

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1676 OF 2026

Sahil Rajendra Lodha

..Petitioner

Versus

State of Maharashtra

...Respondent

Mr. Aabad Ponda, Senior Advocate, with Saurabh Arora, i/b Gaurav
Parkar, for the Petitioner.

Mr. D.J. Haldankar, APP, for the Respondent-State.

CORAM: N. J. JAMADAR, J.

DATE : 30th APRIL 2026

ORAL ORDER:

1. Heard Mr. Aabad Ponda, the learned Senior Advocate for the
Petitioner , and Mr. D.J. Haldankar, the learned APP for the Respondent.

2. The challenge in this Petition is to an order dated 4th February
2026 passed by the learned Additional Chief Judicial Magistrate,
Esplanade, Mumbai.

3. By the said order the learned Magistrate has directed the
Petitioner to execute a bond for appearance before the Court under
Section 91 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS
2023”), corresponding to Section 88 of the Code of Criminal Procedure,
1973 (“the Code”) till the next date in the trial.

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4. Mr. Ponda, the learned Senior Advocate for the Petitioner, submits that the learned Magistrate has misconstrued the ratio of the Division Bench judgment of this Court in the case of **Santosh Balkrishna Nadgaonkar Vs State of Maharashtra and Anr.**¹ Inviting attention of the Court to the directions in paragraph 17 of the said judgment, Mr. Ponda would urge that this Court has directed the Special Judge to obtain a bond from the Accused to ensure his appearance on the subsequent dates, in the trial. The said order was misconstrued by the learned Magistrate, to the effect that the accused can be released on such bond only till the next date and the accused is required to execute the bond to appear on each and every succeeding date in the trial, submitted Mr. Ponda.

5. Reliance was also placed on the judgment of the Supreme Court in the case of **Tarsem Lal Vs Directorate of Enforcement Jalandhar Zonal Office.**²

6. Mr. D.J. Haldankar, the learned APP submitted that the impugned order cannot be faulted at. The order passed by the learned Magistrate of taking a bond under Section 91 of the BNSS 2023, cannot construed as a bail order. The Petitioner must file an Application for regular bail.

7. Indisputably, the Petitioner was not arrested by the investigating agency nor the Petitioner was taken in custody by the learned

1 Criminal Writ Petition No. 6204 of 2025, decided on 8th December 2025.

2 (2024) 7 SCC 61.

Magistrate. In a situation of the present nature, there was no occasion for the Petitioner to apply for regular bail. It appears the learned Magistrate has not adverted to the operative directions in the order dated 8th December 2025 in Criminal Writ Petition No. 6204 of 2025.

Paragraph 17 of the said order reads as under:

“17. In any case, we do not intend to go into the merits of the matter, as we are convinced that the procedure and method adopted by the learned judge of taking the Petitioner into custody, merely because he has not filed bail application, cannot sustain, and we therefore, set aside the order dated 4/11/2025 passed by the Magistrate, and the subsequent orders of remand dated 18/11/2025 and 20/11/2025.

The petitioner who is still detained on his bail application, being rejected by the very same Judge vide order dated 25/11/2025, is entitled for his release forthwith, by quashing and setting aside the order dated 4/11/2025, 18/11/2025 and 20/11/2025.

Needless to state that the Special Judge shall obtain a bond from him, ensuring his appearance on the subsequent dates, in the trial.

... ..”

8. The aforesaid judgment of the Division Bench cannot be construed to imply that learned Magistrate can release an accused upon

execution of the bond under Section 91 of the BNSS for appearance of such accused before the Court, only till the next or returnable date.

9. The judgment of the Supreme Court in the case of **Tarsem Lal Vs Directorate of Enforcement Jalandhar Zonal Office**³ makes this position abundantly clear. The observations in paragraph Nos. 24 and 25 postulate the consequences that ensue the acceptance of bond under Section 88 and the subsequent default on the part of the accused in appearing before the Court despite execution of such bond. They read as under:

“24. Now, we come to the issue of whether an order of the Court accepting bonds under Section 88 amounts to grant of bail. If an accused appears pursuant to a summons issued on the complaint, he is not in custody. Therefore, there is no question of granting him bail. Moreover, even if the accused who appears before the Court does not offer to submit bonds under Section 88 of the CrPC, the Court can always direct him to do so. A bond furnished according to Section 88 is an undertaking to appear before the Court on the date fixed. The question of filing bail bonds arises only when the Court grants bail. When an accused furnishes a bond in accordance with Section 88 of the CrPC for appearance before a Criminal Court, he agrees and undertakes to appear before the Criminal Court regularly and punctually and on his default, he agrees to pay the amount mentioned in the bond. Section 441 of the CrPC deals with a bond to be furnished by an accused when released on bail. Therefore, in our considered view, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail.

3 (2024) 7 SCC 61.

25. Now, we deal with a contingency where after service of summons issued on a complaint under the PMLA, the accused does not appear. One category of such cases can be where the accused appears on the returnable date of the summons and subsequently does not appear, notwithstanding the furnishing of bonds under Section 88. The other category of cases is where, after the service of summons is made on the complaint, the accused does not appear. This category will also include a case where the accused appears on returnable date, but on a subsequent date fails to appear. In the first contingency, where the accused does not appear in breach of the bond furnished under Section 88, Section 89 of the CrPC confers sufficient powers on the Court to take care of the situation. Section 89 reads thus:

“89. Arrest on breach of bond for appearance.—

When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.”

The warrant contemplated by Section 89 can be aailable or non-bailable warrant.”

(emphasis supplied)

10. The aforesaid enunciation of law makes it explicitly clear that the bond furnished under Section 88 need not remain valid only till the returnable or next date. Even when an accused does not appear on the

subsequent dates, the Court is empowered to issue a warrant to secure his presence.

11. The Division Bench was cautious to clarify that learned Special Judge shall obtain a bond from the Accused to ensure his appearance on the subsequent dates, in the trial.

12. Thus, the Petition stands disposed with a direction that the bond executed by the Petitioner under Section 91 of the BNSS shall continue to operate till it is cancelled or forfeited by a specific order or the conclusion of trial, whichever is earlier.

[N. J. JAMADAR, J.]