

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

CRIMINAL WRIT PETITION NO. 4283 OF 2025

Vicky @ Vikky Vilas Kamble

..Petitioner

Versus

The State of Maharashtra

..Respondent

Mr. Mayuresh Ingale a/w. Rajesh Waghmare and Ishan Paradkar
for Petitioner.

Ms. Supriya Kak, APP for State/Respondent.

CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.

DATE : 25 SEPTEMBER 2025

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

1. Rule. Rule is made returnable forthwith with consent of the parties.

2. This petition is filed for release of the Petitioner in connection with C.R.No.92 of 2025 registered at Yerwada police station, Pune, because, according to the Petitioner, there was violation of Article 22(2) of the Constitution of India. According to the Petitioner, he was not produced before the nearest Magistrate within a period of 24 hours as was required under the said Article.

Consequently, there was violation of Section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'), as he was not produced before the nearest Magistrate within 24 hours of his arrest. The second ground for filing this petition was that, there was violation of Section 35(3) and Section 35(5) of the BNSS.

3. Heard Mr. Mayuresh Ingale, learned counsel for the Petitioner and Ms. Supriya Kak, learned APP for the State.

4. Before referring to the legal issues raised by the learned counsel for the Petitioner, it is necessary to mention the allegations in the F.I.R. The Affidavit in reply filed by the Police Inspector (Crimes), Yerwada police station, Pune, mentions those facts in paragraph-5. The F.I.R. was registered at Yerwada police station based on the detailed complaint of one Rajeev Agrawal. On 26.11.2024, he had received a WhatsApp message and he was encouraged to invest various amounts in a number of schemes for profit. One application INDKKR was used for investment and for withdrawal of the money. Initially, the informant received some money, but subsequently, he could not withdraw any amount. He

contacted the Administrator of the WhatsApp group. He was asked to deposit additional 20% amount to enable him to withdraw the amount which he had earned. Subsequently, his access to the account was blocked and he realised that he was defrauded for the amount of Rs.47,43,000/-. On these allegations, he lodged the F.I.R. During the course of the investigation, it was revealed that, in this connection, the amount of Rs.3,80,000/- was transferred to the account of the present Petitioner by way of RTGS. Therefore, according to the investigating agency, the Petitioner was involved in commission of the offence. He was given a Notice U/s.35 of the BNSS. From this point onwards, there is a dispute in the submissions made by the learned counsel for the Petitioner and the learned APP.

5. According to the Petitioner, he appeared before the investigating officer in Yerwada police station on 25.04.2025 and co-operated with the investigation. The I.O. recorded the Petitioner's statement and then he was allowed to go. He went back to Akola. On 27.05.2025, the police team of Yerwada police station went to Akola and took the Petitioner in custody at

8:45a.m. According to the Petitioner, this amounted to his arrest at 8:45a.m. on 27.05.2025. The petition mentions that, there is a CCTV footage of his residence showing his arrest. After his arrest, he was produced before the J.M.F.C., Court No.5, Pune, on 29.05.2025 at 4:20p.m.; that would be after 56 hours from his arrest. Therefore, according to the Petitioner, there was clear violation of Article 22 of the Constitution of India and Section 58 of the BNSS. According to him, this was the first violation.

6. According to the learned counsel for the Petitioner, the second violation was that, since he had answered the Notice U/s.35 of the BNSS and had appeared before the police and had co-operated with the investigation, the police officer could not have arrested him in this connection.

7. Learned APP relied on the averments made in the Affidavit-in-reply explaining the stand of the investigating agency. Paragraph Nos.7 to 10 are important in this respect. According to the investigating agency, in spite of service of notice U/s.35 of the BNSS, the Petitioner did not respond in any manner. However,

after persuading the Petitioner telephonically on several occasions, he remained present in Yerwada police station on 25.04.2025 and pleaded ignorance about the transaction. He informed that, he had permitted opening of his account for online gaming as he was informed that, he would get Rs.30000/- by way of commission. He had assured to co-operate with the investigation and to deposit the amount of Rs.3,80,000/- before 29.04.2025. According to the police, after that the Petitioner did not co-operate. The investigation was getting affected and, therefore, it was necessary to make detailed inquiry with the Petitioner. Therefore, a team of the police officers went to Akola. It is mentioned in the Affidavit that, the team went to Akola so that the Petitioner could be brought to Yerwada police station for the purpose of inquiry. The Petitioner allegedly disclosed the names of two more accused namely Yuvraj and Mohd. Shahin. They were traced. The averments made further are important. It is stated that, with intimation to the local police station i.e. Civil Line police station, Akola, as well as, to the relatives of all the three persons including the Petitioner, all of them were taken to Yerwada police station,

Pune for the purpose of inquiry. A necessary station diary entry was taken in the register of Civil Line police station, Akola. The team left Akola around 10:00a.m. and reached Yerwada police station at about 10:25p.m. on 27.05.2025. The inquiry was made with all of them and at 1:00a.m. on 28.05.2025 all three of them were allowed to go; but they were given notice to attend the police station in the morning. According to the I.O., the Petitioner was not arrested till then. But the inquiry conducted on the next day showed that the Petitioner was not giving any truthful information. He could not explain credit of Rs.3,80,000/- in his account. Therefore, the Petitioner was arrested in that offence at 6:00p.m. on 28.05.2025. The other requirements for the arrest as per the procedure were followed. He was produced before the learned J.M.F.C., Pune on 29.05.2025 at 4:20p.m. and then he was remanded to police custody by the learned Magistrate on the first occasion till 31.05.2025.

8. The Petitioner had made an application before the learned Magistrate, Pune specifically on the ground that his arrest was illegal and he was produced before the learned Magistrate

beyond 24 hours. That application was rejected by the learned Magistrate on 31.05.2025. It was observed that, perusal of the record, the remand papers, the F.I.R., the case diary and the arrest panchanama, it appeared that the Petitioner was produced within 24 hours before the Court and, therefore, contention of the Petitioner was rejected.

The learned Magistrate had not taken into account the fact that the Petitioner was brought from Akola to Yerwada police station. He mechanically referred to the arrest memo and other documents to record the finding that the Petitioner was produced within 24 hours of his arrest.

9. In this background, the Petitioner has approached this Court. As mentioned earlier, the two main grounds raised by the Petitioner are his production before the Court beyond 24 hours after his arrest and though he had complied with the Notice U/s.35 of the BNSS, he was wrongly arrested in violation of the mandate of Section 35(5) of the BNSS.

10. Learned APP tried to contend that, since the Petitioner

did not co-operate with the investigation, the investigating agency was permitted to arrest the petitioner as per the provision of Section 35 of the BNSS. She further submitted that the Petitioner was put under arrest as can be seen from the record on 28.05.2025 at 6:00p.m. and then he was produced before the learned Magistrate on 29.05.2025 at 4:20p.m.; which would be within 24 hours and, therefore, there is no force in the submission of the learned counsel for the Petitioner.

11. We have considered these submissions. We are unable to accept the explanation offered by the learned APP. Though the Petitioner was shown to be arrested on 28.05.2025 at 6:00p.m., the background of the case which is accepted in the Affidavit in reply shows that the police team had gone to Akola on 27.05.2025 itself. The Affidavit in reply clearly states that the Petitioner and two others were “brought” from Akola to Yerwada police station. (*emphasis supplied*). The Affidavit mentions that the relatives of these three persons were informed when they were taken from Akola, the local police station i.e. Civil Line police station, Akola was informed and even the station diary entry was made. After

reaching Yerwada police station at about 10:25p.m. on 27.05.2025, they were interrogated till 1:00a.m. on 28.05.2025 and thereafter, though they were allowed to go; at that point of time, they were asked to come in the morning. Again they were interrogated. All this shows that the Petitioner was not a free man. He was not allowed to go anywhere when he was taken from Akola to Yerwada police station. According to the police, he was taken from Akola at 10:00a.m. on 27.05.2025 and according to the Petitioner, he was taken from Akola at about 8:45a.m. on 27.05.2025. Therefore, in any case, in the morning, the Petitioner was under the control of the police. He was not a free man. He was made to travel with the police from Akola to Yerwada police station. The very fact that the relatives of the Petitioner were informed, the local police station was informed and the station diary entry was made to that effect shows that the police officers attached to Yerwada police station were completely in control of the Petitioner and, therefore, though the police are not labeling this act as 'arrest', but it was nothing other than arrest of the Petitioner. Therefore, even by giving concession to the police as per

their averment in paragraph-9 they left Akola at 10:00a.m. on 27.05.2025, from that point onwards, definitely, the Petitioner was in their custody. Therefore, it can be said that he was arrested from that point onwards. In that view of the matter, it was necessary for the police officers to have produced the Petitioner before 10:00a.m. on 28.05.2025 before the nearest Magistrate. That was not done. He was brought to Yerwada police station and was produced before the learned Magistrate, Pune on 28.05.2025 at 4:20p.m.; which was clearly beyond 24 hours. Thus, the period of 24 hours is exceeded. The Petitioner was not even produced before the nearest Magistrate as is mandated under the Article 22(2) of the Constitution of India. This is the first gross violation committed by the investigating agency.

12. Even the other contention raised by the learned counsel for the Petitioner has sufficient force. Sections 35(3) and 35(5) of the BNSS read thus:

“35. When police may arrest without warrant – (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(2) xxxxxx

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) ~~xxxxx~~

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.”

13. From the Affidavit in reply itself it is clear that the Petitioner had remained present in Yerwada police station on 25.04.2025. His statement was recorded. Though, the police are claiming that after much persuasion and phone calls he had appeared, but the fact remained that he did appear which was pursuant to the notice issued U/s.35(3) of the BNSS. Therefore, it is necessary to see whether there was violation of Section 35(5) of the BNSS. The requirement under the said sub section is that, if a person receiving notice complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is

of the opinion that he ought to be arrested. In this case, no such written reasons are brought to our notice. Therefore, the Police officer has not recorded any reasons for the Petitioner's arrest, though, he had appeared before the police station and had given his statement. Thus, we find there is violation of mandate U/s.35(5) of BNSS, as well. On both these counts, the petition must succeed. The Petitioner deserves to be released forthwith.

14. Hence, the following order:

O R D E R

- i) The Petitioner be released forthwith in connection with C.R.No.92 of 2025 registered at Yerwada police station, Pune, if not required in any other case.
- ii) Rule is made absolute in the aforesaid terms.
- iii) The petition is disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)