

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 764 of 2025

Anuj alias Babu Malhari Chavan
Age 24 years, Occ : Business,
R/o. Vanwadi,
Tal. Bhore, District Pune
(Yerwada Central Prison)

... Appellant
(Original Accused
No.1)

versus

1. The State of Maharashtra
Through P.I. Bhore Police Station,
Dist: Pune.
2. Sagar Dadasaheb Gaikwad,
Age : 28 years, residing at Utroli,
Tal. Bhore, District : Pune

.... Respondent/s

Mr. Ashok Mundargi, Senior Advocate along with Ms. Pravada Raut i/b.
Mr. Meghdeep Oak, Advocate for the Appellant.
Mr. H. J. Dedhia, APP for Respondent No.1.
Mr. Mihir Desai, Senior Advocate along with Ms. Lara Jesani and Ms.
Rashika Agarwal, Advocate for Respondent No.2.

**CORAM : R. M. JOSHI, J.
RESERVED ON : 10th DECEMBER 2025
PRONOUNCED ON : 17th DECEMBER, 2025.**

Judgment :

1. This appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act"), takes exception to the order dated 19th June 2025 passed by Special Judge, Pune in Special Case No.467 of 2025, whereby an application for bail in connection with Crime No.22 of 2025 registered with Bhore Police Station for the offences punishable under Section 103(1), 238(c) of the Bhartiya Nyaya Sanhita, 2023 (for short "the BNS") and

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Section 3(2)(v) of the Atrocities Act and Section 7(1)(d) of Protection of Civil Rights Act, 1955 filed by the appellant/accused came to be rejected.

2. At the outset, it needs to be recorded that at the the time of filing of the appeal against the impugned order, the appellant has not raised the issue with regard to legality of his arrest. By order dated 26th August 2025, this Court granted leave to the appellant to incorporate additional grounds in relation to illegal arrest of the appellant. Pertinently, this order came to be passed after hearing learned counsel for the appellant, learned APP and learned counsel appearing on behalf of respondent No.2.

3. Pursuant to the said order, amendment came to be made to the grounds of appeal and a specific ground is raised with regard to the legality of the arrest of the appellant. It is contended on behalf of the appellant that he is shown to be arrested at 4.10 pm on 9th February 2025, however, as per the statements of the witnesses including the police officer, he was taken in custody at 2.45 a.m. on 9th February 2025 i.e. prior to 13 hours of arrest being shown. It is also claimed that the appellant has been taken into custody by a police personnel by detaining him to answer the criminal charge and preventing the commission of criminal offence, therefore, he is deemed to have been taken into custody and the act of arrest of the appellant is complete there. It is further claimed that the appellant was examined by the Doctor of Sub-District Hospital, Bhore, at 2.45 pm on 9th February 2025 i.e. 2 hours prior to the arrest. However,

he has been produced before the Special Judge, Pune on 10th February 2025 at 5.15 pm, which is beyond 24 hours of his arrest. It is claimed that there is no requirement for pre-arrest medical examination as per Section 53 of the Cr.P.C. as it provides for the medical examination when a person is arrested on a charge of committing an offence and such examination will afford evidence as to the commission of the offence. It is claimed that Section 54 provides that when any person is arrested, he shall be examined by a medical officer, soon after arrest is made. It is claimed that since the appellant has not been produced before the Special Judge within 24 hours of his arrest, his arrest becomes illegal and, therefore, in contravention to the Article 22(2) of the Constitution of India and Section 57 of the Cr.PC/Section 58 of the BNS.

4. Learned counsel for the appellant, makes statement that the appellant is not challenging the order passed by the Special Court on the merit, however, the order has been challenged solely on the ground of non-production of the appellant before the Special Judge within 24 hours of his arrest and, therefore, his detention having become illegal and consequently, he cannot be allowed to be detained in the custody further. To support his submission that the appellant was taken in custody at 2.45 am on 10th February 2025, he places reliance on the statements of witnesses, so also the statements of the police personnel, which according to him, indicate so. He further drew attention of the Court to the fact that at 2.45 pm on 9th February 2025, he was sent for medical

examination and it was conducted at 2.45 pm on 9th February 2025. He then drew attention of the Court to the order passed by the Special Judge dated 10th February 2025 remanding the accused to the police custody, wherein there is a specific mention in the order about the accused being produced before him at about 5.15 pm. Thus, it is his submission that the appellant is admittedly not produced before the Magistrate i.e. Special Judge herein within 24 hours of his arrest and, therefore, the arrest becomes illegal for non-compliance of the provisions of Section 57 of the Cr.P.C. and being contrary to the provision of Article 22(2) of the Constitution of India. To support his submission with regard to there being no exclusion of period of pre-arrest medical examination, he placed reliance on the judgment of the Division Bench of this Court in Writ Petition No.54 of 2025 in the case of **Hanumant Jaggannath Nazirkar versus The State of Maharashtra in 2025 SCC OnLine Bom 2508**. He further placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Directorate of Enforcement versus Subhash Sharma 2025 Livelaw (SC) 137**.

5. Learned APP and learned counsel for respondent No.2 opposed the appeal firstly on the ground that before the Trial Court i.e. a Special Judge, at the time of filing of application for bail, so also at the time of remand, no issue was raised by the appellant with regard to he being not produced before the Special Judge within 24 hours of his arrest. It is thus contended by them that this Court in entertaining appeal, cannot

permit the appellant to raise the said issue. In this regard, it is pertinent to note that though the appellant did not raise this issue either at the time of the remand before the Special Judge or even in an application filed for bail before this Court, after hearing counsel for both sides, the Court has permitted to raise the said issue with regard to the legality of his arrest and accordingly, the amendment was permitted to the grounds in this appeal. Apart from this, the question would arise as to whether this Court can refuse a party to make submissions taking exception to the arrest on the ground of breach of fundamental rights of the accused guaranteed by Article 22(2) of the Constitution of India. A candid answer thereto must be in negative. It is a duty of any Court of law to consider as to whether there is a breach of fundamental rights guaranteed by the Constitution of India even to the accused. In such circumstances, this Court finds no substance in the objection raised by learned counsel for respondent No.2 as well as learned APP that for want of any objection to being raised before the Special Judge, this Court cannot permit such objection to be raised and such objection cannot be entertained. This Court finds in fitness of justice that the objection raised by the appellant needs to be considered and decided on the basis of material evidence on record.

6. On merit, learned counsel for respondent No.2 has tried to impress upon this Court about the seriousness of the crime and also the provisions of the Atrocities Act being made applicable to thereto. There cannot be any dispute made with regard to the said proposition of law that

for the purpose of granting bail, the Court is required to consider the merit of the case, such as seriousness of the crime, likelihood of abscondance, possibility of pressuring of the witnesses etc. However, it is necessary to note that the appellant is not seeking the bail on merit of the case but the bail has been sought solely on the ground that his arrest is illegal for he not being produced before the Magistrate within 24 hours of the arrest and further detention being not in consonance with law, he is entitled for bail.

7. On the point of non-production of the accused before the Special Judge, learned APP and learned counsel for respondent No.2 submitted that the appellant has been arrested at 4.10 pm on 9th February 2025 whereas, he is produced before the Special Judge at 5.15 pm on 10th February 2025. It is their contention that if there is exclusion of period of travelling from the place where the accused was kept and the Court before whom, he was to be produced, it cannot be said that he was produced before the Special Judge beyond 24 hours of his arrest. With regard to the statements of police officers as well as statement of the uncle of the accused, it is contended that the informant has lodged the complaint against the police officers for not conducting the investigation properly and it would not be in the fitness of justice to rely upon those statements for the purpose of deciding the present application. Learned counsel for respondent No.2 placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka versus Shreedarshan 2025 SCC Online SC 1702** in order to submit that non-

supply of ground of arrest is not considered by the Supreme Court to be the breach of fundamental rights of the accused. It is her submission that non-production of the accused before the Magistrate also need not be considered to be fundamental breach of rights of the accused. Without prejudice to her submissions, she placed reliance on the Judgment of the Division Bench of this Court in **Criminal Writ Petition No.4539 of 2025 in the case of Dhanshala Prakash Vishwarkarma versus the State of Maharashtra**, in order to argue that if this Court comes to the conclusion that detention of the appellant is illegal, liberty be granted to the investigating agency to re-arrest the appellant.

8. At the outset, this Court would like to take note of the judgment of the Hon'ble Supreme Court in the case of **Shreedarshan (supra)**, the Hon'ble Supreme Court has held that in the said case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest and that they were legally represented from the outset and applied for bail shortly after the arrest. No material has been placed on record to establish that any prejudice was caused due to alleged procedural lapse. It is held that in absence of demonstrable prejudice such irregularity, it is at the best a curable defect and cannot by itself warrant release on bail. It is pertinent to note that the issue before the Hon'ble Supreme Court was not as to the fundamental right of the accused guaranteed under Article 22(2) of the Constitution of India. The Hon'ble Supreme Court dealt with the issue with regard to the

communication of the grounds of arrest and since in that case, no prejudice is shown by accused, it is held that the procedural defect, if any, is curable in nature. In utmost respectful view of this Court, two things i.e. non-production of accused before the Magistrate within 24 hours of his arrest as guaranteed by the Constitution of India under Article 22(2) cannot be termed as a procedural irregularity, which can be cured at any subsequent point of time. This Court, therefore, finds that the said judgment could have no application to the facts of the present case.

9. Now it would be relevant to take note of the order of the Division Bench of this Court in the case of **Hanumant (Supra)**. This Court has dealt with the issue as to whether the period which has lapsed for the purpose of pre-arrest medical examination can be excluded from including 24 hours of arrest. It is also observed that arrest means one is taken in custody and restrained from his liberty and not formal arrest shown in record by police. It is thereafter the facts of the said case were taken into consideration and it is held that the accused therein was not produced before the nearest Magistrate within 24 hours of his arrest excluding the time necessary for going from the place of arrest to the Court of Magistrate. Similarly, in case of **Subhash Sharma (Supra)**, it was an undisputed fact before the Hon'ble Supreme Court that the accused therein was detained at Indira Gandhi International Airport from 11 hours and his arrest was shown at 1.15 hours on the next day. In the light of these facts, it was held by the Hon'ble Supreme Court that non-production

of the accused before the Magistrate within a period of 24 hours, makes his arrest illegal. This Court, therefore, is required to take into consideration the prima facie facts appearing on record to decide issue.

10. During the course of hearing, this Court had directed learned APP to place before this Court, the relevant general diary entries from 8th February 2025 to 10th February 2025 of the concerned police station pertaining to the crime in question. Pursuant to the said order, the relevant entries are placed before this Court for its perusal. First of such entry being Entry No.3 indicates that at 4.15 am, there was a information received with regard to the commission of offence under Section 103 of the BNS. Entry No.7 indicates registration of FIR at 7.00 am on the basis of information received at 6.45 a.m. Entry No.12 indicates about accused being sent for pre-arrest medical examination at 3.13 pm. Entry No.16 denotes arrest of accused at 4.10 pm.. There are general diary entries of Bhore Police Station as well as Jejuri Police Station indicating that the accused was sent from Bhore Police Lockup to Jejuri Police Lockup. On the next day i.e. from 10th February 2025, from Jejuri Police Lockup, he was taken to the Court of Special Judge at Pune.

11. At this stage, this Court is expected to look into the general diary entries, which are maintained in ordinary course of business of any police station and is most credible piece of evidence, of course proved otherwise in trial. The said general diary entries though do not indicate the exact time at which the physical custody of the appellant was taken,

however, entry No.12 shows that on 9th February 2025 at 3.13 pm, he was referred for medical examination before his arrest. After medical examination, he was arrested at 4.10 p.m. as reflected from entry No.16.

12. Learned senior counsel for the appellant is asking this Court to accept the time of arrest i.e. time of taking the appellant/accused in custody at 2.35 am on 9th February 2025. To support this submission, he refers to the statement of the uncle of the accused and police officer. Firstly, at this stage, it is not open for the Court to consider correctness or otherwise the statements recorded under Section 161 of the Cr.PC. It becomes more so difficult for acceptance when there are specific allegations against the police personnel of the concerned police station of not carrying out investigation properly and taking side of the accused. In any case, there is no other material on record to indicate that at 2.45 am, the accused was taken in custody. The reason for the same is that entry No.3 taken at 4.15 am though indicates of receiving information about the occurrence of offences, it does not refer anybody being taken in custody by the police. Similarly the offence came to be registered on the basis of information received at 6.45 am.. Even at that stage, there is nothing on record to indicate that the accused was taken into custody prior thereto.

13. The first document which indicates about the custody of the accused is entry No.12, which is taken at 3.13 pm on 9th February 2025. This entry shows that he was referred for medical examination before his arrest. This is, therefore, prima facie an authentic document which reveal

that at 3.13 pm, he was in custody. There are entries in the general diary which indicate that the accused was required to be sent from Bhore Police custody to Jejuri Police custody. The accused was produced before the Special Judge at Pune on 10th February 2025 at 5.15 pm. There cannot be dispute with regard to the position of law that the travel time required for production of the accused before the Magistrate needs to be excluded from the computation of 24 hours. Here in this case, the accused is sought to be produced before the Special Judge from Jejuri to Pune. There is no dispute with regard to the fact that the travel time between these two places is more than two hours. Having regard to this fact, it cannot be said that the accused was not produced within 24 hours of his arrest before the Special Judge.

14. Once it is held that he is produced within 24 hours of his arrest excluding the period of travel, it cannot be said that the fundamental rights of the accused guaranteed under Article 22(2) of the Constitution of India as well as Section 57 of the Cr.PC are flouted in any manner. Thus, it cannot be held that the accused has been detained in illegal custody in order to release him on bail. This Court, therefore, finds no merit in the present appeal. Since the appellant has chosen not to seek bail on merit of the case, this Court does not wish to record any findings in that regard.

15. As a result of above discussion, the appeal stands dismissed.

(R. M. JOSHI, J.)