

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4562 of 2025

Jyotiram Aba Kare

.. Petitioner

Versus

State of Maharashtra

.. Respondent

...

Mr. Ranjeet Pawar for the petitioner.

Ms. Supriya Kak, APP for the State.

CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ
DATED : 10th NOVEMBER, 2025

JUDGMENT:-

1 The petitioner implicated as an accused in FIR No. 293/2025 registered with Indapur police station, has approached this Court, seeking issuance of a writ of Habeas Corpus or any other appropriate writ or direction under Article 226 of the Constitution and Section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), thereby declaring the arrest of the petitioner to be illegal, since it is in violation of fundamental right of the petitioner guaranteed under Article 21 and 22 of the Constitution.

The petitioner, therefore, seek relief of setting aside of the remand orders dated 25/4/2025 and 30/4/2025 passed

by the Magistrate, Indapur, so as to secure his release on interim bail.

2 By consent of the parties, since the petition is taken up for final hearing, on completion of pleadings, we deem it appropriate to issue Rule which is made returnable forthwith.

Heard learned counsel Mr.Ranjeet Pawar for the petitioner and Ms.Supriya Kak, learned APP for the State.

3 The petitioner is the husband of one Priyanka Kare and since his wife went missing, he lodged complaint No.9/2025 on 29/1/2025, stating therein that his wife has left the matrimonial home between 9.00 p.m of 28/1/2025 and 6.00 a.m. on 29/1/2025 without informing anyone. He made inquiry about his wife with the relatives and carried out the search in the nearby area, but she could not be found.

During the course of investigation since respondent was giving contrary and conflicting statements and on the information being received from independent sources, that he is moving freely in the village without being worried about his missing wife, the Inspector of Police, Indapur summoned him for inquiry and as per the respondent, he confessed about murdering his wife and lead them to a particular place, but he retracted his earlier statement and hence, he was asked to visit again and therefore, he visited the police station on the next day and as per the respondent, lead the investigating machinery to the body of his wife in Pardhadi ghat near Dheku village.

Since the body of the wife of the petitioner was discovered in the cliff before it could be retrieved, it was setting dark in the evening, the search party left the spot. Pursuant to this, on 23/4/2025, at 23.59 hrs, an offence was registered by invoking Section 103, 238, 3(5) of the Bharatiya Nyaya Sanhita (BNS) against the petitioner.

On 24/5/2025, at around 8 am, the body of the deceased was retrieved from the cliff area and identified by her relatives, subsequent to which the post mortem was conducted.

The petitioner was shown to be arrested in connection with the FIR on 25/4/2025 on 4.46 am and he was produced before the JMFC, Indapur, District Pune at 3.20 p.m for police custody remand and was granted PCR till 30/4/2025. When he was again produced before the Magistrate, he was remanded to MCR till 13/5/2025.

On completion of investigation, charge-sheet is filed before the JMFC at Indapur, District Pune, but the case is not yet been committed to the Court of Sessions.

4 It is in the aforesaid background facts the counsel for the petitioner has urged before us that the production of the petitioner before the Magistrate beyond 24 hours, is in violation of Section 58 of BNSS and hence, the arrest of the petitioner is illegal.

Learned counsel would urge that the petitioner was in fact arrested on 22/4/2025 without authorization or order from the Magistrate but, he is shown to be arrested on

25/4/2025 at 4.46 a.m. The learned counsel would submit that on being taken in custody on 23/4/2025 at about 7.56 a.m, the petitioner accompanied the Investigating Officer, and they could trace the body of his deceased wife in a cliff and this reflects that the petitioner was in custody of the respondent on 23/4/2025 from 7.56 am, since the body of the deceased was discovered at the instance of the petitioner, but as it could not be recovered, the search was stopped and on 24/4/2025, the local police of Nandgaon police station visited the spot and recovered the body from the cliff. According to the learned counsel, the spot panchnama was prepared at his instance and on 24/4/2025 between 12.30 to 15.00 hours, which is clearly demonstrative of the fact that at the time the petitioner was in custody, although he was not shown to have been arrested.

The specific ground raised in the petition reads to the following effect

“It is pertinent to note that the petitioner was in the custody of the respondent as he was detained from 22/04/2025 till his arrest was shown on 25/4/2025 at 4.46 a.m. The respondent registered a FIR against the petitioner and another on 23/04/2025 at 23.59 after the body was discovered at the instance of the petitioner however, he was shown as arrested on 25/04/2025 at 4.46 a.m. The petitioner was illegally detained from 22/04/2025 till 25/04/2025. The petitioner was produced before the learned Magistrate on 25/04/2025 till 25/04/2025 at 3.20 p.m is illegal detention of the petitioner without any authorization or warrant from the Magistrate.”

5 In the wake of the aforesaid pleading, it is urged before us since the word ‘arrest’ would convey a restrain or

deprivation of one's personal liberty, since the petitioner was detained for investigation on 22/4/2025, despite this he was shown to be arrested on 25/4/2025 at 4.46 a.m and therefore, his production beyond a period of 24 hours of his detention, entitle him to be released by declaring his arrest to be illegal.

Reliance is placed upon the rights conferred under Article 21 and 22 of the Constitution, and it is urged that arrest and detention is a matter of grave consequence and upon the arrest being effected, it is necessary to have production of the person within 24 hours before the Magistrate, with the only exception of exclusion of the time necessary for going from the place of arrest to the Court/Magistrate. Taking recourse to the provisions in the Constitution, it is argued before us that the petitioner was in custody of the respondent since 24/2/2025, though shown to have been arrested on 25/4/2025 at 4.46 a.m and therefore, the period of his detention is illegal, as he should have been produced before the Magistrate within 24 hours from the time when he was taken in detention, as he was not a free man to move as per his wishes and a camouflage is created by Investigating Officer by showing his arrest at 4.46 am on 25/4/2025.

6 We have before us the affidavit filed by the Police Sub Inspector, Dattatray Bhanudas Lendave attached to Indapur police station responding to the allegations in the petition.

The affidavit refers to the missing complaint filed by the petitioner registered with Indapur police station on

29/1/2025. However, it is stated that during inquiry, it was revealed that the petitioner and one Dattatraya Shivaji Golande hatched conspiracy and committed murder of Priyanka Kare at Mauje Kalashi, Taluka Indapur District Pune on 27/1/2025 at 10.00 pm and her body was carried in Swift vehicle and thrown in the area of Mauje Dheku village to Pardhadi ghat.

Upon the aforesaid facts being revealed, C.R.No. 293/2025 was registered against the petitioner and Dattatraya Golande on 23/4/2025 at 23.52 hours.

As per the affidavit, as part of investigation, the petitioner lead to the body of his wife and during the course of investigation, the spot panchnama was drawn and the Swift vehicle in which the body was carried, was seized from his brother.

The affidavit contain a following categorical statement:

“I say that after the role of the present petitioner/ accused was revealed in the said offence and after following the prescribed procedure, the present petitioner accused came to be arrested on 25.4.2025 at 4.46 a.m.”

7 The affidavit also refer to the other material on the basis of which an inference was drawn about the involvement of the petitioner in murder of Priyanka Kare, his own wife and this includes CCTV footage, in which the car is located and also the surrounding circumstances which lead to the said inference.

The affidavit respond to the accusation of he being detained illegally from 22/4/2025 to 25/4/2025 and the sequence of events is specifically set out with the reason for suspicion that it is the petitioner who is responsible for eliminating his wife. It is not disputed that on 22/4/2025 he was called for inquiry at Indapur police station and his brother who is also working in police department, also accompanied him.

It is stated that during the course of inquiry, the petitioner admitted that with the help of his friend Dattatraya, he pressed the neck of his wife and committed her murder and threw her body in Ujani dam. However, when he was asked to accompany the police team on the spot, he retracted from his statement and told that he require some time. According to the Investigating Officer, the petitioner adopted another stand, when he stated that his wife might have gone to Nasik/Aurangabad and he shall help the police in searching the said area. This called for requisite permission, as the inquiry was to be conducted in other district and a specific statement is made that before the said permission is obtained, the petitioner was permitted to leave the police station by taking assurance from him that he shall remain present on 23/4/2025 at 6 am and a categorical statement is made as below :-

“Therefore, after making enquiry, the Petitioner was permitted to leave Indapur police station with intimation to remain present on 23/4/2025 at 6.00 a.m. Accordingly, the petitioner left Indapur police station on 22/4/2025.”

The affidavit further reveals that on 23/4/2025, the petitioner again came for inquiry along with his brother at 7.00 a.m and he was asked to accompany the police staff as they proceeded towards Nasik in vehicle.

The affidavit categorically state that a station diary entry No. 8/2025 is recorded on 23/4/2025 at 7.45 a.m. to that effect. Thereafter, they proceeded to Nandgaon police station and with the help of the local police, attempted to search the missing person and this fact is also recorded in the station diary maintained with Nandgaon police station at 17.28 hours on 23/4/2025.

Thereafter, the petitioner confessed to his crime and when the search was carried out in Nandgaon pardadi Ghat, one skeleton, saree, hair braid were found in 150 ft deep trench, but since it was not possible to pull the body, the police guards were deployed on the spot and police party along with the petitioner, came to Nandgaon police station, where his statement was recorded and entry to that effect was made in the station diary vide Entry no.21/2025 at 22.33 hours. This information was then communicated to Indapur police station and Deputy Superintendent of Police, Baramati and C.R. was registered on 23/4/2025 at 23.52 hours.

A categorical statement is made in the affidavit to the following effect :

“The petitioner was neither taken in custody of the police nor he was arrested on 23/4/2025.

Therefore, the petitioner and his brother left the police station.”

7 Narrating the happenings of 24/4/2025, it is stated that the petitioner and his brother came to Nandgaon police station and the parents of the deceased also arrived. Station diary Entry No.14 was made on 24/4/2025 at 9.04 am and then once again, the petitioner along with his brother were taken to the spot of Pardhadi ghat where the forensic team and medical officer had also reached and the belongings of the deceased were identified by her relatives and panchnama to that effect was prepared.

The affidavit thus proceed to state that upon the role of the petitioner in the offence being revealed, and the information given by him lead to the discovery of the body, he was taken into custody for the first time in presence of his brother working in police department at around 20.00 hours on 24/4/2025 and station diary no.27/2025 made by Thane Amlatdar of Nandgaon police station record this.

Thereafter, the police team along with the accused reached Indapur police station on 25/4/2025 at 3.40 a.m and station diary no. 9/2025 was recorded and thereafter, on following the prescribed procedure, the petitioner was arrested on 25/4/2025 at 4.46 a.m.

8 The affidavit filed by Investigating Officer categorically state thus :-

“10 I say that the requisite notice under Section 47 of BNSS was given to the petitioner accused on 25/4/2025 which was acknowledged by the petitioner on 25/4/2025. I say that the requisite notice under Section 48 of BNSS was given to the brother of the petitioner accused namely Appaso Aba Kare, who is working police department on 25/4/2025 which was acknowledged by his brother on 25/4/2025.

11. I say that before arresting the petitioner/accused, the arrest form of the petitioner accused was filled up by me. I say that before his arrest, the reasons for arrest and his legal rights were explained to the accused/Jyotiram Aba Kare and the same have been mentioned in the said arrest form. I say that the arrest form of the accused – Jyotiram Aba Kare was duly filled up in the presence of two panchas namely, Swapnil Madhukar Kumbhar and Mahadev Satyavan Gorve and they had signed on the said arrest form accordingly. I say that the present accused – Jyotiram Aba Kare had also signed and has put his thumb impression on the said arrest form wherein it has specifically mentioned that before his arrest, reasons for arrest and legal rights were explained to him.”

9 The sequence of events narrated before us and the perusal of the remand report dated 25/4/2025 produced before the JMFC, Indapur, reveal that the accused was arrested after following the guidelines of the Hon'ble Supreme Court and the intimation of his arrest was given to his brother. It also state that the accused was produced before the Court on 25/4/2025 at 3.20 pm for remand, which is within 24 hours from his arrest.

The remand order clearly reveal that the petitioner was duly represented by his Advocate and at the time of remand, no ground of illegal arrest was pleaded before the Magistrate.

10 The order by the Magistrate dated 25/4/2025 placed along with the affidavit at Annexure 'A' clearly record as below :-

“Upon perusal of checklist and grounds of arrest of the accused persons, their arrest appear to be justified”.

11 In the wake of the pleadings and the arguments advanced before us and on perusal of the other documents, including the remand order passed by the Magistrate, we do not find merit and substance in the contention advanced on behalf of the petitioner, as it is clearly disclosed before us that the petitioner was called in the police station on 22/4/2025 for inquiry but, he was permitted to leave the police station in the evening. On 23/4/2025, he along with his brother voluntarily accompanied the police team to Taluka Nandgaon, which is at a distance of approximately 350 kms from Indapur, when the petitioner along with his brother returned to Nandgaon police station, he was again permitted to leave, on being instructed to present himself on the next day.

Accordingly, on 24/4/2025, petitioner reported to Nandgaon police station and after corroborating his version, when the body of the deceased was found in the forest area, he was taken in custody on 24/4/2025 at 20.00 hours and was brought to Indapur police station at around 3.20 a.m and shown to be arrested at 4.46 a.m.

From the time of his arrest, within 24 hours, he was produced before the Magistrate i.e. at 3.20 p.m. on the next day and since there is no denial to the averment to the statement made on oath by the Police Sub Inspector Indapur police station, by filing any counter affidavit, the statement on oath is accepted by us as a statement of fact.

12 The order passed by the Magistrate, Indapur, on the Remand Application also reveal that the petitioner along with the other accused were represented by the Advocate of their own choice and on perusal of the checklist and ground of arrest of the accused persons, the Magistrate recorded that the arrest was properly carried and we do not find any legal lacunae in the procedure followed before the petitioner came to be arrested.

13 The argument advanced before us that the petitioner was taken into custody when he was called for inquiry and therefore, he is arrested on that day, is not to be borne from record, as we find that the affidavit filed by the Investigating Officer categorically state that the petitioner being called for inquiry, accompanied the police, but on both dates i.e. 23/4/2025 and 24/4/2025, he was permitted to leave the police station and was not detained. It is only on 25/4/2025 on completion of the necessary formalities, he was arrested at 4.46 a.m.

It is not in dispute that 'arrest' would convey restraint of a person, obliging him to be obedient to law,

thereby amounting to the execution of the command of a duly authorized officer. The word 'arrest' signifies restraint or deprivation of one's personal liberty.

The restraint commences with the officer taking a person into his custody and restricting his movements and his continued custody with the police until he is produced before the Magistrate. Arrest commences with the restraint placed on liberty of a person and though the Code of Criminal Procedure has clearly prescribed the manner in which the arrest shall be effected, it involves an element of compulsion, preventing free movement of an arrestee and only permitting the movements according to the will of a person who has effected the arrest.

14 In **Niranjan Singh Vs. Prabhakar Rajaram Kharota**¹, the term 'custody' was explained with precision with reference to the power to release a person on bail under section 439 in the following words :-

“No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocal quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.”

1 1982 SC pg 559

15 With the affidavit being filed before us by the Officer of Indapur police station, sequentially placing before us the events that transpired from 22/4/2025 to 25/4/2025, with a specific statement supported by the entries in the station diary that the petitioner was neither taken into police custody, nor he was arrested on 23/4/2025 and rather he was allowed to leave the police station as a free man but was arrested only on 25/4/2025 at 4.46 am with no denial of the aforesaid statement, in our considered opinion, the production of the accused before the Magistrate on 25/4/2025 at 3.20 p.m is within the prescribed period of 24 hours and we do not find that the Investigating Officer of Indapur police station investigating C.R No. 293/2025 has faltered in this regard. Since there was no arrest prior to the time specified in the affidavit, and as the petitioner was undisputedly called for the purpose of inquiry and that he rendered all his co-operation, do not in any contingency lead to an inference that he was in custody of the police on being arrested.

Finding no merit and substance in the contention raised on behalf of the petitioner, we dismiss the Writ Petition.

No order as to costs.

(SHYAM C. CHANDAK,J)

(BHARATI DANGRE, J.)