

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

CRIMINAL WRIT PETITION NO.4539 OF 2025

Dhanshala Prakash Vishwakarma ...Petitioner

Vs.

The State of Maharashtra & Ors. ...Respondents

Mr. Shirish Desai a/w Mr. Harsh Agarwal for the Petitioner.

Ms. Dhanalaxmi Krishnaiyar, APP for the Respondent/State.

Mr. Vijaykumar Wagh, API, Sakinaka Police Station, Mumbai present.

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

DATED : 7th OCTOBER, 2025

P.C. :-

1) The Petition is filed for declaration that the arrest of the Petitioner's husband (hereinafter referred to as the detenu) as illegal and in gross violation of Article 22 of the Constitution of India.

2) Heard Mr. Desai, learned Counsel for the Petitioner and Ms. Krishnaiyar, learned APP for the Respondent/State.

3) The subject matter arises from the F.I.R. registered *vide* C.R. No.288 of 2025 registered at Sakinaka Police Station on 20th April, 2025 under Sections 64(2)(k) and 351(2) of Bharatiya Nyaya Sanhita, 2023. In this case the investigation is over and the charge-sheet is filed. The case is pending before the Additional Sessions Judge, Dindoshi, Mumbai. At this belated stage, this Application is filed mainly with the contention that the detenu was produced beyond the stipulated period of twenty-four hours

before the learned Magistrate for his first remand. Article 22 (2) of the Constitution of India laid down thus:-

"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."

Section 58 of BNSS reads thus:-

"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."

4) The main contention of the learned Counsel for the Petitioner is that there is violation of these important provisions and therefore his arrest was illegal.

5) Before addressing the issue whether he was produced beyond twenty-four hours, it is necessary to refer to the allegations in brief. The F.I.R. is lodged by the first informant the victim herself. She was deaf and dumb. She could communicate only in sign language. The F.I.R. mentions

that she was working at one society at Sakinaka, Mumbai in the department of housekeeping. She had got that job with the help of her sister-in-law. On 19th April, 2025 both of them had gone to that society for their work. The detenu was the Supervisor in that society. After 1:00 p.m. the informant had lunch. The detenu told her to do the cleaning work in the parking area. When she went there the detenu followed her. He took her to a secluded spot and committed rape on her. She tried to tell her sister-in-law about the incident but her sister-in-law could not understand what she was trying to tell. Both of them returned home. At about 6:30 p.m. her husband returned home. She communicated with him and told him the entire incident. Her husband asked her sister-in-law to question the detenu. She called him but he did not respond. The informant's husband then contacted the person who had given them job. He advised them to approach the police station. Therefore, the informant went to Sakinaka Police Station and lodged the F.I.R. The investigation was carried out and the charge-sheet was filed.

6) The allegations in the F.I.R. are referred to in this Order to place the background of this case on record. We are not commenting on the merits and quality of material collected during the investigation. The short point which we are required to consider in this Petition is whether there was violation of Article 22 (2) of the Constitution of India and Section 58 of the BNSS. We have to consider whether the detenu was produced before the learned Magistrate beyond 24 hours from his arrest.

7) Some facts are reflected in the Affidavit-in-Reply. The proforma of the F.I.R. shows that the F.I.R. was registered at 7:13 a.m. on 20th April, 2025. The information was received at the police station on 20th April, 2025 at 12:45 a.m. The Affidavit-in-Reply filed by Shri. Wagh, the Assistant Police Inspector attached to Sakinaka Police Station gives certain dates and time. In paragraph 6 of the said Affidavit-in-Reply, it is mentioned that the informant came to Sakinaka Police Station on 19th April, 2025 at around 23:30 hrs. The inquiries were made by the investigating agency in presence of her husband. After that, the detenu was called to Sakinaka Police Station by sending a team of police officers. The detenu was brought to Sakinaka Police Station at 0.38 hrs., on 20th April, 2025. This particular fact is not disputed in the Affidavit-in-Reply itself. According to the investigating agency the detenu was not co-operating with the investigation. The police officers required the services of a translator and with the help of that translator, the statement was recorded, the F.I.R. was lodged and the investigation commenced. After that the victim was sent for Medical Examination. The Applicant was asked to produce his identification documents. In the meantime, the Spot Panchanama was conducted. Clothes of the detenu were seized between 9:45 p.m. to 10:50 p.m. on 20th April, 2025 in the presence of panchas. The Petitioner was shown arrested on 20th April, 2025 at 11:20 p.m. and he was produced before the learned Judicial Magistrate, First Class, 66th Court, Andheri, Mumbai at 12:45 p.m. on 21st

April, 2025. He was remanded to police custody till 24th April, 2025.

8) This time line clearly shows that the detenu was in the police station from 0:38 hrs. on 20th April, 2025 and he was actually shown arrested at 23:20 hrs. on 20th April, 2025. The F.I.R. was lodged at 7:13 hrs. on 20th April, 2025. It is quite clear from this fact that from midnight of 20th April, 2025 the detenu was in the police station. He was not a free man. He was not allowed to leave the police station. Therefore, the learned Counsel for the Petitioner is right in submitting that the detenu ought to have been produced before the nearest Magistrate before 0:38 hrs. on 21st April, 2025. Even by giving a little concession till registration of F.I.R. we find that the F.I.R. was registered at 7:13 a.m. in the morning. Even then the detenu ought to have been produced before the nearest Magistrate before 7:13 a.m. on 21st April, 2025. It is an admitted fact that he was produced for the first time before the Judicial Magistrate First Class, 66th Court, Andheri, Mumbai on 21st April, 2025 at 12:45 p.m. Thus looking from any angle, all these time lines show that the Petitioner was produced beyond the stipulated period of twenty-four hours. before the learned Magistrate and therefore, there was violation of Article 22(2) of the Constitution of India and Section 58 of the BNSS. In this view of the matter, it will have to be held that his detention on 20th April, 2025 from 0:38 hrs. was illegal. With the result, the Petitioner will have to be released as is prayed in prayer Clause (c) of this Petition.

9) The trial is still pending before the Additional Sessions Judge, Dindoshi at Mumbai and therefore, the detenu will have to execute a bond which will lend assurance that he would attend the Trial Court and would not abscond. Therefore, before his release, he will have to execute the necessary bail bond as directed in this Order.

10) There is another important aspect in this matter. The offence is quite serious and therefore, it would not be proper if the victim suffers because of the lapse on the part of the investigating agency. A Division Bench of this Court in the case of ***Kavita Manikikar Vs. Central Bureau of Investigation & Anr.*** in Writ Petition No.1142 of 2018 vide the Order dated 10th May, 2018 had held the arrest of the Petitioner in that Petition as illegal but had further observed that the investigating agency was not precluded to arrest the Petitioner if the investigation so warranted, by following the due procedure of law. The relevant portion in paragraph 17 of the said Judgment is as follows:-

"17. 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."

11) Therefore, to strike a balance, liberty needs to be given to the investigating agency to re-arrest the detenu if they deem fit. The

investigating agency may have regard to the fact that the investigation is over and there are no antecedents against him. Since the detenu is being released because of violation of the provisions, this is not a bail Order under Section 483 of BNSS and therefore it would not be necessary for the investigating agency to seek Order for cancellation of bail if they decide to re-arrest the detenu. Hence, the following Order:-

:: ORDER ::

- (i) The Petitioner's husband Pareg alias Prakash Bahadur Manjite Vishwakarma is directed to be released on bail in connection with C.R. No.288 of 2025 registered at Sakinaka Police Station on 20th April, 2025 under Sections 64(2)(k) and 351(2) of Bharatiya Nyaya Sanhita, 2023, on his executing PR. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (ii) The investigating agency is at liberty to re-arrest the detenu if they so desire by following due process of law.
- (iii) It shall not be necessary for the investigating agency to seek an Order for cancellation of bail.
- (iv) With these observations the Petition is disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)