D/L 52

17.11.2026
Rohit/ Chanchal
A.R.(Ct.)
ct.no.5
Allowed

In the High Court at Calcutta

Criminal Miscellaneous Jurisdiction
Circuit Bench at Jalpaiguri

C.R.M (NDPS) 424 of 2026

Sahajal Miah
Vs
The State of West Bengal

In Re: An Application for Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with **Sitai** Police Station Case No. **107** of **2025** dated **19.05.2025** under Sections **221/223/121(2)/132/3(5)** of the BNS read with Section **21(C)/ 29** of the NDPS Act,1985.
And
In the matter of : Sahajal Miah

...Petitioner.

Mr. Prajnadeepta Roy
Mr. Sabir Ali
Mr. Jaimallya Bhattacharya

...for the Petitioner

Mr. Avrojyoti Das, Ld. A.P.P
Ms. Suman Sehanabis
Mr. Mayank Bhandari

...for the State

1. The learned Advocate representing the State submitted the order dated 19.8.2026 passed by the Co-ordinate Bench had been complied with in terms of a report dated 16. 11. 2026 filed by the Inspector-in-charge, Sitai Police Station, Cooch Behar, whereby it had been categorically detailed that the procedure of search and seizure had been videographed which had been a part of the case diary placed before the Court. A perusal of the aforesaid report annexed to the original case diary evinced the process of search and seizure to have been videographed.

2. The learned Advocate representing the petitioner argued the process of arrest of the petitioner and his subsequent production before the concerned Court had been defective and contrary to the

This order has been modified by speaking to the minutes of the order dated 20th November, 2026.

provisions enumerated in Section 58 of BNSS and contrary to the mandate of Article 22(2) of the Constitution of India. It was further submitted that the provisions of Article 22 (1) of the Constitution of India as well as section 47 (1) of the BNSS of 2023 had not been complied with as the petitioner was not informed of the grounds of arrest. It was further urged the petitioner to have been arrested by the BSF personnel on 19.5.2025 at about 02.20 hours along with other co-accused persons. The contraband articles were seized under a seizure list. The present petitioner along with the co-accused persons were further arrested by the local police station on 19.5.2025 at 14.30 hours. The petitioner was forwarded before the Court of Additional Sessions Judge, 1st Court, NDPS, Sadar Cooch Behar on 25.05.2025 beyond the statutory period of 24 hours violating his constitutional right as mandated in terms of the aforesaid provisions of the Constitution of India as well as BNSS, 2023.

3. The learned Advocate representing the petitioner relied upon a decision of the Hon'ble Supreme Court reported in ***2026 INSC 1195*** and a decision of the Co-ordinate Bench of this Court in CRM (NDPS) No. 494 of 2026 dated 8.10.2026 wherein on similar grounds the petitioners therein had been enlarged on bail as well as interim bail respectively.

4. The learned advocate representing the petitioner argued on the ground of violation of Article 22 (2) of the Constitution of India and the provisions under section 58 of the BNSS the petitioner was entitled to be released on bail.

5. The learned Advocate representing the State admitted the period of delay in producing the petitioner beyond 24 hours before the concerned Trial Court attributing the reason to an injury sustained by a BSF personnel inflicted by a co-accused smuggler

who had to be attended at the hospice imminently. It was further argued that the contraband articles seized from the possession of the petitioner was of commercial quantity attracting the rigours of Section 37 of the NDPS Act and the period of detention to be insignificant in terms of the decisions of the Co-ordinate Bench of this Court in absolute violation of the Article 21 of the Constitution of India as cited in ***CRM (NDPS) 689 of 2026*** and ***CRM (NDPS) 388 of 2026*** with ***CRM (NDPS) 337 of 2026*** with ***CRM (NDPS) 336 of 2026*** with ***CRM (NDPS) 390 of 2026.***

6. Admittedly, the petitioner was arrested by the BSF personnel on 19.05.2025 at 02. 20 hours as per the seizure memo. The memorandum of arrest revealed the petitioner to have been arrested by the Sitai police station, District- Cooch-Behar, 19.05.2025 at 14:30 hours. The contraband articles were re-seized under a re-seizure list on 19.5.2025. The petitioner was produced before the 1st Court of Additional Sessions Judge, (NDPS), Sadar, Cooch-Behar on 25.05.2025 after a lapse of 24 hours. The time consumed in transportation of the petitioner if taken into consideration and excluded accordingly should have been beyond 24 hours. The Hon'ble Supreme Court in the decision cited in ***2026 INSC 1195 (Sujit Das And Ors.-Vs- Union of India)*** has inter-alia observed as follows:

> ***"44. At this stage, it would be apposite to refer to the decisions of this Court relied upon in Aryaman Pattnayak, Kannan and in Arun K. Thomas as well as by the High Court in the impugned decision.***
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> ***45. This Court in Deepak Mahajan was considering the question as to whether a magistrate before whom a person arrested under sub-section (1) of Section 35 of the Foreign Exchange Regulation Act, 1973 is produced under sub-section 72 (2) of Section 35 of the aforesaid Act, has jurisdiction to authorize detention of that person under Section 167 (2) CrPC? 45.1. In the course***

of its analysis, the Bench also delved into the meaning of the word 'arrest' and noted that it is derived from the French word 'arreter' meaning 'to stop or stay'; it, thus, signifies a restraint of the person. The Bench also quoted with approval a decision of the Madras High Court which was authored by Justice Pandian, who incidentally also happened to author the judgment in Deepak Mahajan. Relevant portion of the judgment is extracted hereunder:

46. * * * * * ***The word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. 73 The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested.***

50. ***We are dealing with one of the most important provisions of our Constitution viz. clause (2) of Article 22. Before we endeavour to interpret clause (2) of Article 22, it would be advisable to advert to various decision of this Court telling us how to go about interpreting a constitutional provision, more particularly a provision which is included in Part III of our Constitution as a fundamental right?***

51. In Sakal Papers (P) Ltd. Vs. Union of India23, a Constitution Bench of this Court was examining the constitutionality of the Newspaper (Price and Page) Act, 1956 and the Daily Newspaper (Price and Page) Order, 1960. In that context, the Constitution Bench declared

that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering 23 1961 SCC Online SC 124 80 the nature and content of those rights, the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure.

52. In the case of M. Nagraj Vs. Union of India, a Constitution Bench of this Court while examining the challenge to reservation in promotion held that a constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner. This principle of interpretation is particularly apposite to the interpretation of fundamental rights. Part III of the Constitution does not confer fundamental rights; rather, it confirms their existence and gives them protection. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. These are basic human rights available to individuals by virtue of the fact that they are members of the human race. These fundamental rights are 24 (2006) 8 SCC 212 81 important as they possess intrinsic value. Every foundational value is placed in Part III as a fundamental right as it has intrinsic value. A right becomes a fundamental right because it has foundational value. Fundamental right is a limitation on the power of the State. A Constitution, and in particular that of it which protects and which entrenches fundamental rights and freedoms, is to be given a generous and purposive construction.

53. A nine-Judge Bench of this Court in IR Coelho Vs. State of Tamil Nadu25 developed and applied the basic structure doctrine while examining judicial review of laws placed in Schedule IX to the Constitution of India. In that context, this Court held that fundamental rights enshrined in Part III were added to the Constitution as

the check on the power of the State. The framers of the Constitution have built a wall around certain fundamental rights, which have to remain forever, limiting the ability of the majority to intrude upon them.

54. A Constitution Bench of this Court in the case of Dr. Jaishri Laxmanrao Patil Vs. Chief Minister26 considered the constitutionality of the Maharashtra Socially and Educationally Backward Classes Act, 2018. While doing so, this Court observed that the language of the Constitution is not clay in the hands of the interpreter to be moulded as he or she sees fit. The language of the Constitution is a source for its purpose. The fact that we may learn the purpose of the Constitution from sources external to it does not mean that we can give the Constitution a meaning that is inconsistent with its explicit or implicit language. Importantly, this Court held that interpretation cannot create a new constitutional text.

55. We have only extracted a few of the numerous judgments of this Court highlighting the importance or necessity of interpreting a constitutional provision, more particularly a fundamental right enshrined in Part III of the Constitution, in a manner which aligns with the constitutional objective and which does not whittle down the constitutional safeguards. A statute, special or otherwise, cannot be a guide to interpret the Constitution; rather, it should be the other way around. To reiterate, a fundamental right must be interpreted in such a manner that it upholds and furthers the objective of such a fundamental right.

56. In Jaskaran Jeet Singh Deol, we reminded ourselves that the Constitution or a constitutional provision cannot be interpreted in a vacuum. Interpretation of the Constitution cannot also be left to imponderables in the form of ifs and buts.

57. Applying the above interpretative standards, we have no hesitation in our mind that the exercise undertaken by the Orissa High Court in Aryaman Pattnayak while taking the view that detention of a

person leading to temporary disruption of his liberty in the course of a search and seizure process cannot be treated as a detention alike arrest runs contrary to the very grain of our constitutional jurisprudence. There is no such thing called temporary disruption of liberty. The further view of the Orissa High Court that a detention is not arrest if it is for brief questioning but if it goes beyond a short investigatory hold, then 84 it becomes an arrest is constitutionally unsustainable, delving into a realm of uncertainty. We are afraid, a constitutional provision, that too, a fundamental right, cannot be interpreted in such a manner. Similar is the position in respect to the interpretation of the Madras High Court in Kannan and of the Kerala High Court in Arun K. Thomas.

58. Having sieved through the judgments of the High Courts in Aryaman Pattnayak, Kannan and Arun K. Thomas, which we have disapproved, let us once again revert back to Article 22. As noticed supra, the heading of this fundamental right is protection against arrest and detention in certain cases. We are concerned with clause (2) thereof which we have already extracted above and analyzed extensively. Clause (2) says that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall not be detained in custody beyond the said period without the authority of the magistrate. The key expression appearing in clause (2) of Article 22 is 'arrested and 85 detained in custody'. What is the meaning of this expression? Does it mean that the two crucial words appearing in this expression, 'arrest' and 'detain', should be assigned separate meanings or they mean one and the same thing. It is important to note that the expression is conjunctive and not disjunctive. Had it been disjunctive, two separate meanings could have been assigned to the two words. But the expression being joint and conjunctive, the two words appearing

therein would mean one and the same thing. This is because the Constitution does not recognize any detention dehors arrest. Thus, the prescription of 24 hours time period would commence the moment a person is detained by the arresting authority suspecting him to have committed an offence, when his liberty is effectively curtailed. To that extent, the words appearing in clause (2) of Article 22 i.e. 'arrested' and 'detained' are synonymous. Any attempt to draw an artificial distinction between 'arrest' and 'detention' would dilute or negate the fundamental protection guaranteed by the Constitution under clause (2) of Article 22. Such an endeavour should be avoided. We must adopt that 86 interpretation which enhances and furthers the constitutional objective.

59. Our above interpretation resonates with the powerful exhortations of Justice Krishna Iyer in Niranjan Singh which he made more than four decades ago. This Court speaking through Justice Krishna Iyer held that explanations and submissions to the effect that police have taken a man into informal custody but not arrested him; have detained him for interrogation but not taken him into formal custody are terminological dubieties and are unfair evasions of the straightforwardness of the law. He called such explanations as equivocatory quibblings and hide and seek niceties, describing those as a shady facet.

60. We have already referred to Section 57 CrPC (equivalent provision in BNSS is Section 58) which contains the constitutional mandate of clause (2) of Article 22. Here the statute not only speaks of the 24 hours limitation but also clarifies that detention in custody of a person without a warrant shall not be for a period which is longer than what is reasonable considering all the circumstances of the case, which in any case, should not exceed 24 hours unless there is a special order of a magistrate. Therefore, Section 57 CrPC (58 BNSS) mandates two limitations: firstly, the constitutional limitation of 24 hours; and secondly, within that 24 hours, the detention should not exceed

what is considered to be a reasonable period in the facts of that case. This additional but salutary limitation should be borne in mind not only by the detaining authorities but also by the magistrates considering remand. In a given case, even though technically there may not be any breach of the 24 hours timeline, yet if the magistrate is satisfied that detention was for a period longer than what was reasonable, he or she may decline remand. 61. There is a reason for insistence on the 24 hours mandate under clause (2) of Article 22, which is mandatory and as we have interpreted, would commence from the time of detention when the person detained is deprived of his liberty. The endeavour of this Court has always been to eliminate custodial violence which unfortunately takes place during the time when a person is under detention and not shown as 88 formally arrested, in the process delaying production before the magistrate. Custodial violence is an unfortunate reality of our country and is judicially acknowledged. In Khatri, this Court was confronted with the horrific Bhagalpur blindings of prisoners where this Court observed that the provisions inhibiting detention without remand is a very healthy provision enabling the magistrate to keep a check over police investigation. Likewise, in D.K. Basu, this Court acknowledged the prevalence of custodial violence and abuse of police power in the country and observed with concern that notwithstanding the constitutional and statutory safeguards, growing instances of torture and death in police custody was a disturbing factor. Significantly, this Court recorded that worst violation of human rights take place during the course of investigation when the police with a view to extract information or confession resorts to third degree methods by adopting techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. The above aspect has also been elaborated in detail by the Bombay High Court in Ashak Hussain Allah Detha @ Siddique.

64. Therefore, it is evident that the endeavour of this Court has always been to ensure that no custodial violence takes place during interrogation, which is one of the worst forms of human rights violations. Therefore, the 24 hours deadline mandated under clause (2) of Article 22 would mean and commence from the time when a person is intercepted and detained by the investigating agency, in this case officials of the NCB, when his liberty is curtailed.

67. That apart, in terms of Section 58 BNSS (Section 57 CrPC), not only the person detained without a warrant should be produced before the magistrate within 24 hours, but there is also a requirement that such detention within 24 hours should not be for a period which is longer than what is reasonable considering all the circumstances of the case. As per the stand of the respondent itself, it is evident that the search and seizure procedure against the appellants was concluded in the office premises of the Customs Division, Agartala at 05:00 pm on 29.09.2025. However, the appellants were shown arrested at 11:00 am and 11:15 am respectively on 30.09.2025. Thus, there is a gap of 18 hours from the conclusion of the search and seizure procedure and the formal arrest of the appellants. No 94 explanation has been given for this delay of 18 hours. 18 hours in custody without judicial oversight is a long period with misuse and abuse of authority a clear possibility. Such a period certainly cannot be construed to be a reasonable period within the meaning of Section 58 BNSS (Section 57 CrPC).

68. That being the position, appellants are entitled to be released from custody forthwith."

7. The instant case deals with the right of the petitioner in terms of Article 22(2) of the Constitution of India as well as Section 58 of the BNSS as agitated on behalf of the petitioner apart from the aspect of Article 21 of Constitution of India as distinguished elaborately in the decisions relied upon by the learned advocate

representing the State. The petitioner is in custody since 20.05.2025 and the conception of grant of bail in affecting the rights of the petitioner under the provisions of Article 21 of the Constitution of India applicable to him at this juncture is premature. This court has restricted itself to the grievance of the petitioner on account of violation of his rights under Article 22(2) of the Constitution of India as well as Section 58 of BNSS and the observations of the Hon'ble Supreme Court in ***Sujit Das And Ors*** (supra) as the arrest of the petitioner got vitiated on completion of 24 hours in custody without being produced before the concerned Trial Court. The petitioner is accordingly enlarged on bail.

8. Accordingly, Petitioner, namely, **Sahajal Miah** shall furnish bond of Rs. 50,000/- (Rupees Fifty Thousand Only) with two registered sureties of Rs. 25,000/- each, one of whom must be local to the satisfaction of Learned Special Court, NDPS Act, Cooch Behar.

9. The petitioner shall be physically present on each and every date fixed before the learned Trial Court and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition the petitioner shall not leave the jurisdiction of the Special Court without prior permission of the Trial Court. The petitioner shall inform his mobile number to the local police station shall not change the number without prior permission of the Trial Court. He shall deposit the passport with the learned Judge of Special Court concerned, it at all he holds a passport and shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. The petitioner shall meet with the the petitioner shall meet with the Officer-in-Charge/Investigating Officer of the Sitai Police Station once in a week until further orders.

This order has been modified by speaking to the minutes of the order dated 20th November, 2026.

10. In the event the petitioner fails to appear before the trial Court without justifiable cause, the trial Court shall be at liberty to cancel his bail automatically without reference to this Court.

11. Accordingly, CRM (NDPS) **424** of 2026 is **allowed**.

12. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ananya Bandyopadhyay, J.)

This order has been modified by speaking to the minutes of the order dated 20th November, 2026.