said statement and it is required to be held that the Petitioners were arrested at 02.30 p.m. on 13th July, 2025.

15. It is the contention of the Investigating Officer that the Petitioners were taken out of jail at 02.40 p.m. on 14th July, 2025 for production before the learned Magistrate and they were taken to the Court at 02.45 p.m.

Admittedly, the Court is situated in the same premises, at a distance of 300 feet from Akole Police Station. We called upon the Investigating Officer to submit relevant station diary entries,

justifying his stand that the Accused were taken out of jail at 02.40 p.m. on 14th July, 2025 and were taken to the Court at 02.45 p.m. However, the Investigating Officer has failed to produce these entries. For non production of relevant station diary entries, adverse inference needs to be drawn against the Investigating Officer that the Accused were not taken out of the jail at 02.40 p.m. and produced in the Court at 02.45 p.m.

Fact remains that, the learned Magistrate has observed in the remand order that the Accused were presented before him at 04.30 p.m. It is thus clear that the Petitioners were not produced before the learned Magistrate within 24 hours of their arrest and there is clear violation of constitutional right of the Petitioners under Article 22 of the Constitution of India and statutory right under section 58 of the BNSS.

16. In the decision rendered by Co-ordinate Bench of this Court at Principal Seat in Writ Petition No. 54 of 2025 (*supra*), in similar facts, it is held :

36. Under Article 22 (2) of the Constitution of India, only the time taken for the journey from the place of arrest to the Court of the Magistrate is excluded. A similar provision of exclusion appears in Section 57 of the Cr.P.C. In the absence of any provision in the Constitution or in the Cr.P.C. to exclude the alleged “pre-arrest medical examination time”, we cannot accept the contention of the learned APP.

37. It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established by law. The Constitution further directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest. The only time permitted to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of the Magistrate". Only under two contingencies can the said direction be obviated. One is when the person arrested is an "enemy alien" and the second when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited peremptorily that "no such person shall be detained in custody beyond the said period without the authority of a Magistrate

17. The above observations are squarely applicable to the facts of the present case. Decision of the Co-ordinate Bench of this Court at Principal Seat in Writ Petition No. 2989 of 2025 (supra) also supports the Petitioners' case.

18. For the aforesaid reasons we find that the Petitioners' constitutional right guaranteed under Article 22 (2) of the Constitution of India and statutory right under section 58 of the BNSS is violated in the present case and their arrest is required to be declared as illegal. In the result, following order:

ORDER

- a. Criminal Writ Petition is allowed by declaring that the arrest of the Petitioners dated 13th July, 2025 is illegal.

- b. The Petitioners be released forthwith in connection with Crime No. 354 of 2025, registered with Akole Police Station.
- c. Rule is made absolute in above terms.
- d. Jail authorities to act upon authenticated copy of this order.

[SANDIPKUMAR C. MORE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE

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