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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5378 OF 2026

Vijaya Laxman Gaikwad
(Sister of Ajay Laxman Gaikwad) ...Petitioner
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. Ayush Pasbola with Mr. Ramprasad Deore, Mr. Harshawardhan Dixit and Mr. Shubham Gharbudave for the Petitioner

Mr. S. S. Hiray, Public Prosecutor with Ms. Sangeeta Shinde, A.P.P. for the Respondent-State.

CORAM: BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.

DATE : 14th OCTOBER 2026

P.C. **:**

1. The petition is filed by the sister of Ajay Laxman Gaikwad (accused), being aggrieved by the order dated 2nd October 2026, passed by the learned Judicial Magistrate First Class ('JMFC'), Holiday Remand Court at Esplanade, remanding her brother, Ajay Laxman Gaikwad, to judicial custody till 15th October 2026. The said remand order is placed at page 41 of the petition.

2. We have heard the learned counsel, Mr. Pasbola, for the petitioner and the learned Public Prosecutor, Mr. Hiray, for the State.

It is the specific contention of Mr. Pasbola that the petitioner's brother has been wrongly dealt with. He submits that the offences with which the petitioner's brother is charged, viz. under Sections 78 and 356(2) of the Bharatiya Nyaya Sanhita ('BNS'), read with Section 66E of the Information Technology Act, are bailable offences. However, since the Investigating Officer insisted on his arrest, and the remand order records that sufficient reasons had been shown for the arrest and that the remand officer had sought his judicial custody, the petitioner's brother came to be remanded to judicial custody.

According to Mr. Pasbola, the petitioner's brother ought to have been released on bail upon his production before the Court. However, instead, he came to be remanded to judicial custody vide order dated 2nd October 2026.

We, therefore, called upon the learned Public Prosecutor, Mr. Hiray, to produce the Case Diary before us, so as to ascertain whether the police officer, while exercising the power under Section 35(1) of the Bharatiya Nagarik Suraksha Sanhita ('BNSS'), had recorded the justification for the arrest. Upon perusal of Case Diary No. 3 dated 2nd October 2026, we find that it is recorded therein that the petitioner's brother was apprised that he was accused of a cognizable and bailable offence, but he did not offer bail.

As regards the merits of the case, it is alleged that the petitioner's brother had repeatedly indulged in the commission of the offence against the complainant-victim. The offence was considered serious in nature, and it was, therefore, deemed necessary to arrest the petitioner's brother.

The statement made on behalf of the State that the petitioner's brother did not offer bail is strongly disputed by Mr. Pasbola. However, this being a disputed question of fact, we are not equipped, at this stage, to delve into the issue. Nevertheless, we must clarify that, having regard to the nature of the offence, the petitioner's

brother was entitled to be released on bail. Though, in our view, the arrest is supported by the reasons recorded in Case Diary No. 3 of 2026, it was the duty of the learned JMFC to consider whether judicial custody was, in fact, necessary, having regard to the nature of the accusation.

In any event, as of today, the learned Public Prosecutor, Mr. Hiray, states that the police do not wish to seek police custody. Since the accused is presently in judicial custody, the learned Public Prosecutor submits that he may be released on bail subject to appropriate conditions.

In these circumstances, though the petition seeks several other reliefs, including payment of compensation, we *prima facie* find no fault with the Investigating Officer. However, the learned JMFC, while exercising discretion to remand the petitioner's brother to judicial custody, failed to consider the material warranting such custody. We, therefore, direct that the petitioner's brother be released

forthwith on furnishing a P.R. bond in the sum of Rs. 20,000/-. The P.R. bond shall be furnished before the learned JMFC.

The Writ Petition stands disposed of accordingly.

All concerned to act on the authenticated copy of this order.

ASHISH S. CHAVAN, J. *BHARATI DANGRE, J.*