

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6052 OF 2025

Nandini Rajaram Belekar

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr. K. A. Shinde, for the Petitioner.

Mr. Tanveer Khan, APP for the Respondent-State.

WPSI- Punam Chavhan, Gamdevi Police Station, Mumbai, present.

CORAM: BHARATI DANGRE, &
SHYAM C. CHANDAK, JJ.

DATED : 19th NOVEMBER, 2025.

P. C. :-

1) The Petitioner raise a grievance about her arrest on 14/11/2025 and her detention subsequent thereto without following the procedure prescribed under Chapter 5 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

Specifically the reliance is placed upon the provision requiring a police officer to record reasons in terms of sub-section(1)(b)(ii) of Section 35 in arriving at a satisfaction that the arrest is necessary. The ratio flowing from the decision in case of *Arnesh Kumar v/s. State of Bihar and anr.*¹ & *Satender Kumar Antil v/s. Central Bureau Of Investigation and anr.*²

¹ (2014) 8 SCC 273

² (2021) 10 SCC 773

is invoked before us in submitting that since the offence under Section 76 as well as Section 115(2) and 352 of the Bharatiya Nyaya Sanhita (BNS), 2023 which is invoked in subject F.I.R., has prescribed punishment less than 07 years, it was imperative for the Investigating Officer to follow this procedure.

2) *Prima facie*, we find substance in the submission as the learned APP Mr. Khan has not been in a position to demonstrate before us that the police officer has recorded his satisfaction that the arrest is necessary and what is placed before us are the reasons for arrest, which are recorded in the case diary and probably also communicated to the Petitioner but, we find the same to be completely averse to the requirement of clause (ii) (a) to (e) when the police officer can arrive at the conclusion that the arrest is necessary and from the bare reading of the reasons recorded and for instance, the arrest being shown to be necessary to find out whether there is participation of any other persons in the plan, the possibility of the accused eliminating the evidence and threatening the witnesses, etc.

3) *Prima facie*, we find the arrest is without any application of mind as even according to the complaint, it is only the sole Petitioner/the accused who is indulging into the act and she has threatened to the complainant on more than one occasion and therefore, there is no justification in invoking the reasons, as attempted to be done under the

faction of “reasons for arrest”.

4) In such circumstances, we expect the Investigating Officer to file an Affidavit as we intent to fix the responsibility upon an Officer who has conducted the investigation and gave a complete go by to the norms laid down by the Apex Court with an expectation that they shall be strictly be followed.

Let the Affidavit be filed within a period of two weeks from today.

5) The learned Counsel for the Petitioner has invited our attention to an Order passed by the JMFC, 40th Court, Girgaon, Mumbai in the Bail Application and we are surprised to note that the Magistrate deemed it appropriate to keep the Application in abeyance till the order is passed by the Hon’ble High Court in *habeas corpus* Petition. It is just for the reminder of the learned Magistrate that filing of the *habeas corpus* petition and its pendency shall not be accepted as an excuse for not deciding the Application of the Applicant which is filed for securing his release on bail and this being a right conferred upon him merely because the *habeas corpus* petition declaring the arrest to be illegal, is filed before us cannot be a ground for deferring it.

6) Let this Order be brought to the notice of the JMFC, 40th Court, Girgaon, Mumbai by the learned Counsel for the Petitioner who shall then consider the Application of the Petitioner on its own merits and

he shall pass an order in an expeditious manner. The complainant is at liberty to file an Application for Intervention if she so desire.

7) Re-notify to **10/12/2025**.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)