

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4727 of 2025

Rajan Subramaniyan Arundatiyar .. Petitioner

Versus

State of Maharashtra .. Respondent

WITH

CRIMINAL WRIT PETITION NO. 4039 of 2025

Arkan Mohammed Shakeel Memon .. Petitioner

Versus

State of Maharashtra & Ors .. Respondents

...

Mr.Vikas Tiwari with Mr.Rohit Gupta and Aditya Urankar for the petitioner in WP No. 4727/2025.

Mr.Gaurav Bhawnani i/b Shadab Khopekhar for the petitioner in WP No.4039/2025.

Mr.S.V. Gavand, APP for the respondent State.

CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ
DATED : 24th NOVEMBER, 2025

JUDGMENT:- (Per Bharati Dangre, J)

1 The two petitioners in the petition are accused in FIR No. 159/2025 registered with RCF police station, invoking Sections 8C, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The petitions are filed by them under Article 226 of the Constitution along with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS) 2023, seeking a declaration that their arrest be declared as illegal detention for their release thereafter.

2 In Writ Petition No. 4039/2025, it is the claim of the petitioner that he was illegally taken in custody by the Officers of RCF police station on 20/5/2025 and on 22/5/2025, his sister filed missing complaint with Neral police station. The petitioner was shown to be arrested only on 26/5/2025 and he was produced before the Magistrate on the same day at 5.30 p.m.

According to Mr. Gaurav Bhawnani for the petitioner in the first Remand Report, the time of arrest of the petitioner is not mentioned. However, in the second remand report dated 2/6/2025, the time of his arrest is shown as 17.00 hours.

It is contended by the learned counsel that the petitioner was picked up from his home and illegally detained by respondent no.5, and he was instructed to send a message to his sister via Whatsapp, assuring her that he will come home and she shall not worry. It is also his submission that the arrest of the petitioner was not informed to his sister and therefore, there is no compliance of Section 48 of the BNSS, 2023, but the notice is served upon Mr.Zihaan Mansur, allegedly a friend of

the petitioner, but neither his sister nor any close family member was informed about the arrest.

It is the case of the petitioner that on a grievance being made about his illegal detention, the Magistrate did not apply his mind and did not even consider that the petitioner was detained beyond 24 hours without his production before the JMFC, and this is in violation of Section 58 of the BNSS.

3 As far as Writ Petition No. 4727/2025 is concerned, according to the petitioner, on 2/5/2025, the Police Officer attached to the respondents, visited the house of the petitioner at Belapur at 5.00 a.m. and thereafter detained him, but his arrest was shown on 3/5/2025 at 6.00 a.m, for establishing that he was produced within 24 hours before JMFC, Kurla. The Magistrate granted PCR without considering the fact that the remand application is absolutely silent about general diary entry about the arrest of the applicant, and since the production of the petitioner before the Magistrate is beyond 33 hours, it is urged that it is violative of Article 21 and 22 of the Constitution. Another ground in the petition is that the petitioner was not given the grounds of arrest immediately upon detention in writing, as mandated under Section 47 and 48 of the BNSS and therefore, his arrest is illegal, bad-in-law, as it violates Section 58, 62 of the BNSS, 2023.

4 Time and again, the argument that an accused is 'arrested', is advanced before us, whenever a person is either called for inquiry or called to the police station for gathering

any information in connection with the offence which is registered. It is in various authoritative pronouncements the higher courts have emphasized upon the test of 'arrest', and held that a two-fold tests would apply whether the person is under the control of Investigating Agency or the Court or whether he is a free man to walk out, at his free will. The term 'arrest' necessarily convey a restraint on persons movement and when he is under such restraint, it necessarily result into deprivation of his personal liberty and in its absence, it cannot be said that he was subjected to 'arrest'.

5 Before the person is arrested and denuded of his liberty or freedom to be free, the Code of Criminal Procedure, 1973 and now the BNSS, 2023 set out a procedure as to how arrest shall be effected and the manner in which a person shall be deprived of his liberty. As arrest is the act of a apprehending and bringing the person into custody because he is suspected or is found to have indulged himself in commission of an offence, pursuant to which a Magistrate is empowered to pronounce upon his custody.

6 It is in the wake of the aforesaid, when we examined the case before us, from reading of the FIR as well as Remand orders, it is revealed to us that on 18/3/2025, on information being received by the Anti Narcotics Bureau, about a person, who is engaged in drug deal and found to be present on a given location in suspicious circumstances, he came to be apprehended.

On following the necessary procedure prescribed under the NDPS Act, he revealed his name to be 'Rehan Santosh Shaikh', and on his personal search, a zip lock bag was found in his left pant pocket and which was disclosed by him to be Mephadrone (MD). He also disclosed that the said substance was purchased by him from one Shiva, Chembur and Farid Govandi.

The contraband weighed 45 grams and on following the necessary procedure, he was taken in custody.

The said accused led the investigating machinery to one Shiva Hiralal Gupta, who came to be arrested on 2/5/2025 at 14.54 for his involvement in the subject FIR, invoking provisions of NDPS Act.

It is this accused Shiva Hiralal Gupta who disclosed that he purchased the said substance from the petitioner Rajan and on gaining necessary information, the petitioner came to be arrested on 3/5/2025 at 6.00 a.m. It is at the instance of the petitioners who had named the other accused person and they could track a place in form of a factory or production unit which indulged in preparation of the contraband and huge storage of methylamine and mono-methylamine as well as isopropyl alcohol came to be seized, leading to a conclusion that all the accused persons were involved in the activity of either manufacturing or storing the contraband or leading to its combinations in form of psychotropic substance.

7 It is in this aforesaid scenario, the petitioner Rajan, being arrested on 6.00 a.m on 3/5/2025 he was produced before the Magistrate within 24 hours.

As regards the contention that the petitioner was apprehended and taken into custody on 2/5/2025, except a bald statement by the petitioner, there is no proof of this accusation. Reliance is placed upon the call history of the Investigating Officer with mobile number 8104579907 produced at Exhibit-C, but there is no proof that the phone calls were made to the petitioners and in any case, even if the phone call is made, it do not establish that he was arrested. Therefore, merely relying upon the screen shot reflecting that the call was received from the Police Officer do not lead to an inevitable conclusion that the petitioner Rajan was arrested on 2/5/2025.

8 Apart from this, the contention that the grounds of arrest were not sufficiently worded also fail to impress, as we find that the grounds of arrest specifically refer to registration of the offence in the concerned police station and make reference to the information provided by one of the arrested accused about the involvement of the petitioner and it was therefore, mentioned that his arrest is necessary as there is a huge quantity of contraband involved and it is necessary to investigate the offence.

9 The learned APP Mr.Gavand by relying upon the affidavit filed by the Investigating Officer, would submit that all the procedural safeguards were ensured before arrest of the

petitioner and he would submit that when the police team was patrolling in the area of Patel Nagar, Mahul, Chembur, one suspected person dealing in Mephadrone, was arrested, resulting in registration of C.R.No. 159/2025, invoking the relevant provisions of NDPS Act, 1986 against Rihan Santosh Shaikh.

The investigation moved ahead when Rihan disclosed that he purchased the contraband from one Shiva Hiralal Gupta who came to be arrested and he disclosed that he purchased the contraband from Rajan Subramaniam, one of the petitioner and the petitioner was traced in Belapur. He came to be arrested on 3/5/2025 and Mr.Gavand has placed before us the arrest panchnama, entry in station diary as well as the communication as regards reasons and grounds of arrest along with the information given to his relatives.

10 As far as Arkan Mohammed is concerned, he came to be arrested on 26/5/2025, and there is a recovery of 5 kg 525 gms mephadrone worth Rs.One crore from him.

As far as Arkan is concerned, the affidavit filed by API Neral police station, categorically record that the sister of the petitioner had lodged a missing complaint on 22/5/2025 that her brother went missing since 20/5/2025 from his residence. The said complaint was registered as missing person registration no. 20/2025 and entry to that effect was taken. The affidavit state that in order to trace the location of missing person, CDR of his mobile number was obtained, which clearly

reveal that there is a movement of the said person from 20/5/2025 to 25/5/2025 at various places i.e. Karjat, Koparkhairne, Dongri, Vashi, Chembur, Kashali – Karjat and even there was communication on some numbers during the said period. The affidavit state that several attempts were made to contact through this mobile number, however, at several intervals, the phone was switched off and the location showed movements towards areas outside the jurisdiction.

In light of this affidavit, since the petitioner was found to be on move, the contention of Mr.Bhawnani, that he was taken from one place to other by the police on being detained cannot be believed.

11 The Assistant Police Inspector attached to RCF Police station also filed an affidavit, specifically stating that the Officer was not in Mumbai from 20/5/2025 to 24/5/2025 and he was in Rajasthan and therefore, there was no question of asking the petitioner to send a whatsapp message to his sister. The officer has placed on record the Air India tickets, establishing that he was not in Mumbai and denying the allegation that he played any role in taking the accused in custody.

12 Another Police Inspector of RCF police station filed a categorical affidavit, categorically stating that during the course of investigation of the subject C.R, when huge amount of contraband substance was recovered from Jaman Hidayatullah Khan and to disclose that he purchased the same from Shakeel

Chikna @ Shakeel Memon, i.e. the father of the petitioner, and Arkan, the police team visited his residential address when he was not found home, but his son Arkan was present. He evaded giving proper response and therefore he was brought to Beat No.2 of RCF police station for inquiry on 22/5/2025 at 19.27 hours. An entry to that effect is taken in the Station diary.

The petitioner during the course of inquiry, disclosed another residential address, and when he was taken there, the residence was found locked. A requisite notice was served on the petitioner u/s.67 of the NDPS Act on 22/5/2025 at 10.00 p.m by intimating him to remain present for inquiry on the next day at 11.00 a.m. The petitioner accepted the said notice and signed the same and put the time and date on the notice and left the police station.

13 In response to the notice, the petitioner, however, failed to remain present either on 23rd or 24th May 2025, and efforts made to contact him did not succeed as his mobile was switched off. The investigation lead to the petitioner, who was also involved in illegal drug transaction along with his father, and he made every endeavour to conceal his whereabouts as well the whereabouts of his father.

The petitioner was however, tracked in Karjat, District Raigad on 25/5/2025 at 17.35 hours and after following the procedure, he accepted his involvement and agreed to make disclosure of certain information of the

contraband substance. Therefore, on issuing a notice to him under Section 50 of the NDPS Act, the petitioner lead to a place which was a unit which had stored chemicals and powder and other equipments for preparing Mephadrone in huge quantity. Five kg, 525 grams of contraband was seized worth Rs.11 crores along with the equipment for preparing MD worth Rs.One crore. A seizure panchnama to that effect was prepared and requisite notice under Section 52 was served on the petitioner in presence of two panchas.

Thereafter, he came to be arrested by following the procedure including communicating the grounds of arrest to him. In the whole search and seizure procedure, the huge amount of contraband worth Rs.25 crore was seized along with the raw material and machinery used for preparing the same.

14 On perusal of the affidavit filed by PSI attached to RCF police station, we find the grounds raised in the petition to be hollow as we find that the procedure prescribed under BNSS of communicating the grounds of arrest and intimation of the arrest was strictly followed.

15 In our considered opinion, since the grounds of arrest specifically referred to the other accused and also referred to the involvement of the accused persons, i.e. the petitioners, particularly in the wake of the fact that the investigation had led to huge quantity of Mephedrone, we do not find any merit in the contention raised in the two petitions.

As a result, Writ Petitions are dismissed.

(SHYAM C. CHANDAK,J)

(BHARATI DANGRE, J.)