

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4461 OF 2025

Tanmay alias Banty Shailendra Gupta	]	
Aged 36 years,	]	
[Presently lodged in police custody]	]	
Residing at Hyderabad, Telangana	]	Petitioner

Versus

1.	State of Maharashtra	]	
	Through Barshi Police Station	]	
2.	Mr. U.G. Kunjir	]	
	Concerned Investigating Officer	]	
	Barshi Police Station	]	Respondents

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Mr. Mudit Jain (through V.C.) a/w Mr. Rahul Agrawal, Jasmin Purani, Aman Arora i/b Mr. Prasad P. Kulkarni a/w Paras Yadav, for Petitioner.

Mr. Pankaj Deokar, A.P.P, for Respondent No.1 – State.

Mr. Umakant Kunjir, P.S.I, Barshi Police Station present.

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CORAM : M.S. KARNIK &
SHARMILA U. DESHMUKH, JJ

DATE : 25th SEPTEMBER, 2025.

ORAL ORDER: [PER M.S. KARNIK, J.:

1. Heard Mr. Jain, learned Counsel for the petitioner and Mr. Deokar, learned A.P.P, for respondents – State.

2. By this petition filed under Article 226 of the Constitution India, petitioner prays for following substantive reliefs which read thus;

“A. Pass necessary orders and directions thereby declaring the arrest of the Petitioner as illegal;

B. Pass necessary orders and direction thereby to quash and set aside the Impugned Order dated 19 September 2025 passed by the Ld. Judicial Magistrate First Class at Barshi arising out of unnumbered Remand Application in relation to FIR bearing No.751 of 2025 dated 13 September 2025 filed at the instance of Barshi Police Station and all other consequential proceedings arising therefrom and thereby declaring the arrest and remand of the Petitioner as illegal and thereby releasing the Petitioner forthwith as the same is passed in violation of Constitutional mandate as enshrined in Article 22 (2) of the Constitution of India;

C. Pass necessary orders and directions to forthwith release the Petitioner from police custody in light of the arrest of the Petitioner being patently illegal”.

3. It is the petitioner’s case that he has been illegally detained and arrested in gross violation of Article 22 (1), Article 22 (2) and Article 21 of the Constitution of India. It is further submitted that order of remand passed by the learned Magistrate is illegal.

4. It is the case of the petitioner that on 19th September, 2025 at about 12.30 a.m in the midnight, some individuals purporting to be Police Officers entered the residence of the petitioner along with the local Police on the instructions of the complainant. The petitioner was sought to be arrested in respect of First Information Report No.0751 of 2025 dated 13th September,

2025 registered with Barshi Police Station, District Solapur by the complainant under section 420 r/w 34 of the Indian Penal Code. It is the allegation of the complainant that the petitioner along with other accused assured the complainant that if the complainant makes investment in the share market, he will get good interest on the investment. The complainant along with his friends handed over an amount of Rs. 1,70,86,000/- to the petitioner and other accused. The complainant neither received any returns as promised by the petitioner nor money was returned to him by the accused.

5. The petitioner was arrested on 19th September, 2025. Learned Counsel for the petitioner submitted that the arrest is in breach of section 41-A of the Code of Criminal Procedure, 1973 (for short "Cr. P.c.) and comprehensive guidelines laid down by the Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar, (2014) 8 Supreme Court Cases 273**. Learned Counsel for the petitioner also relied on the decision dated 11th July, 2024 in the case of **Bhairaram Saraswat Vs. State of Maharashtra and others in Criminal Writ Petition [Stamp] No.7551 of 202** dealing with non compliance of Section 41-A of the Cr. P.C.

6. Learned A.P.P has placed on record checklist as regards arrest of the petitioner. Investigating Officer submitted a report about checklist regarding the reasons for arrest to the Judicial Magistrate First-class, Barshi. Checklist which only contains the reasons for arrest. When we inquired with the learned

A.P.P, whether the grounds of arrest have been furnished to the petitioner, learned A.P.P was not able to place any material on record to substantiate the fact that the petitioner was informed the grounds of arrest.

7. Furthermore, learned A.P.P relied on the copy of notice served on the petitioner under section 47 (1) of the Cr. P. C dated 19th September, 2025. There is nothing on record to indicate that notice under section 41-A of the Cr. P.C was served on the petitioner though the F.I.R is registered against the petitioner under section 420 r/w 34 of the I.P.C.

8. We find that though in the notice issued under section 47 (1) of the Cr. P.C reference is made to the decision of the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar** (supra), no notice under section 41-A of the Cr. P.C is served on the petitioner. A notice under section 47 (1) of the Cr. P.C cannot be construed as notice under section 41-A of the Cr.P.C. though it makes a reference to Arnesh Kumar decision. It may be that the Investigating Officer was under a misconception as submitted by the learned A.P.P that a notice dated 19th September, 2025 under section 47 (1) of the Cr. P.C is sufficient compliance of section 41-A of the Cr. P.C. This cannot be held a valid notice under section 41-A of the Cr. P.C. There is thus no notice issued under section 41-A of the Cr. P.C to the petitioner.

9. The petition is, therefore, allowed. The impugned order dated 19th September, 2025 passed by the learned J.M.F.C in the remand application in relation to F.I.R No.0751 of 2025 is quashed and set aside. The respondents are directed to forthwith release the petitioner from the custody.

10. The parties to act on the authenticated copy of this order.

[SHARMILA U. DESHMUKH, J.]

[M.S. KARNIK, J.]