

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 851 OF 2026

Jaykumar Kishore Bidichandani

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Sudhanshu a/w Mr. R B Mungekar, for the Petitioner.

Mr. A R Metkari, APP for the Respondent - State.

PSI – Deshpande, Mahim P.S.

CORAM : N. J. JAMADAR, J.

DATE : 27th FEBRUARY 2026

ORDER:

1. Heard the learned Counsel for the parties.
2. By this petition under Article 227 of the Constitution of India the petitioner assails the legality and validity of the Chapter Proceeding No. 14/2025 (Security Procedure Proposal No. 05/2025), initiated by the Special Executive Magistrate, Zone-5, Mumbai.
3. On 08th July, 2025, FIR was registered against the petitioner vide CR No. 345/2025 for the offences punishable under Sections 78, 356(2), 351(2) of the Bhartiya Nyaya Sanhita, 2023 ('BNS, 2023') r/w Section 67

of the Information Technology Act, 2000, with the allegations that the petitioner is a dangerous person and has created fictitious facebook accounts in the name of the first informant and defamed the first informant and her family members by uploading obscene material.

4. On the basis of the said report, a notice was served on the petitioner purportedly under Section 130 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ('BNSS, 2023') calling upon the petitioner to show cause as to why the petitioner should not be ordered to execute a bond for his good behaviour for a period of one year, under Section 129(e)(g) of the BNSS,2023. The said notice was purportedly issued and served on the petitioner on 07th August, 2025.

5. On the very day, the Special Executive Magistrate ordered the petitioner to furnish a bond in the sum of Rs. 25,000/- with a surety for his good behaviour for a period not exceeding one year.

6. Subsequently, the Special Executive Magistrate by an order dated 13th November, 2025 issued a notice to the petitioner under Section 141(b) of the BNSS, 2023 calling

upon the petitioner to show cause as to why the said bond be not forfeited and the amount of Rs. 25,000/- not be recovered from the petitioner, as the petitioner had committed breach of the said bond, in view of the registration of CR No. 718/2025 against the petitioner for the offences punishable under Sections 78, 351(2), 352, 356(3) of the BNSS, 2023 and Section 66(c) and 66(e) of the Information Technology Act, 2000. It was alleged that, the petitioner was arrested in the said crime on 10th November, 2025 and has since been enlarged on bail.

7. The petitioner has invoked the writ jurisdiction asserting that, the very initiation of the Chapter Proceeding and an order to furnish the bond were tainted with patent illegality. The Special Executive Magistrate had not passed an order under Section 130 of the BNSS, 2023 before issuing show cause notice. Passing of such an order is mandatory before initiation of the proceedings under Section 129 of the BNSS, 2023. Secondly, there was flagrant violation of the principles of natural justice as an effective opportunity of hearing was not given to the petitioner and the inquiry as envisaged by Section 135 of the BNSS, 2023 was not conducted.

8. I have heard Mr. Sudhanshu, the learned Counsel for the petitioner, and Mr. A R Metkari the learned APP for the Respondent – State at some length. Perused the material on record.

9. Mr. Sudhanshu, the learned Counsel for the petitioner, submitted that, the provisions contained in BNSS for obtaining security for good behaviour were followed in breach. He laid emphasis on the fact that the purported show cause notice under Section 130 of the BNSS, 2023 was issued without first having passed an order under Section 130 of the BNSS, 2023. Secondly, the very fact that purported show cause notice was issued to the petitioner on 07th August, 2025, and served on the petitioner on the very day and even the final order was passed on that day itself indicates that, there was complete non-application of mind, and order to furnish the security was passed post haste without conducting the requisite inquiry. Mr. Sudhanshu would urge that, the entire proceeding stood vitiated on account of failure to comply with the mandatory requirement.

10. Mr. Metkari, the learned APP initially attempted to support the impugned orders. However, having realized the apparent infirmities in the impugned orders, fairly submitted that, the inquiry as envisaged by Section 135 of the BNSS, 2023 does not seem to have been conducted.

11. Evidently, the show cause notice was issued to the petitioner on 07th August, 2025 and it was served on the petitioner on the very day. Under the said show cause notice, the petitioner was purportedly called upon to appear before the Special Executive Magistrate at 04:00 pm on that day itself. Interestingly, on the very day i.e. 07th August, 2025, the Special Executive Magistrate passed an order directing the petitioner to furnish a bond in the sum of Rs. 25,000/- and a surety for good behaviour for a term of one year, under Section 129(e)(g) of the BNSS, 2023.

12. From the perusal material on record it does not appear that, show cause notice was preceded by an order under Section 130 of the BNSS, 2023. The provisions of Section 130 of the BNSS are abundantly clear. Whenever a Magistrate acting under Sections 126, 127, 128 or 129 of the BNSS, 2023, deems it necessary to require any person

to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. Thus, making an order before requiring a person to show cause against initiation of action under the preceding sections is peremptory. In a sense that is a jurisdictional condition.

13. Under the scheme of Chapter IX of BNSS, 2023 after a notice is issued and the person appears before the Magistrate in compliance thereof, or in execution of, a summons or warrant, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary. Sub-Section (2) of Section 135 of BNSS, 2023 provides that, such inquiry shall be made, as nearly as may be practicable in the manner prescribed for conducting trial and recording evidence in summons cases. It is only upon such inquiry if it is proved that it is necessary for keeping the peace or maintaining the good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute the bond with

or without sureties, the Magistrate shall make an order accordingly under Section 136 of the BNSS, 2023.

14. From a bare perusal of the order passed by the Special Executive Magistrate on 07th August, 2025, it does not appear that, any such inquiry as envisaged by Section 135 of BNSS, 2023 was conducted by the Special Executive Magistrate. The order simply records that, show cause notice was read over and explained to the petitioner and the petitioner had shown willingness to execute the bond. The Special Executive Magistrate has made no effort to inquire into the truthfulness of the information furnished against the petitioner, much less, record evidence and try the said issue. On the contrary, it appears that the order was passed in a printed form containing the blanks as to the date of notice, the period for which the bond is to be executed and the amount of the bond; which were filled in by handwriting. *Prima facie*, the entire exercise, which commenced and concluded in one day, betrays complete arbitrariness and non-application of mind.

15. A useful reference in this context can be made to a judgment of a learned Single Judge of this Court in the

case of *Vasantkumar Jivrambhai Majithia Vs. State of Maharashtra*¹, wherein it was enunciated as under:-

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The order passed on 14 June 2005 appears to be in a printed or cyclostyled form. The printed portion of the order records that the petitioner accepted the allegations made against him and has prayed for acceptance of apology. The printed portion of the order further records that on the basis of the evidence produced by the Senior Inspector of Police, Mulund Police Station, the Special Executive Magistrate has come to the conclusion that the petitioner was having criminal tendencies and from the Petitioner there was a likelihood of breach of peace and tranquility in the area and therefore, the order was passed directing him to furnish bond. In the printed format of order, only the name of the Petitioner, his address and the bond amount has been filled in by hand. It is pertinent to note that the Roznama dated 14 June 2005 does not record that the Petitioner accepted the correctness of the allegations made against him and tendered apology. What is recorded in the Roznama is that the Special Executive Magistrate asked the Petitioner whether he was willing to furnish a bond and the Petitioner requested that he may be allowed to furnish a personal bond. There is no reference to any separate order passed by the Executive Magistrate on 14 June 2005. There is no reference in the Roznama to evidence produced by the Senior Inspector of Police. After perusing the file, I found that no such evidence by the Senior Inspector of Police is on record. Thus the order dated 14 June 2005 shows a complete non-application of mind. Though there is nothing on record

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to show that the Petitioner accepted the allegations made against him and tendered an apology, the order records the acceptance of allegations by the Petitioner and apology.

11. Going by the Roznama of the proceedings, it appears that a reply was filed by the Petitioner on the earlier date. The **provisions of section 116 of the said Code** mandate that as far as possible, the procedure for summons case shall be adopted in conducting the inquiry.

Section 251 of the said Code which deals with the procedure of summons case provides that the particulars of the offence alleged against the Accused shall be stated to him and shall be asked whether he pleads guilty or has any defence to make. Section 252 further provides that if the accused pleads guilty, the Magistrate is required to record his plea. The Roznama records that the Special Executive Magistrate asked the Petitioner whether he was willing to furnish bond. The Petitioner had filed a reply contesting the show-cause notice and therefore, there was no occasion for the learned Magistrate to ask the question which is recorded in the Roznama. When the Petitioner had filed a reply to the show-cause notice, it is very difficult to accept that the Petitioner made a prayer for seeking permission to give personal bond. It is pertinent to note that the Roznama does not record that the Petitioner pleaded guilty or that he tendered apology. As stated earlier, it is impossible to accept that the Petitioner voluntarily offered to give personal bond. As the Petitioner did not accept the allegations made against him in the show-cause notice and even assuming that interim order as contemplated by **sub-section (3) of section 116 of the said Code** was required to be passed, the learned Magistrate was bound to record reasons in writing. In

the present case, the order dated 14 June 2005 is the final order which proceeds on an erroneous assumption that the Petitioner accepted the correctness of the allegations made against him and tendered apology. The order is erroneous for the reason that it relies upon the non-existing evidence allegedly produced by the Senior Inspector of Police. There is complete non-application of mind on the part of the officer concerned. It is obvious that the procedure which is followed by him is unjust, unfair and contrary to law.

(emphasis supplied)

16. In the case of ***Vijay Purshottam Salvi v. State of Maharashtra***², a Division Bench of this Court, emphasized the necessity of an order under Section 111 of the Code of Criminal Procedure, before the initiation of the proceedings for obtaining security for good behaviour. The observations in Para No. 08 are material and hence extracted below:-

8. It is clear from Section 111 that whenever chapter proceedings under Sections 107, 108, 109 and 110 are proposed to be initiated, the Magistrate is required to make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, the character and class of surety (if any) required. It is also clear from Section 113 and 114 that copy of the order passed under Section 111 is required to be furnished to the person who is summoned in Court by reason of his being not present in Court, when order under Section 111 was made. The combined

reading of Sections 111, 113 and 114 would lead to just one conclusion and it is that the order passed under Section 111 has to be recorded separately and copy thereof must be furnished to the person, if the order is not made in his presence and he has been called to the Court by issuing a summons or warrant, as the case may be. These are procedural requirements and must be followed in accordance with the mandate of the legislature. The mandate of the legislature is absolute and admits of no exception and that is the reason why **Section 111 as well as Section 114** are worded in imperative terms as seen from the use of such expressions as “he shall make an order in writing” (Section 111), and “such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same” (Section 114). The mandatory nature of these requirements of law can also be gauged from the purpose they serve. They act as safeguards against arbitrary exercise of power by the authority and are consistent with principles of natural justice. The order that is required to be separately passed in writing under Section 111 must contain the substance of the information received, the amount of the bond to be executed, the term for which the bond will remain in force and so on and so forth. By giving such information to the person, an adequate opportunity is afforded to him to know the case against him in advance which enables him to prepare his defence in the inquiry proposed to be held against him. If such an order is not made known or its copy is not furnished to him, it would amount to violation of principles of natural justice which is a requirement of procedural reasonableness so well entrenched in our legal system. In the case of *Vasantkumar v. State of Maharashtra (supra)*, learned

*Single Judge of this Court has taken a view that passing of separate order as contemplated under **Section 111 of the Code of Criminal Procedure** is a condition precedent for initiating chapter proceedings. The view commends to us. The question of law is, therefore, answered accordingly.*

17. Applying these principles to the facts of the case at hand, it becomes abundantly clear that, the impugned action falls foul of two peremptory requirements. First, it does not appear that the Special Executive Magistrate has passed an order under Section 130 of BNSS, 2023 before initiation of the proceedings under Section 129 of the BNSS, 2023 and, second, the Special Executive Magistrate did not conduct an inquiry as warranted by Section 135 of BNSS, 2023.

18. In view of the breach of aforesaid mandatory statutory requirements, the order directing the petitioner to furnish security and subsequent show cause notice alleging breach of the conditions of the bond, cannot be sustained. The Writ Petition, therefore, deserves to be allowed.

19. Hence, the following order:-

:: O R D E R ::

- i] The Writ Petition stands allowed.
- ii] The impugned order dated 07th August, 2025 as well as bonds which the petitioner and the surety were made to execute, stand quashed and set aside.
- iii] The show cause notice under Section 141(b) of BNSS, 2023 alleging breach of the said bond also stands quashed and set aside.

[N. J. JAMADAR, J.]