

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

CRIMINAL WRIT PETITION NO. 105 OF 2026

Ms. Sheetal Kisanchand Tejawani

Age: 44 years, Occ.: Business

Having its office at : 305, 3rd Floor, Tulsiani
Chamber, Nariman Point, Mumbai – 400021

(presently in judicial custody)

...Petitioner

Versus

The State of Maharashtra through the
Public Prosecutor, Bavdha Police Station,

Through Investigating Officer,

Shri. Anil Vibhute

...Respondent

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
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Date: 2026.04.17
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Mr. Ajay Bhise, a/w Ms. Deepali Kedar, for the Petitioner.

Ms. Mankuwar Deshmukh, Incharge Public Prosecutor, a/w

Mr. S. V. Gawand, APP, for the State.

Mr. D. M. Waghmare, I.O., API, EOW, Pune City, present.

Mr. Sarang Thakare, PSI, Bavdhan Police Station, Pimpri-
Chinchwad, present

CORAM: N. J. JAMADAR, J.

RESERVED ON: 23rd FEBRUARY, 2026

PRONOUNCED ON: 17th APRIL, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS 2023"), the petitioner assails the legality and validity of her arrest, and the remand order dated 16th

December, 2025, passed by the learned Magistrate on the grounds of alleged infraction of the fundamental and statutory rights of the petitioner.

3. Shorn of unnecessary details, the background facts necessary for the determination of this petition can be stated as under:

3.1 Santosh Hingane, the First Informant, was posted as the Joint District Registrar at Pune. On 20th February, 2025, an instrument came to be registered with Sub-Registrar, Haveli No.4, Pune, in respect of the land admeasuring 40 acres out of Survey No.88, Hissa No.1 to 26, totally admeasuring 17 H 51 R, situated at Mauje Mundhwa, Pune ("the subject land").

3.2 The said instrument was purportedly executed between Ashok Abaji Gaikwad and 271 others through their Power of Attorney Sheetal Tejwani, the petitioner herein, in favour of Amedia Enterprises LLP for a consideration of Rs.300 Crores. It transpired that the State Government was the holder of the subject land. Yet, without their being any semblance of title, the petitioner and the co-accused, with intent to defraud, executed the instrument by furnishing a 7/12 extract, which was closed long back. It further transpired that the subject land was Mahar Vatan land. It was resumed by the State Government, and there

was no order of re-grant to erstwhile Vatandars. Yet, in pursuance of a criminal conspiracy, the petitioner professed to transfer the subject land by executing the said instrument on the strength of the alleged Power of Attorney.

3.3 The petitioner and co-accused had also deceived the State Government by intentionally evading the stamp duty payable on the said instrument in connivance with Ravindra Balakrishna Taru, (A3), the then Sub-Registrar Haveli-4, Pune.

3.4 The first informant, thus, lodged the report leading to registration of CR No.523/2025 initially for the offences punishable under Section 316(5) and 318(4) read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023 ("BNS 2023"). Subsequently, the offences punishable under Sections 59 and 60 of the Maharashtra Stamps Act, 1958 ("the Stamp Act, 1958") were also added.

3.5 It appears that initially, a notice was given to the petitioner on 8th November, 2025, under Section 35(3) of the BNSS 2023. The petitioner, the prosecution alleges, did not appear in response to the said notice.

3.6 In the meanwhile, on 3rd December, 2025, the petitioner came to be arrested in CR No.552/2025 registered with Khadak

Police Station, Pune, for the offences punishable under Sections 61(2), 201, 316(2), 316(5), 318(3), 318(4), 336(3), 338, 340(2), read with Section 3(5) of the BNS 2023. Thereupon, on 4th December, 2025, the Investigating Officer in the instant CR applied for a production warrant. The learned Magistrate was persuaded to issue a production warrant on 4th December, 2025 commanding the Superintendent Prison to hand over the petitioner to Bavdhan Police for the purpose of investigation in connection with the instant crime. Eventually, the petitioner came to be arrested on 16th December, 2025 at 12.10 p.m. after obtaining her custody from the Prison. An intimation about the arrest of the petitioner was given to Advocate Pradnya Rajendra Chavan, the person nominated by the petitioner.

3.7 The petitioner was produced before the learned Magistrate on 16th December, 2025 at 4.00 p.m. The learned Magistrate did not accede to the submissions on behalf of the petitioner that the arrest of the petitioner was in gross violation of the fundamental and statutory rights of the petitioner. Opining that the Investigating Agency had fully complied with the statutory requirements, and finding the custodial interrogation of the petitioner necessary for further investigation, the petitioner was remanded to police custody.

3.8 The petitioner has, thus, invoked the writ and inherent jurisdiction of this Court asserting *inter alia* that the allegations in the FIR were at best of commission of regulatory offences. There was no necessity of the arrest of the petitioner, much less custodial interrogation of the petitioner. The learned Magistrate has passed the remand order without satisfying himself about the compliance of the constitutional and statutory requirement, especially the mandate contained in Section 35(3) of BNSS 2023. The learned Magistrate did not consider the specific objections raised by the petitioner to the legality and necessity of her arrest and proceeded to remand the petitioner to police custody in a mechanical manner. In substance, the fundamental and statutory rights of the petitioner were vitiated with impunity. Resultantly, the petitioner deserves to be enlarged.

3.9 An affidavit-in-reply has been filed on behalf of the respondent controverting the contentions of the petitioner. The Investigating Officer has affirmed that the arrest of the petitioner was in conformity with the statutory requirements. The petitioner had not appeared before the Investigating Officer despite notices. The petitioner was apprised of the grounds of arrest. Intimation about arrest was given to the person

nominated by the petitioner. The allegations of non-compliance of the statutory requirement are thus without substance. In order to carry out the effective investigation and unearth the fraud in all its facets, the arrest of the petitioner was indispensable. The learned Magistrate has evaluated the gravity of the accusation against the petitioner and has, thus, justifiably remanded the petitioner to police custody.

4. In the light of the aforesaid facts and pleadings, I have heard Mr. Ajay Bhise, the learned Counsel for the petitioner, and Ms. Mankuwar Deshmukh, the learned Public Prosecutor for the State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

5. At the outset, it is necessary to note that the petitioner has filed a substantive petition seeking quashment of FIR No. 523/2025 on the merits of the allegations against the petitioner. In this petition, the petitioner has restricted the prayers to the legality and validity of the arrest and her detention pursuant to the impugned order passed by the learned Magistrate. The petition was, thus, heard with a clear understanding that, in this petition, the Court will not delve into the merits of the allegations against the petitioner.

6. Mr. Bhise, the learned Counsel for the petitioner, advanced a two-pronged submission. Firstly, not only, there was total non-compliance of the mandate contained in Section 35(3) of the BNSS 2023, but also a devious design to defeat the rights of the petitioner by resorting to arrest of the petitioner in a high-handed manner. The fact that the investigating agency resorted to the manipulation of record to demonstrate the compliance of the mandate contained in Section 35(3) of BNSS Act 2023, Mr. Bhise would urge, completely erodes the sanctity of arrest and detention of the petitioner. Mr. Bhise laid emphasis on the fact that a second notice was shown to have been issued on 1st December, 2025, though it was dispatched, by post, on 5th December, 2025. By that time, the Investigating Officer had already obtained a production warrant on 4th December 2025 itself. Thus, a farce was made of compliance of the mandate under Section 35(3) of BNSS 2023, when the Investigating Officer already knew that the petitioner was in custody in connection with CR No.552/2025 since 3rd December, 2025. This duplicitous attempt singularly renders the arrest and detention of the petitioner illegal.

7. Secondly, Mr. Bhise would urge, the grounds of arrest were not communicated to the person nominated by the petitioner

and, thus, there was violation of the constitutional guarantee under Article 22(1) of the Constitution of India. Inviting the attention of the Court to the intimation purportedly given to Advocate Pradnya Chavan (Exhibit-F to the petition), Mr. Bhise strenuously urged that a mere intimation of arrest was given to the nominated person, without furnishing the grounds of arrest. Laying emphasis on the pronouncement of the Supreme Court, in the case of *Mihir Rajesh Shah vs. State of Maharashtra and another*¹, Mr. Bhise submitted that the failure to furnish the grounds of arrest to the relative of the petitioner rendered the arrest illegal.

8. As a sequitur of the aforesaid submissions, Mr. Bhise would urge the Magistrate committed a manifest error in law in remanding the petitioner to custody by the impugned order. The Magistrate did not adhere to the duty to satisfy himself that there was scrupulous compliance of the constitutional and statutory provisions. To this end, reliance was placed on the judgments in the cases of *Arnesh Kumar vs. State of Bihar and anr.*², *Satyendra Kumar Antil vs. Central Bureau of Investigation*³ and *Mihir Shah* (supra).

1 (2026) 1 SCC 500.

2 2014(8) SCC 273.

3 (2022) 10 SC 51.

9. Ms. Deshmukh, the learned Public Prosecutor, stoutly countered the submissions on behalf of the practitioner. It was urged that the material on record indicates that the investigating agency had scrupulously observed the constitutional and statutory provisions, while effecting the arrest of the petitioner. The notices under Section 35(3) of BNSS 2023 were addressed to the petitioner. The latter chose not to appear before the Investigating Officer. There was compliance of the mandate contained in Section 47 of BNSS as the grounds of arrest were instantaneously served on the petitioner at 12.19 p.m. The Investigating Officer had satisfied himself about the necessity of arrest and did record justifiable reasons for the same. Reliance was placed on the station diary entry No.29 made by the Investigating Officer. Thus, none of the grounds sought to be urged on behalf of the petitioner merit countenance, submitted the learned PP.

10. To start with, it may be apposite to consider the challenge premised on the non-compliance of the provisions contained in Section 35(3) of BNSS 2023. It can not be over-emphasized that arrest has grave consequences. There is a significant distinction between the power to arrest and the necessity of arrest. The fact that, under the statute, the police officer has power to

arrest, does not necessarily imply that the arrest must be effected in every case. Emphasizing this distinction between the power to arrest and the necessity of arrest, the constitutional guarantee of personal liberty has been construed in a dynamic manner to strike at unjustified arrest and detention.

11. In the case of *Arnesh Kumar* (supra), the Supreme Court emphasised the consequences which entail an arrest of a person in the following words:

“5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

12. The Supreme Court observed that its endeavour in the said judgment was to ensure that Police Officers do not arrest the accused unnecessarily and the Magistrates do not authorize detention casually and mechanically. In order to ensure the scrupulous compliance of the mandate contained in Sections 41

and 41A of the Code of Criminal Procedure, 1973 ("the Code") the Supreme Court has issued directions.

13. In the case of ***Satyendra Kumar Antil*** (supra) the Supreme Court again reiterated the principles enunciated in the case of ***Arnesh Kumar*** (supra). It was, *inter alia*, observed that the provisions contained in Sections 41 and 41A of the Code of Criminal Procedure, 1973 ("the Code") are facets of right to life and personal liberty guaranteed under Article 21 of the Constitution. The observations of the Supreme Court in paragraphs 24, 25, 26, 28, 29 and 100 read as under:

"24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

25. The consequence of non-compliance with Section 41 shall certainly enure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

26. Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41B deals with the procedure of arrest along with mandatory duty on the part of the officer.

.....

28. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the

non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the Court, which is expected to be reflected in the orders.

.....

100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which maybe subject to State amendments.:

100.1.....

100.2 The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

100.3 The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail."

(emphasis supplied)

14. The aforesaid enunciation of law makes it abundantly clear that, arrest is not mandatory. If the Investigating Officer is satisfied that a person has committed a cognizable offence punishable with an imprisonment for a term which may be less than, or extend to seven years, he can resort to arrest the accused only when there is a reason to believe that such person has committed an offence and there is necessity for an arrest. The conditions or justification of the necessity for the arrest are stipulated in sub-clauses (a) to (e) of Section 35(1)(b)(ii).

15. On the aforesaid touchstone, the alleged infraction of the provisions contained in Section 35(3) of BNSS 2023 is required

to be appreciated. Evidently, instant crime was registered on 6th November, 2025 initially for the offences punishable under Sections 316(5) and 318(4). *De hors* the question, whether the offence of criminal breach of trust and cheating could be committed in the same set of facts, it is necessary to note, the petitioner does not satisfy the description of the seven categories of persons, who can be arraigned under Section 316(5) of BNSS 2023. The offences punishable under Sections 59(1) and 60 of the Stamp Act, 1958, which were subsequently added entail punishment which may extend to six months. Thus, it can be hardly disputed that a notice as envisaged by Section 35(3) of BNSS 2023 was required to be issued to the petitioner. Nay it is the case of the prosecution that the notices under Section 35(3) of BNSS 2023 were issued to the petitioner, and the latter chose not to appear and that necessitated the arrest of the petitioner.

16. Incontrovertibly, the first notice was addressed to the petitioner on 8th November, 2025. The report of the serving officer (page 129 (Exhibit-A Coll.) annexed to the affidavit-in-reply) indicates that since the petitioner was not found at the address on which the notice was issued, it was returned unserved. The second notice under Section 35(3) was purportedly issued on 1st December, 2025 calling upon the

petitioner to appear before the Investigating Officer on 6th December, 2025 (page 130). Indisputably the said notice was dispatched by speed on 5th December, 2025, as is evident from the postal receipt.

17. Interestingly, a day prior thereto i.e. 4th December, 2025, the same Investigating Officer had filed an application for issue of production warrant before the learned Magistrate and such production warrant was issued. And, on that day itself, the jurisdictional Magistrate addressed a communication to the learned Magistrate (in whose custody the petitioner was in connection with C.R. No.552/2025) alongwith a production warrant addressed to the Superintendent of Prison.

18. The aforesaid facts make it explicitly clear that a purported notice under Section 35(3) was issued to the petitioner calling upon her to appear before the Investigating Officer on 6th December, 2025, while the petitioner was, to the knowledge of the Investigating Officer, already in custody in CR. No.552. What purpose such a notice under Section 35(3) would serve, except to demonstrate that there was an effort at compliance of the statutory requirements, in a most perfunctory manner, begs an answer. It defies comprehension as to how the petitioner could have been served with a notice under Section

35(3) while she was already in custody in another crime. The very purpose of issue of notice under Section 35(3) stood completely defeated. In fact, the statutory right of the petitioner under Section 35(3) of BNSS 2023 was rendered illusory.

19. The situation which thus obtained was that, though the crime was registered on 6th November, 2025, yet, till the arrest of the petitioner in CR No.552/2025 on 3rd December, 2025, the petitioner was not served with notice under Section 35(3) of BNSS 2023. Thus, I find substance in the submission of Mr. Bhise that, after the arrest of the petitioner, a farce of serving a notice under Section 35(3) was made. In the peculiar facts of the case, the arrest of the petitioner was wholly vitiated on account of the manner in which the Investigating Officer proceeded to arrest the accused, by resorting to a subterfuge of compliance of Section 35(3) of BNSS 2023.

20. On the second count of non-furnishing the grounds of arrest to the friend or relative of the petitioner, the constitutional safeguards enshrined in Articles 21 and 22(1), find resonance in the legislative prescription.

21. Section 47 of the BNSS, 2023 (Section 50 of Cr.P.C., 1973), thus casts duty on the police officer or other person arresting any person without warrant to forthwith communicate the

arrestee the grounds of arrest. Section 48 of BNSS 2023 (Section 50-A of Cr.P.C., 1973) enlarges the scope of the right by enjoining the person who effects the arrest to give the information about the arrest to the relative, friend, or such other person, as may be disclosed or nominated by the arrestee.

22. The obligation to communicate the grounds of arrest has a salutary purpose. It is not conceived as a mere formality of communicating some grounds of arrest howsoever irrelevant, flimsy or unsustainable those grounds may be. Those grounds ought to reflect sufficient material or information to equip the accused to effectively defend himself.

23. The purpose of informing to the arrested person the grounds of his arrest is salutary and sacrosanct, in as much as this information would be only effective means for the arrested person to consult his advocate, oppose the police custody remand and to seek bail (*Prabir Purkayastha v/s. State (NCT of Delhi)*⁴).

24. In the case of *Mihir Shah* (supra), the Supreme Court explicated in clear and explicit terms that the constitutional mandate provided in Article 22(1) of the Constitution, is not a mere procedural formality, but the constitutional safeguard in

4 (2024) 8 SCC 254

the form of fundamental rights. The grounds of arrest must be provided to an arrestee in such a manner that sufficient knowledge of facts constituting the grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard.

25. In the case at hand, the investigating agency asserts that the grounds of arrest were intimated to the petitioner almost instantaneously. However, the investigating agency does not claim that the grounds of arrest were also furnished to the friend or relative of the petitioner. The letter of intimation (Exhibit-F) clearly records that only the intimation of arrest was given to Advocate Pradnya Chavan, the person nominated by the petitioner. It is this failure to furnish the grounds of arrest to the nominated person, the petitioner claims, violated her constitutional right.

26. In the case of *Vihan Kumar vs. State of Haryana and Another*⁵, in the supplementing judgment, Hon'ble Justice N. Kotiswar Singh, observed that the requirement of *communicating the grounds of arrest, to be purposeful*, is also

5 2025 SCC OnLine SC 269.

required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50-A of the CrPC. The purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution.

27. It was further observed that the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.

28. In the case at hand, it is imperative to note, the failure to furnish the grounds of arrest to the nominated person, deserves consideration through the prism of obtaining custody of the

petitioner on the strength of a production warrant. It was essentially a case of transfer of custody. In a situation of the present nature, where the petitioner's custody was transferred from one crime to another, while the petitioner continued to be detained, the mere intimation of arrest would not be an effective compliance of the mandate under Article 22(1) of the Constitution.

29. The conspectus of the aforesaid consideration is that, in the facts of the case at hand, it can be said that, the vitiation began with the perfunctory manner in which notice under Section 35(3) for BNSS 2023 was sought to be served on the petitioner while she was in custody in another crime. The infraction of the constitutional rights continued in not furnishing the grounds of arrest to the nominated person though it was a case of transfer of custody from one crime to another. Thus, this Court is persuaded to hold that had it been a case of mere failure to furnish the grounds of arrest to the relative and friend, probably different considerations might have come to play. Cumulatively, the arrest and detention became wholly illegal.

30. The learned Magistrate, in the considered view of this Court, did not pose unto himself the relevant questions to

satisfy the legality and validity of the arrest and detention. Resultantly, the writ petition deserves to be allowed.

31. Hence, the following order :

: O R D E R :

- (i) The Writ Petition stands allowed.
- (ii) The arrest of the petitioner and order of remand dated 16th December, 2025 in CR No.523/2025, registered at Bavdhan Police Station, are declared illegal.
- (iii) Consequentially, all the subsequent orders of remand and detention are also declared illegal.
- (iv) The petitioner be set at liberty, if not required to be detained in any other case, upon furnishing a PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount to the satisfaction of the learned Magistrate.
- (v) The petitioner shall not tamper with the prosecution evidence. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

- (vi) The petitioner shall appear before the Investigating Officer as and when directed till the filing of the charge-sheet.
- (vii) The petitioner shall regularly attend the proceedings before the jurisdictional Court.
- (vii) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]