

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2297 OF 2025

Shakoor Ahmed Jamaluddin Sayed

Age : 60 years, Occ. Business

R/o. Flat No. 11, Yash Apt.

Yash Co-op. Hsg. Soc., Opp of Ved mandir,

Dhamankar Corner, Trambak Road,

Nashik – 422 002.

.....Petitioner

Versus

The State of Maharashtra

.....Respondent

Adv. Vivekanand V. Krishnan a/w Adv. Nishant M. Bardiya, Adv.
Fakhruddin Khan - Advocate for the Petitioner.

Ms. M. M. Deshmukh - APP for the Respondent-State.

API Kishor Kolhe – EOW Nashik City.

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

DATE : 02nd MAY 2025

JUDGMENT : (Per SARANG V. KOTWAL, J.)

1. This is a petition for declaring the arrest of the Petitioner
illegal in connection with C.R. No. 26 of 2025 registered with

Sarkarwada Police Station, Nashik and consequent prayer is for his release on bail.

2. Heard learned Counsel Shri Krishnan for the Petitioner and learned APP Ms. Deshmukh for the Respondent-State.

3. The basic contention of the Petitioner is that he was not produced before the nearest Magistrate within 24 hours as is the requirement of law and therefore, his arrest is illegal. Before referring to the questions of law raised by the learned Counsel for the Petitioner, it is necessary to refer to the allegations in brief against him. The F.I.R. was lodged on 21.01.2025 by one Pankaj Kumar Anand Kumar Thakur. He has stated in his F.I.R. that he is Deputy General Manager in the branch office of M/s Aban offshore Limited, Chennai. The Petitioner had his own IS Construction Company at Nashik. He was a resident of Sikar, State of Rajasthan. The Petitioner's Company was given contract by Public Works Department, Nashik for constructing a road between Adgaon-Niphad and Aurangabad between the period 2001-2002 for the budget of Rs. 16 Crores. The Petitioner's firm did not have so much capital and nobody was willing to give him financial assistance.

Therefore, he contacted the Complainant's Company and gave a proposal for taking 50% capital in lieu of 50% shares in their project. Accordingly, the document was executed on 14.03.2003. A company by the name 'I.S. Infrastructure and Buildcon Pvt. Ltd.' was formed. The Complainant's company invested substantial amount in the project. Due to the Goodwill of the complainant's company, Banks gave loan of Rs.11 Crores. The road was constructed. The toll collection from vehicles started from 06.03.2004 onwards. The amount which was received as toll was to be deposited by the Petitioner in the Company's account maintained with Indian Bank, Ambad, Nashik. But the Petitioner misappropriated that amount. The new company's account was declared as NPA as the installments were not paid. PWD took over the project and started collecting toll. 'I.S. Infrastructure And Buildcon Pvt. Ltd.' claimed compensation in Arbitration proceedings. The compensation and interest to the tune of Rs.25,25,35,000/- was to be paid to the company. The Petitioner forged the documents and transferred the amount of

Rs.12,61,68,000/- in the account of Immortal Company of the Petitioner and he misappropriated it.

4. The Assistant Police Inspector Kishor Kolhe attached with Economic Offence Wing, Nashik has filed his affidavit-in-reply. It is mentioned in that affidavit that in order to withdraw the amount received from the PWD, Nashik for the payment of that work, the Petitioner has made the false and fabricated documents and submitted them to the bank. During the investigation, the bank statements were verified, and it was revealed that the money was received against bill of the contract from the Public Works Department to I.S. Infrastructure and Buildcon Private limited and thereafter, the Petitioner has siphoned of those amounts to his own Company's bank account, namely, Immortal Infrastructure Private Limited. Accordingly, C.R. No. 26 of 2025 was registered at Sarkarwada Police Station, Nashik under Sections 406, 408, 409, 420, 465, 468, 471, 120-B of IPC.

5. Before referring to the submissions made by learned Counsel for the Petitioner, it is necessary to refer to the affidavit-in-reply, so that the relevant dates can be reproduced in this case. According to

the said affidavit-in-reply, the Petitioner was not found at the places of which the addresses were known in Nashik. The Petitioner's mobile phone was kept under surveillance and the Petitioner's presence was seen in the District Sikar, State Rajasthan. The job of apprehending the absconding accused was assigned to Anti Gunda Squad. The Deputy Commissioner of Police, Crime set up a team.

6. The investigating officer assigned Anti Gunda Squad Nashik to apprehend the Petitioner as they were specialized in such work. Five team members for that purpose went to Kotwali Police Station, Sikar, State of Rajasthan on 02.04.2025 at 5.00 p.m.. The affidavit thereafter mentions that after taking assistance of the local Police station, they went to the Petitioner's residence at about 5.45 p.m., and took custody of the Petitioner, after apprising him for the reasons of their visit. They took custody of the Petitioner and he was brought to the Kotwali Police Station, Sikar, Rajasthan. His friend Anwar Hussain was informed about the said fact. The station diary entry was made on 02.04.2025 at 8.04 p.m. at Kotwali Police Station, Sikar, Rajasthan. His medical examination was conducted on 02.04.2025 in Rajkiya Kalyan Chikitsalaya, Sikar.

7. Then the Petitioner was brought to Nashik on 03.04.2025. He was again medically examined at Civil hospital at Nashik on 03.04.2025 and was produced before the Economic Offence Wing, Nashik City at 1.00 p.m. on 03.04.2025. The custody was handed over to the Economic Offence Wing Nashik City on 03.04.2025 at 01.00 p.m.. PSI Mulak arrested the Petitioner on 03.04.2025 at 3.16 p.m.. The Petitioner was given reasons of his arrest and grounds of arrest. PSI Mulak alongwith the Petitioner went to the in-charge Chief Judicial Magistrate Court, Nashik for the first remand at 3.45 p.m. on 03.04.2025. The affidavit mentions that the Court orally directed PSI Mulak to produce the Petitioner on 04.04.2025, as there was period of 24 hours still available after arrest of the accused. At that time, the Petitioner's Advocate Shri Bardiya was present. The Petitioner was then kept in lock up of Bhadrakali Police Station, Nasik.

8. The Petitioner was then produced before the Chief Judicial Magistrate Nashik on 04.04.2025. On that date before the remand order was passed, the Petitioner filed an application making a grievance of illegal arrest. The learned Chief Judicial Magistrate

rejected the Petitioner's application and granted police custody remand to the investigating agency vide two separate orders dated 04.04.2025.

9. The learned Chief Judicial Magistrate granted Police custody till 08.04.2025. It was extended upto 10.04.2025 and then the Petitioner was remanded to the Magistrate custody. As of today, he is in the Magistrate custody.

10. These dates mentioned in the affidavit are not in dispute. The learned Counsel for the Petitioner made the following submissions:-

The investigating agency were duty bound to produce the Petitioner after his arrest on 02.04.2025 at 5.45 p.m. before the nearest Magistrate in Sikar, State of Rajasthan. The investigating agency could not have straight away taken the Petitioner to Nashik. He submitted the words used in the relevant provisions of the Article 22 of the Constitution of India and Section 167 of the Criminal Procedure Code refers to the nearest Magistrate which corresponds to Section 187 of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS). He submitted

that it is an admitted fact that on 02.04.2025 itself the Petitioner was arrested at about 5.45 pm from his house. He relied on the judgment of the Division bench of the Aurangabad bench of this Court in the case of *Vachhalabai Vs. State of Maharashtra*¹. He further submitted that this illegality was compounded by the fact that at the first instance when the Petitioner was produced before the in-charge Chief Judicial Magistrate, he was not granted any remand, and he was then illegally kept in the lock up in the night of 03rd and 4th April 2025. This is another example of illegal detention. On both these counts, the Petitioner deserves to be released forthwith.

11. The learned APP on the other hand made the following submissions:-

According to her, the Petitioner was taken in custody on 02.04.2024 at 5.45 p.m. at Sikar, Rajasthan. He was not formally arrested. The Petitioner was formally put under arrest on 03.04.2025 at 3.16 p.m.. Thereafter, he was produced before Chief Judicial Magistrate Nashik at 1.00 p.m. on 04.04.2025 which

1 2020 0 AHMR (Cri) 3181

would be within 24 hours of his formal arrest at 3.16 p.m. on 03.04.2025. She therefore submitted that he was produced within 24 hours of his arrest.

Learned APP relied on the judgment of the another Division bench of this Court in case of *Ram Kotumal Issrani Vs. Directorate of Enforcement and others*², decided on 15.04.2024, in Criminal Writ Petition (Stamp) No. 15417 of 2023 to contend that if the accused is produced within 24 hours before the jurisdictional Magistrate that satisfies the requirement of the Article 22 of the Constitution of India and Section 187 of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS).

12. We have considered these submissions. It must be noted that at the very first instance, the learned Counsel for the Petitioner has taken the objection that the Petitioner's production before the Magistrate was illegal as he was produced beyond 24 hours of his arrest. The learned CJM Nashik has held that after the Petitioner was arrested at Sikar, he was produced before in-charge Chief

² (2024) 0 Supreme (Bom) 577

Judicial Magistrate, Nashik on 03.04.2025 within 24 hours and therefore, there was no illegality in his arrest and remand.

13. We are unable to accept the submissions of learned APP and observations of the learned Magistrate that the Petitioner was produced before the nearest Magistrate within 24 hours. In this context as rightly submitted by the learned Counsel for the Petitioner reliance can be made to the observations of the Division bench in the case of Vachhalabai (supra). The relevant paragraphs are as under para nos. 26, 52 and 53.

“26 The aforesaid reasons given to have the Article in the present form show that no scope is left to police to keep arrested person in their custody for the purpose of investigation for more than 24 hours excluding the time required for taking the accused from the place of arrest to the Court of Magistrate. Only to ensure such observance, mandate, the term "nearest magistrate" is used and specific period is also given. The period of 24 hours is given in relation to the term "nearest magistrate" and it cannot be read separate from this term. Further, as per the aforesaid reasoning given, "nearest magistrate" cannot be presumed as the Magistrate having jurisdiction over the crime, in

which the accused is arrested. Further, right to inform the Magistrate of the charge under which that man is arrested given in this Article shows that it was intention to see that the Magistrate within whose territorial jurisdiction the man is arrested is expected to be informed about such arrest and such Magistrate is expected to exercise the power, which can be like bail, remand etc. No other interpretation of the aforesaid obligation, to inform to the Magistrate about the arrest mentioned by Dr. Ambedkar is possible. In view of this object behind using the term "nearest" the subsequent reference of terms like "Court of Magistrate" and "Magistrate" in Article 22(2) can have the same object. So, the subsequent terms used as "Court of Magistrate" and "Magistrate" means that "nearest magistrate" mentioned in the Article. If the purpose behind Article 22(2) of Constituent Assembly is kept in mind, only the aforesaid meaning can be given to the term "nearest magistrate".

52. *The provision of Section 167(2-A) of Cr.P.C. already quoted shows that no excuse is available to the police officer arresting the accused like nearest Judicial Magistrate was not available. In that case also, as per this provision, the accused needs to be transmitted to the nearest Executive Magistrate on whom powers are*

conferred of Judicial Magistrate. In that case also, some record is required to be prepared by the police officer under this Section. This provision shows that no scope is left to police to say that they could have produced such arrested accused before the concerned Magistrate, the Magistrate having jurisdiction over the offence within 24 hours from the time of arrest and so, the accused was taken before the concerned Magistrate. In view of the aforesaid provisions, the interpretation suggested for the Respondents by the learned APP is not at all acceptable.

- 53 *The aforesaid provisions are safeguards for protection of fundamental rights mentioned in Article 21 of the Constitution of India. They need to be strictly followed by the officers effecting arrest. If there is a material to infer that there was actual arrest, but after the arrest the accused was not taken before the nearest Magistrate and he was taken far away from that place for production before the concerned Magistrate, the moment the accused is taken out of the jurisdiction of nearest Magistrate, his detention becomes unauthorized and illegal. Such detention will not become legal only because subsequently the accused is produced before the Magistrate having jurisdiction to try or inquire into the offence within 24*

hours of the actual arrest. Here only it needs to be mentioned that the contention of police that formal arrest was made after taking the accused to the local jurisdiction of the concerned Magistrate and the period needs to be counted from that time and the case needs to be considered from that angle cannot be accepted. There are other provisions in Cr.P.C. like issuing notice or summons for making inquiry and by that process calling a person to the police station is possible. If that procedure is not followed and accused is picked up from a place over which the police station has no jurisdiction and he is taken to the place over which the police has jurisdiction, inference become easy that the accused was taken away from the first place only by illegally detaining him. If such interpretation is not made then the aforesaid provisions mentioned like Section 41-B, 41-C and all subsequent provisions will become otiose and that will be against all the provisions made to safeguard the fundamental rights of such person.”

14. The above discussion is clear enough. The Division bench had specifically considered the distinction between the Jurisdictional Magistrate and the nearest Magistrate. It was specifically observed that the detention would not become legal only because

subsequently, the accused was produced before the Magistrate having jurisdiction to try or inquire into the offence within 24 hours of the actual arrest.

15. It is an admitted position that the Petitioner was taken in custody at 5.45 p.m. on 02.04.2025. From that point onwards he was detained, and it cannot even be argued that he was not arrested at that point of time. Even learned Chief Judicial Magistrate, Nasik has proceeded on the footing that the Petitioner was arrested at 5.45 p.m. on 02.04.2025. The only contention which found favour with the learned Magistrate, was that, he was produced before in-charge Chief Judicial Magistrate on 03.04.2025 before the period of 24 hours from 5.45 p.m. on 02.04.2025 had elapsed. The fact remains that he was arrested on 02.04.2025 and the record shows that first remand was granted by the Chief Judicial Magistrate at Nashik on 04.04.2025 which is well beyond the period of 24 hours from 5.45 p.m. on 2.4.2025. The in-charge Chief Judicial Magistrate on 3.4.2025 had directed the Police Officer to produce him on the next day. There was no order of granting police custody or judicial custody passed on 3.4.2025. Thus, in the

facts of the present case, the Petitioner was arrested on 02.04.2025 at 5.45 pm and his first remand was granted on 04.04.2025 at 1.30 p.m.. It was well beyond the period of 24 hours from his arrest. In this connection Article 22(2) of the Constitution of India, Sections 187(1)(2)(3) and Section 58 of BNSS are important, which are as follows:

Article 22(2) of the Constitution of India

*“22. Protection against arrest and detention
in certain cases*

(1) xxxxxxxxxxxx

*(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.”*

Sections 187(1)(2)(3) and 58 of the BNSS:

“187. Procedure when investigation cannot be completed in twenty-four hours

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time

to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.”

“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.”

. It is the requirement of law that the Magistrate must authorize detention within first 24 hours from his arrest. In this case, the learned In-charge CJM, Nasik told the police to bring the

accused on the next day without authorizing his detention on the presumption that he was arrested on 3.4.2025 at 3.16 p.m. In fact, he was arrested at 5.45 p.m. on 2.4.2025. On 2.4.2025 at 8.04 p.m. Station Diary Entry No.60/2025 was made in Kotwali Police Station, Sikar, Rajasthan. The medical examination of the Petitioner was done on 2.4.2025 in the Rajkiya Kalyan Chikitsalaya, Sikar. This procedure also shows that the Petitioner was arrested on 2.4.2025 at 5.45 p.m., though he was shown arrested formally at 3.16 p.m. on 3.4.2025.

16. Thus in the facts of this case, the observations made in the case of **Ram Kotumal Issrani** (supra) do not support the argument that the custody was legal. The first remand itself was granted after well beyond the stipulated period of 24 hours therefore the Petitioner's remand on 04.04.2025 becomes illegal remand.

17. In this context, a reference can be made to the another Division Bench judgment of this Court in the case of **Niraj Ramesh Jariwala and others Vs. Mahadeo Pandurang Nikam and others**³. The facts and issues in that particular case are very similar to the

³ (2013) 2 BOMCR (CRI) 260

present case. In that case, the FIR was registered against the Petitioners therein under Section 498-A, 406, 323, 504 read with 34 of IPC on 29.11.2011. The FIR was registered with Navghar police station, Mumbai. The Petitioners therein were taken into custody at 10.50 p.m. on 2.12.2011 at Aurangabad but were not shown as arrested. They were brought to Mumbai on 3.12.2011 at 8.20 p.m.. They were shown arrested on 4.12.2011 and then they were enlarged on bail.

. In this context the Division Bench observed in paragraph-11 that the Petitioners therein were arrested from the jurisdiction of Usmanpura police station, Aurangabad on 2.12.2011 at 8.50 p.m.. but they were not produced before the nearest Magistrate. It was observed that the police officer ought to have produced them before the learned Magistrate at Aurangabad. Moreover though they were brought to Navghar police station at Mumbai at 8.20 p.m. on 3.12.2011, they were illegally detained in the police station without being shown arrested and were ultimately shown arrested on the next day morning at 8.10 a.m. It

was held that their detention was illegal and relief was granted to the Petitioners therein.

. The facts in the present case are very similar and, therefore, the observations of the Division Bench in that case are applicable to the present case.

18. Having observed thus, the next question which arises for consideration is whether the Petitioner can be re-arrested. In that context, the learned APP relied on the judgment of the Division bench of this Court, in the case of *Kavita Manikikar w/o Ravikiran Mankikar V/s Central Bureau of Investigation*⁴ as decided on 10.05.2018 in Criminal Writ Petition 1142 of 2018. The relevant paragraph i.e. para no. 18 is reads thus:-

“18. In result, of the aforesaid discussion, the writ petition is allowed in terms of prayer clause (a) and it is held that the arrest of the petitioner is illegal and contrary to the provisions of Section 46(4) of the Code of Criminal Procedure. However, the CBI is not precluded to arrest the petitioner if investigation warrants so, by following the due procedure of law. The competent authorities are at liberty to

4 2018 AIIMR (Cri) 3169

initiate disciplinary proceedings against the erring officers, for flagrant violation of the statutory provisions.

The respondent No. 1 shall pay costs of Rs.50,000/- to the petitioner within the period of eight weeks from date of this order. The respondent No. 1 is at liberty to recover the said cost from erring officers responsible for violations, as may be concluded after disciplinary proceedings.”

19. In this case learned APP therefore submitted that if the Petitioner is released on bail by declaring his arrest as illegal, the investigating agency be given liberty to rearrest him.

20. In response to this submission, learned counsel for the Petitioner submitted that the investigating agency was granted six days Police custody, and they had sufficient opportunity to interrogate the Petitioner and thereafter, he was remanded to Judicial custody. Therefore, there is no further necessity of the Petitioner's custody as far as the investigation part is concerned. The Petitioner has property in Nashik, therefore, he is not likely to abscond.

21. We have considered these submissions. As submitted by the learned Counsel for the Petitioner, the investigating agency had

sufficient opportunity to interrogate the Petitioner. As can be seen from the record, the Petitioner was in custody of the Police right from 02.04.2025 upto 10.04.2025. Thereafter, he was remanded to Magistrate custody. Therefore, in the facts of this case, the investigating agency may take steps in accordance with law to re-arrest the Petitioner, only if it is absolutely necessary by giving proper reasonable notice to the Petitioner.

22. As a result of the above discussion, the following order is passed:-

ORDER

- (i) It is declared that the Petitioner's arrest and the consequent remands are illegal.
- (ii) The Petitioner is directed to be released on bail on his executing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.
- (iii) Before his release the Petitioner shall deposit his passport, if any, with the investigating officer.

- (iv) The Petitioner shall report to the investigating agency office every alternate Saturday between 04.00 to 06.00 p.m. till the charge-sheet is filed.
- (v) The Petitioner shall attend the every date before the trial Court.
- (vi) If it is absolutely necessary, the investigating agency may take steps in accordance with law to re-arrest the Petitioner by giving him sufficient notice.

23. The petition is disposed of in the aforesaid terms.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
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