

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1563 OF 2025

Mrs.Sneha Suresh Bhujel

Age about 28 Years, Occupation : Housewife,

Adult Indian Inhabitant, Residing at:-

Ramgarh Nagar, Gaushala Road, Mulund (W),

Mumbai : 400080.

...Petitioner

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Versus

1. **The State of Maharashtra**

(Through the Office of the Public Prosecutor)

2. **Senior Police Inspector**

(Sahar Police Station, Mumbai)

...Respondents

Mr.Kripashankar Pandey a/w Ms.Neeta Solanki, Mr.Shailesh Mishra and Ms.Kiran Dubey i/b. Unison Legal – Advocates for Petitioner.

Mr.S.V.Gavand – APP for Respondents – State.

Mr.Amarsinh Deshmukh – Police Sub-Inspector – Sahar Police Station – Mumbai.

**CORAM : SARANG V. KOTWAL &
S.M.MODAK, JJ.**

DATE : 3rd APRIL 2025

ORAL JUDGMENT (PER SARANG V. KOTWAL, J.)

1. This is a Petition for issuance of a Writ in the nature of Habeas Corpus, for the release of the detainee Suresh Bahadur Bhujel from the alleged illegal detention by the Satish Sangar

Respondent No.2. The Petition is filed by the wife of the detinue.

2. Heard the learned counsel Mr.Kripashankar Pandey for the Petitioner and learned APP Shri.S.V.Gavand on behalf of the Respondents–State.

3. The main contention of the learned counsel for the Petitioner is, that the detinue was produced before the learned Magistrate for the first remand beyond the period of twenty four hours which is in violation of Section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) and also is violative of Article 22(2) of the Constitution of India. According to the learned counsel, therefore, this infringes the Articles 21 and 22 and therefore, he is entitled to be released from the detention.

4. Before referring to the arguments of the learned counsel for the Petitioner, and of the learned APP, very briefly the allegations in the F.I.R. can be noted as follow:-

(i) The F.I.R. was lodged by one Sujata Ganesh Kale. She has stated, that she has joined the Mumbai Police as Police Constable from 2006, and on the date of filing of the F.I.R. lodged by her, she was working as a Counter Officer on behalf of the Bureau of Immigration at Chhatrapati Shivaji

Maharaj International Airport.

- (ii) On 17th March 2025, she was on duty at Counter No.19 from 8.00 a.m. At about 9.15 a.m. on 17th March 2025, the detainee approached her Counter and tendered certain documents for Immigration clearance. Those documents included the Voting card, Boarding pass for the flight from Mumbai to Kathmandu and the Aadhar card. The scheduled departure timing of his flight was 11.15 a.m. The informant got suspicious about him. Therefore, for further enquiry, she took him before Wing In-charge Shri.Pankajkumar Yadav. He made enquiries with the detainee. It was revealed that he had come in India in 2000 and was staying at Mulund (West). After coming to India, he had prepared the Aadhar card and Voter card. Shri.Pankajkumar Yadav – the Duty Officer then made further enquiries and at that time, it was revealed that the detainee was having Nepali citizenship card in his mobile. Therefore, it was confirmed that he was a citizen of Nepal. It was then made clear that he had forged the Indian Aadhar card and Voter's card and on the basis of those documents, he had attempted to travel from Mumbai to Kathmandu, thereby he had cheated the Indian Immigration Authorities. When this was made clear, the informant on the orders of F.R.R.O.Mumbai, produced the detainee before the Sahar Police Station along with those forged

documents.

On this basis, the F.I.R. is lodged.

5. The learned counsel for the Petitioner submitted that the detinue had admittedly approached the informant's Immigration Counter at 9.15 a.m. From that point onwards, he was stopped from proceeding further which amounted to putting restrictions on his movement and therefore, it would amount to his arrest. According to the learned counsel, admittedly, he was produced before the concerned Magistrate at 1.20 p.m. on 18th March 2025 which was beyond the period of twenty four hours from 9.15 a.m. on 17th March 2025. This was in violation of the aforementioned provisions.

6. In support of his contentions, he relied on the judgments of:-

- (i) The Hon'ble Supreme Court passed in Special Leave Petition (Criminal) No.1136 of 2023 in case of ***Directorate of Enforcement V/s. Subhash Sharma*** decided on 21st January 2025.
- (ii) A Single Judge Bench judgment of this Court in case of ***Ashak Hussain Allah Detha @ Siddique and another V/s. The Assistant Collector of Customs (P) Bombay and another*** reported in 1990 SCC OnLine Bom 3.

7. On the other hand, learned APP relied on the Affidavit filed by the Police Sub-Inspector Amarsinh Anil Deshmukh pointing out the facts of this case. He submitted, that the Immigration Officers including the First-Informant were empowered to carry out the enquiry about the passengers. Stopping the suspected person for enquiry will not amount to arrest. According to the Police, the arrest was formally effected at 6.30 p.m. on 17th March 2025. He was brought to the Police Station at 2.30 p.m. Shri.Gavand submitted that even assuming that the actual time of arrest was 2.30 p.m. on 17th March 2025, even then, since the detainee was produced at 1.20 p.m. on 18th March 2025 before the concerned Magistrate, it will not amount to the violation of the requirement to produce the detainee within twenty four hours from his arrest. He has submitted that in case of ***Subhash Sharma*** referred to hereinabove, the facts were completely different.

8. We have considered these submissions. Before referring to the rival contentions, briefly, the timings as contended by both the learned counsel can be considered in the light of the Affidavit filed on behalf of the Respondents-

State of Maharashtra.

- (i) There is no dispute that the detainee was produced before the Judicial Magistrate First Class, 66th Court, Andheri on 18th March 2025 at 1.20 p.m. The dispute is about the time of arrest of the detainee.
- (ii) The events as unfolded show that the detainee reported to the Immigration Departure Counter No.19 at Chhatrapati Shivaji Maharaj International Airport, Mumbai at 9.15 a.m. on 17th March 2025. The informant got suspicious and he was taken to the Wing In-charge Mr.Pankajkumar Yadav. Further enquiry was made and it was found that he was carrying the forged documents and thereafter, he was produced at the Sahar Police Station at 2.30 p.m. It is mentioned in the Affidavit that after making preliminary enquiry, the information given by the informant Smt.Sujata Kale was reduced into writing and the offence was registered on 17th March 2025 at 4.25 p.m. vide C.R. No.258 of 2025 at Sahar Police Station under Sections 336(2), 336(3), 318(4) and 340(2) of the Bharatiya Nyaya Sanhita, 2023 (“**BNS**”).
- (iii) The Affidavit further mentions that after registration of the F.I.R., the investigation commenced and the documents produced by the informant were seized by the Police as per the

production panchnama dated 17th March 2025 drawn between 5.10 p.m. to 5.50 p.m. Since the involvement of the detainee was *prima facie* established, and it was necessary to arrest him, he was informed about the grounds of arrest and by executing arrest panchnama, he was arrested at 6.30 p.m. on 17th March 2025. The proforma of the F.I.R. mentions that the information was received by the Police Station at 2.30 p.m. on 17th March 2025 and the occurrence of the offence was described as 9.15 a.m. on 17th March 2025.

9. The contention of the learned counsel for the Petitioner is, that the detainee was under arrest right from 9.15 a.m. on 17th March 2025. However, we are unable to agree with this contention. The F.I.R. itself shows that at 9.15 a.m. when he approached the Counter, the informant became suspicious and the detainee was taken to the Wing In-charge Shri.Pankajkumar Yadav who made enquiries and verified the documents of the detainee. Obviously, before the enquiry and before being satisfied that those documents were forged, no action could have been taken against any passenger. Only after it was revealed and only after the Immigration Officers were satisfied that the detainee was carrying the forged documents

and had attempted to travel on the forged documents, he was taken to the Police Station at 2.30 p.m. on 17th March 2025. Therefore, it is not possible to hold that from 9.15 a.m. on 17th March 2025, the detainee was under arrest. In this view of the matter, the reliance of the learned counsel on the case of ***Ashak Hussain*** is totally misplaced. It was not a question of putting restraint on the personal liberty of the detainee. However, the Immigration Officers were well within their rights, and in fact, it was their duty to make enquiries about the genuineness of the documents produced by the passengers. Till it was clear that a particular passenger was carrying the forged documents, he cannot be treated as an accused or a person whose liberty is curtailed. The Immigration Officers were well within their rights in carrying out the enquiry. We do not find any fault with this procedure and we do not see how that period of enquiry can be treated as an arrest of the detainee.

10. As far as the case of ***Subhash Sharma*** is concerned, in that case, the facts were that the accused in that case was detained and taken in custody at 6.00 p.m. on 4th March 2022 at IGI Airport, New Delhi, when the Bureau of Immigration executed the LOC issued against that accused and held him in

custody on behalf of the ED. The physical custody of the accused was taken by the ED at 11.00 a.m. on 5th March 2022 and he was produced before the concerned Magistrate at 3.00 p.m. on 6th March 2024. The Hon'ble Supreme Court has clearly observed, that the accused was not produced before the nearest learned Magistrate within twenty four hours from 11.00 a.m. on 5th March 2022. Thus, in that case, the ED had taken custody of the accused at 11.00 a.m. on 5th March 2022 and inspite of that, he was produced before the concerned Magistrate at 3.00 p.m. on 6th March 2024. This period was clearly beyond the stipulated period of twenty four hours. The same judgment also mentions that the Bureau of Immigration had detained the accused at the Airport from 4th March 2022 on behalf of the Directorate of Enforcement. Thus, the facts in that case are completely different.

11. In the present case, the detainee was stopped for making enquiry as his documents appeared doubtful. Thereafter, the enquiry was conducted and only after being satisfied about the offence having been committed, he was taken to the Police Station at 2.30 p.m. Learned APP Shri.Gavand rightly submitted, that even if it is assumed that

he was under restraint from 2.30 p.m. on 17th March 2025, he was produced at 1.30 p.m. on 18th March 2025 before the concerned Magistrate which was well within the stipulated period of twenty four hours and therefore, there was no violation of any fundamental right or statutory right of the detenue. In this view of the matter, we do not find any merit in the Petition. It is accordingly dismissed.

12. It is made clear, that the detenue can avail of his other remedy of pursuing the Bail Application on merits.

(S.M.MODAK, J.)

(SARANG V. KOTWAL, J.)