

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5256 OF 2025

Vitthal Mahadeo Shelar .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents
...

Mr. Manoj Mohite, Senior Advocate, a/w Mr. Pranav Pakale, Mr. Chinmay Sawant, Mr. Aditya Bagal for the Petitioner.
Mr. Brijesh Shukla for respondent no.2./ original complainant.
Dr. Pradeepsingh. M. Rajput Special Public Prosecutor a/w Ms. Sangeeta D Shinde, APP for the State.
Mr. Ganesh Fartade, PSI, Crime Branch, Pune.

**CORAM: BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.**
DATED : 17th DECEMBER, 2025

JUDGMENT:- (PER BHARATI DANGRE J)

1. C.R. No. 2 of 2024 was registered with Kothrud Police Station, Pune, on 5/01/2024 invoking Sections 302, 307 read with Section 34 of Indian Penal Code, Section 3, 25 of Arms Act, 1959 along with relevant provisions of Maharashtra Police Act, 1951.

The same was based on the information that at 1:20 p.m., Sharad Mohol, who was on his way to Dagdusheth Ganpati Mandir along with three other persons, Munna @ Sahil Polekar and two unknown persons accompanying him, fired at him and caused his death. The information was also provided that Munna Polekar fired at Pramod Sathe, who was walking with complainant behind Sharad.

2. The provisions of Maharashtra Control of Organised Crime Act, 1999 were invoked in the said FIR on 27/01/2024 though the petitioner was not arraigned as an accused. His name was however added in the C.R., on 13/01/2024, on the basis of suspicion of allegedly hatching criminal conspiracy.

Admittedly, the petitioner Vitthal Mahadeo Shelar was not named as an accused in the FIR. However on 15/01/2024 at 19:30 hours, he was arrested in connection with the said C.R., being arraigned as accused no.15 and his police remand was sought before the J.M.F.C. Court No.1, Pune for the purposes of investigation. On application preferred by Assistant Commissioner of Police, Crime-1, Crime Branch, Pune City, Pune, upon production of the petitioner at 3:45 p.m., he was remanded in police custody till 20/01/2024 by the order passed by the J.M.F.C, Pune on 16/01/2024.

3. Being aggrieved by his arrest without following the procedure prescribed, the petitioner filed a writ petition before this Court alleging that he was not communicated the grounds of arrest in writing and he was illegally detained beyond 24 hours. However, in the wake of the reference being made to the larger Bench on the issue of communication of the grounds of arrest, on the very first day withdrawal of the petition was sought, which was permitted on 22/04/2025.

4. The present petition once again raises a challenge to the arrest of the petitioner, by alleging that it is illegal and his production before the Magistrate is beyond period of 24 hours and therefore on both these counts, he is entitled for his release.

5. We have heard learned Senior Counsel, Mr. Manoj Mohite, for the petitioner along with Special Public Prosecutor, Dr. Pradeepsingh Rajput, for the State.

By consent of parties, we issue Rule, which is made returnable forthwith.

6. Mr. Mohite would invite our attention to the order dated 24/11/2025, when we permitted impleadment of Panvel City Police Station as a respondent. The amendment being carried out the Special Public Prosecutor is under instructions to represent the Investigating Officer of the Crime Branch as well as the Senior Police Inspector of Panvel City Police Station.

Inviting our attention to the timeline of the events, which according to Mr. Mohite are crucial for determination of the issue involved, the Panvel Police nabbed the petitioner at 1:00 a.m. on 15/01/2024 from Vashi, Navi Mumbai. As per the Police station general diary no. 8/2024, he was shown to be taken into custody at 3:56 a.m, and was brought to the police station. The general diary record that the petitioner and his vehicle were both handed over to the officers of Crime Branch, Pune.

According to Mr. Mohite from the time he was apprehended, he was in the custody of Panvel Police Station and his custody was handed over to officer of Crime Branch, Pune, though he was shown to be formally arrested at 19:30 hours on 15/01/2024. His production before the Magistrate however was on 16/01/2024 at 3:45 p.m., which is beyond period of 24 hours from the time he was apprehended. It is therefore, the contention of Mr. Mohite that his

production before the Magistrate after 24 hours of his confinement is illegal as it is in the teeth of Article 22(2) of the Constitution and Section 58 of the [Bharatiya Nagarik Suraksha Sanhita](#) (BNSS), 2023.

Another submission advanced by Mr. Mohite, is the flaw in the arrest as the grounds of arrest were never communicated to the petitioner in writing by the Crime Branch, Pune City, before his arrest was effected on 15/01/2024, at 19.30 hours. He would place reliance upon the settled position of law flowing from the decision of the Apex Court in case of *Pankaj Bansal vs. Union of India*¹ and the decision in case of *Prabir Purkayastha vs. State*², submitting that time and again the Apex Court has laid its emphasis on liberty of an individual and having held that the liberty cannot be curtailed without following due process of law, and hence by not ensuring compliance of Article 22 and the statutory safeguards, he would submit that his deprivation of liberty, without adhering to the procedural safeguard is illegal. According to Mr. Mohite, if it is the constitutional mandate to produce the arrested person before the nearest Magistrate before 24 hours and also to inform the grounds of arrest at the earliest, if the investigating machinery fail to adhere to this mandate, then the arrest along with the subsequent remands are liable to be declared as illegal and the petitioner shall be released from custody forthwith.

It is his specific contention that to cover up the lacunae, of his non-production as prescribed in law, he is shown to be formally arrested at a later point of time and this is attempted to be demonstrated by him on the basis of various station diary entries annexed to the petition.

¹ (2024) 7 SCC 576

² (NCT of Delhi) 2024 8 SCC 254

7. The Special Public Prosecutor, Dr.Rajput, would place reliance upon the affidavit affirmed by the Assistant Commissioner of Police, Crime-1, Pune City, Shri Vijay Ganpatrao Kumbhar, where the timeline of the occurrence of events is set out. It is his submission that the petitioner was apprehended by Panvel City Police and he was handed over to Pune City Crime Branch at 3:56 a.m. on 15/01/2024. Therefore, he was brought to the office of ACP, Crime Branch-1, Pune, at around 7:00 a.m., and after preliminary interrogation, the Investigating Officer released him at 12:00 p.m., with direction to remain present at the Crime Branch office at 15:30 p.m. It is the statement made on oath and also the submission of Special Public Prosecutor that the petitioner complied, and marked his appearance before the Investigating Officer.

From 15:30 p.m. a detail interrogation was conducted and when the Investigating Officer found material indicating his involvement, as well as one of the co-accused Ramdas Marane in the crime, and since he was of the opinion that his custodial interrogation is necessary, by invoking the power vested in him, the petitioner was arrested at 19:30 p.m.

8. Reliance is placed upon the arrest entry recorded in station diary no.22/2024 at Kothrud Police Station, at 20:45 p.m.

The Special PP submits before us that the station diary entry record that as per the guidelines of the Supreme Court the Investigating Officer informed the applicant's brother Krushna Mahadeo Shelar about the arrest and within 24 hours of his arrest, he was produced before the Magistrate. On merits of the matter, Mr.Rajput would submit that the petitioner was in contact with the

co-accused even and after the commission of crime and the necessary C.D.Rs are obtained during the course of investigation. He would also submit that the Investigating Officer has recorded statement of 4 witnesses under Section 164 of Cr.P.C., in which the role of the petitioner has surfaced. Though an attempt is made to take us deep into the investigation by pointing out the petitioner's involvement in the offence, we do not think that for determining the issue as to whether the arrest of the petitioner was legal and effected after following the proper procedure, we are required to take into consideration the merits of the accusations.

9. From the affidavit filed by the Investigating Officer, who has effected the arrest of the petitioner in connection with an offence registered under MCOCA, we find that during the course of investigation, the petitioner is attributed a role of a leader of a crime syndicate, engaged in amassing wealth through illegal activities. As per respondent no.1, on completion of investigation the charge-sheet has been filed against 17 persons which include the present petitioner.

The Investigating Officer make a statement on oath that during the course of investigation, the investigating agency arrested 8 accused persons on 6/01/2024 and two accused namely Satish Sanjay Shedge and Dhanu @ Dhanjay Maruti Varkar on 10/01/2024. On 12/01/2024, three other accused persons were arrested and on 13/01/2024 one of the confidential witness and the technical investigating team provided information that accused Vitthal Mahadeo Shelar (petitioner) was attempting to take revenge and with the help of the secret informer, he was tracked in Panvel on 15/01/2024. The information was conveyed to Panvel City Police,

who apprehended him and handed him over to Pune City Crime Branch on the same day at 3:56 a.m. He was then brought in the office of ACP, Crime-1, Pune and what is most relevant is the statement on oath made by the Investigating officer to the following effect in the affidavit.

“After preliminary interrogation, the Investigating Officer released the applicant/accused and other on the same day at 12:00 p.m., with a specific direction to remain present at Crime Branch office at 15:30 p.m. and he complied, and entry of his appearance was recorded in Station Diary No. 14/2024”

10. We are really surprised with the aforesaid approach of the Investigating Officer, who released a suspect, who after due search and clues provided by the technical investigating team was apprehended on 15/01/2024, i.e. after two days of the search and he was allowed to leave the office of the Investigating Officer, with a direction that he should report back at 15:30 p.m.

We also find an entry to that effect, being taken in the police station diary of Crime branch annexed along with the affidavit at Exhibit-G, recorded at 13:12 hours.

The diary entry record that in connection with C.R. No. 02/2024, the investigating team on 15/01/2024 took six persons in possession from Panvel, Navi Mumbai, and they were brought at 7:00 hours at Crime Branch Pune and this include the petitioner Vitthal Mahadeo Shelar along with 5 others.

It also record that on making inquiries with the said persons, at around 12:00 hours they were released and they were given written intimation of remaining present in the office of ACP Crime-1 Pune city at 15:30 hours on 15/01/2024.

When we specifically inquired with Special Public Prosecutor, about the intimation given to those six persons as per the station diary, he deny that there is any such communication in writing.

11. We, therefore, find that the stand adopted, that the petitioner, who was brought to Crime Branch at 7:00 hours for the purpose of investigation was allowed to leave the office only by directing him to remain present at 15:30 hours is hard for us to digest. Merely by taking a note in the station diary to the above effect without any intimation in writing, we really wonder that a person who was nabbed with lot of efforts being taken from Panvel and brought to Pune by confining and restricting his movements, was allowed to be free at 12:00 p.m., by reposing absolute faith in him that he shall come back to the office for further interrogation as directed.

We find the aforesaid very surprising, as even when a person suspect that he is likely to be investigated by the police in connection with a crime, the first step he take is to file an application for anticipatory bail, so that he can avoid his arrest, though he undertake to render his assistance to the Investigating Officer. However, once the petitioner was taken into custody by the Panvel City Police, and he was handed over to Pune City Crime Branch at 3:56 a.m., when there was no free movement for the petitioner and he being brought to the Investigating Officer at 7:00 a.m. and the investigation being conducted, asking the petitioner who is an accused of a serious offence of 302, in which MCOCA is also invoked, to set at liberty only on an assurance that he will return back after a while has really astonished us.

12. In fact, from the narration in the affidavit filed by the Investigating Officer, along with the station diary entries, it is evidently clear to us that the petitioner was apprehended by Panvel City Police and his custody was handed over to City Crime Branch, Pune, on 15/01/2024, at 3:56 a.m. and he was brought to the office of ACP Crime-1, at 7:00 a.m. he was continued to be detained there till the time he is shown to be arrested at 19:30 p.m.

We have every reason to doubt the statement made on oath by the Investigating Officer that he was a free man from 12:00 p.m. and only when he came back to the police station, some inquiries were made with him, and satisfied with his involvement in the subject crime, he is arrested at 19:30 p.m.

13. We find that from the time when he was apprehended at 1:00 a.m. from Vashi till his production on 16/01/2024 at 3:45 p.m., even deducting the travel time from Panvel Police Station to Kothrud Police Station i.e. of 3 hours, the production of the petitioner before the Magistrate is beyond 24 hours. As per the respondent, his arrest is at 7:30 p.m. on 15/01/2024, and therefore his production on 16/01/2024 at 3:45 p.m. before the Magistrate is within 24 hours i.e. 20 hours 15 minutes, but since we refuse to accept the contention that the arrest was effected only on 15/01/2024, at 19:30 p.m and before that the petitioner was a free man, according to us the production of the petitioner is clearly beyond 24 hours from the date of his confinement though he was not actually shown to be arrested.

14. Arrest connotes restrain on the individual's right of free movement particularly as he is suspected of committing an offence. According to us arrest involves deprivation of liberty and whenever

there is restrain on the freedom of movement, though according to the Investigating Officer, it is not arrest, but mere detention, we must specifically take note of the safeguard provided in sub-clause (2) of Article 22, which direct that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no person shall be detained beyond period of 24 hours without authority of the Magistrate.

Since we find that though the petitioner was not found to be formally arrested but his movements were restricted from the time when he was picked up from Vashi at 1:00 a.m., till he was shown to be formally arrested and we find the attempt on part of the Investigating Officer, respondent no.1, to submit that he was a free man till the time of his arrest, according to us is bald-faced lie as it is very obvious that a petitioner who was being searched from 13/12/2024, and being nabbed in the darkness of the night, was allowed to walk free from the office of the Investigating Officer in broad day light.

Since we find that the production of the petitioner from his apprehension/detention is beyond 24 hours, it amounts to violation of his fundamental rights guaranteed under Article 22(2) of the Constitution of India.

15. Another ground pressed into service by the petitioner is non-adherence to the imperative mandate of furnishing the grounds of arrest in terms of clause (1) of Article 22 of the Constitution and as

interpreted by the Apex Court in Pankaj Bansal (supra), communication of the grounds in writing.

Section 47 of the BNSS also make it imperative for every police officer arresting without warrant to forthwith communicate to the person arrested with full particulars of the offence for which he is arrested or other grounds for such arrest.

The learned Special Public Prosecutor fairly submits that the reply affidavit filed by the Investigating Officer is silent on this aspect, but he would invite our attention to station diary no.22, which is annexed along with the affidavit filed by the Investigating Officer and he would submit that the entry as regards arrest of the petitioner is taken in the arrest station diary recorded on 15/01/2024.

16. We have perused the Station Diary entry which is annexed along with the affidavit of the respondent.

The entry records that the petitioner Vitthal Mahadeo Shelar, along with one Ramdas @ Waghya Nanasaheb Marne, who were found in separate vehicles were taken into possession and on being brought to the office of ACP Crime Branch, on noticing their participation in the offence registered vide C.R. No. 2/2024, by apprising them of the terms and conditions prescribed by the Apex Court as regards arrest, he came to be arrested on 15/01/2024, at 19:30 hours. It also record that as far as the petitioner is concerned, the information about his arrest is transmitted to his brother Krushna Mahadeo Shelar on his mobile number.

On reading of the aforesaid, when we specifically inquired with learned Special Public Prosecutor, as to whether grounds of

arrest are communicated to the petitioner in writing, it is his submission that whatever safeguards are directed to be followed by the Apex Court while effecting the arrest of an accused are all ensured. However, there is a specific denial by the petitioner that the grounds of arrest were communicated in writing and with this plea being specifically raised in the petition, since the pleadings are not traversed nor did the Special Public Prosecutor produce before us any document demonstrating that the grounds of arrest were communicated to the petitioner, we find that the arrest of the petitioner is even vitiated on that count.

17. It is worth to be noted that the arrest of the petitioner on 15/01/2024 is after the declaration of law by the Apex Court in Pankaj Bansal (supra) on 3/10/2023 and as declared in Prabir Purkayasta (supra), where the arrest of the appellant followed by remand order dated 4/10/2023 which was subsequent to the declaration of law in Pankaj Bansal, it was imperative to communicate the 'grounds of arrest' in writing and having failed to adhere to the law laid down by Pankaj Bansal, definitely the benefit of the pronouncement must accrue in favour of the petitioner.

In this case, we find that the Investigating Officer has not even attempted to communicate the grounds of his arrest even in oral, as we find that despite a specific plea being raised in the petition to that effect, the affidavit filed by the Investigating Officer, who effected the arrest of the petitioner on 15/01/2024, has not even made an attempt to communicate the grounds of arrest to him even orally.

18. In the wake of the aforesaid, since we find that the arrest of the petitioner on 15/01/2024 at 19:30 p.m. at the hands of the Assistant

Commissioner of Police Crime-I, Pune City, is in utter violation of mandate of law, to furnish the grounds of arrest as the arrest panchnama do not refer to the grounds nor are these grounds communicated in writing, we cannot continue his detention following the arrest which is illegal.

Similarly, since his production before the Magistrate was beyond period of 24 hours, and the attempt made to countenance the same by urging before us that he was a free man till the time he was arrested, which argument we have out rightly rejected, we declare that the arrest of the petitioner is flawed one as his production is beyond 24 hours and the grounds of arrest in writing were not provided to him before passing of the remand orders.

In the wake of the aforesaid, we declare his arrest dated 15/01/2024 at 19:30 p.m. at the hands of the Assistant Commissioner of Police Crime-I, Pune City, to be illegal. As a consequence, subsequent remand orders are also declared invalid in the eyes of law and quashed and set aside.

The petitioner is entitled to a direction for his release from custody by applying the ratio of the judgment rendered by Apex Court in Pankaj Bansal (supra). The appellant shall however be entitled to be released from custody on furnishing bail bonds to the satisfaction of the Special Court.

The Petition is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK,J)

(BHARATI DANGRE, J.)