

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4680 OF 2025**

Ahmed Jalal Shaikh	...	Petitioner
versus		
State of Maharashtra and Anr.	...	Respondents

Mr. Moin Khan i/by Shafiya Shaikh, for Petitioner.
Mrs. R.S.Tendulkar, APP for State.
PSI Vishal Karade, Shahunagar Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 4 DECEMBER 2025

P.C.

1. Heard the learned Counsel for the parties.
2. By this Petition under article 226 of the Constitution of India and Section 539 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS of 2023), the Petitioner takes exception to a notice issued to the Petitioner under Section 130 of the BNSS of 2023, calling upon the Petitioner to show cause as to why the Petitioner be not directed to furnish security for good behaviour for a term of two years under Section 129(g) of the BNSS of 2023.
3. Mr. Moin Khan, learned Counsel for the Petitioner, submitted that the impugned show cause notice is clearly in breach of the provisions contained in Section 130 of BNSS as the Executive Magistrate has not passed any order which is a pre-requisite before any show cause notice is issued for initiation of action under Section 129 of the BNSS of 2023. Secondly, the

show cause notice is based on a solitary crime i.e. C.R.No.342 of 2021 registered against the Petitioner for the offences punishable under Sections 376, 354, 354A, 354B, 354C, 315, 406, 498A read with Section 34 of the Indian Penal Code, at the instance of the wife of the Petitioner. Invocation of the powers under Section 129(g) of the BNSS of 2023, which empowers the Executive Magistrate to obtain security for good behaviour from habitual offenders, was thus wholly uncalled for.

4. Learned APP submitted that, no interference is warranted at this stage, as only a show cause notice has been issued to the Petitioner. Thus, the Petitioner can very well appear before the Executive Magistrate and show cause and, thereupon, the Executive Magistrate may pass appropriate orders.

5. It is true, ordinarily the writ court would be loath to intervene at a stage when the matter is at the stage of show cause notice only, for the noticee has an opportunity to show cause pursuant thereto and the Competent Authority may pass appropriate order thereon, which if the noticee feels aggrieved by, can be assailed in appropriate proceeding. However, if the show cause notice appears to be in teeth of the statutory mandate or constitutes an abuse of the process of law, the writ court may justifiably interfere.

6. A useful reference in this context can be made to a decision of the Supreme Court in the case of **Union of India and Anr. V/s. Vicco**

Laboratories¹, wherein the Supreme Court observed as under :

“31. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.

7. Section 130 of BNSS of 2023 reads as under :

“130. Order to be made. - When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the

1 (2007) 13 SCC 270

substance of the information received, the amount of the bond to the executed, the term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties.”

8. A plain reading of the aforesaid provision would indicate that, when a Magistrate acting under Sections 126, 127, 128 and 129 deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth the substance of the information received, amount of the bond to be executed, term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties. Show cause notice, therefore, must be preceded by an order passed by the Executive Magistrate.

9. From the perusal of the impugned show cause notice, it does not appear that the Executive Magistrate has passed an order in conformity with the provisions contained in Section 130 of BNSS of 2023.

10. Even otherwise, the resort to the provisions contained in Section 129 of BNSS of 2023, in the peculiar facts of the case, appears to be unsustainable. It is well recognized, proceedings under Chapter IX of BNSS are preventive in nature. The initiation of the action under Chapter IX warrants that the Executive Magistrate is satisfied that the person concerned is either likely to commit breach of peace or disturb public tranquility or habitually indulges in

offences.

11. Section 129 of the BNSS reads as under :

“129. Security for good behaviour from habitual offenders. -
When an Executive Magistrate receives information that there is within his local jurisdiction a person who-

(a) is by habit a robber, house-breaker, thief, or forger; or

(b) is by habit a receiver of stolen property knowing the same to have been stolen; or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter X of the Bharatiya Nyaya Sanhita, 2023, or under section 178, section 179, section 180 or section 181 of that Sanhita; or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace; or

(f) habitually commits, or attempts to commit, or abets the commission of-

(i) any offence under one or more of the following Acts, namely:-

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreigners Act, 1946 (31 of 1946);

(c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(d) the Essential Commodities Act, 1955 (10 of 1955);

(e) the Protection of Civil Rights Act, 1955 (22 of 1955);

(f) the Customs Act, 1962 (52 of 1962);

(g) the Food Safety and Standards Act, 2006 (34 of 2006); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption; or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community.

Such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bail bond, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.”

12. In the case at hand, the Executive Magistrate has resorted to clause (g) of Section 129. For the applicability of clause (g), the Executive Magistrate must satisfy himself that the noticee is so desperate and dangerous as to render his being at large without security hazardous to the community.

13. As noted above, only one crime has been registered against the Petitioner at the instance of his wife, and on that basis alone, proceeding under Chapter IX has been initiated. Neither there is material to show that the Petitioner is habitually indulging in offences or the Petitioner is a desperate and dangerous person.

14. In the case of **Farhan Nasir Khan and Anr. V/s. State of Maharashtra**

and Anr.² a Division Bench of this Court enunciated that Section 110, the precursor of Section 129 of BNSS, repeatedly uses the words “habit” and “habitually” with grammatical variations. That eliminates the use of isolated, one-off incidents. Those words imply repetition and persistence in committing offences. There must be some degree of continuity, repetition and persistence in the person’s commission of offences. A solitary FIR remote in point of time would not support invocation of an action under Section 110.

15. In the case of **Mohan Parmanand Khatri v/s. M.G.Ingle and Ors.**³ explaining the import of sub-section (g) of section 110, a learned Single Judge observed, inter alia, as under :

“6. So far as Sub-section (g) is concerned, the behaviour of such person should be sufficient enough to indicate that he is a desperate person and likely to commit the acts which have been mentioned in Section 110 of the Code. One should be sure that in all probabilities he would be committing such acts irrespective of prudence prevailing on him or any restraint in his behaviour. There should be material on record to show that he is so dangerous to the society that his being at large would be dangerous to the society as such in respect of the acts indicated by Section 110 of the Code. The words "desperate" and "dangerous" should be understood in proper perspective. They are not to be used irrationally, loosely and for the purpose of curtailing liberty of the citizens.

2 2014(3) Bom.C.R. (Cri.) 751

3 2004(1) Mh.L.J. 524

7. Furnishing the bond of good behaviour causes a social stigma and that cannot be forgotten. It should not be taken lightly. Without any justifiable cause or ground, a citizen should not be asked to furnish the bond of good behaviour in a democratic republic wherein his liberty, his status has been guaranteed by the constitution. His fundamental rights should not be humiliated or molested on insufficient material and he should not be put to a social stigma or embarrassment. Asking a citizen to furnish a bond has to be taken with its proper significance.”

16. Applying the aforesaid tests to the facts of the case at hand, registration of FIR at the instance of the wife of the Petitioner, in the wake of matrimonial dispute, would hardly sustain an action under Section 129(g) of the BNSS of 2023.

17. Resultantly, the initiation of action appears to be in flagrant violation of the statutory provisions and a clear abuse of the process of law. Thus, I am impelled to quash and set aside the impugned notice.

18. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned show cause notice dated 7 August 2025 stands quashed and set aside.

(N.J.JAMADAR, J.)