



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.1188/2025

(Bapu S/o Kishtayya Kummari Vs. The State of Maharashtra, through Police Station Officer Police Station Bamani,
Tahsil Sironcha, District Gadchiroli)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Madhur A. Deo, Advocate for the applicant.
Mr. A.M. Kadukar, A.P.P for the non-applicant/State.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE ORDER: 12.11.2025.
DATE OF PRONOUNCING THE ORDER: 17.11.2025.

The applicant is arrested in Crime No.27/2024 for the offence punishable under Sections 101(1) and 126(2) of the Bharatiya Nyaya Sanhita, Section 3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act.

2. It is alleged that the applicant has committed the murder of one Rukmabai alleging that she is doing some jadutona or black-magic. The eye witness is there. Roshakka Alloori has seen the incident. She has given the report and the crime is registered.

3. The applicant is coming before this Court on the ground that the applicant was not produced before the Magistrate within 24 hours from his arrest.

4. The learned Advocate for the applicant has stated that though it is the settled principle of law and as per the provisions of Section 57 of the Code of Criminal Procedure and Article 22(2) of the Constitution of India, it is mandatory to produce the person before the Magistrate who is arrested and detained in police custody within

24 hours of his arrest or detention and failure to produce an arrested person before the Magistrate within 24 hours can make the detention illegal. As per the case of the applicant, he was taken in custody before 1.30 p.m. on 27.11.2024 but his movement was curtailed even before 1.30 p.m. on 27.11.2024. The arrest is shown at 2 p.m. on 27.11.2024. The applicant was brought to the police station at 1.30 p.m. after conducting his medical examination. It is clear that the applicant was in custody of the non-applicant before 1.30 p.m. His arrest is shown at 2 p.m. He was produced before the Magistrate at 1.45 p.m. on 28.11.2024.

5. It is urged by the learned Advocate for the applicant that it is well settled law that the time taken for medical examination of the accused cannot be excluded for the purpose of computing 24 hours i.e. the time limit within which the accused has to be produced before the nearest Magistrate. It is, thus, clear that the applicant was produced before the Magistrate after 24 hours which is in gross violation of the constitutional and the statutory rights of the applicant. The arrest of the applicant is thus illegal and the remand orders passed by the Magistrate are illegal. The applicant, therefore, deserves to be released on bail on this ground only.

6. The applicant has relied on the judgment of the Hon'ble Apex Court in support of his claim that 24 hours period starts when the police restrains the movement of the applicant/accused. He has relied on the judgment in the case of *Vihaan Kumar V/s. State of Haryana and another* reported in (2025) 5 SCC 799 wherein it is observed that no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also

includes what is provided in Article 22(1) and 22(2) of the Constitution. Therefore, when a person is arrested without a warrant and the grounds of arrest are not informed as soon as he is arrested, or after the arrest, it will amount to violation of his fundamental rights guaranteed under Article 21 as well in a given case if the mandate of Article 22 is not followed while arresting a person it also violates the fundamental rights guaranteed to him under Article 21 and his arrest will be rendered illegal. He has also relied on the judgment of this Court in case of *Devi Das Raghu Nanth Naik V/s. State* reported in **1987 SCC OnLine Bom 277**. Reliance is also placed on the judgment of the Hon'ble Apex Court in the case of *Gautam Navlakha V/s. National Investigation Agency* reported in **(2022) 13 SCC 542**. In the recent judgment of the Hon'ble Apex Court in the case of *Arshnoor Kaur and another V/s. Union of India and others* reported in **2025 SCC Online 1668** the Hon'ble Apex Court has observed that there is no waiver of fundamental rights.

“69. It is settled law that it is not open to the Respondent-Union of India to contend that a person is not entitled to enforce his/her Fundamental Rights, in particular his/her Right to Equality, because he/she has waived it. It is always open to an aggrieved person to challenge any policy or notification or statutory provision by filing a writ petition under Article 226 or under Article 32 on the grounds that it violates his/her Fundamental Rights.”

7. He has also placed reliance on the judgment of the Hon'ble Apex Court in Civil Appeal No.13806/2024 (Ram Autar Singh Yadav V/s. The State of Uttar Pradesh and others) wherein in para 22 following observations are made.

“22. Law is well-settled that there is no loss of a fundamental right for non-exercise thereof and also that there cannot be waiver of a fundamental right.”

8. The applicant has submitted that in the case of *The State of Punjab V/s. Ajaib Singh and another* reported in **AIR 1953 SC 10**, the observations made about delay are in different aspect. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of *Commissioner of Central Excise, Bangalore V/s. Srikumar Agencies and others* reported in **(2009) 1 SCC 469**, in support of his argument that each judgment does not create a statute.

“5.

15. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (AC at p. 761) Lord Macdermott observed: (All ER p. 14 C-D)”

9. He has also placed reliance on the judgment of the Hon'ble Apex Court in the case of *Career Institute Educational Society V/s. Om Shree Thakurji Educational Society* reported in **2023 SCC OnLine SC 586** wherein observations about distinction between the *obiter dicta* and *ratio decidendi* are made.

“6. The distinction between obiter dicta and ratio decidendi in a judgment, as a proposition of law, has been examined by several judgments of this Court, but we would like to refer to two, namely, State of Gujarat vs. Utility Users’ Welfare Association and Jayant Verma vs. Union of India.

7. The first judgment in State of Gujarat (supra) applies, what is called, “the inversion test” to identify what is ratio decidendi in a judgment. To test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inverted, i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case.

8. In Jayant Verma (supra), this Court has referred to an earlier decision of this Court in Dalbir Singh vs. State of Punjab to state that it is not the findings of material facts, direct and inferential, but the statements of the principles of law applicable to the legal problems disclosed by the facts, which is the vital element in the decision and operates as a precedent. Even the conclusion does not operate as a precedent, albeit operates as res judicata. Thus, it is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon which the case is decided and, for this reason, it is important to analyse a decision and isolate from it the obiter dicta.”

10. He has also relied on the judgment in the case of *Saad and another V/s. State of Maharashtra through its Chief Secretary and others* reported in **2025 SCC Online Bom. 2856** in which this Court has granted bail considering the delay in producing the applicant/accused to the nearest Magistrate beyond 24 hours considering that there is violation of the constitutional rights of the

petitioner under Article 21 of the Constitution of India and statutory rights under Section 58 of the B.N.S.S. He has also relied on the judgment of this Court in Writ Petition No.54/2025 (Hanumant Jagganath Nazirkar V/s. The State of Maharashtra) wherein this Court has observed about arrest and the pre-arrest medical examination theory, the legal and constitutional rights of arrested person of producing before the Magistrate within 24 hours cannot be violated, such action on the part of the Police Officer is likely to lead unscrupulous tendencies where after a person arrested he is not produced before the Magistrate till hospital authorities declare him fit. This will give a wrong signal to the society and to the public at large. The pre-arrest medical examination theory can be a fraught with mischief and highly deplorable.

“20. “Arrest” consists in the actual touching of a person's body with a view to his restraint. The words may, however, amount to an "arrest" if they are calculated to bring to a person's notice that he is under compulsion and he, thereafter, submits to such compulsion. An authority is said to arrest another person if it prevents the latter from freely making their movements and moving according to their will. To constitute an arrest, it is necessary that the officers should assume custody and control over the person, either by force or with his consent. “Arrest” is when one is taken and restrained from their liberty. Even if a person is touched with a view to detaining, it would amount to an arrest.”

11. Reliance is also placed on the judgment of this Court in the case of Ugochukwu Soloman Ubabuko V/s. Union of India and another reported in **2021 1 SCC Online Bom 3572**.

12. Since one year the accused is in jail. Though this is his first bail application before this Court, he has applied previously before the

trial Court for bail. At that time, he has not raised this issue of infringement of his fundamental right that he was not produced before the Magistrate within 24 hours at the time of his remand. It is at a much belated stage that he has raised this issue taking an exception to the fact of late production from his arrest.

13. In this case, from perusal of station diary entry it reveals that the accused was taken into custody at about 1.30 p.m. thereafter was send for medical check up and on next day he was produced before the Magistrate at 1.45 p.m. On arrest form arrest is shown at 2 p.m. and thereafter Magistrate has observed in order that the accused is produced before him within 24 hours and remanded the accused to police custody.

14. The question arose whether he was produced within 24 hours. According to the applicant, arrest time mentioned in arrest form is not the correct time. It is actual time of arrest. However, time starts from the period when he was taken in custody. The applicant was taken in custody and when his movement was restrained is the time to be considered for computing 24 hours. On perusal of station diary entry it is seen that specific period is not mentioned but after his arrest he was taken for medical examination, therefore, there is delay at the most of 15 minutes.

15. The next question arises as to what is the effect of non-production of the applicant before the Magistrate after his arrest within 24 hours.

16. The learned Advocate for the applicant placed reliance on the judgment in such cases where arrested accused were granted relief. Arrest of the accused rendered completely illegal as a result of

violation of Clause (2) of Article 22 of the Constitution. Therefore, his arrest get vitiated.

17. It appears from the record that after one year the applicant has raised this issue. It was not raised before the Sessions Court. He approached this Court at a belated stage. It is observed by this Court in case of *Karan Ratan Rokade and others V/s. State of Maharashtra and another* reported in **2025 SCC OnLine 1535** as follows:-

“18. This Court time and again has held that delay defeats equity. Delay or latches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.”

18. The learned Advocate for the applicant has argued that there is no limitation in case of bail. Above observations are made in case of a petition under writ jurisdiction, therefore, it is not proper to apply the same in this application for bail. He has relied on the judgment in support of his argument that every judgment does not create a statute. In the present case there is no justification as to why this issue was never raised for considerable period between 27.11.2024 up to 14.10.2025 when this application is filed. The applicant was represented through an Advocate right from his remand.

19. It needs to be verified in case in hand whether the applicant was produced before the Magistrate after 24 hours. The question is how to count the said period. On perusal of station diary it is seen that at about 1.30 p.m. the applicant was taken in custody and sent

for medical examination. Memorandum panchanama was drawn at 5.30 p.m. and on next day at 11.30 he was taken from police station for being produced before the Magistrate. Distance from the police station to Court is about 20 to 22 kilometers. It took half an hour to reach the Court and he was produced before the Magistrate at 1.45 p.m. as Court was busy. If we consider the period of his arrest from taking in custody there is hardly 15 minutes delay. A short delay in producing the accused is a procedural issue which is unlikely to lead the whole case being dismissed. *In the case of Ajaib Singh (supra) it is observed by the Hon'ble Supreme Court that "arrest" means taking a person into custody under the authority of law, and the moment a person's liberty is restrained by the police, he is deemed to be in custody, even if the formal arrest is shown later. The Court emphasized that constitutional and procedural safeguards under Article 22(2) of the Constitution and Section 57 CrPC being from the time of actual apprehension. However, in serious offences like murder under Section 302 IPC, a minor delay of 15-20 minutes in producing the accused before a Magistrate would not automatically render the detention illegal, provided it was not deliberate or mala fide. The Courts must balance personal liberty with societal interest, especially where direct and credible evidence links the accused to a grave offence."*

20. In this case there is no deliberate delay. On the contrary, the applicant was taken to Magistrate within 24 hours i.e. at 12 noon to be produced before the Magistrate at 1.45 p.m. Thus there is delay of hardly about 15 to 20 minutes which is not deliberate. The argument is that it is not applicable to the accused. Observations are made in

case of *habeas corpus* and effect is totally different. The law is settled by the Hon'ble Apex Court. After considering the gravity of offence, especially when there is an eye witness and this issue is raised at a belated stage and when there is a doubt about whether he was produced beyond period of 24 hours of his arrest, no case is made out to grant bail to the applicant on this ground. The application is rejected.

(MRS.VRUSHALI V.JOSHI, J.)