

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.240 of 2026

Arising Out of PS. Case No.-133 Year-2025 Thana- Benta District- Darbhanga

Prem Shankar Jha S/o Late Kedar Nath Jha Resident of village - Bangaon, P.S
- Banagaon, District - Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna
2. The Director General of Police, Home Department, Government of Bihar, Patna
3. The Inspector General of Police, Darbhanga Division, Darbhanga, District - Darbhanga
4. The Superintendent of Police, Darbhanga, District - Darbhanga Bihar
5. The Deputy Superintendent of Police, Darbhanga, District - Darbhanga
6. The Officer Incharge of Benta Police Station, District - Darbhanga Bihar
7. The Investigation Officer of Benta Police Station, Benta P.S case No. 133 of 2025, P.S - Benta District - Madhubani, Bihar
8. Smt. Minta Devi, Husband Name - Not known to the Petitioner, arresting authority of the petitioner the S.I of Benta Police Station, Darbhanga, District - Darbhanga
9. Ganesh Mandal S/o Late Lakhan Mandal R/o Village - Tulapatti, P.S - Pipra, District - Supaul

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Subhash Kumar Jha, Advocate
		Mr. Chaudhary Prem Shankar Thakur, Advocate
For the Respondent/s	:	Mr.A.C to A.G.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 11-02-2026

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition, in the nature of *Habeas*



Corpus, has been preferred seeking the following reliefs:-

“ Present application is being filed to issue a writ in the nature of habeas corpus for issuance of a direction to the respondents authorities to release the petitioner from illegal custody in connection with Benta P.S.Case No. 133 of 2025 dated 06.08.2025 corresponding to G.R. No. 3387 of 2025 registered for offences under section 103, 61 and 3(5) of Bharatiya Nyaya Sanhita, 2023 and section 25(1-b)a, 26 and 27 of Arms Act as the custody of petitioner is completely illegal under provision 46(2) 47 and 58 of Bhartiya Nagrik Suraksha Sanhita 2023, and Article 21 and 22(1) of the Constitution of India and further be pleased to issue a writ in the nature of certiorari to quash the order dated 12.08.2025 passed by learned Chief Judicial Magistrate, Darbhanga by which the learned Court below without seeing the provision as mentioned above, send the petitioner in judicial custody and as such the custody of petitioner is completely, unjustified and clearly violation of provision as mentioned above.”

3. The brief facts, as alleged, are that the prosecution case arises out of the *Fardbeyan* of respondent no. 9, pursuant to which Benta P.S. Case No. 133 of 2025 dated 06.08.2025, corresponding to G.R. No. 3387 of 2025, was registered against the petitioner and others. As per the informant, on 05.08.2025 at about 05:30 P.M., he received



information that the petitioner had shot his son, Rahul Kumar, by firearm. Upon reaching the postmortem house at about 09:00 P.M., he found his son dead. It was further alleged that the petitioner had gone to the place of occurrence along with his two sons and wife. The informant also stated that the petitioner's daughter, Tanu Priya, had solemnized marriage with the deceased while both were studying in a B.Sc. Nursing College, and that owing to the said marriage, the petitioner had earlier lodged a case at Banagaon Police Station. After completion of investigation, charge-sheet No. 198 of 2025 dated 07.11.2025 was submitted under Section 103(1) of the Bharatiya Nyaya Sanhita, 2023 and Sections 25(1-B)(a), 26 and 27 of the Arms Act.

4. Learned counsel for the petitioner submits that although the petitioner was arrested on 05.08.2025 at 05:40 P.M. he was produced before the learned Chief Judicial Magistrate, Darbhanga only on 12.08.2025, i.e., after seven days, which is in violation of Section 58 of the B.N.S.S., 2023 and Article 22(2) of the Constitution of India. It is also submitted that grounds of arrest were neither communicated at the time of arrest nor at the time of his production before the Magistrate, resulting in violation of Article 22(1) of the Constitution of



India and Section 47 of the B.N.S.S., 2023.

5. In support of the aforesaid submissions, reliance has been placed upon the judgement of the Hon'ble Supreme Court in *Vihaan Kumar vs. State of Haryana & Another (Special Leave Petition (Criminal) No. 13320 of 2025)*, and *Minir Rajesh Shah vs. State of Maharashtra & Another (Criminal Appeal No. 2195 of 2025 along with connected matters)*.

6. Upon hearing the submissions advanced on behalf of the parties and perusal of the entire materials available on record, the core issue that arises for consideration in the present case is: “*Whether, in the facts of the present case, the custody of the petitioner can be said to be illegal or without authority of law, on account of the alleged delay in production before the Magistrate, and alleged procedural irregularities in the remand proceedings, so as to justify issuance of a writ in the nature of Habeas Corpus expedient under Article 226 of the Constitution of India?*”

7. It is well settled that a writ of *Habeas Corpus* is maintainable only when detention is shown to be wholly illegal or without authority of law. Detention pursuant to a judicial order of a competent court limits the scope of interference under



Article 226. In ***Kanu Sanyal v. District Magistrate, Darjeeling*** reported in ***(1973) 2 SCC 674***, the Hon'ble Supreme Court has authoritatively explained the true nature, scope and object of a writ of *Habeas Corpus*. Paragraph 4 of the said judgment, reads as follows:

“4..It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, ‘in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint’...”

8. Similarly, in ***Manubhai Ratilal Patel v. State of Gujarat & Ors.*** reported in ***(2013) 1 SCC 314***, the Hon'ble Supreme Court has observed as follows:

“31.. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of



the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law.”

9. In the present case, it is not disputed that the petitioner was arrested on 05.08.2025. The arrest memo placed on record bears the signature of the petitioner dated 05.08.2025, which clearly evidences his arrest on that date. The fardbeyan is also dated 05.08.2025, while the formal FIR was registered on 06.08.2025. The difference between the date of fardbeyan and the date of registration of FIR is procedural in nature and does not render the arrest or custody illegal.

10. So far as the alleged delay in production is concerned, the materials on record (Annexure P-1 series, page 45 to the writ application) indicate that immediately after arrest, the petitioner was hospitalized at D.M.C.H., Darbhanga, and subsequently referred to P.M.C.H., Patna due to his critical medical condition. The police authorities informed the concerned Court regarding his medical status and indicated that he would be produced upon being declared fit by the attending doctors. The petitioner was thereafter produced before the



learned Chief Judicial Magistrate on 12.08.2025 and remanded to judicial custody.

11. In the facts of the present case, the delay in physical production stands satisfactorily explained on medical grounds. It cannot be termed as unlawful or mala fide detention. The constitutional mandate under Article 22(2) is intended to prevent arbitrary detention; however, where production is delayed due to genuine medical exigency and the Court has been informed, such delay does not *ipso facto* render custody illegal.

12. With respect to the contention regarding non-communication of grounds of arrest, the arrest memo bearing the petitioner's signature dated 05.08.2025 indicates that he was duly apprised of the fact of arrest. No cogent material has been placed to substantiate the allegation that the grounds of arrest were not communicated. Mere bald assertion is insufficient to invalidate custody. In ***Union of India v. Paul Manickam, (2003) 8 SCC 342***, the Hon'ble Supreme Court has observed as follows:

“19..While dealing with a habeas corpus application undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings the court has to take



serious note of unclean approach.”

13. Applying the aforesaid principles, this Court finds that the petitioner is presently in custody pursuant to a judicial remand order dated 12.08.2025 passed by a court of competent jurisdiction. There is no material to demonstrate that the said remand order is without jurisdiction or a nullity.

14. Even assuming procedural irregularities occurred at the stage of arrest or initial custody, the subsequent judicial remand validates the detention. *Habeas Corpus* is not a remedy to challenge the correctness or merits of a judicial remand or to probe disputed facts of investigation.

15. In the considered opinion of this Court, the facts of the present case do not disclose any violation of Section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023, nor of Section 47 thereof. The delay in production stands explained by medical circumstances, and the arrest memo bearing the petitioner's signature negates the allegation of non-communication of arrest.

16. Accordingly, the Court finds that the custody of the petitioner is not illegal or without authority of law rather he is in judicial custody in a criminal case being Benta P.S. Case No. 133 of 2025. No case is made out for issuance of a writ in



the nature of *Habeas Corpus*. The issue is, therefore, answered in the negative.

17. The present writ petition, therefore, stands dismissed. It is clarified that dismissal of this petition shall not preclude the petitioner from availing other remedies available under law.

18. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.02.2026
Transmission Date	NA

