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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2989 OF 2025

Hemang Jadavji Shah
Age: 50 years, Occ: Business
Having his address at – 1501,
Sough Ridge, 54, Ridge Road,
Teen Batti, Malabar Hill,
Mumbai - 400006
His Office address at - 13th Floor,
B Wing, Peninsula Business Park,
Senapati Bapat Marg,
Lower Parel (W), Mumbai 400013
(At present in Arthur Road Jail)

.....Petitioner

Vs.

1. The State of Maharashtra
Through the Ld. Public Prosecutor

2. The Senior Police Inspector
Economic Offences Wing, Unit-5
GC-III, Police Commissioner Office
Compound, Dr. D. N. Road,
Mumbai – 400 001

3. The Senior Police Inspector,
Malabar Hill Police Station,
Walakeshwar, Malabar Hill
Mumbai – 400 001

.....Respondents

Mr. Ravi Prakash, Senior Advocate, Mr. Munaf Virjee, Mr. Aditya
Dewan, Mr. Vikram Sutaria, Debopriyo Moulik, Zain Shroff, Sagar
Shetty i/b Mr. Hrituraj Singh Rajput and AMK Law
Mr. Amit Desai, Senior Advocate i/b Mr. Nikhil S. Kamble,

Ms. Archishmati Chandramore for intervener
Mr. S. V. Gavand, APP for the State
Mr. Anand Bagade, Unit-5, GC-3 EOW Mumbai

**CORAM : GAURI GODSE,
SOMASEKHAR SUNDARESAN, JJ.
(VACATION COURT)**

DATE : 30th MAY 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith. The petition is taken up for final disposal.
2. We heard learned senior counsel for the petitioner and the learned APP for the respondents. Learned senior counsel for the first informant made a request to appear in the matter. Though no intervention application has been filed, we have heard the learned senior counsel for the first informant.

3. This petition is filed seeking the following relief:

“b. Issue a direction/ writ of certiorari and/or any other similar writ, order and direction of like nature, to declare the arrest of the Petitioner dated 18.05.2025 illegal and unnecessary and order immediate release of the Petitioner in connection with FIR bearing C. R. 53 of 2025 with Economic Offences Wing, Mumbai (Original

FIR bearing C. R. No. 116/2025 lodged with Malabar Hill Police Station, Mumbai);

c. This Hon'ble Court be pleased to quash and set aside remand order dt. 18.05.2025, 21.05.2025 and 26.05.2025 passed by the Ld. Magistrate Court, (Holiday Court) remanding the Petitioner to police custody and all such subsequent orders of extension of remand, in the interest of justice;

d. This Hon'ble Court be pleased to direct for an investigation to be conducted by an independent agency (other than EOW, Mumbai) for bringing to book the officials of the EOW, Mumbai who colluded with Mr. Mehul Shah and Mr. Ashwin Sheth and allowed for the extortion to be conducted in the above manner with the Petitioner during the Petitioner's police custody with the EOW, Mumbai from 18.05.2025 to 26.05.2025 ”

4. The factual matrix relating to which the prayers are made is summarised below:

a) The dispute is between the petitioner on the one hand and his

bother and their father on the other. The first informant is the elder brother of the petitioner;

- b) On 14th May 2025 at about midnight, on an oral complaint and statement of the petitioner's brother, an FIR bearing CR No. 116 of 2025 was registered with the Malabar Hill Police Station at 0214 hours;
- c) The allegation in the FIR is regarding a memorandum of understanding (MOU) dated 15th August 2024 and the money that was to be distributed pursuant to the terms and conditions agreed between the parties to the MOU;
- d) On 14th May 2025, after the FIR was registered, a Look Out Circular (LOC) was issued at the instance of the Deputy Commissioner of Police, In-charge of Malabar Hill Police Station. After the FIR was registered, the complaint was transferred to the Economic Offences Wing (EOW) Unit – 5 GC–III, Mumbai;
- e) The FIR is registered for the alleged offences punishable under section 316 (5), 318 (4) of Bharatiya Nyaya Sanhita, 2023 (BNS);
- f) It is the petitioner's contention that the dispute between the parties was sought to be resolved before a mediator. During mediation, the complaint was filed against the petitioner. The

petitioner was scheduled to travel from Delhi to Muscat on 17th May 2025, when the immigration authorities apprehended him at the IGI airport in Delhi pursuant to the LOC. The petitioner was detained in the office of immigration authorities at the airport from 17:30 hours on 17th May 2025;

g) The EOW officers reached the airport on 18th May 2025 post-midnight. The petitioner's custody was handed over to the EOW officers, and the petitioner was brought to Mumbai in the morning on 18th May 2025. The petitioner was then produced before the learned magistrate at about 1045 hours on 18th May 2025, and the petitioner was remanded to the police custody till 21st May 2025; and

h) On 21st May 2025, a second application was filed seeking further police custody, and the petitioner was remanded to further police custody until 26th May 2025. On 26th May 2025, the petitioner was again produced before the learned magistrate, and the petitioner is remanded to judicial custody till 6th June 2025.

5. Learned senior counsel for the petitioner seeks release of the petitioner on the ground that the petitioner's arrest is illegal. The first

ground argued to support the submission that the arrest is illegal is based on the time of arrest and not producing the petitioner before the learned magistrate within 24 hours as required under section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') and Article 22 (2) of the Constitution of India. The argument, therefore, on behalf of the petitioner, is that the petitioner was illegally detained at the immigration office at the airport in Delhi and thereafter, taken into custody by the EOW officers, and even after bringing the petitioner to Mumbai, he was not produced before the learned magistrate. It is therefore argued that the arrest of the petitioner is illegal.

6. Learned senior counsel for Petitioner submitted that the petitioner was detained in the office of the immigration authorities at the airport in Delhi at 1730 hours on 17th May 2025 and produced before the learned magistrate only at around 2245 hours on 18th May 2025. Hence, according to the learned senior counsel for the petitioner, the petitioner's arrest is rendered illegal. To support his submissions, learned senior counsel for the petitioner relied upon the following decisions:

Kaushik Rameshchandra Thakkar Vs. State of Maharashtra¹;

¹ 2025 SCC OnLine Bom 1493

***Directorate of Enforcement Vs. Subhash Sharma*²;**

***Hem Prabhakar Shah Vs. State of Maharashtra*³;**

***Vihaan Kumar Vs. State of Haryana*⁴;**

***Kasireddy Upender Reddy vs. State of Andhra Pradesh*⁵;**

***Mahendra Bhawanji Thakar Vs. S. P. Pande*⁶; and**

***Lalita Kumari vs. State of U.P.*⁷**

7. Learned senior counsel for the petitioner submitted that apart from the ground that the petitioner was not produced within 24 hours of arrest, the arrest is also rendered illegal on account of the violation of provisions of Section 48 of the BNSS. He submitted that the petitioner was informed about the grounds of arrest, but the petitioner's relatives, friends, or any other person nominated by the arrested person were not informed about the grounds of arrest. To support his submissions on both grounds, learned senior counsel for the petitioner also relied upon the remand report dated 18th May 2025, which is placed on the record at Exhibit D to the petition. He submitted that the report specifically records that the grounds of arrest were intimated only to

² 2025 SCC OnLine SC 240

³ 2024 SCC OnLine Bom 3006

⁴ 2025 SCC OnLine SC 269

⁵ 2025 SCC OnLine SC 1228

⁶ 1963 SCC OnLine Bom 28

⁷ 2014(2) SCC 1

the petitioner. A similar reference is also found in another report dated 21st May 2025.

8. Learned senior counsel for the petitioner also pointed out that the FIR, which is registered, is not uploaded on the website, as other FIRs are uploaded. He has relied upon the printout of the extract from the website from 1st May 2025 to 17th May 2025, showing the number of FIRs that are uploaded. He submits that the said extract would indicate that only the FIR lodged against the petitioner was not uploaded, even while FIRs lodged before and after have been uploaded.

9. He submits that the FIR is lodged at an odd hour of 0214 hours, i.e. post-midnight. He submits that considering the nature of the allegations against the petitioner, there was no tearing hurry for registering the FIR post-midnight. He further submits that the family members were in the midst of an amicable settlement before the learned mediator, and only to lure the petitioner, he was called in Mumbai to engage in mediation for an amicable settlement.

10. Learned senior counsel for the petitioner submits that only to threaten and pressurise the petitioner, he was taken into illegal

custody. He further submits that from the nature of the allegations, it is clear that a civil dispute between the parties is sought to be settled by threatening the petitioner by taking him into custody, making false allegations and illegally arresting the petitioner without following the procedure prescribed.

11. By relying upon the decisions referred to above, learned counsel submitted that in view of the well-settled legal principles, non-production of the petitioner before the learned magistrate within 24 hours from the time of arrest renders the petitioner's arrest illegal. Learned senior counsel for the petitioner in particular relied upon the relevant paragraphs 15, 16, 20, 24 to 27 of the decision of this court in the case of ***Kaushik Rameshchandra Thakkar***. He submits that in similar facts where the accused was apprehended at the airport and was subsequently handed over to the investigating officer, this Court held that the arrest of the accused was illegal, as he was not produced within 24 hours of the arrest.

12. Learned senior counsel for the petitioner submitted that the Hon'ble Apex Court in the case of ***Subhash Sharma*** has also referred to the mandatory requirement of producing the accused within 24 hours of the arrest. He relied upon the relevant observations by the

Hon'ble Apex Court with reference to the facts of the said case in paragraph 6 of the said decision. He submits that considering similar facts in the present case, the continued custody of the petitioner, without producing him before the nearest magistrate, would amount to illegal arrest and it violates the fundamental rights of the petitioner under Article 22(2) of the Constitution of India. He submits that once the arrest gets vitiated on completion of 24 hours in custody, it infringes the petitioner's right under Article 22 (2) of the Constitution of India.

13. For similar legal principles, learned senior counsel for the petitioner also relied upon the decision of this Court in the case of ***Hem Prabhakar Shah***. He submits that in similar facts, where the accused was apprehended based on the LOC and subsequently handed over to the local Police Station, this Court held that the arrest was illegal as he was not produced within 24 hours after being taken into custody by the immigration officer.

14. Learned senior counsel for the petitioner also relied upon the legal principles settled by the Hon'ble Apex Court in the case of ***Vihaan Kumar***. He submitted that the reference to the date and time of arrest and production of the accused before the learned magistrate

was referred to in paragraph 2 of the said decision. He submits that even in the present case, the factual aspects regarding detaining the petitioner by the immigration officers and producing him before the Magistrate after almost 30 hours would render the petitioner's arrest illegal. He also relied upon the conclusions in paragraph 21 of the judgment and in particular clause (c) of paragraph 21.

15. Learned senior counsel for the petitioner, by relying upon those legal principles, submits that in the present case, the petitioner has specifically alleged non-compliance with the requirement of section 48 of the BNSS and also alleges non-compliance with the requirement of Article 22 (2) of the Constitution of India. He, thus, submits that as held by the Hon'ble Apex Court, the burden would be upon the investigating agency to prove compliance with the requirement of Article 22(2) of the Constitution of India.

16. Learned senior counsel for the petitioner submits that the relevant dates that emerge from the record clearly indicate that the petitioner was taken into custody on 17th May 2025 at 17:30 hours and produced before the learned magistrate only on 18th May 2025 at around 10:45 hours. He referred to an affidavit in the reply filed on behalf of the investigating agency. He submits that it is clearly stated

by the investigating agency that the custody was handed over by the immigration department to the EOW officers at 0400 hours on 18th May 2025. He submits that paragraph 12 of the affidavit in reply filed on behalf of the investigating agency clearly supports the contention of the petitioner that he was arrested on 17th May 2025 at 1730 hours and was produced before the Magistrate only after 24 hours at 2245 hours on 18th May 2025. He, thus, submits that in response to the specific allegations made regarding non-compliance of section 48 of the BNSS and Article 22(2) of the Constitution of India, the investigating agency has failed to produce on record any material to indicate that the petitioner was arrested only on 18th May 2025 at 1930 hours as contended by the investigating agency.

17. Learned senior counsel for the petitioner also relied upon the legal principles settled by the Hon'ble Apex Court in the case of ***Kasireddy Upender Reddy*** and the well-settled legal principles in the case of ***Lalita Kumari***. Learned senior counsel for the petitioner, therefore, submits that the facts as on record clearly indicate that the petitioner was taken into custody on 17th May 2025 at 1730 hours and not produced before the learned magistrate within 24 hours. He, thus, submits that for non-compliance with the aforesaid mandatory

requirements and for non-compliance with the requirement to inform the grounds of arrest as mandated under section 48 of BNSS, the petitioner's arrest is rendered illegal and thus, he cannot be continued in custody.

18. Learned APP, in the affidavit in reply filed on behalf of the investigating agency, submits that after the FIR was registered, a request for issuing LOC was made on 14th May 2025. Learned APP has tendered a copy of the request for issuing LOC by the Deputy Commissioner of Police, Zone-3, Mumbai on 14th May 2025 to the Deputy Director/Bureau of Immigration of New Delhi. He submits that pursuant to the said letter, a request for opening LOC was generated by the immigration department on 15th May 2025. He submits that considering the nature of allegations against the petitioner, there was an apprehension that he would leave India, and thus, the LOC was issued. Therefore, the immigration officers accosted the petitioner on 17th May 2025 at 1730 hours. He submits that thereafter, EOW officers reached Delhi Airport on 18th May 2025 at 0330 hours, at the immigration department at 0430 hours, and the accused was handed over by the immigration department to the EOW at 0430 hours. He submits that thereafter, the petitioner was brought to Mumbai, and they

reached Mumbai at 0930 hours on 18th May 2025. He, thus, submits that even if the time of 0430 hours is considered as the relevant time for taking the petitioner into custody, the petitioner was produced before the learned Magistrate on 18th May 2025 at around 2245 hours and thus, the investigating agency did produce the petitioner before the learned Magistrate within 24 hours as required under section 48 of the BNSS. To support his submissions, the learned APP has relied upon the relevant averments of the affidavit signed by the Assistant Police Inspector attached to EOW Mumbai. He also relied upon the document regarding the request for issuing LOC.

19. With reference to the second argument regarding non-supply of grounds of arrest to the relatives, friends or such other person as disclosed or nominated by the petitioner, he submits that the petitioner's father was informed about the grounds of arrest. He, therefore, submits that even the second ground raised to contend that the arrest is illegal would not be sustainable. Learned APP further submitted that since the procedure as required to arrest the petitioner and produce him before the learned Magistrate is followed in the present case, the petitioner's arrest would not be rendered illegal and he would not be entitled to be released as argued on behalf of the

petitioner.

20. Learned senior counsel who appeared on behalf of the first informant/complainant sought to argue that the immigration officers cannot be considered as authorised officers or police officers and therefore, custody taken by the immigration officers cannot be termed as the petitioner's arrest. He, thus, submits that though the Immigration officers accosted the petitioner, it cannot be termed as the petitioner's detention by police officers as contemplated under section 58 of the BNSS. To support his submissions, he relied upon the relevant paragraphs of the decision in the case of ***Subhash Sharma***. He referred to the decision in the case of ***Hem Prabhakar Shah*** and, in particular, paragraph 3 (C) and paragraph 23, and submitted that in the facts of that case, the LOC stated that it was issued for detaining the accused and handing him over to the local police station. He, thus, submits that the conclusion recorded by the Court in the said decision, which was based on the facts of the said case, would not apply in the facts of the present case. He submits that, similarly, in the case of ***Kaushik Rameshchandra Thakkar***, the facts were different, and thus, the legal principles relied upon by the learned senior counsel for the petitioner would not apply in the facts of the present case.

21. Learned senior counsel for the first informant/complainant further submitted that the petitioner does not challenge the remand order; rather, the petitioner had consented to the remand for two days. He, thus, submits that the grounds as argued in the petition were always available to the petitioner to be agitated at the time of opposing the request for remand and thus, it would not be open for the petitioner to argue in the present petition that his arrest is illegal. To support his submissions, he relied upon the decision of this Court in the case of ***Naresh Goyal Vs. Directorate of Enforcement and Others***⁸. Learned senior counsel for the first informant also argued that the bail application of the petitioner is scheduled to be heard on 2nd June 2025. He, thus, submits that there is no reason to entertain this petition on the ground that the petitioner's arrest is illegal.

22. We have considered the rival submissions made on behalf of the parties. We find it necessary to refer to the relevant paragraph of the affidavit filed on behalf of the investigating agency. The relevant paragraph in the affidavit is paragraph 12, which reads as under.

“12. I say that the petitioner was accosted by the immigration department, Delhi on 17/05/2025 at 1730

⁸ 2023 SCC OnLine Bom 2446

hours After receipt of intimation, the EOW officer reached, Delhi Airport on 18/05/2025 at 0330 hours and at immigration department at 0400 hours. I say that the accused was handed over by the immigration department to EOW at 0430 hours and from Delhi the EOW officers reached Mumbai along with the accused on - 18/05/2025 at 0930 hours. I say that from Mumbai Airport, we reached EOW officer at about a 1030 hours and thereafter preliminary inquiry was made with the accused and then the accused was arrested in the said crime on 18/05/2025 at 1930 hours. The accused was produced before the Id. Magistrate on 18/05/2025 at. 2245 hours. I say that after the petitioner was arrested, he is produced before the Ld. Magistrate within 24 hours. I say that even if it the time of 24 hours is calculated from 0430 hours i.e. the time at which the accused was handed over by immigration department to EOW, then also the accused is produced before the Ld. Magistrate within 24 hours. I say that the accused was prevented by immigration department from leaving India on

17/05/2025 at 1730 hours. I say that the time spent for travelling i.e. for visiting immigration department, Delhi by EOW Officer, and coming back to EOW Office, at Mumbai along with accused, is excluded from consideration, then by no stretch of imagination it can be said that the accused was produced beyond 24 hours before the Ld. Magistrate.”

23. A perusal of paragraph 12 of the affidavit clearly states that the petitioner was taken into custody on 17th May 2025 at 1730 hours by the immigration department at Delhi airport. The affidavit clearly states that the accused was handed over by the immigration department to the EOW officers at 0430 hours at Delhi airport, and the petitioner was brought to Mumbai at around 0930 hours and was produced before the learned Magistrate only at 2245 hours on 18th May 2025. The reference to the date and time of the FIR and the request for LOC is also relevant. The FIR is registered at 0214 hours on 14th May 2025. Surprisingly, a request for LOC is immediately made on the same day, i.e. on 14th May 2025. The schedule in the request for LOC clearly states the action to be taken on interception of the LOC at the immigration check post. Clause (i) sub-clause (e) of the letter dated

14th May 2025 states that “detain and handover to local Police Station”. The request for LOC opening generated by the immigration department, as referred to by the learned APP, also indicates that the action to be taken is mentioned as “detain and handover intercepted person to local police and inform originator”. Thus, the request made for issuing LOC is to detain the petitioner, hand him over to the local police, and inform the originator.

24. Thus, the contents of the request for LOC and the LOC opening generated by the immigration department, coupled with the affidavit of the investigating agency, support the argument of the petitioner that he was taken into custody by the immigration department on 17th May 2025 at 1730 hours as requested by the investigating agency. It is nobody’s case that the petitioner was only stopped at the immigration department in view of the LOC, only to prohibit him from travelling abroad. The contents of the material on record and the submissions made on behalf of the investigating agency clearly show the intention of taking the petitioner into custody, and that he was taken into custody on 17th May 2025 at 1730 hours. A perusal of the arrest memo records the date of arrest as 18th May 2025 at 1930 hours. However, the investigating agency in the affidavit states that the accused was

brought to Mumbai at 0930 hours on 18th May 2025, and from the airport, they reached the EOW office at about 1030 hours. The affidavit further states that the preliminary enquiry was made, and he was arrested only at 1930 hours. However, the material placed on record would then not justify the contents of the affidavit that the petitioner was accosted at the immigration office at the airport on 17th May 2025 at 1730 hours. In our view the act of the Immigration Officers to accost the petitioner or detain him on 17th May 2025 at 1730 hours is the act of arrest and therefore the period of 24 hours as contemplated under Section 58 of BNSS and Article 22(2) of the Constitution of India shall begin on 17th May 2025 at 1730 hours. The petitioner is produced before the Magistrate on 18th May 2025 at 2245 hours, which exceeds 24 hours from the arrest. Hence, there is a violation of the petitioner's right guaranteed under Article 21 of the Constitution of India for non-compliance with Section 58 of the BNSS and Article 22(2) of the Constitution of India.

25. We also find it necessary to refer to the relevant averments in the petition and supporting documents. There is no dispute that the settlement talks were going on between the family members before the learned mediator. WhatsApp chat is relied upon to show the

conversation between the family members after the petitioner was taken into custody. A perusal of WhatsApp chat at Exhibit 'G' to the petition shows that the wife of the complainant had written to the wife of the petitioner to go to the EOW with the cheque-book and give 51 where Mehul will also be there to help the petitioner's wife, if required. It further indicates that the petitioner's wife was instructed to reach out to EOW officers and hand over money. Though the learned APP sought to argue that the chat produced on record is incomplete, and therefore, it cannot be relied upon to argue any malice towards the officers. However, a perusal of the chat, in our opinion, supports the contentions raised on behalf of the petitioner that the intention to keep the petitioner in custody was to recover the amount that was sought to be settled in the mediation between the family members.

26. We have perused the reports placed on record to examine the second ground, which was argued regarding the grounds of arrest not supplied as required under section 48 of BNSS. The material on record only indicates that the grounds of arrest were supplied to the petitioner. The contention raised on behalf of the investigating agency that the grounds of arrest were intimated to the petitioner's father and his lawyer is rather surprising and shocking, as there is no dispute that

even the petitioner's father has filed a complaint against the present petitioner. Thus, we see no reasonable ground to support such an argument that the ground of arrest supplied to the petitioner's father would amount to sufficient compliance under section 48 of the BNSS, particularly when the petitioner's father has filed a complaint against the petitioner. No material produced on record indicates that the petitioner had ever nominated or disclosed his father's or his lawyer's name for supplying the grounds of arrest as contemplated under section 48 of the BNSS. Therefore, we find substance in the second ground raised on behalf of the petitioner that the grounds of arrest were not supplied as contemplated under section 48 of the BNSS.

27. The reference to the contents of the report is necessary for examining the first ground that the petitioner was not produced within 24 hours of his arrest. The contents of the remand report dated 18th May 2025 refer to the information about the petitioner's arrest. The contents on page 71 of the petition state that on 17th May 2025, the petitioner was taken into custody by the immigration officers. The words used in the report in Marathi read as under:

“आरोपी हेमंग जादवजी शाह यांचेविरुद्ध मलबार हील पोलीस ठाणे

मार्फत विदेश जाण्यास प्रतिबंध करणेकामी एल.ओ.सी. उघडण्यात आली होती. आरोपी हेमंग शाह हे दि. १७.०५.२०२४ रोजी दिल्ली येथून मस्कॉट या देशात जात असताना त्यांना इमिग्रेशन डिपार्टमेंट दिल्ली येथे ताब्यात घेण्यात आले होते.”

(Emphasis applied)

28. The remand report therefore clearly refers that the petitioner was taken into custody by the immigration officers in the immigration office at Delhi. The custody, thus, continued till EOW officers reached the airport and even according to the investigating agency, the petitioner's custody was handed over by the immigration officers to the EOW officers at Delhi airport on 18th May 2025 at 0430 hours. Therefore, we do not find any substance in the arguments raised on behalf of the complainant that the immigration officers cannot be termed as authorised officers for arresting the petitioner or taking him into custody.

29. Even otherwise, it is not the contention of the investigating agency that the immigration officers were not authorised to apprehend the petitioner or keep him in custody. Thus, it is clear that the contents of the affidavit filed on behalf of the investigating agency which shows

that the petitioner was accosted by the immigration department at Delhi airport on 17th May 2025 at 1730 hours is the date and time when the petitioner was arrested and thus, detained at the airport and thereafter, his custody and detention continued in the office of EOW at Mumbai. Though the petitioner is shown to have been arrested in the arrest memo on 18th May 2025 at 19.30 hours, the material on record does not support the date and time as mentioned in the arrest memo. Thus, in view of the said facts of the case, the legal principles as settled by the Hon'ble Apex Court in the above referred cases would assist the arguments raised on behalf of the petitioner.

30. The facts in the decision of ***Kaushik Rameshchandra Thakkar*** and the facts in the present case are almost similar. Hence, the view taken by this Court in the said decision with reference to the time of arrest and the production of the accused within 24 hours would also apply to the facts of the present case. Hence, we are of the view that the legal principles as argued on behalf of the petitioner find support in the decisions as referred to above. Thus, for the reasons recorded above we are of the view that there is breach of requirements under section 48 of the BNSS and the detention of the petitioner in custody without producing him before the nearest Magistrate within stipulated

time of 24 hours is completely illegal and it infringes the fundamental rights under Article 22(2) of the Constitution of India. Therefore, the petitioner's arrest gets vitiated on completing 24 hours in custody from 1730 hours on 17th May 2025. Since there is a violation of Article 22 (2) of the Constitution of India, the petitioner's fundamental right to liberty guaranteed under Article 21 has also been violated.

31. We have referred to the facts of the case for examining the legal principles regarding compliance with section 48 of BNSS and Article 22 (2) of the Constitution of India, and the conduct of the officers is also referred to only to examine the legal position and the effect on the petitioner's right of liberty. We, therefore, refrain from expressing any comments on the unholy haste shown by the police officers as well as EOW officers in registering the FIR post midnight at 2.14 hours on 14th May 2025 and also issuing the request for LOC on the same day. Considering the nature of the dispute and the allegations made against the petitioner, we did not find any such tearing hurry to initiate action to take the petitioner into custody with such zeal and enthusiasm.

32. Thus, in view of well-settled legal principles, we have no doubt that the petitioner's arrest was illegal for non-compliance with the provisions of law, as discussed above. Consequently, we allow the

petition by passing the following order.

ORDER

(I) The petition is therefore allowed in terms of prayer clause (b), which reads as under:

“b. Issue a direction/ writ of certiorari and/or any other similar writ, order and direction of like nature, to declare the arrest of the Petitioner dated 18.05.2025 illegal and unnecessary and order immediate release of the Petitioner in connection with FIR bearing C. R. 53 of 2025 with Economic Offences Wing, Mumbai (Original FIR bearing C. R. No. 116/2025 lodged with Malabar Hill Police Station, Mumbai).”

(II) Since we have allowed prayer clause (b), we do not find it necessary to examine prayer clauses (c) and (d). However, insofar as prayer clause (d) is concerned, it is always open for the petitioner to adopt the appropriate remedy as permitted by law.

(III) By order dated 29th May 2025 statement made by learning APP was accepted that the CCTV footage of the EOW Unit-5 (GC-3) office at D. N. Road, Mumbai and the entry register of 18th May 2025, 22nd

May 2025 and 25th May 2025 shall be preserved, and such statement shall continue for a period of two weeks to enable the petitioner to adopt appropriate remedy as permissible in law.

(IV) We make it clear that our observations and the conclusions drawn in this judgment are solely restricted to the illegal arrest of the petitioner, and the same would not influence the trial or affect the merits of the case in any manner.

(V) We find it necessary to direct that in view of this judgment and the operative order, the petitioner shall be released forthwith.

(VI) The jail authorities/officers shall act upon an authenticated copy of this order.

33. Rule is made absolute in the above terms

[SOMASEKHAR SUNDARESAN, J.]

[GAURI GODSE, J.]