

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

CRIMINAL WRIT PETITION NO.4516 OF 2025

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Sharad Dinkar Gosavi }
Age : 40 Years, Occupation : Nil, }
Residing at : Ganesh Park, Lane No.7, }
Adarsh Nagar, Lohegaon, Pune. } **...Petitioner**

Versus

The State of Maharashtra }
(P.I. Talegaon Dabhade Police Statio } **...Respondent**

Ms.Pooja Agarwal:-	Advocate for Petitioner.
Mr.H.J.Dedhia:-	APP for Respondent – State.

CORAM : S. M. MODAK, J.

DATE : 19th AUGUST 2025

P.C. :-

1. Heard learned Advocate for Petitioner/Accused and learned APP.
2. The only issue arisen in this Petition is “*whether the learned Additional Sessions Judge – Vadgaon Maval – Pune was justified in framing the charge on 10th June 2025.*” The additional submission is made about non-compliance of the provisions of Section 249 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”). It casts an obligation on the prosecutor to open up the case.

3. My attention is invited to the following documents:-

(a) The order dated **10th June 2025** passed on roznama (Page No.11).

It records the following facts:-

- (i) The Accused has not pleaded guilty. He was produced through Video Conferencing.
- (ii) The Accused has refused to avail of the services of an Advocate appointed through Legal Aid.
- (iii) He has informed the names of Advocate Mr.Vipul Dushing and Mr.Prakash Chavan.

4. On this background, the charge for the offence under Section 103(1) of the Bharatiya Nyaya Sanhita, 2023 (“BNS”) (old Section 302 of IPC) was framed. Learned APP invited my attention to the provisions of Section 251(2) of BNSS. According to him, now the charge can be explained through audio-video electronic means also.

The issue is not about explaining charge through Video Conferencing but the issue is when the Accused is not represented by any Advocate whether it was proper to frame the charge. The answer is ‘No’.

5. The reason is the offence is serious and the Accused is ‘*undertrial prisoner*’. There are limitations on his movement. When there is an Advocate appointed, the ‘undertrial prisoner’ gets an opportunity to address the Court in an efficient manner. In fact, the learned Additional Sessions Judge ought to have adjourned the matter for one

date for filing of Vakalatnama by the Advocates suggested by the Petitioner. The learned Judge has overlooked this provision. **The order needs to be set aside.** The trial should be fair

6. On this background, it is for the learned Prosecutor to open up the case as contemplated under Section 249 of BNSS. **Let the trial Court to issue necessary directions to the learned APP in-charge.** It is made clear that if no Application is filed under Section 250 of BNSS, **let the learned Judge to consider the period of limitation mentioned therein.** On this background, the following order is passed:-

ORDER

- (i) **The Writ Petition is allowed.**
 - (ii) The order of framing of charge for the offence under Section 103(1) of BNS is **quashed and set aside.**
 - (iii) On the basis of instructions, it is submitted that Advocate Ritesh Gadade will file Vakalatnama for the Petitioner on the next date.
 - (iv) It is made clear, if the Petitioner is delaying in filing Vakalatnama, the trial Court is at liberty to appoint an Advocate through Legal Aid. For that purpose, it is not necessary to obtain the consent of the Petitioner.
7. With these observations, **the Writ Petition is disposed of.**

[S. M. MODAK, J.]