

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 1328/2025

(Avinash Datta Girbanwad Vs. The State of Maharashtra & anr.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. D.V. Mahajan, Advocate h/f Mr. P.R. Kagdelwar, Advocate for
 applicant.
 Mrs. Mayuri H. Deshmukh, APP for non-applicant/State.
 Mr. V. Dhage, Advocate for non-applicant No.2.

CORAM: M. M. NERLIKAR, J.

DATED : 11/02/2026.

Heard.

2. By this application, the applicant is seeking bail in connection with Crime No. 262/2025 registered with Police Station Patur Dist. Akola for the offence punishable under Sections 137(2), 64(1), 64(2)(i)(m), 65(1), 87 of the Bhartiya Nyaya Sanhita read with Section 4, 6 of the Protection of Children from the Sexual Offences Act.

3. The prosecution story in short is that, on 03.09.2025 sister of victim lodged FIR stating therein that victim is 15 years old. Both were residing together with grandparents and uncle. When informant went to her maternal uncle's house on 02.09.2025, her uncle called her at 10:00 p.m and informed that victim went to attend the

school at 12:00 noon but did not return. Despite searching for her, she could not be found. Hence FIR alleging kidnapping against unknown persons was registered.

4. The learned counsel appearing for the applicant submits that the present application is filed by the applicant for releasing him on bail on the ground that firstly, the applicant was not produced before the Magistrate within 24 hours and secondly grounds of arrest were not supplied to the applicant. The applicant was taken into custody from Pune at about 11:30 a.m. on 13.09.2025 and he was produced before the Magistrate at Akola on 15.09.2025 at about 5:00 p.m. Therefore, he submits that admittedly the applicant was not produced before the Magistrate within 24 hours, therefore it is a violation of Article 22(2) of the Constitution of India. He further submits that though it was shown that the present applicant was given the notice under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), no such notice was received, however, his signature was taken on the blank papers. He submits that there is clear violation of constitutional mandate, so also the provisions of the BNSS in this regard, therefore prayed to release him

on bail considering the arrest of the applicant is an illegal arrest. He has relied on the judgment of this Court passed in the case of ***Vicky @ Vikky Vilas Kamble Vs. The State of Maharashtra*** (Criminal Writ Petition No. 4283/2025, decided on 25.09.2025).

5. On the other hand, the learned APP vehemently opposes the application by filing affidavit in reply. She submits that admittedly the applicant was taken from Pune on 13.09.2025 at about 11:30 a.m., they reached to Patur Police Station at about 10.22 p.m. on the same day. She invited my attention to the station diary entries, wherein the information was recorded that the police party went to Pune from Himayatnagar, Dist. Nanded as they have received the information that the victim is at Pune, it further appears from the station diary entry that notice was given to the present applicant, to victim to attend the police station on the next day, i.e. on 14.09.2025. She also invited my attention to the notice dated 14.09.2025 stating that the applicant should remain present for inquiry on 14.09.2025. According to her, there is no illegal arrest of the present applicant. They have scrupulously complied with the mandate of law and the provisions of BNSS. She

further submits that considering the heinous offence, there is no merit in the contention of the applicant and therefore same be rejected.

6. Upon consideration of the rival submissions, it is necessary to mention some admitted facts. Admittedly, on 03.09.2025, FIR was lodged by the sister of the victim alleging kidnapping of victim who is aged about 15 years by unknown person. During investigation, the information was received that the victim and the present applicant is at Pune. Accordingly, the Investigating Officer went to Pune from Himayatnagar, district Nanded. It is admitted position that the Investigating Officer and his team went to Pune on 13.09.2025 and took custody of the victim as well as the present applicant at about 11:30 a.m. It is further admitted fact that the police party along with the applicant reached to Patur Police Station at about 10:20 p.m. on the same day. However, the applicant was arrested on 15.09.2025 at about 00:31 hours and he was produced before the Magistrate on 15.09.2025 at about 05:00 p.m. Therefore, considering all these facts, it is necessary to consider whether there is violation of Sections 35(3), 35(5), 45, 47 as well as Section 58 of the BNSS. It

would be useful to consider the observations of this court in the case of Vicky @ Vickky (supra) in paragraphs Nos. 11, 12, 13 which read as under:-

“11. We have considered these submissions. We are unable to accept the explanation offered by the learned APP. Though the Petitioner was shown to be arrested on 28.05.2025 at 6:00p.m., the background of the case which is accepted in the Affidavit in reply shows that the police team had gone to Akola on 27.05.2025 itself. The Affidavit in reply clearly states that the Petitioner and two others were "brought" from Akola to Yerwada police station. (emphasis supplied). The Affidavit mentions that the relatives of these three persons were informed when they were taken from Akola, the local police station i.e. Civil Line police station, Akola was informed and even the station diary entry was made. After reaching Yerwada police station at about 10:25p.m. on 27.05.2025, they were interrogated till 1:00a.m. on 28.05.2025 and thereafter, though they were allowed to go; at that point of time, they were asked to come in the morning. Again they were interrogated. All this shows that the Petitioner was not a free man. He was not allowed to go anywhere when he was taken from Akola to Yerwada police station. According to the police, he was taken from Akola at 10:00a.m. on 27.05.2025 and according to the Petitioner, he was taken from Akola at about 8:45a.m. on 27.05.2025. Therefore, in any case, in the morning, the Petitioner was under the control of the police. He was not a free man. He was made to travel with the police from Akola to Yerwada police station. The very fact that the relatives of the Petitioner were informed, the local police station was informed and the station diary entry was

made to that effect shows that the police officers attached to Yerwada police station were completely in control of the Petitioner and, therefore, though the police are not labeling this act as 'arrest', but it was nothing other than arrest of the Petitioner. Therefore, even by giving concession to the police as per their averment in paragraph-9 they left Akola at 10:00a.m. on 27.05.2025, from that point onwards, definitely, the Petitioner was in their custody. Therefore, it can be said that he was arrested from that point onwards. In that view of the matter, it was necessary for the police officers to have produced the Petitioner before 10:00a.m. on 28.05.2025 before the nearest Magistrate. That was not done. He was brought to Yerwada police station and was produced before the learned Magistrate, Pune on 28.05.2025 at 4:20p.m.; which was clearly beyond 24 hours. Thus, the period of 24 hours is exceeded. The Petitioner was not even produced before the nearest Magistrate as is mandated under the Article 22(2) of the Constitution of India. This is the first gross violation committed by the investigating agency.

12. Even the other contention raised by the learned counsel for the Petitioner has sufficient force. Sections 35(3) and 35(5) of the BNSS read thus:

"35. When police may arrest without warrant (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(2) xxxxxx

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing 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, to appear before him or at such other place as may be specified in the notice.

(4) xxxxxxxx

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested."

13. From the Affidavit in reply itself it is clear that the Petitioner had remained present in Yerwada police station on 25.04.2025. His statement was recorded. Though, the police are claiming that after much persuasion and phone calls he had appeared, but the fact remained that he did appear which was pursuant to the notice issued U/s.35(3) of the BNSS. Therefore, it is necessary to see whether there was violation of Section 35(5) of the BNSS. The requirement under the said sub section is that, if a person receiving notice complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested. In this case, no such written reasons are brought to our notice. Therefore, the Police officer has not recorded any reasons for the Petitioner's arrest, though, he had appeared before the police station and had given his statement. Thus, we find there is violation of mandate U/s.35(5) of BNSS, as well. On both these counts, the petition must succeed. The Petitioner deserves to be released forthwith."

7. After considering the above position, even in this case, as observed, the present applicant was taken into

custody from Pune on 13.09.2025 at about 11:30 a.m. and they reached at about 10:22 p.m. to Patur Police Station. This Court inquired with the learned APP if the notice was issued to the applicant and whether he was freed or not and to substantiate, the Investigating Officer was asked to produce the CCTV footage of the police station as well as the lockup, to that effect the order was also passed. Accordingly, the learned APP has made available the CCTV footage. However, she fairly submits that the applicant was for entire duration from 13.09.2025 till his arrest was in the police station. This fact itself shows that the present applicant was never freed by the Investigating Officer. However, a farce was made of giving notice under Section 35(3) of the BNSS. It is interesting to note that the station diary entry dated 13.09.2025 which was uploaded at about 23:30 hours shows the fact of giving notice to the applicant, however, after perusal of the notice, the notice date is 14.09.2025, therefore the question remains that if the notice is dated 14.09.2025, then how on the previous date the entry was made. Today the Investigating Officer is present and upon instructions from the Investigation Officer, the learned APP is not able to explain this fact.

Therefore, the contention which was made by the applicant that on blank papers his signature was taken will have to be accepted. The very object of incorporating Section 35(3) of the BNSS has been frustrated. Presuming for a moment that the notice was issued under Section 35(3) of the BNSS, however, the fact remains that the applicant was in the custody of the Investigating Officer, in that circumstances, it could be said that there was no compliance of Section 35(5) of the BNSS. Under such situation, if a person is complying the notice then it is not necessary to arrest him as mandated under Section 35(5) of the BNSS. Even this Court has taken similar view in the aforesaid judgment.

8. The next question is whether there was any violation by the Investigating Officer about the non-supply of grounds of arrest. The learned APP submits that the Investigating Officer has not supplied the grounds of arrest to the applicant. Therefore, I am not hesitant to say that even the Investigating Officer has violated Section 47 of the BNSS which provides the right of the accused to know on what ground he was arrested.

9. So far as the production of the applicant is concerned, admittedly he was produced on 15.09.2025 before the magistrate at about 05.00 p.m., though he was taken in custody on 13.09.2025 at about 11:30 a.m. at Pune. Considering the period, it could be gathered that it was the duty of the Investigating Officer to produce him before the nearest Magistrate within 24 hours as contemplated under Section 58 of the BNSS. However, even this provision was not complied by the Investigating Officer, thereby also violated safeguard provided under Article 22(2) of the Constitution of India.

10. Considering the present facts and circumstances of the case and considering the fact that the arrest of the applicant is illegal, I am inclined to grant the bail, hence the following order:-

ORDER

- (i) Criminal application is allowed and disposed of.
- (ii) The applicant/accused Avinash Datta Girbanwad be released on bail in connection with Crime No. 262/2025 registered with Police Station Patur Police Station, Dist. Akola for the offence punishable under Sections 137(2), 64(1), 64(2)(i)(m), 65(1), 87 of the Bhartiya Nyaya

Sanhita read with Section 4, 6 of the Protection of Children from the Sexual Offences Act on his furnishing P.R. Bond of Rs. 25,000/- with one surety in the like amount.

(iii) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(iv) The accused shall provide his residential address and cell number to concerned Police Station and shall not change his place of residence without prior intimation to the concerned Investigating Officer.

(v) The applicant/accused shall attend each and every date of trial regularly. If he fails to attend the trial for two consecutive dates or fails to comply with the aforesaid conditions, his default would entails the State to ask for cancellation of bail.

(M. M. NERLIKAR, J.)