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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.406 of 2026

SATISH @ SATYA SHINDE
S/o Chandrakant Shinde, Age-52 yrs,
R/o B/104, Pruthvi Enclave CHS Ltd, Western
Express Highway, Siddharth Nagar, Mumbai,
Behind Broadway Cinema Borivali East,
Mumbai Maharashtra
Presently residing at Flat No. 5102,
Sky City, Borivali East,
Mumbai Maharashtra. … PETITIONER

Versus.

1. STATE OF GOA,
Through the Police Inspector,
Crime Branch Police Station, Goa.

2. THE PUBLIC PROSECUTOR
High Court of Bombay at Goa, Porvorim-Goa.

3. SHRINIVAS NAYAK
s/o Pandurang Nayak, Indian National,
aged 53 years, resident of 'Ramnath', C-6,
Ocean Park, Dona Paula, Tiswadi Goa. … RESPONDENTS

Mr Nitin Sardessai, Senior Advocate with Mr Sairaj Bhaje, Mr Siddhant Sardessai and Mr Ashish Kamat, Advocates for the Petitioner.

Mr Somnath Karpe, Additional Public Prosecutor for the State with Adv Mr Anand Shirodkar and Ms Sonali Gaonkar.

Mr Parag Rao, Mr Vibhav Amonkar, Mr Akhil Parrikar, Ms S. Drago, Ms D. Korgaonkar and Mr Raj Chodankar, Advocates for Respondent No.3.

CORAM: ASHWIN D. BHOBE, J.

DATED: 3rd NOVEMBER 2026

ORAL JUDGEMENT :-

1. Heard, Mr Nitin Sardessai, learned Senior Advocate for the Petitioner, Mr Somnath Karpe, learned Additional Public Prosecutor for Respondent Nos.1 and 2 and Mr Parag Rao, Advocate for Respondent No.3.

2. Rule. Rule returnable forthwith, on request and with consent of the parties, Petition heard finally.

3. By this Petition, filed on 21.09.2026 under Articles 226 and 227 of the Constitution of India, Petitioner, an Accused in Crime No. 66 of 2026 dated 28.08.2026, registered at the Porvorim Police Station, Porvorim, Goa for offences punishable under Sections 109(1), 125 read with Section 3(5), 249, 61 of the Bharatiya Nyaya Sanhita, 2023 ("BNS 2023") and Section 3 read with Sections 25 and 27 of the Arms Act 1959, is before this Court seeking the following reliefs:

> "*a) issue an appropriate writ, order or direction under Articles 226 and 227 of the Constitution of India and quash and set aside the order dated 17/09/2026 passed by the Learned Judicial Magistrate First Class at Mapusa, Goa, in Crime No. 66/2026 of Porvorim Police Station.*
>
> *b) call for the entire record and proceedings of Remand from the Court of the Learned Judicial Magistrate First Class at Mapusa, Goa;*
>
> *c) direct the Respondents to place before this Hon'ble Court the complete contemporaneous record relating to the Petitioner's interception, detention and arrest at Mumbai Airport, including the Immigration records, airport records, Arrest Memo, grounds and reasons of arrest, station diary entries, case diary entries and communication records;*

d) examine the legality of the Petitioner's arrest in the light of Articles 21 and 22 of the Constitution of India and the applicable provisions of law;

e) direct that the Petitioner be released from police custody forthwith, subject to such terms and conditions as this Hon'ble Court may deem fit and proper;"

4. The material facts, not in dispute and relevant to this Petition, as referred to by Nikhil Palekar, Police Inspector, Crime Branch, Ribander, Goa, in paragraph 39 of his reply Affidavit-in-reply dated 28.09.2026, are as follows:-

a. The Bureau of Immigration (CSMIA), Mumbai, intercepted the Petitioner on 16.09.2026 at 11.46 hrs.

b. PSI Amin Naik, attached to the Crime Branch, Panaji, Goa, took custody of the Petitioner on 16.09.2026 at 15.00 hrs.

c. PSI Amin Naik, along with his staff and the Petitioner, boarded the first available flight from Mumbai Airport on 16.09.2026 at 19.20 hrs. and landed at Dabolim Airport, Vasco, Goa on 16.09.2026 at 20.45 hrs.

d. The Petitioner was produced before the Judicial Magistrate First Class, Mapusa on 17.09.2026 at 12.45 hrs.

5. Mr Nitin Sardessai, learned Senior Advocate for the Petitioner, does not contest that the Petitioner was produced before the Magistrate having jurisdiction in the case (Crime No. 66 of 2026) within 24 hours of his arrest.

6. Mr Nitin Sardessai, learned Senior Advocate for the Petitioner, submits that the limited issue raised by the Petitioner in this Petition is that the Petitioner's arrest is illegal, as the Respondent-State violated the Petitioner's rights guaranteed under Article 22(2) of the Constitution of India. He submits that although the Police arrested the Petitioner on 16.09.2026 in Mumbai, they did not produce him "immediately" before the "nearest Magistrate" in Mumbai. To elucidate, Mr Sardessai, learned Senior Advocate for the Petitioner, submits that upon arrest, the Police must produce the accused before the "nearest Magistrate" available and not wait for the 24-hour time limit. According to Mr Sardessai, the accused must be produced "immediately". He submits that the purpose of such production is to ensure immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him.

7. Mr Sardessai, learned Senior Advocate for the Petitioner, by referring to Article 22(2) of the Constitution of India, has emphasised that the said Article confers a constitutional/fundamental right on an accused to be produced before the "nearest Magistrate" and to do so "immediately". This, he submits, is irrespective of whether the accused is produced before the jurisdictional Magistrate within 24 hours of arrest.

8. Mr Sardessai, learned Senior Advocate for the Petitioner, in support of his contention, relies on the following decisions:

(i) Vachhalabai v/s. State of Maharashtra[1]

(ii) Kalim Isaq Shaikh v/s. State of Maharashtra[2]

(iii) Shakoor Ahmed Jamaluddin Sayed v/s. State of Maharashtra[3]

(iv) Aditya Ravichandra v/s. State of Goa & Anr[4]

9. Mr Somnath Karpe, learned Additional Public Prosecutor for Respondent Nos. 1 and 2, submits that after arresting an accused suspected of an offence, the Police have 24 hours to produce the accused before the Magistrate having jurisdiction over the crime. He submits that only if the Police are unable to produce the accused before the jurisdictional Magistrate within 24 hours of arrest must they produce the accused before the nearest Magistrate. He submits that in Crime No. 66 of 2026, the Petitioner-accused was arrested on 16.09.2026 at 15.00 hours and produced before the Magistrate having jurisdiction in the case within the 24-hour window, therefore, the Petitioner can make no grievance. To elaborate, Mr Karpe, learned Additional Public Prosecutor, submits that the Police officer (PSI Amin Naik) was in a position to produce the Petitioner before the Magistrate having jurisdiction in the case within 24 hours, therefore, there was no need or occasion to produce the Petitioner before the nearest Magistrate in Mumbai. He in the context of Article 22(2) of the Constitution of India read with Section 57 of the BNSS, 2023,

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1 2019 SCC OnLine Bom 2937

2 WP No.4598/2026 decided on 23.09.2026

3 Criminal Writ Petition No. 2297/2025 decided on 02.05.2026

4 Criminal Writ Petition No.490/2025-F decided on 31.07.2025

submits that the "nearest Magistrate" would be the "Jurisdictional Magistrate" if the accused is produced within 24 hours, as in the present case.

10. Mr Karpe, the learned Additional Public Prosecutor, submits that if the Petitioner's contention is accepted, every arrested accused would have to be produced before the nearest Magistrate, irrespective of whether the accused can be produced before the jurisdictional Magistrate within 24 hours. Mr Karpe further submits that Article 22(2) of the Constitution of India must be read in conjunction with Section 57 of BNSS, 2023 otherwise Section 57 of BNSS, 2023 would be rendered redundant.

11. Mr Karpe, the learned Additional Public Prosecutor, gave an example of a situation in which, if an accused is arrested in the Taluka of Bardez, Goa, in respect of an offence committed in the Taluka of Tiswadi, Goa, then, if the Petitioner's contentions are accepted, the accused will have to be produced before the "nearest Magistrate", i.e. at Mapusa, Bardez, Goa, instead of the "Jurisdictional Magistrate", i.e. Panaji, Tiswadi, Goa. This would be against the provisions, as the Investigating Officer would be within the prescribed time frame to produce the accused arrested in the Taluka of Bardez, Goa, before the Jurisdictional Magistrate at Panaji, Tiswadi Taluka.

12. Mr S. Karpe relies on the following decisions to support his contentions:

(i) Ram Kotumal Issrani v/s Directorate of Enforcement[5]

(ii) Anil Jaisinghani v/s. State of Maharashtra[6]

(iii) Gautam Navlakha v/s. National Investigation Agency[7]

13. Mr Parag Rao, learned Advocate for Respondent No. 3, in addition to the submissions made by Mr Karpe, learned Additional Public Prosecutor, submits that the safeguards found in Article 22(2) of the Constitution of India are embodied in Section 58 of BNSS, 2023 (Section 57 of the Cr.P.C., 1973).

14. In Rejoinder, Mr Nitin Sardessai, learned Senior Advocate for the Petitioner, reiterating his contentions, submits that the decision in *Aditya Ravichandra (supra)* negates the contentions sought to be urged by Mr Karpe, learned Additional Public Prosecutor. Relying on paragraphs 13 to 15 of *Aditya Ravichandra (supra)*, he submits that this Court observed that the detention continued beyond 24 hours without the accused being produced before the Magistrate, in violation of Article 22(2) of the Constitution of India and therefore found the arrest illegal. He submits that the observations made by the Hon'ble Supreme Court in paragraph 102 of *Gautam Navlakha* (*supra*) are confined to the facts of that case, which pertain to house arrest and do not address the issue under Article 22(2) of the Constitution of India. He further submits that the entire facet of Articles 21 and 22 of the Constitution of India did not fall for consideration in

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5 2024 SCC OnLine Bom 1050

6 2023 SCC OnLine Bom 752

7 2021 SCC OnLine SC 382

Gautam Navlakha (supra), therefore, the observation in paragraph 102 therein would not even be *obiter dicta*.

15. Mr Sardessai, learned Senior Advocate for the Petitioner, relies on the decision of the Hon'ble Supreme Court in *State of Punjab v/s. Ajaib Singh and Anr.*[8] to submit that the decision mandates the production of the accused before the nearest Magistrate within 24 hours. He further relies on the decision in *Priya Indoria v/s. State of Karnataka*[9] to contend that the Hon'ble Supreme Court has explained the concept of transit bail.

16. Mr Sardessai, learned Senior Advocate for the Petitioner, dealing with the example referred to by Mr Karpe, submits that if the law requires the accused to be produced before the nearest Magistrate within 24 hours, or requires a particular thing to be done in a particular manner, irrespective of prejudice, the same is required to be done. He relies on the following decisions in support of his contentions:

(i) Sushitex Exports (India) Ltd & Ors v/s. Union of India[10]

(ii) K. Prabhakar Hegde v/s. Bank of Baroda[11]

17. Mr Sardessai, learned Senior Advocate for the Petitioner, relied on the Constituent Assembly Debate, which pertains to clause (1) of Article 15A, the debate on 24-hour custody and the

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8 (1952) 2 SCC 421

9 2024 (4) SCC 749

10 Writ Petition (L) No.9641 of 2020 decided on 14.01.2022

11 Civil Appeal No.6599/2025 decided on 19.08.2025

words "as soon as may be" therein. He further relied on H. N. Sirwai's Commentary on the Constitution of India, again in relation to Article 15 contained in the Draft Constitution, corresponding to Article 22.

18. Mr Sardessai, learned Senior Advocate for the Petitioner, referring to the decisions relied upon by Mr Karpe, viz., *Ram Kotumal Issrani (supra)* and *Anil Jaisinghani and Anr. (supra)*, submits that these decisions, having not considered the decision in the case of *Vachhalabai (supra),* are per incuriam and must therefore be ignored.

19. For all the aforesaid reasons and contentions, Mr Sardessai, learned Senior Advocate for the Petitioner, submits that after the Petitioner's arrest on 16.09.2026 in Mumbai, the Petitioner was not produced "immediately" before the "nearest Magistrate" in Mumbai, thereby infringing the rights guaranteed to the Petitioner under Article 22(2) of the Constitution of India. Accordingly, he submits that the Petitioner's arrest must be declared illegal and that the Petitioner be released forthwith. Without prejudice, he submits that, if the Petitioner's arrest is held illegal, the Police is not prevented from taking appropriate steps under law, as per the decision of the Hon'ble Supreme Court in *Jaskaran Jeet Singh Deol v/s. State of Punjab.*[12]

20. From the contested arguments of the parties, the point and issue for consideration in this Petition is whether the Petitioner - accused, upon his arrest on 16.09.2026 at 15.00 hours in

12 Criminal Appeal No.4234/2026 decided on 21.09.2026

Mumbai, was required to be produced immediately before the "nearest Magistrate" in Mumbai, irrespective of whether he could be produced before the Magistrate having jurisdiction over the Crime No. 66 of 2026, i.e., the Judicial Magistrate First Class, Mapusa, Goa, within 24 hours of his arrest?

21. Article 22(2) of the Constitution of India reads as under:

> " *22. Protection against arrest and detention in certain cases*
>
> *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
>
> *(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four 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 be detained in custody beyond the said period without the authority of a magistrate.*"

22. Section 57 of BNSS, 2023 reads as under:

> "*57. Person arrested to be taken before Magistrate or officer in charge of police station.*
>
> *A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.*"

23. Section 58 of BNSS, 2023 reads as under:

> "*58. Person arrested not to be detained more than twenty-four hours.*
>
> *No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the*

time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not."

24. The question of whether the accused in a crime may be kept in custody for investigation for not more than 24 hours, excluding the time required to take the accused from the place of arrest to the Magistrate, is not the subject matter of this Petition. No arguments were addressed to this issue.

25. Mr Nitin Sardessai, learned Senior Advocate for the Petitioner, relies on three decisions of the Hon'ble Division Bench of this Court in support of his contentions regarding the "nearest Magistrate", whereas Mr Somnath Karpe, learned APP, and Mr Parag Rao, learned Advocate for the Respondent No. 3, rely on two decisions of the Hon'ble Division Bench of this Court and one decision of the Hon'ble Supreme Court.

26. In *M/S A. P. Electrical Equipment Corporation vs. The Tahsildar & ors*[13] in paragraph 35 has observed as follows:

"*35. If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathern, 1901 AC 495 at p.506 and reiterated by the Privy Council in Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore AIR 1940 PC 230:*

> *".....every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the*

13 CA Nos. 4526-4527 of 2024

particular facts of the case in which such expressions are to be found. "and follow that decision whose facts appear more in accord with those of the case at hand."

27. Bearing in mind the aforesaid principle, I proceed to consider the submissions of the learned Advocates.

28. Reference to the decisions relied upon by the respective parties being relevant, same are referred to herein :

29. In *Kalim Isaq Shaikh (supra),* this Court has observed in paragraphs 9 to 11 as follows:

"*9. In the backdrop of these facts, we have considered the submissions made by the learned Counsel for the Petitioner. He relied on the case of Division Bench of this Court in the case of Vacchalabai. The Division Bench specifically considered the expression "nearest Magistrate". In that case, the Police from Karnataka had arrested the Petitioner in that case from Maharashtra but had not produced him before the nearest Magistrate. In that context, the Division Bench made certain observations. The relevant paragraphs are paragraph 26, 55 and 56 which are as follows:*

"26. The aforesaid reasons given to have the Article in the present form show that no scope is left to police to keep arrested person in their custody for the purpose of investigation for more than 24 hours excluding the time required for taking the accused from the place of arrest to the Court of Magistrate. Only to ensure such observance, mandate, the term "nearest magistrate" is used and specific period is also given. The period of 24 hours is given in relation to the term "nearest magistrate" and it cannot be read separate from this term. Further, as per the aforesaid reasoning given, "nearest magistrate" cannot be presumed as the Magistrate having jurisdiction over the crime, in which the accused is arrested. Further, right to inform the Magistrate of the charge under which that man is arrested given in this Article shows that it was intention to see that the Magistrate within whose territorial jurisdiction the man is arrested is expected to be informed about such arrest and such Magistrate is expected to exercise the power, which can be like bail, remand etc. No other interpretation of the aforesaid obligation, to inform to the Magistrate about the arrest mentioned by Dr. Ambedkar is possible. In view of this object behind using the term "nearest" the subsequent reference of terms

like "Court of Magistrate" and "Magistrate" in Article 22(2) can have the same object. So, the subsequent terms used as "Court of Magistrate" and "Magistrate" means that "nearest magistrate" mentioned in the Article. If the purpose behind Article 22(2) of Constituent Assembly is kept in mind, only the aforesaid meaning can be given to the term "nearest magistrate".

55. The provision of Section 167(2-A) of Cr. P.C. already quoted shows that no excuse is available to the police officer arresting the accused like nearest Judicial Magistrate was not available. In that case also, as per this provision, the accused needs to be transmitted to the nearest Executive Magistrate on whom powers are conferred of Judicial Magistrate. In that case also, some record is required to be prepared by the police officer under this Section. This provision shows that no scope is left to police to say that they could have produced such arrested accused before the concerned Magistrate, the Magistrate having jurisdiction over the offence within 24 hours from the time of arrest and so, the accused was taken before the concerned Magistrate. In view of the aforesaid provisions, the interpretation suggested for the Respondents by the learned APP is not at all acceptable.

56. The aforesaid provisions are safeguards for protection of fundamental rights mentioned in Article 21 of the Constitution of India. They need to be strictly followed by the officers effecting arrest. If there is a material to infer that there was actual arrest, but after the arrest the accused was not taken before the nearest Magistrate and he was taken far away from that place for production before the concerned Magistrate, the moment the accused is taken out of the jurisdiction of nearest Magistrate, his detention becomes unauthorized and illegal. Such detention will not become legal only because subsequently the accused is produced before the Magistrate having jurisdiction to try or inquire into the offence within 24 hours of the actual arrest. Here only it needs to be mentioned that the contention of police that formal arrest was made after taking the accused to the local jurisdiction of the concerned Magistrate and the period needs to be counted from that time and the case needs to be considered from that angle cannot be accepted. There are other provisions in Cr. P.C. like issuing notice or summons for making inquiry and by that process calling a person to the police station is possible. If that procedure is not followed and accused is picked up from a place over which the police station has no jurisdiction and he is taken to the place over which the police has jurisdiction, inference become easy that the accused was taken away from the first place only by illegally detaining him. If such interpretation is not made then the aforesaid provisions mentioned like Section 41-B, 41-C and all subsequent provisions will become otiose and that will be against

all the provisions made to safeguard the fundamental rights of such person."

10. The said judgment was followed by another Division of this Court in the case of Shakoor Ahmed Jamaluddin Sayed Vs. State of Maharashtra in Criminal Writ Petition No. 2297 of 2025, vide the Order dated 2nd May 2025.

11. Thus, it is clear that the Investigating Agency was duty bound to produce the Petitioner before the "nearest Magistrate" at Barshi, from where he was arrested. The contention that he was produced within 24 hours by itself is not sufficient. The arrested person has to be produced before the nearest Magistrate as per the requirement of the above provisions, as is held by the Division Bench in the case of Vacchalabai."

30. In *Shakoor Ahmed Jamaluddin Sayed (supra),* this Court, in paragraphs 11 to 14, observed as follows:

"*11. The learned APP on the other hand made the following submissions:-*

According to her, the Petitioner was taken in custody on 02.04.2024 at 5.45 p.m. at Sikar, Rajasthan. He was not formally arrested. The Petitioner was formally put under arrest on 03.04.2025 at 3.16 p.m.. Thereafter, he was produced before Chief Judicial Magistrate Nashik at 1.00 p.m. on 04.04.2025 which would be within 24 hours of his formal arrest at 3.16 p.m. on 03.04.2025. She therefore submitted that he was produced within 24 hours of his arrest.

Learned APP relied on the judgment of the another Division bench of this Court in case of Ram Kotumal Issrani Vs. Directorate of Enforcement and others, decided on 15.04.2024, in Criminal Writ Petition (Stamp) No. 15417 of 2023 to contend that if the accused is produced within 24 hours before the jurisdictional Magistrate that satisfies the requirement of the Article 22 of the Constitution of India and Section 187 of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS).

12. We have considered these submissions. It must be noted that at the very first instance, the learned Counsel for the Petitioner has taken the objection that the Petitioner's production before the Magistrate was illegal as he was produced beyond 24 hours of his arrest. The learned CJM Nashik has held that after the Petitioner was arrested at Sikar, he was produced before in-charge Chief Judicial Magistrate, Nashik on 03.04.2025 within 24 hours and therefore, there was no illegality in his arrest and remand.

13. We are unable to accept the submissions of learned APP and observations of the learned Magistrate that the Petitioner was produced before the nearest Magistrate within 24 hours. In this context as rightly submitted by the learned Counsel for the Petitioner reliance can be made to the observations of the Division bench in the case of Vachhalabai (supra). The relevant paragraphs are as under para nos. 26, 52 and 53.

> *"26 The aforesaid reasons given to have the Article in the present form show that no scope is left to police to keep arrested person in their custody for the purpose of investigation for more than 24 hours excluding the time required for taking the accused from the place of arrest to the Court of Magistrate. Only to ensure such observance, mandate, the term "nearest magistrate" is used and specific period is also given. The period of 24 hours is given in relation to the term "nearest magistrate" and it cannot be read separate from this term. Further, as per the aforesaid reasoning given, "nearest magistrate" cannot be presumed as the Magistrate having jurisdiction over the crime, in which the accused is arrested. Further, right to inform the Magistrate of the charge under which that man is arrested given in this Article shows that it was intention to see that the Magistrate within whose territorial jurisdiction the man is arrested is expected to be informed about such arrest and such Magistrate is expected to exercise the power, which can be like bail, remand etc. No other interpretation of the aforesaid obligation, to inform to the Magistrate about the arrest mentioned by Dr. Ambedkar is possible. In view of this object behind using the term "nearest" the subsequent reference of terms like "Court of Magistrate" and "Magistrate" in Article 22(2) can have the same object. So, the subsequent terms used as "Court of Magistrate" and "Magistrate" means that "nearest magistrate" mentioned in the Article. If the purpose behind Article 22(2) of Constituent Assembly is kept in mind, only the aforesaid meaning can be given to the term "nearest magistrate".*
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> *52. The provision of Section 167(2-A) of Cr.P.C. already quoted shows that no excuse is available to the police officer arresting the accused like nearest Judicial Magistrate was not available. In that case also, as per this provision, the accused needs to be transmitted to the nearest Executive Magistrate on whom powers are conferred of Judicial Magistrate. In that case also, some record is required to be prepared by the police officer under this Section. This provision shows that no scope is left to police to say that they could have produced such arrested accused before the concerned Magistrate, the Magistrate having jurisdiction over the offence within 24 hours from the time of arrest and so, the accused was taken before the concerned Magistrate. In view of the aforesaid provisions, the interpretation suggested for the Respondents by the learned APP is not at all acceptable.*

> *53 The aforesaid provisions are safeguards for protection of fundamental rights mentioned in Article 21 of the Constitution of India. They need to be strictly followed by the officers effecting arrest. If there is a material to infer that there was actual arrest, but after the arrest the accused was not taken before the nearest Magistrate and he was taken far away from that place for production before the concerned Magistrate, the moment the accused is taken out of the jurisdiction of nearest Magistrate, his detention becomes unauthorized and illegal. Such detention will not become legal only because subsequently the accused is produced before the Magistrate having jurisdiction to try or inquire into the offence within 24 hours of the actual arrest. Here only it needs to be mentioned that the contention of police that formal arrest was made after taking the accused to the local jurisdiction of the concerned Magistrate and the period needs to be counted from that time and the case needs to be considered from that angle cannot be accepted. There are other provisions in Cr.P.C. like issuing notice or summons for making inquiry and by that process calling a person to the police station is possible. If that procedure is not followed and accused is picked up from a place over which the police station has no jurisdiction and he is taken to the place over which the police has jurisdiction, inference become easy that the accused was taken away from the first place only by illegally detaining him. If such interpretation is not made then the aforesaid provisions mentioned like Section 41-B, 41-C and all subsequent provisions will become otiose and that will be against all the provisions made to safeguard the fundamental rights of such person."*
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> *14. The above discussion is clear enough. The Division bench had specifically considered the distinction between the Jurisdictional Magistrate and the nearest Magistrate. It was specifically observed that the detention would not become legal only because subsequently, the accused was produced before the Magistrate having jurisdiction to try or inquire into the offence within 24 hours of the actual arrest.*"

31. In *Ram Kotumal Issrani (supra),* this Court has observed in paragraphs 8 to 13 as follows:

> *"8. As far as the submission that the petitioner was not produced before the nearest Magistrate is concerned, according to Mr. Venegavkar, the said submission is flawed, inasmuch as, the term 'nearest Magistrate' used in Section 167 Cr. P.C. needs to be read in a situation, where it is not possible for the investigating agency to take the arrestee before the jurisdictional Magistrate within 24 hours and it is in these circumstances that transit remand is sought before the jurisdictional Magistrate.*

9. Mr. Venegavkar submitted that the PMLA being a special statute, Section 19 deals with production of an arrestee before a Special Court or before a jurisdictional Magistrate. He submitted that even if the time to travel is excluded from Delhi to Mumbai, i.e. travel time of about 8 hours is excluded, the petitioner was produced within 23 hours i.e. well within the stipulated period of 24 hours. Thus, according to the learned Spl. P.P, there is no merit in the petition and as such, the petition is liable to be dismissed.

10. Perused the petition. It appears that the petitioner entered the Office of the ED, pursuant to the summons under Section 50 of the PMLA on 07.08.2023 at 11:00 a.m. It is not in dispute, that this was the 4th summons issued to the petitioner for recording of his statement. It is also not in dispute, that in addition to the petitioner, two more persons were summoned on the very same day i.e. on 07.08.2023. It appears that as is the practice, when a person enters the Office of the ED, his/her mobile phone is kept with the security and as such the petitioner's phone was kept with the security. It appears that the statements of two persons who were summoned, were recorded prior to the recording of the petitioner and as such, the recording of the petitioner's statement started at 10: 30 p.m. It appears that the petitioner was taken to the investigation room at 10: 00 p.m. on 07.08.2023, pursuant to which, recording of his statement started at 10: 30 p.m. and at around 3: 30 a.m, petitioner's questioning was over i.e. recording of his statement, after which, the petitioner was arrested by the ED on 08.08.2023 at 5: 30 a.m. It is not in dispute that the petitioner and the ED Officer left for the airport on 08.08.2023 at 7:00a.m. from the office of the ED situated at Delhi; that the flight took-off at 10 00 a.m. on 08.08.2023; that the flight landed in Mumbai airport at 12: 15 p.m. on 08.08.2023; and at 2:00 p.m, the petitioner and the ED Officer arrived at the Office of the ED in Mumbai. It is also not in dispute that at about 5:00 p.m, the petitioner was produced before the learned Special Judge, PMLA and the matter was taken up by the Court at around 5: 15 p.m.

11. Having regard to the time-line and the facts, we are of the opinion that the time when the petitioner entered the Office of the ED, pursuant to summons under Section 50 of the PMLA, the petitioner was not kept in confinement, much less, detained. It is not in dispute that when Section 50 summons was issued, the petitioner was not an accused, inasmuch as, Section 50(2) of the PMLA clearly states that the Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have the power to summon "any person" whose attendance is considered necessary, whether to give evidence or to produce any records during the course of any investigation or proceeding under the Act. It is Section 19 of the PMLA which gives power to the Investigating Officer to arrest an individual against whom material is collected as contemplated under Section 2(1)(na), after following the process contemplated under Section 50 of the PMLA. Thus, the petitioner became an accused only when he was arrested under Section 19 of the PMLA, after the authority on the

basis of material in his possession had reason to believe that the petitioner was guilty of the offence. Thus, when the petitioner came to the ED office under a summons under Section 50 of the PMLA, the petitioner was not an accused. Thus, if the said time-line is considered the petitioner was produced well within 24 hours of his arrest before the Special Court.

12. Even for the sake of argument, if we consider that the petitioner was detained from 07.08.2023 at 11:00 a.m, and was produced before the learned Special Judge at 5:00p.m. on 08.08.2023, and exclude the period of travel i.e. from 7: 00 a.m. to 2:00 p.m, the petitioner was still produced before the learned Judge, well within 24 hours, as mandated in law.

13. As far as producing the petitioner before the nearest Magistrate is concerned under Section 167 Cr. P.C., the term 'nearest Magistrate' used in Section 167 has to be considered where it is not possible for the investigating agency to take the arrestee before the jurisdictional Magistrate within 24 hours. It is for this purpose, that the term 'nearest Magistrate' is used in Section 167 so as to enable the investigating agency to seek transit remand, and, thereafter produce the arrestee before the jurisdictional Magistrate. In a case, where the arrestee can safely be produced before the jurisdictional Magistrate within 24 hours, then, there is no necessity of taking him first before the nearest Magistrate and then before the jurisdictional Magistrate. Thus, we do not agree with the submission of Mr. Aggarwal that the petitioner ought to have been produced before the nearest Magistrate before being brought to Mumbai. Thus, there is no merit in the allegations that the petitioner was not produced within 24 hours before the jurisdictional Court and as such, the petitioner's arrest cannot, be termed as 'illegal'."

32. The decision in *Ram Kotumal Israni (supra)* was assailed before the Hon'ble Supreme Court in Special Leave to Appeal No. 6181/2024. The Hon'ble Supreme Court declined to entertain the said appeal. Mr Sardessai, learned Senior Advocate for the Petitioner, submits that the rejection of Special Leave to Appeal would not amount to concurring with the view taken by the Hon'ble Division Bench.

33. In the case of *Anil Jaisinghani & Anr (supra)* in paragraphs 3, 11, 12, 13 and 14, this Court has observed thus:

"*3. Though the Petitioners have prayed for several reliefs in the prayer clause of the Petition, the learned Senior counsel for the Petitioners submitted that, he is restricting his relief for release of the Petitioners from custody of Respondent-State on the ground of breach of Article 22(2) of the Constitution of India and Section 57 of the Cr. P.C.*

12. A bare perusal of relevant paragraph of the said Press-Note dated 20th March, 2023 indicates that, it nowhere mentions that the Petitioners were arrested at about 11.45 p.m. of 19th March, 2023 at Godhra, Gujarat. From the aforesaid factual matrix, it is apparent that, the Petitioners and in particular Petitioner No. 1 was detained in the wee hours between 19th March, 2023 and 20th March, 2023. As per the record, the Petitioner No. 1 was located and accordingly detained at Vejalpur near Bedia Naka within the jurisdiction of Vejalpur Police Station, State of Gujarat at about 2.25 am. of 20th March, 2023 and therefore according to us, there is no substance in the contention of the learned Senior counsel for the Petitioners that, the Petitioners were arrested on 19th March, 2023. In the Order dated 21st March, 2023, passed by learned Sessions Judge on the Remand Report, it is observed that, accused were arrested on 20th March, 2023 at 5.00 p.m. after his proper identification as he was absconding in other cases. Except electronic news nothing is on record to show that accused were arrested on 19th March, 2023 at 11.45 p.m. The reasons put forth by Investigating Officer are satisfactory and therefore arrest cannot be said to be illegal. We have perused the Remand Report dated 21st March, 2023, wherein it is stated that, accused were arrested on 20th March, 2023 at 17.00 hrs. Arrest/search panchanama was recorded and reasons for arrest were informed to the accused. The guidelines issued by Supreme Court were followed at the time of their arrest. The information about arrest of accused was given to relative and acquaintance of accused.

11. The Petitioners were thereafter produced before the learned 45th Additional Sessions Judge, Mumbai on 21st March, 2023 at about 11.00 a.m. along with a Remand Report/Application No. 329 of 2023 of even date. The Remand Report mentions that, the Petitioners were arrested on 20th March, 2023 at about 5.00 p.m. and it was a fresh remand. The learned Additional Sessions Judge, Mumbai took up the said Remand Report/Application for hearing at about 3.20 p.m. and after hearing the learned counsel for the Petitioners and the APP, was pleased to remand the Petitioners to police custody till 27th March, 2023. It is thus apparently clear that, the Petitioners were produced before the learned Additional Sessions Judge, at Mumbai within a period of 24 hours from their arrest.

13. Article 22(2) of Constitution of India states 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. Whereas Section 57 of the Cr. P.C. provides that, no police officer shall detain in custody a person arrested without warrant for a

longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

14. As noted above, the Petitioners were produced before the Court of competent jurisdiction within a period of 24 hours from the time of their arrest. Assuming for the sake of argument, they were detained at Vejalpur on 20th March, 2023 at about 2.25 a.m. after excluding the period of travel required for the said place to Mumbai, the Petitioners were thereafter produced before the concerned Court of competent jurisdiction within the stipulated period. According to us, in the present case there is no breach of Article 22(2) of Constitution of India and/or Section 57 of the Cr. P.C. is committed by the Respondent-State."

34. In *Gautam Navlakha (supra),* the Hon'ble Supreme Court, in paragraphs 25, 36, 89, 90, 95 and 102, has observed as follows:

"*25.1. (1) What is the nature of an order of transit remand? Is it an order passed under Section 167 CrPC?*

25.2. (2) What is the nature of the interim order dated 28-8-20181, 2 passed in the writ petition by the appellant in the High Court of Delhi as extended? Are these orders passed under Section 167 CrPC?

25.3. (3) What is the effect of the judgment of the High Court of Delhi dated 1-10-20185 wherein the arrest of the appellant and the transit remand are found illegal?

25.4. (4) Does the house arrest of the appellant amount to police custody or judicial custody? Can there be an order for custody other than police custody and judicial custody under Section 167 CrPC? Is house arrest custody within the embrace of Section 167 CrPC?

25.5. (5) Is the house arrest of the appellant not custody under Section 167 CrPC on the score that the appellant could not be interrogated by the competent investigating officer?

25.6. (6) What is the effect of the appellant being in police custody from 15-4-2020 till 25-4-2020 and the alleged acquiescence of the appellant in the order and the custody undergone by the appellant?

25.7. (7) Whether broken periods of custody otherwise traceable to Section 167 CrPC suffice to piece together the total maximum period of

custody permitted beyond which the right to default bail arises or whether the law giver has envisaged only custody which is continuous?

25.8. (8) What is the impact of mandate of Article 21 and Article 22 of the Constitution?"

"*36. In State of Punjab v. Ajaib Singh14, the Court had to deal with ambit of Article 22(1) and also the scope of the expression "arrest" contained therein: (SCC pp. 430-31, paras 20-21)*

> *"20. Broadly speaking, arrests may be classified into two categories, namely, arrests under warrants issued by a court and arrests otherwise than under such warrants. As to the first category of arrest, Sections 75 to 86 collected under sub-heading "B-Warrant of Arrest" in Chapter VI of the Code of Criminal Procedure deal with arrests in execution of warrants issued by a court under that Code. Section 75 prescribes that such a warrant must be in writing signed by the Presiding Officer, or in the case of a Bench of Magistrates, by any member of such Bench and bear the seal of the court. Form II of Schedule V to the Code is a form of warrant for the arrest of an accused person. The warrant quite clearly has to state that the person to be arrested stands charged with a certain offence. Form VII of that Schedule is used to bring up a witness. The warrant itself recites that the court issuing it has good and sufficient reason to believe that the witness will not attend as a witness unless compelled to do so. The point to be noted is that in either case the warrant ex facie sets out the reason for the arrest, namely, that the person to be arrested has committed or is suspected to have committed or is likely to commit some offence. In short, the warrant contains a clear accusation against the person to be arrested. Section 80 requires that the police officer or other person executing a warrant must notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant. It is thus abundantly clear that the person to be arrested is informed of the grounds for his arrest before he is actually arrested. Then comes Section 81 which runs thus:*
>
> > *"81. Person arrested to be brought before Court without delay. The police officer or other person executing a warrant of arrest shall (subject to the provisions of Section 76 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person."*
>
> *21. Apart from the Code of Criminal Procedure, there are other statutes which provide for arrest in execution of a warrant of arrest issued by a court. To take one example, Order 38 Rule 1 of the*

Code of Civil Procedure authorises the court to issue a warrant for the arrest of a defendant before judgment in certain circumstances. Form 1 in Appendix F sets out the terms of such a warrant. It clearly recites that it has been proved to the satisfaction of the court that there is probable cause for belief that the defendant is about to do one or other of the things mentioned in Rule 1. The court may under Section 55 read with Order 21 Rule 38, issue a warrant for the arrest of the judgment-debtor in execution of the decree. Form 13 sets out the terms of such a warrant. The warrant recites the decree and the failure of the judgment-debtor to pay the decretal amount to the decree-holder and directs the bailiff of the court to arrest the defaulting judgment-debtor, unless he pays up the decretal amount with costs and to bring him before the court with all convenient speed. The point to be noted is that, as in the case of a warrant of arrest issued by a court under the Code of Criminal Procedure, a warrant of arrest issued by a court under the Code of Civil Procedure quite plainly discloses the reason for the arrest in that it sets out an accusation of default, apprehended or actual, and that the person to be arrested is made acquainted with the reasons for his arrest before he is actually arrested."

89. Now, the "Magistrate's Court" referred to in Section 57 is the Magistrate competent to try the case. Section 57 contains the peremptory limit of 24 hours exclusive of the period for journey, in the absence of "special order" under Section 167.

90. The words "special order" are not found in Section 167 CrPC. Therefore, could it not be said that but for Section 57 permitting the Magistrate to allowing time by passing an order under Section 167, detention in violation of Section 57 would be rendered illegal? What is the nature of the custody on the basis of the special order under Section 167 referred to in Section 57? Is it C police custody or is it judicial custody? Is it any other custody? Will the period of remand for statutory bail begin from the date of this "special order"? Will it begin only when the competent Magistrate orders remand?

95. We would hold that the remand order, be it a transit remand order, is one which is passed under Section 167 CrPC and though it may be for the production of the appellant, it involved authorising continued detention within the meaning of Section 167.

102. There is a scheme which is unravelled by the Code regarding detention of an accused. The starting point appears to be the arrest and detention of the person in connection with the cognizable offence by a police officer without a warrant. He can detain him and question him in the course of the investigation. However, the officer cannot detain the accused beyond 24 hours excluding the time taken for the journey from

> *the place of arrest to the place where the Magistrate who is competent to try the case sits. If he cannot so produce the accused and the investigation is incomplete, the officer is duty-bound to produce the arrested person before the nearest Magistrate, The nearest Magistrate may or may not have jurisdiction. He may order the continued detention of the arrested person based on the request for remand. He would largely rely on the entries in the case diary and on being satisfied of the need for such remand which must be manifested by reasons. The Magistrate can order police custody during the first 15 days (in cases under UAPA, the first 30 days). Beyond such period, the Magistrate may direct detention which is described as judicial custody or such other custody as he may think fit. It is, no doubt, open to a Magistrate to refuse police custody completely during the first 15 days. He may give police custody during the first 15 days not in one go but in instalments. It is also open to the Magistrate to release the arrested person on bail.*"

(emphasis supplied)

35. The decision of *Gautam Navlakha (supra)* {date of decision 12.05.2021} was not cited before the Hon'ble Division Bench in *Kalim Isaq Shaikh (supra)* {date of decision 23.09.2026} *and Shakoor Ahmed Jalaluddin Sayed (supra)* {date of decision 02.05.2025}.

36. *Ram Kotumal Israni (supra)* {date of decision 15.04.2024} *and Anil Jaisinghani (supra)* {date of decision 03.04.2023} also do not refer to *Gautam Navlakha (supra).* However, the view expressed by the Hon'ble Division Bench aligns with the decision in *Gautam Navlakha (supra)*.

37. In the case of *Directorate of Enforcement v/s. Subhash Sharma*[14], the Hon'ble Supreme Court in paragraphs 4, 5, 6 and 7 has observed as under:

> "*4. In paragraph 10 of the impugned judgment, the High Court has recorded factual findings which read thus:*

14 Special Leave Petition (Criminal) No.1136/2023

"From the documents available in the case diary and the aforesaid order, it is crystal clear that the applicant was detained and taken into custody at 18.00 hours (6 pm) on 04.03.2022 at IGI Airport, New Delhi when the Bureau of Immigration executed the LOC issued against the applicant and held him in custody on behalf of ED. It is also not in dispute that ED took physical custody of the applicant from the Bureau of Immigration at 11.00 hours (11 am) at IGI Airport on 05.03.2022 and brought him to Raipur where the ED in the afternoon on 06.03.2022 before the remand Court."

(underline supplied)

5. The submission of the learned counsel appearing for the appellant is that pursuant to the Look Out Circular (for short, 'the LOC') issued against the respondent, he was detained at IGI Airport from 11.00 hours, on 5th March, 2022. But he was shown as arrested at 01.15 hours March, Enforcement by the appellant Directorate and was produced before the Court of the learned Magistrate within 24 hours from 1.15 hours on 6th on 6th March, 2022. 2022

6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant By executing the LOC, the Directorate of Enforcement. Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Immigration at Bureau of 11.00 hours on 5th Thereafter, at 1.15 hours on 6th March 2022, an arrest March, 2022. memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order (Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

7. The requirement of clause 2 of Article 22 has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C). There is no inconsistency between the provisions of the PMLA

and Section 57 of Cr.P.C. Hence, by virtue of Section 65 of the PMLA, Section 57 of the Cr.P.C applies to the proceedings under the PMLA."

38. Considering the facts of the case at hand and the decisions in *Gautam Navlakha (supra), Ram Kotumal Issrani (supra) and Anil Jaisinghani (supra)*, I am of the view that the term "nearest Magistrate" referred to in Article 22(2) of the Constitution of India would be the Magistrate having jurisdiction in the case if the accused can be produced within 24 hours of arrest. If the accused cannot be produced before the Magistrate having jurisdiction to try the case within 24 hours of arrest, then it would be the nearest Magistrate, whether or not he has jurisdiction.

39. In *Aditya Ravichandra (supra),* this Court found that the accused therein was not produced before the jurisdictional Magistrate within 24 hours and therefore observed that the police gave no explanation as to why the accused was not produced before the nearest Magistrate within 24 hours.

40. The Constitutional Assembly Debate, relied upon by Mr Sardessai, is referred to in *Vachhalabai (supra)*. Therefore, I do not intend to remark on it. Further, *Gautam Navlakha (supra)* refers to the decision in *Ajaib Singh (supra)*.

41. The fundamental right of the accused is violated if he is detained for more than 24 hours without being produced before the Magistrate. In the present case, the arresting officer, PSI Amin Naik, found that the Petitioner, arrested in Mumbai on 16.09.2026 at 15.00 hours, could be produced before the

Magistrate having jurisdiction in the case (i.e. the Judicial Magistrate First Class at Mapusa) within 24 hours, and accordingly produced the Petitioner on 17.09.2026 at 12.45 hours.

42. Useful reference can be made to the elaborate decision of the High Court of Patna in the case of *Uttam Daga v/s. Union of India and Ors*[15], on the issues raised in this Petition. Paragraphs 90 to 99 are reproduced hereunder:

> "*90. Final conclusion of this writ petition, therefore, depends upon the interpretation of the term "nearest Magistrate". Does it mean "nearest Magistrate" having his seat within the territorial jurisdiction of the place of arrest or the term encompasses the authority of the Magistrate having jurisdiction to try the case. Requirement of production of the accused before the nearest Magistrate in the locality where his arrest comes into play when a person who after arrest is required to be produced before the jurisdictional Judicial Magistrate is detained in a place which is far away from that jurisdiction and therefore cannot be produced before the jurisdictional Magistrate within 24 hours as mandated both by Article 22(2) of the Constitution and by Section 57 of the Code of Criminal Procedure, now Section 58 of the BNSS. In such circumstances, he will be produced before the nearest Judicial Magistrate together with a copy of the entries in the diary. Therefore, even before a Magistrate before whom a transit remand application is filed, the mandatory requirement of Section 167 (1) Cr.P.C., now Section 187 of BNSS, is that a copy of the entries in the case diary should also be produced. It is on the basis of the entries in the case diary, under Section 167 (2), such "nearest Judicial Magistrate" while passing an order authorizing detention of person arrested for a term not exceeding 15 days in a whole. Where he has no jurisdiction to try the case and he finds further detention unnecessary, he may order the accused to be produced before the Jurisdictional Magistrate. This principle is elaborately dealt with in Gautam Navlakha (supra). The issue was decided by the Hon'ble Supreme Court and this Court has already referred to paragraph 102 of the Supreme Court's judgment in Gautam Navlakha (supra) that the nearest Magistrate may or may not have the jurisdiction to try the case. Conversely, this Court shall not commit any wrong to held that if the arresting officer has the scope to produce the arrested person before the jurisdictional Magistrate within 24 hours for an order of remand, requirement of Article 22 (2) cannot be said to be violated.*

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15 Writ Jurisdiction Case No.196/2025, decided on 08.04.2025

91. In Sat Parkash Yadav (supra), it is held by the Division Bench of the Delhi High Court that any person who is arrested outside the district or outside the State is produced before the Chief Judicial Magistrate / Chief Metropolitan Magistrate for obtaining the transit remand. The purpose of transit remand is to get sufficient time to produce the accused before the concerned Court within the stipulated period of 24 hours as provided under Article 22(2) of the Constitution of India. Since the appellant could be brought to Delhi just within one hour, it was not essential to obtain transit remand from the Court of the concerned Magistrate at Noida, Gautam Budha Nagar.

92. The case in hand is absolutely similar on factual circumstances. The DOE found that the accused could be brought to Patna immediately after his arrest within one hour and ten minutes by air. The DOE took recourse of the said path and produced the accused before the learned Chief Judicial Magistrate, Patna along with an application for remand in the custody of ED. The learned Chief Judicial Magistrate passed an order of custodial remand with the DOE on perusal of the application for remand. The application contained elaborate statement regarding reasons to believe and grounds of arrest. I have no hesitation to rely on the Division Bench's decision of the Hon'ble Delhi High Court in Sat Parkash Yadav (supra) because no contrary view has been taken on this issue till date by the Hon'ble Supreme Court.

93. The learned Sr. Advocate appearing on behalf of the petitioner lays great stress on the provisions contained in Section 58 of the BNSS and submits that Article 22(2) of the Constitution read with Section 58 of the BNSS was violated by the DOE in the instant case.

94. A conjoint reading of both the above provisions show that in terms of Article 22 of the Constitution itself, after excluding the time taken in the journey, a person arrested in Raipur by the CBI, pursuant to a case registered in Delhi, has to be produced before a Magistrate within 24 hours. It is only if the journey is likely to take more than 24 hours that the person arrested has to be produced before a local Magistrate and a transit remand is obtained. In Article 22(2) of the Constitution, in computing the period of 24 hours, the travel time for the arrested persons to be produced before the jurisdictional Court is to be excluded. If the arrested person cannot be produced before 24 hours, then he has to be produced before the nearest Magistrate.

95. In the instant case, the accused was produced within 24 hours of his arrest. Therefore, the requirement of his production before the nearest Magistrate of the place of arrest was not mandatory.

96. Mr. Singh, learned Sr. Advocate appearing on behalf of the petitioner, tries to interpret the term "nearest Magistrate" in its narrow and pedantic

manner. If such approach is taken to interpret Article 22(2) of the Constitution read with Section 187 of the BNSS, it would obviously limit the power of the arresting authority to produce an accused before the jurisdictional Magistrate, even if it has the scope to produce him within 24 hours of his arrest. If such approach is taken, the Court will lean in favour of a construction which reduces the Statute to a futility. A Statute or any enacting provision therein must be so construed as to make effective and operative on the principle expressed in the maxim : - "ut res magis valeat quam pereat".

97. The Courts while pronouncing upon the Constitutionality of a Statute starts with a presumption in favour of Constitutionality and prefers a Constitution which keeps the Statute within the competence of the legislature.

98. On this point, this Court refers to a decision of the Hon'ble Supreme Court in Corpn. of Calcutta & Anr. v. Liberty Cinema, reported in AIR 1965 SC 1107.

99. The right of an accused rests on the Constitutional and Statutory requirement of his production before the Magistrate within 24 hours. If the arresting officer finds that he may be produced before the jurisdictional Magistrate within 24 hours, there is no necessity to produce the accused before the nearest Magistrate where he is arrested. The fundamental right of the accused is said to be violated if he is detained for more than 24 hours without being produced before the Magistrate."

43. In view of the above, I am unable to accept the contentions of Mr Nitin Sardessai, learned Senior Advocate for the Petitioner.

44. For all the aforesaid reasons, I do not find any case for indulgence. This Petition is without merit and is, as such, dismissed. Rule discharged.

45. This Court appreciates the assistance rendered by Mr Sardessai, learned Senior Advocate for the Petitioner; Mr Karpe, learned Additional Public Prosecutor; and Mr Rao, learned Advocate for the Respondent No. 3, in assisting the Court.

46. Criminal Writ Petition No.406 of 2026 is dismissed. No order as to costs.

ASHWIN D. BHOBE, J.

Signed by: SUCHITRA NANDAN SINGBAL
Designation: Personal Assistant
Date: 05/11/2026 19:23:03