

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4084 OF 2025**

Suraj Ganesh Suryawanshi
V/s.

.... Petitioner

The State of Maharashtra and anr.

.... Respondents

Mr. Narayan Rokade a/w. Mr. Udaysinh Deshmukh, Ms. Pratibha Pawar,
Mr. Vikrant Kadam, Mr. Vishal Padwal, Mr. Siddharth Ghodke,
Mr. Ramchandra Wagh and Mr. Swapnil Kalokhe for the Petitioner.
Ms. Sharmila Kaushik, APP for the Respondent Nos.1 and 2 – State.
Ms. Priyanka Gore, API, Ambegaon Police Station, Pune, present.

**CORAM : SARANG V. KOTWAL AND
SHYAM C. CHANDAK, JJ.**

DATED : 03rd OCTOBER, 2025

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

. This is a Petition for issuance of Writ directing the Respondent – State of Maharashtra to release the Petitioner forthwith as, according to the Petitioner, his arrest was in violation of Article 22(2) of the Constitution of India though in the prayer clause Article 21(2) is wrongly mentioned. The other prayers are for setting aside the remand orders dated 18/06/2025 and 24/06/2025 passed by the learned JMFC, Pune.

2) Heard Mr. Narayan Rokade, learned Counsel for the Petitioner and Ms. Sharmila Kaushik, learned APP for Respondent Nos.1 and 2 – State.

3) The main contention of the learned Counsel for the Petitioner is that, the Petitioner was not produced before the nearest Magistrate as is mandated under Article 22(2) of the Constitution of India and under

Section 58 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 with reference to Section 187 of BNSS. Before referring to the said contention, it is necessary to refer to the allegations and the material against the Petitioner.

4) The Petitioner is the sole accused in the offence registered at Ambegaon Police Station, Pune vide C.R.No.124/2025 on 15/06/2025 under Sections 103 and 238 of Bharatiya Nyaya Sanhita (BNS), 2023. The offence is grave. The FIR was lodged by one Deepak Sukhdev Bandgar who was a friend of the Petitioner as well as the deceased – Rohit Dhamal. On 14/06/2025, the first informant, the Petitioner and the victim – Rohit had gone to a lake. The first informant – Deepak was sitting at some distance because he was not comfortable as the other two were smoking. After some time, he heard screams at some distance. He went there and saw that the Petitioner was sitting on the chest of Rohit and was assaulting him with a stone. The first informant tried to stop the Petitioner but he was beyond control. He committed the murder of Rohit. He went away from there. The first informant was scared but on the next day, i.e. on 15/06/2025 at 01:20 p.m., he approached the Police Station and gave his FIR. The investigation commenced. The Petitioner had absconded. The post-mortem examination of the dead body was conducted and there were 37 injuries including major injuries on the head. The cause of death was mentioned as “ hemorrhagic shock due to multiple injuries ”. The viscera was preserved for chemical

analysis. In the meantime, the police were searching for the Petitioner.

5) As far as the arrest of the Petitioner is concerned, there is hardly any dispute under what circumstances, at which place and at what time the Petitioner was arrested. Therefore, a reference can be made to the Affidavit filed by the Ms. Priyanka Gore, Assistant Police Inspector, Ambegaon Police Station, Pune City, Pune. It is mentioned in the Affidavit that, CDR analysis of the Petitioner was carried out by the Investigating Agency. His presence was found to be in Indore, Madhya Pradesh. The Investigation team headed by Mr. Mohan Kalamkar, PSI along with the police staff left to search for the Petitioner at Indore, Madhya Pradesh. The Petitioner was found at 10:00 p.m. on 16/06/2025 at Dwarkapuri, Indore, Madhya Pradesh. He was restrained by Mr. Mohan Kalamkar, PSI and was brought to Ambegaon Police Station at 04:30 p.m. on 17/06/2025. He was put under formal arrest at 06:45 p.m. on 17/06/2025. He was served with a copy for reasons of his arrest under Section 47 of BNSS. A written intimation was served on the Petitioner's father under Section 48 of BNSS. The Petitioner was then produced before the learned JMFC, Court No.4, Pune on 18/06/2025 at 03:40 p.m. He was remanded to police custody till 24/06/2025. That custody was extended till 25/06/2025 and from 25/06/2025, he was remanded to the judicial custody. There is hardly any dispute about these dates.

6) Thus, according to the Investigating Agency, after the

Petitioner's arrest at 06:45 p.m. on 17/06/2025, he was produced within 24 hours before the JMFC Court No.4 at Pune at 03:40 p.m. on 18/06/2025. On the other hand, the learned Counsel for the Petitioner submitted that, the contention that the Petitioner was arrested at 06:45 p.m. on 17/06/2025, is not correct. He was admittedly taken from Indore at 10:00 p.m. on 16/06/2025. Since that point onwards, he was in custody and therefore, it was incumbent on the Police Officers to have produced him before the nearest Magistrate in Indore within 24 hours from 10:00 p.m. on 16/06/2025 i.e., the outer limit was 10:00 p.m. on 17/06/2025.

7) Learned APP tried to contend that the time required to take the Petitioner from Indore to Ambegaon will have to be excluded for calculating the period of 24 hours.

8) In support of his contention, Shri. Rokade, learned Counsel for the Petitioner relied on three Orders passed by the different Division Benches of this Court as follows :-

(a) ***Niraj Ramesh Jariwala and others v/s. Mahadeo Pandurang Nikam and others*** dated 21/12/2012 passed in Criminal Writ Petition No.856 of 2012.

(b) ***Vachhalabai v/s. State of Maharashtra*** reported in 2019 SCC OnLine Bom 2937.

(c) ***Shakoor Ahmed Jamaluddin Sayed v/s. The State of Maharashtra*** dated 02/05/2025 passed in Criminal Writ Petition No.2297 of 2025.

9) Learned APP submitted that the Petitioner cannot be released because he was produced within 24 hours from his arrest. In the alternative, she submitted that, if the Petitioner is to be released because of this alleged procedural lapse, then permission be granted to the Investigating Agency to re-arrest the Petitioner in view of the serious and grave offence committed by the Petitioner. She relied on the Judgment of a Division Bench of this Court dated 10/05/2018 in the case of ***Kavita Manikikar of Mumbai v/s. Central Bureau of Investigation BS&FC and anr.*** passed in Criminal Writ Petition No.1142/2018.

10) We have considered these submissions.

11) We are unable to agree with the submissions of the learned APP that the Petitioner was arrested on 17/06/2025 at 06:45 p.m. The Affidavit of the Investigating Agency itself shows that he was taken in custody at 10:00 p.m. on 16/06/2025. From that point onwards, he was always in the custody of the Police Officers and therefore, it cannot be said that he was not arrested at 10:00 p.m. on 16/06/2025 but was arrested only at 06:45 p.m. on 17/06/2025. Therefore, Shri. Rokade, learned Counsel is right in his submissions that the Police Officers were duty bound to produce the Petitioner before the nearest Magistrate at Indore before 10:00 p.m. on 17/06/2025. Shri. Rokade submitted that the first production before the Magistrate had to be before the nearest Magistrate

and not before the jurisdictional Magistrate. In that context, he relied on the aforementioned three Judgments.

12) **Shakoor Ahmed Jamaluddin Sayed's** case is based on the other two Judgments i.e., **Niraj Jariwala's** case and **Vachhalabai's** case. The relevant paragraphs from these two cases are as follows. Paragraph 11, 12 and 13 of **Niraj Jariwala's** case read thus :-

“ 11. Thus, the arrest of the second and third Petitioners made by the first Respondent at Aurangabad is just before 20.50 on 2nd December 2011. At that time no entry of arrest was made in the station diary at Usmanpura Police Station, Aurangabad in terms of the guidelines laid down by the Apex Court. There was no Arrest Memo drawn at Aurangabad. In terms of the decision in the case of Sheela Barse (AIR 1983 SC 378) (supra), though the third Petitioner is a woman, she was not informed about her right to apply for bail. Within 24 hours from 20.50 on 2nd December 2011, they were not produced before the nearest Magistrate. In fact, the first Respondent ought to have produced them before the learned Magistrate at Aurangabad. Moreover, though they were brought to Navghar Police Station at Mumbai at 20.20 on 3rd December 2011, they were illegally detained in the police station without showing them arrested and were ultimately shown as arrested on the next day morning at 08:10. Shockingly after admitting in the first affidavit that he had taken the second and third Petitioners into the custody at Aurangabad for investigation, in the second affidavit in reply in Paragraph 4, the first Respondent has come out with the following excuse :-

“Hence, it is submitted that the accused/ petitioner

No.2 and 3 were produced within 24 Hours if journey period is excluded as contemplated under Section 57 of the Code of the Criminal Procedure. ”

12. In so many words, the first Respondent has stated in the first affidavit that the second and third Petitioners have been taken into custody for the purposes of investigation. There is no other mode of taking the Accused into the custody for investigation save and except by arresting them. Thus, the said Petitioners were arrested just before 20.50 on 2nd December 2011 at Aurangabad. But they were shown as arrested in Mumbai at 08.10 on 4th December 2011. They were thus illegally detained by the Police nearly for 35 hours and 40 minutes. The decision in the case of Siddha-ram Satlingappa Mhetre (supra) was not followed. There is no entry made in the station diary as to why they were arrested. Memorandum of arrest was not drawn. Entry of arrest was not made in the station diary of Usmanpura Police Station at Aurangabad. Therefore, this is a case of gross violation of the directions issued by the Apex Court in the case of D.K. Basu (supra), Sheela Barse (supra) and Siddharam Satlingappa Mhetre (supra). This is also a case of gross violation of the Articles 21 and 22 of the Constitution of India as the directions in the case of D.K. Basu (supra) flow from the Articles 21 and 22. It is shocking to note that 12 years after the decision in the case of D.K. Basu (supra) under which directions were issued which were already a part of the earlier directions of the Apex Court, the officers of the Maharashtra Police have shown a complete disrespect and disregard to the binding directions. We may note here that by introducing Section 41B in CRPC by Section 6 of Amendment Act No.5 of 2009, the directions in the case of D.K. Basu (supra) have been incorporated in the Statute.

13. Thus, there is a violation of fundamental rights of the second and third Petitioners guaranteed under Article 21 of the Constitution of India. There is also a violation of clauses (1) and (2) of the Article 22 of the Constitution of India. This case of blatant violation of human rights shocks the conscience of the Court. ”

13) The relevant paragraph from **Vachhalabai's** case are paragraphs 26, 55 and 56 which read thus :-

“ **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".

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55. 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.

56. 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.PC. 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. Both these Judgments have explained the term ‘nearest Magistrate’. Therefore, based on these observations, it is clear that as per the requirement of law, the Police Officers had a duty to produce the Petitioner before the nearest Magistrate at Indore after his arrest at 10:00 p.m. on 16/06/2025. They have failed to do so and thus, there is violation of Article 22(2) of the Constitution of India and Section 58 of the BNSS. Therefore, we are constrained to observe that this procedure was illegal and therefore, his first remand on 18/06/2025 was illegal. Consequently,

directions will have to be issued for his release. The trial is yet to commence. The Petitioner was absconding after the commission of offence. Therefore, it is necessary that he executes a bond in the nature of bail bond with sureties to bind himself to appear regularly before the trial Court.

15) We cannot ignore the gravity and the seriousness of the offence. We also cannot ignore a strong material collected during the investigation. It was a brutal murder witnessed by a friend of the deceased and a friend of the Petitioner. There were not less than 37 serious injuries on the head. The Court will have to consider whether it is desirable that a person of this nature is left loose in the society. Learned APP has rightly relied on the Judgment of **Kavita Manikikar** (supra). The relevant paragraph in that Judgment is paragraph 17 which reads thus :-

“ 17. In a 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.

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In that case, though the Petitioner was released by holding that the arrest was illegal, it was observed that the Investigating Agency was not precluded to arrest the Petitioner if investigation warranted so by following

the due procedure of law.

16) Considering the gravity of the offence and the nature of evidence, we are inclined to follow the same course and though we are inclined to hold that the Petitioner was not produced within 24 hours of his arrest before the nearest Magistrate and therefore, direct his release on certain conditions, we are granting liberty to the Investigating Agency to re-arrest the Petitioner after following due process of law. It is necessary to consider that the deceased victim also had a fundamental right to life guaranteed under Article 21 of the Constitution of India. It is grossly violated by the Petitioner by taking away his life in the most brutal and cruel manner. Therefore, the Investigating Agency can be given liberty to re-arrest the Petitioner. Hence, the following Order :-

(a) It is declared that the Petitioner was not produced before the nearest Magistrate within 24 hours, thereby making his arrest illegal.

(b) Consequently, the Petitioner shall be released on bail on his executing PR. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(c) Before being released, the Petitioner shall deposit his passport, if any, with the Investigating Agency

(d) The Petitioner shall report to Ambegaon Police Station, Pune on every Sunday between 04:00 p.m. to 06:00 p.m. till the trial is over.

(e) On his release, if the Investigating Agency deems fit, they can re-arrest the Petitioner immediately by following due process of law.

(f) It is clarified that since the Petitioner is being released for violation of Article 22(2) of the Constitution of India and Section 58 of BNSS, there would not be any necessity to file an Application for cancellation of bail because he is not released on bail under Section 483 of BNSS (corresponding to Section 439 of Cr.PC.).

17) The Petition is disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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