

Act), 2012.

2. Heard Mr. Pandey learned counsel for the petitioner, Smt. Deshmukh learned APP for the State and Mr.Kharat, learned counsel for the respondent no. 3.

3. Before referring to the main contention regarding illegal detention, it is necessary to refer to the allegations in the FIR. The FIR is lodged by the mother of the victim. The victim was 17 years of age. On 12th December 2024, the informant and the victim had gone to a cycle Mart at Malad (West) to buy a cycle for the informant's grand daughter from her other daughter. The grand daughter was 5 years of age. When the informant and her daughter-the victim went to the cycle shop, the person present there gave his visiting card to the victim. The FIR thereafter goes on to mention that the said person developed contact and exchanged regular messages with the victim.

It is the case in the FIR that he used to call her to meet him. He had asked for sexual favours from the victim but she had refused. The incident in question is dated 16th January 2025. The said person took the victim to Aksa Beach in a rickshaw. While returning, he pressed her chest and inserted his finger in her private parts and thus committed the offence. The victim got scared. The informant made enquiries with her. When the informant came to know about the incident, she went to the police station with the victim. The case in the FIR is that name of that person was Sagar. The phone number used by him was mentioned in the FIR. His full name was not mentioned. On this basis, the FIR is lodged.

4. The case of the prosecution is that, after registration of the FIR, the victim was medically examined at Cooper Hospital. The medical report shows the opinion as “based on the history and medical examination, sexual assault cannot be ruled out”. Therefore, two constables were sent to the residence of the petitioner’s brother, Sagar to make enquiry. This petition is filed by Sagar’s sister claiming that his arrest and detention are illegal. Sagar was taken to Malvani Police Station at 1:30 p.m. on 17th January 2025. He was put under arrest at 4:32 p.m. on that day.

5. According to the prosecution case, he was produced before the learned Additional Sessions Judge, Dindoshi Court on at 4:30 p.m on 18th January 2025. At that time, the first remand was granted by the said Court.

6. Shri Pandey, learned counsel for the Petitioner made the following submissions:

- a) The petitioner’s brother was actually arrested at 12:45 p.m. on 17th January 2025. For that purpose, he relied on the photographs in respect of the CCTV footage from Sagar’s building. The photographs show that Sagar was taken by two people in plain clothes at 12:48 p.m. The main thrust of Shri Pandey’s submissions is that the petitioner’s brother Sagar was arrested at 12.48 p.m. on 17/01/2025 and admittedly, he was produced at 4:30 p.m. on 18th January 2025 before the Sessions Court at Dindoshi. This period is more than 4 hours beyond the stipulated period of 24 hours from arrest within which the authorities were required to produce

the arrested accused before the competent court for remand. He submitted that on the very first occasion, the accused, Sagar made an application for his release on the ground that he was produced beyond 24 hours from his arrest and therefore his custody was illegal. However, his contention was brushed aside. Shri Pandey relied on the affidavits of the father and mother of Sagar to submit that Sagar was actually arrested at 12:48 p.m. on 17th January 2025.

b) Shri Pandey invited our attention to the remand report dated 18th January 2025, wherein it is mentioned that the fact of the arrest of the accused was mentioned in the Arrest Register No. 41 of 2025. Shri Pandey invited our attention to the general diary entry annexed to the affidavit-in-reply, wherein the general diary Number is mentioned as '40'. He, further submitted that the police have suppressed the general Diary No. 41 which would have shown the correct time of arrest. Shri Pandey further submitted that a copy of the general diary entry at page 341 of this Petition memo is incomplete as the time of uploading that information is not mentioned. He further submitted that a copy of the grounds of arrest annexed at page 339 of the Petition memo and the information to the father of the accused mentioned the timings as 16:32 p.m. of 17th January 2025 in handwriting. He, therefore, submitted that it is clearly a manipulation on the part of the police because the rest of the matter is typewritten. He submitted that the police have manipulated the time of arrest to wriggle out of the inconvenient situation of producing the accused after the stipulated period of 24 hours. On all these submissions, Shri

Pandey claimed that the petitioner's brother deserves to be released as his detention is illegal.

7. Learned counsel relied on the judgment of a Division Bench of this Court in the case of '*Hem Prabhakar Shah vs The State of Maharashtra*)¹ and on the judgment of the Hon'ble Supreme Court in the case of '*Directorate of Enforcement Vs. Subhash Sharma*)² in support of his contentions.

8. As against these submissions, the learned APP relied on the affidavit filed by PI Sunil Bile attached to Malvani Police Station. She submitted that the offence is very serious. It was a penetrative sexual assault on a minor, therefore, it requires thorough investigation and inquiry. She submitted that in the FIR, the name of the accused was mentioned only as Sagar. Therefore, the police wanted to be sure that they were arresting the correct person. She submitted that the accused Sagar was asked to accompany the police at 12:48 p.m. on 17th January 2025 from his building but at that time he was not arrested. After making enquiry with him and after ascertaining his identity by giving him a fair chance, the police have arrested him at 4:32 p.m. on 17th January 2025. He was produced before the Sessions Court at Dindoshi within 24 hours. There was no illegal detention, and therefore, the petitioner's brother does not deserve to be released on this ground.

9. In rejoinder Mr. Pandey submitted that in the affidavit the police have not said that they wanted to ascertain the identity of Sagar.

1 (Cri.) Writ Petition (St.) No. 17757 of 2024 dated 5th September 2024.

2 SLP (Cri.) No. 1136 of 2023 dated 21st January 2025

Mr. Pandey submitted that since 12:48 p.m. on 17th January 2025, his movement was restricted and therefore, he was arrested at that time.

Learned counsel further submitted that in the remand report there is not a whisper that they wanted to establish the identity of accused because they have mentioned the telephone number of the accused and from that number they had trapped the accused.

10. We have considered these submissions. The photographs annexed to this petition which are relied on by the learned counsel for the petitioner show that at 12.48p.m. on 17th January 2025 the petitioner's brother was walking with two persons in plain clothes. A copy of that photographs is at page 250 of this petition. From that photograph, it is quite clear that the petitioner's brother was not physically held by either of these persons. All three of them were seen walking. According to the affidavit filed by the police officers, the accused Sagar accompanied the two constables of Malvani police station and they reached that police station at 1.30 p.m. on 17th January 2025 for enquiry. The Affidavit further mentions that during enquiry his role in commission of offence was revealed. The affidavit further mentions that a notice dated 17th January 2025 under Section 47 of BNSS was given to Sagar. The contents of the notice were explained and interpreted to him in 'Hindi' at the time of his arrest. Sagar had given an acknowledgment in token of having received that notice dated 17th January 2025. Two witnesses including his advocate Shah had also signed on the notice given to Sagar under Section 47 of BNSS. The notice contained the grounds of arrest and reasons of arrest. In the meanwhile, the petitioner herself i.e. Sagar's sister came

to the police station along with an Advocate. PI, Bile gave the information regarding grounds of arrest and reasons of arrest of Sagar. He had followed the prescribed procedure.

It is specifically mentioned that after following the prescribed procedure, Sagar was arrested by him on 17th January 2025 at 16:32 hours. After his arrest, a notice under section 48 of BNSS was given to Sagar's father Arvind who had given acknowledgment in token of having received that notice. The said fact was mentioned in the station diary on 17th January 2025. After arresting the accused, his body search was taken. At that time, his mobile phone was seized. The WhatsApp chats exchanged between Sagar and the victim were retrieved from his mobile phone. Those WhatsApp chats have supported the version of the complainant.

11. In paragraph 15 of the affidavit, it is further mentioned that on 17th January 2025, two police constables went to the residence of Sagar and asked him to come with them to the police station for enquiry in connection with C.R. No. 83 of 2025 as in the FIR only the name Sagar and the cell phone number were mentioned. They reached the police station at 1:30 p.m. Sagar's role was revealed during that time on making enquiry with him and then he was arrested. Thus, we find that police have followed the correct procedure required under the law. There is no force in the submissions that the station diary entry mentioned in the remand report was 41/2025, whereas the actual station diary entry annexed to the affidavit was having No. '40'. Learned APP explained that what was mentioned in the remand report was Arrest Register No. 41/2025. It was the different from the station

diary entry number. Therefore, there is no force in the submission that the station diary entry was different.

12. We have perused the form of grounds of arrest. The rest of the matter is typewritten and only the time of 16:32 p.m. was mentioned in handwriting. Obviously, it would require some time to type the grounds of arrest. The timing of arrest was important and therefore, after completion of the procedure of arrest only the time could be entered. This had to be done in order to immediately hand over the grounds of arrest to the arrested accused. Therefore, we do not find any manipulation or deliberate attempt to include the time of arrest in handwriting in the grounds of arrest form. Similarly, the General Diary No. 40 regarding the arrest clearly mentions the time of entry in the diary as 17th January 2025 at 16:32 hours.

13. As far as the case of 'Hem Prabhakar Shah' (supra) is concerned, the Division Bench of this Court has observed that, in that case, the petitioner was intercepted by the Immigration Officers around 10:00 p.m. on 13/08/2024, allegedly based on a Look Out Circular. He was deprived of his liberty and he ceased to be free. Therefore, the time of arrest was taken from that point onwards.

14. In the present case, from the facts, it is quite clear that at 12:48 p.m. on 17th January 2025 the accused was not put under any sort of restraint. He was asked to accompany the police to the police station and it was his duty to cooperate in the investigation. It cannot be said that he was put under arrest at 12:48 p.m. on 17th January 2025.

15. As far as the Judgment of '*Subhash Sharma*' (supra) is concerned, the Hon'ble Supreme Court was referring to the fact that, the appellant in that case was detained at the airport at 11:00 hours on 5th March 2022 pursuant to the Look Out Circular but he was then arrested at 1.15 hours on 6th March 2022.

It was observed that, perusal of the arrest order indicated that the typed order was kept ready and the date and time of arrest were kept blank, which were filled in by hand. In that case the accused was detained pursuant to the Look Out Circular and therefore, he was actually arrested at that point of time, but he was shown arrested subsequently at 1:15 hours on 6th March 2022. In the facts of that case it was a case of manipulation, whereas, in the present case, before us, as explained by the police authorities, the procedure of arrest was completed in the police station itself and he was shown arrested as he was actually arrested at 4:32 p.m. on 17th January 2025. Thus, the facts in the present case are materially different and no advantage can be given to the petitioner's brother.

16. As is discussed above, initially, the accused Sagar was only asked to accompany the constables to the police station and only after verifying his identity, he was arrested. There is nothing wrong in the procedure. In fact, the police have not acted hastily in arresting the accused. They had taken precautions to satisfy themselves about his identity and then they had arrested him. Mr. Pandey submitted that since Sagar was traced on the basis of the phone number mentioned in the FIR, there was no necessity to ascertain his identity. There was no propriety to take Sagar to Police Station at 12:48 p.m. and then to

arrest him at 4:32 p.m. on 17th January 2025. But we can not find fault with the police for having taken precaution for first satisfying themselves that Sagar was the offender and then arresting him at 4:32 p.m. on 17th January 2025.

17. Considering the above discussion, we do not find that there is any manipulation on the part of the police officer or that the accused Sagar was actually arrested at 12:48 p.m on 17th January 2025 and not at 4:32 p.m. on 17th January 2025. The offence is very serious, and therefore, we do not find any merit in this petition.

18. The Criminal Writ Petition is dismissed.

(S.M. MODAK, J)

(SARANG V. KOTWAL, J)