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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 09th July, 2025

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W.P.(CRL) 2063/2025, CRL.M.As. 19284-19285/2025**HARISH (THROUGH PAIROKAR) MS. LIPIKA KHURANA**

365, St. No.15,
Bholanath Nagar,
Shahdara
Delhi-110032

.....Petitioner

Through: Mr. Ninad Dogra, Mr. Vishal
Bhardwaj and Mr. Pranav Sarthi,
Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through Crime Branch (Delhi)

Through: Mr. Amol Sinha, ASC (Crl.) for the
State with Mr. Kshitiz Garg, Mr.
Ashvini Kumar, Mr. Nitish Dhawan,
Ms. Chavi Lazarus and Ms. Sanskriti
Nimbekar, Advocates with SI Manoj
Kumar Meena, Crime Branch, Sector-
9, Dwarka.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Writ Petition has been filed under Article 226/227 of the Constitution of India, 1950 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) against Order dated 02.06.2025 and 05.06.2025 of the Ld. ACJM, Delhi in regard to remand, arising out of FIR No.132/2025 registered on 02.06.2025 under



Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act"*) Police Station Crime Branch, Delhi.

2. The ***brief facts of the case*** are that on 01.06.2025, the Petitioner was apprehended and arrested for unlawfully carrying 15 boxes of *Spasmo Proxyvon Plus (Tramadol, Dicyclomine, Acetaminophen)* consisting of 2160 capsules (painkiller medicine), without Invoice or Bill for the said capsules. The Petitioner was detained on 01.06.2025 at around 2:15 P.M. and FIR No. 132/2025 was registered on 02.06.2025, on which date he was produced before the Ld. ACJM.

3. It is submitted that on said date, the Case Diary was not produced by the Respondent Authority before the Ld. ACJM. It was also observed that the grounds of arrest were not properly supplied to the Petitioner. Therefore, on the grounds of non-production of the Case Diary and the non-supply of grounds of arrest, *Ld. ACJM directed the release of Petitioner*. It was also observed that the release was only on 'technical grounds' and thereby, *granted an opportunity to the Respondent Authority to re-arrest the Petitioner after completion of documentation*.

4. Thereafter, on 03.06.2025, at approximately 8:00 P.M., the Investigating Officer visited the Petitioner's residence and served him with a Notice under Section 35(3) of BNSS (*corresponding to Section 41 and 41A of Cr.P.C.*), requiring his personal appearance before the Investigating Officer on 04.06.2025.

5. Upon receiving the Notice, the Petitioner informed the Investigating Officer that he had medical Tests scheduled for the morning and assured that



he would appear in person after completing the Tests/procedure. The Petitioner also presented his Medical documents, including proof of the appointment on 04.06.2025. The Investigating Officer acknowledged this and agreed to the Petitioner joining the investigation after his medical appointment. However, to his astonishment on 04.06.2025, while the Petitioner was undergoing his medical tests at Aarogya Hospital, Chitra Vihar, Vikas Marg, Delhi, the Investigation Officer arrested the Petitioner.

6. Thereafter, on 05.06.2025, the Petitioner was produced before the Ld. ACJM seeking Police Custody of the Petitioner for two days. Ld. ACJM allowed the said request and *remanded the Petitioner to Police Custody for two days*.

7. *Aggrieved by the Orders of Ld. ACJM dated 02.06.2025 and 05.06.2025, the Petitioner has filed the present Petition.*

8. The ***grounds of challenge to the impugned Order*** are that the *vide* Order dated 05.06.2025, Ld. ACJM has mechanically directed the Police Custody of the Petitioner without appreciating the fact that the Petitioner was under unlawful and illegal detention. The Petitioner had been arrested earlier and released by Ld. ACJM on 02.05.2025, solely due to the Respondent Authority's failure to follow mandatory legal procedures.

9. The re-arrest of the Petitioner by the Respondent Authority is infact, a guided arrest. The Order dated 02.06.2025 in effect guided the Investigating Authority, which amounted to unwarranted interference in the investigation, thus, prejudicing the Petitioner and his liberty.



10. It is submitted that the impugned Order mechanically directed the Police Custody of the Petitioner without appreciation of the facts at hand and the current legal position.

11. The Ld. Trial Court erroneously assumed that the Petitioner's release on 02.06.2025 was merely on a '*technical*' ground, allowing for his re-arrest. However, the impugned Order does not consider that the release was due to the Respondent's failure to follow the prescribed legal procedure, thereby impinging on the Petitioner's right to personal liberty.

12. Furthermore, the Ld. Trial Court only made a vague observation of having "*perused*" the purported Case Diary; however, it was not appreciated that the said Case Diary was manufactured and created ante dated. Moreover, it is no longer res integra that the maintenance of a Case Diary is essential, in terms of Section 187 of BNSS (*corresponding to Section 167 of Cr.P.C.*).

13. It is submitted that there is nothing on record to show any subsequent discovery or any other change in facts or circumstances, to justify the re-arrest of the Petitioner. The re-arrest with respect to the same FIR, is unconstitutional and is liable to be set aside.

14. Reliance is placed on the principles recognised in Rajbhushan Omprakash Dixit vs. Union of India, W.P. (CRL) 363/2018 wherein it was held that procedural violations in arrest and custody invite constitutional scrutiny under Habeas Corpus.

15. It is submitted that the mechanical reproduction of earlier documents does not permit arrest for the second time, in the absence of genuine



discovery. The second arrest violates procedural fairness, thereby constituting contemptuous misuse of judicial discretion.

16. Lastly, it is submitted by the Petitioner that there is no attempt of fleeing, tampering with evidence, or obstruction of justice. Hence, custodial arrest serves no investigative purpose and is in the nature of only a punitive measure.

17. *Thus, the present Petition be allowed and the impugned Orders of Ld. ACJM dated 02.06.2025 and 05.06.2025 be set aside.*

18. ***Learned Counsel for the Respondent*** has vehemently opposed the present Petition.

19. It is submitted that the Ld. ACJM clearly noted a procedural defect at the first instance; however, this defect was subsequently cured by the Respondent Authority on 05.06.2025. The Ld. ACJM later categorically recorded *vide* Order dated 05.06.2025 that the Case Diary was duly produced and perused.

20. It is submitted that any '*technical*' defect or irregularity that had arisen initially, stands rectified in the subsequent Order of Ld. ACJM. Thus, the initial procedural lapse does not vitiate the proceedings.

21. Reliance has been placed on the Bombay High Court case of Vicky Bharat Kalyani vs. The State of Maharashtra, 2025 SCC OnLine Bom 193 (Division Bench) wherein it was observed that there is no bar in re-arresting the persons who are released for non-furnishing the grounds of arrest in writing. What the accused were claiming, is that, they were arrested in violation to the provisions of Cr.P.C. and it infringes their constitutional right under Article 21, but if they are released on that ground and thereafter,



if the grounds of arrest are supplied to them, they cannot have any grievance.

22. In Vicky Bharat Kalyani, (supra), reliance was placed on Kavita Manikikar of Mumbai vs. CBI, 2018 SCC OnLine Bom 1095 wherein after considering the seriousness of the allegations, it was observed that the accused lady could be re-arrested after following due procedure of law. The same course can be adopted in the cases where the Investigating Agency wants to re-arrest the accused if they are released for non-compliance of Section 50 of Cr.P.C.

23. *Thus, the present Petition is liable to be dismissed.*

Submissions heard and record perused.

24. The *brief facts* are that the Petitioner was detained on 01.06.2025 when he was found unlawfully carrying 15 boxes of SPASMO PROXYVON PLUS, without Invoices of bills.

25. *FIR No. 132/2025 under Section 22 of the NDPS Act was registered on 02.06.2025 at Police Station Crime Cell.* The Petitioner was thus, produced before the Ld. ACJM-1/Central/Tis Hazari Courts/Delhi on 02.06.2025, but was released as *the grounds of arrest* were not properly supplied and on account of *non-production of Case Diary*.

26. Subsequently, the Petitioner was re-arrested on 05.06.2025 and was produced before the Ld. ACJM-2/Central/Tis Hazari Courts/Delhi along with the Case Diary, after perusing which, he was remanded to Police Custody for two days.

27. The question which emerges herein is ***whether having been released on 02.06.2025, could the Petitioner be re-arrested on 05.06.2025?***



28. To understand the legality of such re-arrest, it is imperative to examine the statutory framework.

29. **Section 36 of BNSS** (corresponding to Section 41B of Cr.P.C.) gives the **procedure of arrest and the duties of officer making arrest**. It provides that every Police official should have clear identification of his name. Memorandum of Arrest be prepared, which should be attested by at least one witness and counter signed by the person arrested. Further, the person arrested unless the Memorandum is attested by a member of family, he has a right to have a relative or a friend informed about his arrest.

30. **Section 47 of BNSS** (corresponding to Section 50 of Cr.P.C.) further provides that the person arrested must be informed of the grounds of arrest and of right to Bail.

31. The consequences of non-compliance with these procedural safeguards were considered by the Division Bench of Bombay High Court in the case of Mrs. Bharti S. Khandhar vs. Maruti Govind Jadhav, PSI, 2013 Cri LJ 677 wherein a woman had been arrested in the wee hour of morning in violation of Section 46(4) of Cr.P.C. The Division Bench concluded that the arrest of the woman after sunset was totally illegal and cannot be countenanced. Resultantly, the Court held that the arrest of the Petitioner was an utter violation of the said provision.

32. Likewise, in the case of Smt. Sandhya Upmanyu vs. Station House Officer, ACB, 2016 SCC OnLine Raj 6502 it was observed that exigency of situation will have to be taken into account before it can be held that the arrest of a woman after sunset was in contravention of Section 46(4) of Cr.P.C.



33. Most pertinently, in the case of Kavita Manikar of Mumbai vs. Central Bureau of Investigation, 2018 SCC OnLine Bom 1095 the question arose of the arrest of a lady in violation of Section 46(4) of Cr.P.C. While making reference to the aforesaid judgments, it was held that such arrest in violation of Section 46(4) was illegal. However, CBI was not precluded to arrest the Petitioner if investigation warrants so, by following the due procedure of law. Furthermore, liberty was given to the Competent Authority to initiate disciplinary proceedings against the erring officer for flagrant violation of the statutory provisions. In addition, cost was also awarded.

34. There is a distinct difference between 'arrest' and 'custody', though it may be a fine line. The term 'custody' was considered in the case by Madras High Court in Niranjan Singh vs. Prabhakar Rajaram Kharate, (1980) 2 SCC 559, wherein it was observed that 'custody' means that a person is in duress either because he is held by the investigating or other police or allied authority or is under the control of the Court having been remanded by judicial Order or having offered himself to the Court's jurisdiction and submitted to its Orders by physical present. No lexical dexterity of precedential profusion is needed to come to realistic conclusion that he who is under the control of the Court or is in the physical hold of an officer with coercive power, is in custody. This word is of elastic semantics, but its core meaning is that *the law has taken control of the person*. The equivocatory quibbling and hide-and-seek niceties sometime heard in the Court that the Police had taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and



other like terminological dubieties, are unfair evasions of the straightforwardness of the law.

35. In State of Haryana vs. Dinesh Kumar, (2008) 3 SCC 222 while making a reference to the observations of the Madras High Court, the Apex Court observed that Section 46 of Cr.P.C. does not contemplate any formality before a person can be said to have been taken into custody. Submission to the custody by words of mouth or action by a person, is sufficient.

36. The aforesaid judgment of Kavita Manikikar, (supra) was quoted by the Division Bench of Bombay High Court in the case of Vicky Bharat Kalyani vs. The State of Maharashtra, Crl. W.P. (S) No.24338/2024 decided on 31.01.2025 wherein it was noted that where the grounds of arrest in writing are not furnished under Section 50 of Cr.P.C., the person may be released forthwith; however, there is no bar to re-arresting the person who are released for non-furnishing the grounds of arrest in writing. The arrest in violation of provisions of Code of Criminal Procedure infringes the constitutional right under Article 21 of the Constitution of India but if they are released on that ground, they cannot have any grievance if they are arrested after the grounds of arrest are made available to them.

37. Regarding the production of Case Diary, in the case of R.K. Nabachandra Singh vs. Manipur Administration, 1964 (2) Cri LJ 307 in the context of Section 167 of Cr.P.C. which is *pari materia* to Section 187 of BNSS, observed that if the Police do not transmit to the Court a copy of the Case Diary relating to the case to satisfy the Magistrate that there are grounds for believing that the accused is well founded and remand is



necessary, the Magistrate has no jurisdiction to direct the arrest of the accused and it is the duty of the Police to comply with the provisions of Section 167(1). The Magistrate should insist on such strict compliance and if the Police is not able to satisfy the Magistrate that such document is not necessary, *the Magistrate may release the accused*. However, it was observed that in the absence of copy of Case Diary, if there is other material before the Magistrate in the form of FIR from where it is possible to make out whether the person produced is required to be detained in Police custody for further investigation, it would be open to the Magistrate to extend the custody and such a case cannot be held to be a case of non-production of the Case Diary altogether.

38. In the case of Mrs. Sudha Shivaram Gowda vs. State of Karnataka, 1993 CRI LJ 1533 while referring to the aforesaid Judgment, it was concluded that the function performed by the Magistrate under Section 167 of Cr.P.C. is a judicial function and it relates to the person who is in custody and therefore, the Magistrate is required to closely scrutinise the material before him while granting or refusing to grant Police custody remand sought by the Police.

39. *Applying these legal principles to the facts at hand, in the present case as well*, the Applicant had been produced before Ld. ACJM on 02.06.2025 for remand. However, the Case Diary was not produced before the Court. Moreover, the grounds of arrest were found to be vague and lacked specificity. Furthermore, the Arrest Memo was observed to have been filed up mechanically and reasons of arrest were found contrary to the facts related to the apprehension. It was concluded that the ground of arrest



has not been properly supplied to the accused, thereby handicapping him in the absence of the Case Diary and also because of non-supply of proper grounds of arrest. Consequently, the Applicant was directed to be released from custody *on technical grounds*. The Police were given liberty to re-arrest the accused after complying with law and proper documentation.

40. Subsequently, the Applicant was again produced on 05.06.2025 after fresh arrest. Ld. ACJM perused the Case Diary and also noted that the grounds of arrest had been supplied to the accused and thereby remanded him to Police custody for two days.

41. Here, reference may be made to Section 187 of BNSS (*corresponding to Section 167 of Cr.P.C.*) which provides that when person is arrested and detained in custody and it appears that the investigation cannot be completed within 24 hours and there are grounds for believing that the accusations or information is well founded the accused be produced before the nearest Judicial Magistrate along with the copy of the entries in the Diary relating to the case after consideration of which the Magistrate may authorise detention of the accused in custody of the Police or remand to the judicial custody.

42. Connected therewith, is Section 192 of BNSS (*corresponding to Section 172 of Cr.P.C.*) which mandates that the day to day proceedings in the investigation be entered into the Diary setting forth the time at which information reached the Investigation Officer, the time at which he began and closed his investigation, the place or places visited by him and the statement of the circumstances ascertained through his investigation.

43. The conjoint reading of these two Sections provide that whenever accused is apprehended and produced before the Judicial Magistrate, he by



going through the Case Diary, may ascertain if there are grounds for further detention and consequently remand the accused either to Police or judicial custody.

44. In the present case as well, when the accused was produced on 02.06.2025, the Investigating Officer failed to produce the Case Diary, thereby depriving the Ld. Judicial Magistrate of the opportunity to ascertain whether sufficient grounds existed to justify further remand. Additionally, the grounds of arrest were found to be vague and not properly formulated. Consequently, as mandated by law, the right procedures were followed by Ld. ACJM, who directed the release of the accused forthwith, with a rider that he may be re-arrested according to due procedure of law.

45. Merely because the accused was discharged on 02.06.2025 on technical grounds, is neither a bar nor any prohibition to his re-arrest. Pertinently, such release on technical ground is not an acquittal which would bar the subsequent arrest. In fact, as has been in the case of Kavita Manikikar, (supra) the release on technical ground, does not bar the re-arrest of the Applicant.

46. Ld. ACJM in her Order dated 05.06.2025, after satisfying herself by perusing the Case Diary and also observing that the grounds for arrest have been duly provided to the Applicant, had remanded him to the Police custody. The procedure adopted by the Ld. ACJM was not only in accordance with law, but also ensured the protection of a Constitutional and Fundamental rights under Articles 14 and 21 of the Constitution of India, of the Applicant.



47. Thus, there is no infirmity in the impugned Order. The Petition is, hereby, dismissed.

48. Pending Application(s), if any, are also disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 09, 2025
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