



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

CRIMINAL WRIT PETITION NO. 20 OF 2026

Zamkhankap S/o Thangzachin
Aged about 49 Years, Occ. Business,
R/o CH/S-1, 56 E, Chhawkhlei,
Thuampui, Zemabawk, Aizawl,
Mizoram-796017. **PETITIONER**

Versus

State of Maharashtra,
Thr. its Sub Divisional Forest Office,
Rajura, District Chandrapur. **RESPONDENT**

Mr. Lianlemsiam P. @ Siam Phaipi, Advocate a/w Mr. Saurav P.
Rajurkar, Advocate for the Petitioner.
Mr. Devendra V. Chauhan, Public Prosecutor/Senior Counsel a/b
Mr. A.B. Badar, APP for the Respondent/State.

CORAM : **URMILA JOSHI PHALKE AND**
NIVEDITA P. MEHTA, JJ.

RESERVED ON : **07th MAY, 2026.**

PRONOUNCED ON : **08th JUNE, 2026.**

ORAL JUDGMENT :- (PER : URMILA JOSHI PHALKE, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of learned Counsel appearing for the respective parties.

3. The Petitioner is seeking declaration that the arrest in connection with POR No.08893/222322/2025 and RCC No. 72/2025 is illegal and bad in law. The Petitioner is also seeking the writ of *habeas corpus* on the ground of his illegal detention.

4. The Petitioner was arrested on 20.02.2025 for offences punishable under Sections 2, 9, 31, 50, and 51 of the Wildlife (Protection) Act, 1972 (for short “Act of 1972”), read with Section 26(1)(d)(i) of the Indian Forest Act, 1927 (for short “Act of 1927”). The Petitioner was arrested on an allegation that, on 25.01.2025, the Beat Guard of Chunala, Rajura Forest Range, while on patrolling duty found a person carrying an axe, sharp blades, knife and other suspicious weapons. On an enquiry it revealed that he held from Madhya Pradesh. Due to possession of such weapons, the Range Forest Officer made an enquiry with him and from the enquiry it

revealed that the said person alongwith his family members and relatives, had been residing in temporary tents in Chunala village. A raid was conducted and during raid the materials used for hunting animals including a piece of bone, sandpaper, a weighing machine and other related articles were found. During further interrogation, the accused admitted to hunting tigers in the area and also revealed that they are residing there from last ten months. The Investigating Officer seized mobile phones and collected bank account. On an analysis of call records and bank transactions it revealed that the said person was having connection with the present Petitioner and it was also revealed to the Investigating Agency that the Petitioner was actively involved in the illegal trade of wildlife articles and had facilitated the deposits of approximately 90 Lakhs into the bank accounts of persons involved in the offence.

5. It further revealed that, co-accused namely Lalneisung, was arrested in Shillong. The verification of his bank transactions revealed his active involvement in illegal wildlife trade alongwith one woman namely Ning San Lun, who was found to have several contacts in Myanmar and China.

During investigation, the present Petitioner was also found to be in contact with the accused persons. The Petitioner is a resident of Aizawl, Mizoram. The investigation further revealed that, he was actively involved in illegal monetary transactions. Therefore, initially he was summoned by the Enforcement Directorate, Hyderabad and proceedings against him are still pending. His bank accounts were also frozen as the money transactions revealed between him and the co-accused. His association with the absconding accused namely Goliyam Tunag, was also revealed, and therefore, he was arrested.

6. The arrest was challenged by the Petitioner on the ground that, the grounds of arrest are not communicated to him. Thus, there is a violation of Article 22(1) of the Constitution of India. His confessional statement was not recorded in his language and there was a wrongful search and seizure by the Investigating Agency. On this ground it was contended that, the entire procedure adopted by the Investigating Agency is contrary to the provisions of law. There was unlawful deprivation of liberty in violation of Article 21 of the Constitution of India. His detention is illegal, and therefore,

by issuing the writ of *habeas corpus* he be released forthwith being his arrest is contrary to Article 22(1) of the Constitution of India. The order dated 05.06.2025 in Misc. Criminal Application No. 271/2025 rejecting his bail application deserves to be quashed and set aside.

7. Heard learned Counsel for the Petitioner, who reiterated the contention that the arrest of the Petitioner was wrongful as grounds of arrest are not communicated to him. He was not produced before the nearest Magistrate which is a procedure requirement. The grounds of arrest are not communicated to him in his language. His statement under Section 50(8) of the Act of 1972 is also not in his language and the search and seizure carried out by the Investigation Agency is also contrary to the Manual. For all above these reasons, his detention is illegal and liable to be quashed and set aside.

8. In support of his contention, he placed reliance on *Ramu Appa Mahapatra Vs. The State of Maharashtra, Criminal Appeal No. 608/2013 decided on 04.02.2025; Sri Sampanna Mutalik S/o Vijaya Rao Mutalik & Anr. Vs. State of Karnataka &*

Anr., in Criminal Petition No. 5952/2023, decided on 06.10.2023 alongwith connected matters; Sri Pavan Kumar M R Vs. State of Karnataka, in Criminal Petition No. 730/2024, decided on 13.02.2025; Mihir Rajesh Shah Vs. State of Maharashtra & Anr., Criminal Appeal No.2195/2025 decided on 06.11.2025.

9. *Per contra*, Mr. Chauhan, learned Public Prosecutor/Senior Counsel for the Respondent/State, strongly opposed the said contention and submitted that the Petitioner was produced within 24 hours before the jurisdictional Magistrate. The grounds of arrest are communicated to him. He was represented by his Counsel. He has not made grievance when he was produced before the Magistrate that he is unaware about the language and unable to understand the language English. He submitted that, his arrest is not illegal. The remand orders are also not passed mechanically or illegally or without application of mind, which is evident from the remand orders passed by the Court.

10. He further submitted that, as far as the provisions of the Manual of Wildlife Crime Investigation a Hand book for

Wildlife Crime Investigation Officers has no statutory value, it is only a guideline. Even accepting that Chapter 5 states about the arrest. The Clause 5.16 of the said Chapter is fully complied with by the Investigating Officer. The statement of the present Petitioner recorded under Section 50(8) of the Act of 1972, wherein the Petitioner has specifically stated that he understood the contents of his statement. Thus, consciously he has made a statement before the Forest Officer who is not a Police Officer, and therefore, the confessional statement is not hit by Section 25. He further submitted that, the writ of *habeas corpus* shall only to be issued when the detention is illegal. As a matter of fact, the present Petitioner was arrested on 20.02.2025. The information to his relatives was given on 20.02.2025. He was produced before the Magistrate on 21.02.2025 at about 12.00 noon. Thus, he was produced before the Magistrate within 24 hours.

11. He further submitted that, search warrant was issued on 09.02.2025. Regarding the said search, intimation was given to the District and Sessions Judge on 28.02.2025. His statements were recorded before the independent witnesses.

The endorsement on the said statement clearly discloses that he understood the statement. The said statement was read over to him. He had given the said statement at his own without any threat or inducement and after understanding the statement clearly he signed on the said statement. Therefore, no illegality as such is committed. Now the investigation is already completed, charge-sheet is already filed and this Petition came to be filed after bail application was rejected, and therefore, the Petition deserves to be dismissed.

12. Since the entire case revolves around the question whether the arrest of the Petitioner could be said to be illegal for want of supply of appropriate and meaningful grounds of arrest, which should be looked into the provisions of Constitution of India as well as Bharatiya Nagarik Suraksha Sanhita (BNSS for short).

13. Article 21 of the Constitution of India, reads as under:

“21. Protection of life and personal liberty-

No person shall be deprived of his life or personal liberty except according to procedure established by law.”

14. Article 22 of the Constitution of India reads thus:

“22. Protection against arrest and detention in certain cases. -(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply — (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the

order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under [sub-clause (a) of clause (4)].”

15. Sub-Section (1) of Section 41 of Code of Criminal Procedure and Section 35 of BNSS deals with cases where the police may arrest a person without a warrant.

16. Section 47 of the BNSS states that, person arrested to be informed of grounds of arrest and of right to bail which specifically states that, every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. It further states

that, where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

17. Section 48 of the BNSS talks about obligation of person making arrest to inform about the arrest, etc., to relative or a friend. It speaks that, every police officer or other person making any arrest under the BNSS shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district. It further states that, the police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide. It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that

the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

18. Now we shall now look into the grounds of arrest which were provided to the present Petitioner at the time of his arrest. The grounds of arrest which are furnished to the present Petitioner are reproduced as under:

“GROUNDS OF ARREST”

I Shri Vinod Ganpat Jambhule Range Forest Officer & Asst. Investigation Officer POR No. 08893/222322/2025, registered in Rajura Forest Range, Dist Chandrapur, Maharashtra do hereby inform you that, you have been arrested in the above said forest crime for the reasons stated below.

1. That, in the above POR you have purchased Tiger parts such as Skin, Bones Mustaches and etc hunted by the Accused Shri Ajit Siyala Pardhi and paid a huge amount of money to Ajit Siyala Pardhi and his other associates through Mrs Ning San Lun and also through Shri Lal Neisung both are residents of Shillong. Further, you are transporting the said articles to your counterparts residing at Myanmar and China through the established channels.

2. This offence is being a non bailable one and also for the purpose of further investigation you are hereby informed that, an accusation is well founded against you it is necessary to investigate the said offence to know the channels of further sales and illegal transports, and the sources of money being paid by you, it is necessary to arrest you and hence you are arrested.

This is for your information given under my signature.

Place: Aizawl

Date:20-2-2025

Sd/-

*Vinod Ganpat Jambhule
Range Forest Officer &
Asst. Investigation Officer.*

Sd/-

Sub Divisional Forest Officer, Rajura

Sd/-

*Assistant Investigation Officer,
State Tiger Police, Regional Unit, Jabalpur (M.P.)”*

19. The documents on record shows that before he was arrested at Mizoram he was medically examined. The information regarding his arrest was also communicated to his relatives and thereafter he was taken into custody. The communication dated 20.02.2025 is on record.

20. Learned PP for the Respondent/State placed on record the communication which shows that the special permission was obtained from Central Aviation Ministry and he was brought to Nagpur and Nagpur to Rajura and produced before the Magistrate at Rajura. The remand report shows that, he was produced before the Magistrate at 12.00 noon. The remand order passed by the Judicial Magistrate First Class, Rajura, shows that “The accused namely Zamkhankap is produced before me at 12.00 noon. He is produced by Sub-divisional Forest Officer Rajura, Shri Pawankumar Jong (I.F.S.). Accused has no complaint of ill treatment at the hands of forest

officers. The accused is represented by learned advocate Shri R.U. Lanjekar. On perusal of the medical examination report of the accused, it appears that he is physically fit for custody.” The date of arrest of the accused/Petitioner is 20.02.2025 at about 12.00 noon, whereas his production before the Magistrate is on 21.02.2025 at 12.00 noon. Thus, it is apparent that, he is produced before the Magistrate within 24 hours.

21. The decision of ***Vihaan Kumar Vs. State of Haryana and Anr., 2025 SCC OnLine SC 269***, wherein the Hon’ble Apex Court laid down the guidelines for the enforcement of Article 22 of the Constitution of India. This decision sets a clear precedent that the investigating agency/police officer/authorities effecting arrest of any person in connection with any cognizable offence without a warrant must provide specific, actionable reasons for an individual’s arrest, beyond citing broad provisions of law. The object underlying the provision that the grounds of arrest should be communicated to the person arrested has been very succinctly explained in the said decision. On learning about the grounds for arrest, the person concerned will be in a position to make an application before the appropriate Court for bail, or

move the High Court for a writ of *habeas corpus*. This judgment lays down the following principles, which reads as under:

“a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.

b) Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested.

c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Article 22(1).

d) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1).

e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.

g) When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities.

h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1)

meaningful and effective, failing which, such arrest may be rendered illegal.”

22. Similarly, in the decision of ***Mihir Rajesh Shah*** (supra) relied upon by the learned Counsel for the Petitioner also deals with the various constitutional rights of the detainee and observes that, the statutory safeguard of legal assistance stands also reinforced by Section 38 of the BNSS 2023, which confers upon an arrested person the right to meet an advocate of his choice during interrogation, albeit not throughout its course. The object of this provision is to ensure meaningful access to legal assistance at the earliest stage, so that the advocate, once informed, may effectively exercise the rights available in law, including representation during remand proceedings and invocation of the right to seek bail. It is further states that, Section 167 of CrPC 1973 (now Section 187 of BNSS 2023) while dealing with remand provides for a positive mandate on the police officer to forward the accused to the magistrate before expiry of such period as fixed under Section 57 of CrPC 1973 (now Section 58 of BNSS 2023) when investigation cannot be completed in twenty-four hours. It further mandates that, the Magistrate do not authorize the

detention of accused unless he is physically produced before him. The purpose of this provision mandating the production of accused before Magistrate for exercise of the power of remanding him to custody under this section is with the dual purpose. First, ensuring physical presence of the accused and second to afford him an opportunity to be heard. The intent of this provision is not merely to be heard at the stage of remand but to be represented by the counsel of his choice. Thereafter, the duty is cast upon the Magistrate to apply his judicial mind to the material produced before him, hear the accused or the counsel representing him to determine whether the accused should be remanded to police custody or should be detained at all within the parameters prescribed in Section 167 of CrPC 1973 (Section 187 of BNSS 2023).

23. The above discussed principles manifest the constitutional safeguards under Article 22 of the Constitution of India which is that the arrested person must be well equipped with the information not only about his arrest but the reasons and grounds thereof prior to his production before the Magistrate so as to enable him to effectively defend himself and

oppose the police and judicial custody and even press for bail. The obligation to inform the grounds of arrest to the arrestee is thus, not just a mere procedural formality, instead it flows from the fundamental right of personal liberty which sets the further course for protection from the oppressive restrictions imposed upon the free movement in the society of an arrestee during remand.

24. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest.” Thus, it casts mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22 (1) is notwithstanding any exception. The Apex Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in

fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the IPC 1860 (now BNS 2023).

25. It is further observed by the Hon'ble Apex Court in ***Mihir Rajesh Shah*** (supra), that the requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

26. The above said judgment further speaks about the way or the manner in which the said grounds to be communicated and observed that, while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the

language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall *ipso facto* apply to Article 22(1). The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1).

27. By referring the Constitution Bench judgment in *Harikisan*, the Hon'ble Apex Court observes that, while dealing with the Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person. The relevant portion thereof reads thus:

“7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that ‘he has studied up to 7th Hindi standard, which is equivalent to 3rd English standard’. The High Court negated the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the Order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds, contained in many

*paragraphs, as indicated above, in order to be able effectively to make his representation against the Order of Detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detainee, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the Order of Detention and the grounds would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in the case of *State of Bombay v. Atma Ram Sridhar Vaidya* [1951 SCC 43 : (1951) SCR 167] clause (5) of Article 22 requires that the grounds of his detention should be made available to the detainee as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detainee should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detainee should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detainee sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detainee would not amount to communicating the grounds. Communication, in*

this context, must mean bringing home to the detainee effective knowledge of the facts and circumstances on which the Order of Detention is based.

8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detainee must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.”

28. Thus, the judgment concludes on the issue, which reads as under:

“i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.”

29. In the light of the above said judgment now we have to look into the grounds of arrest which were communicated to

the present Petitioner. The grounds of arrest shows that, it was informed to the present Petitioner that POR has been registered against him on an allegation that he has purchased the Tiger parts such as Skin, Bones Mustaches etc., hunted by the accused Shri Ajit Siyala Pardhi and paid a huge amount of money to Ajit Siyala Pardhi and his other associates through Mrs Ning San Lun and also through Shri Lal Neisung both are residents of Shillong. It was further communicated that, you are transporting the said articles to your counterparts residing at Myanmar and China through the established channels. It was further informed to him that, this offence is being a non bailable one and also for the purpose of further investigation, an accusation is well founded against you it is necessary to investigate the said offence to know the channels of further sales and illegal transports and the sources of money being paid by you, it is necessary to arrest you and hence you are arrested.

30. Thus, the grounds of arrest specifically states about the allegations which are levelled against the present Petitioner and the need of his arrest.

31. Thus, by applying the law laid down by the Hon'ble Apex Court in the case of ***Mihir Rajesh Shah*** (supra) as well as in the case of ***Vihaan Kumar*** (supra), the entire object behind the said provision is that the accused should know the accusation against him and the reasons for his arrest. Thus, this mandatory constitution condition here in the present case is fulfilled by the Investigating Agency.

32. The another ground raised by the Petitioner is that he was not produced before the nearest Magistrate.

33. Section 57 of the BNSS mandates that the police officer making an arrest without Warrant should without unnecessary delay ensure that the arrested person is produced before a Magistrate having jurisdiction in the case or before the officer in charge of the police station.

34. Section 58 of the BNSS declares that a person arrested shall not be detained for more than 24 hours unless there is a special order of the Magistrate.

35. It is thus clear that, exhaustive provisions are provided in Chapter V which are designed to prevent the abuse of the power of arrest and the detention of an arrested person by the Police. The logic behind these provisions is clear and that is to provide a person, who has been arrested, to seek for release on bail and in the event of the offence being non-bailable to enable him to secure legal help through his friends and relatives to seek for his release. The legislature was conscious of the fact that an arrested person can effectively be kept in custody by denying him the right to have access to legal aid for securing bail and hence elaborate measures are also provided to ensure that the friends or relatives of the arrested person are informed of the arrest.

36. The plain reading of the provisions shows that it ensures the compliance of the safeguards provided under Article 22 of the Constitution and to ensure that the person arrested and detained is afforded every opportunity to secure his release in the manner known to law. The explanation of the above provisions relating to the arrest of a person and his detention immediately thereafter has become necessary, for this case, to

emphasize the degree of seriousness that is ascribed by the law when it comes to the liberty of a person being curtailed.

37. The concept of arresting a person is basically to investigate the offence that he has committed by subjecting him to interrogation and to ensure that he does not get a chance to tamper with the evidence or to intimidate the witnesses who may have witnessed his crime or to flee from the jurisdiction of the Court. Ultimately, it is to ensure that there is a smooth investigation conducted by the Police without there being any impediment.

38. Since the detention of a person infringes on his constitutional right to be at liberty, the statute has provided an elaborate mechanism to ensure that this detention is monitored at every stage and every attempt is made to ensure that the detention of a person is always within well-defined parameters.

39. In view of the above provisions, the remand order passed by the Magistrate on 21.02.2025 specifically states that, the accused was produced before him at 12.00 noon. He was represented by his Counsel. He has not made any complaint as

to the ill-treatment and after considering the reasons given in the remand report that his custodial interrogation is required to ascertain his involvement and various monetary transactions, the Judicial Magistrate has remanded to the forest custody till 25.02.2025. Therefore, there is no substance in the contention of the learned Counsel for the Petitioner that, he is not produced before the nearest Magistrate. Only requirement of law is that he is to be produced before the concerned Court or jurisdictional Magistrate within 24 hours when investigation cannot be completed in 24 hours. Thus, he was arrested on 20.02.2025 at 12.00 noon and produced before the Magistrate on 21.02.2025 at 12.00 noon, shows that he was produced within 24 hours.

40. The communication placed on record by the learned PP further shows that, though the accused was arrested in Mizoram. The Investigating Agency has obtained the special permission from the Aviation Ministry on 20.02.2025. Permit No.03/2025 dated 20.02.2025 issued by the Government of India, Ministry of Civil Aviation, which shows that:

“In exercise of powers under Rule 24 B of Aircraft Rules 1937 delegated by Government of India, Ministry of Civil Aviation & Tourism Notification No. S.O. 727 (E) dated 04.10.1994, the Regional Director, Bureau of Civil Aviation Security Imphal Region hereby authorizes Shri Anand Reddy Yellu, IFS, of Revenue and forests department Mantralaya, Mumbai to carry prisoner namely Zamkhan Kap (Male), S/O Thangzachin of House No. Ch/S-1, 56-E, Chhawkhlei, Thuampui Zembawk, Aizawl, Mizoram to produces in the Court of Judicial Magistrate first class Rajura Dist. Chandrapur as per case No. 08893/222322/2025 section 9, 51 & 39 of wildlife Protection Act. 1972, from Lengpui Airport to Nagpur Airport via Delhi Airport by (Indigo Flight No. 6E-158 Lengpui to Delhi on 20.02.2025 at 1540 hrs) and (Indigo Flight No. 6E-2601 Delhi to Nagpur on 20.02.2024 at 2105 hrs.).”

41. Thus, the Petitioner was brought by the Investigating Agency and produced before the jurisdictional Magistrate within 24 hours. Thus, there is compliance of Section 167 of Cr.PC (Section 187 of BNSS) and Section 57 of Cr.PC. (Section 58 of BNSS).

42. Learned Counsel for the Petitioner, vehemently submitted that there is non-compliance of the guidelines issued in Manual which is given to the Investigating Agency for wildlife crime investigation. The Preface of the said Manual states that, this guide is being brought out with a view to standardise practices and procedures to be followed by State police and

forest departments in wildlife crime investigation. It is expected that use of this document would bring uniformity in methodology, improve investigation quality and result in better appreciation of evidence by the courts contributing to effective combating of wildlife crime.

43. Chapter-5 of the said Manual mandates the manner in which the arrest is to be affected. Specific clause of 5.16. states as under:

“5.16. Arrest of an accused - check list:

(i) Power to arrest is given to a forest officer and Police officer under Sections 50(1)(c), and 50(3) of the WLP Act 1972.

(ii) Identity of the accused should be established before the arrest is made.

(iii) Arrest-cum-Personal Search Memo in the prescribed format should be prepared at the time of arrest. Copy of the same should be given to the accused.

(iv) Arrested accused should be produced forthwith before the Jurisdictional Magistrate along with a Remand Report.

(v) If custodial interrogation of the accused is required, a separate petition should be filed in the court under Section 167 Cr.PC.”

44. The format of the arrest is also given in the said Manual under the heading of Arrest Cum Personal Search Memo.

45. On perusal of the said Manual and Annexure-V of the said Manual giving format of Arrest cum Personal Search Memo. The arrest memo is given to the present Petitioner in the same format, and therefore, the contention of the learned Counsel for the Petitioner that the arrest of the Petitioner is not as per the Manual, is also not correct.

46. It is vehemently submitted by the learned Counsel for the Petitioner that, the Petitioner is not aware about English language or Hindi language and his statement under Section 50(8) of the Act of 1972 is recorded in English language. Thus, his statement was recorded contrary to the provisions of law which is not within his language, and therefore, on that ground also the Petition deserves to be allowed.

47. We have perused the said statement of the accused which was recorded under Section 50(8)(d) of the Act of 1972. The first para of the said statement specifically states that, he is giving his statement at his own free will without any fear or favour, under no pressure or greed and not under influence of any drug, alcohol etc. It also states that, the Investigation

Officer has clearly informed him that this statement is being recorded under Section 50(8)(d) of the Wildlife (Protection) Act, 1972 which will be admissible in further proceedings before the court under Section 50(9) of this act, and can be used against him in the Court, due to which he can also be punished. He further admits that, he is not forced to give the statement and he was asked whether he is ready to give the statement of his own free will and he consented for the same. The endorsement on the last portion of the said statement also shows that he understood the statement written above and it is the true account of facts. He had been read over the statement by Shri. Pavankumar Jong. He has given the above statement on his own volition, without any threat or inducement and after understanding this statement clearly and thereafter put his signature.

48. Admittedly, this statement was recorded on 06.02.2025 at 09.00 a.m and in the entire statement he nowhere stated that he does not know English. He nowhere stated that, he is not aware about the contents of the statement. After his statement in presence of the independent witnesses

recorded by the Forest Officer he was produced before the Magistrate for second remand. When he was produced before the Magistrate for the second remand on 25.02.2025 and 01.03.2025, at the relevant time also he has not mentioned any grievance that his statement was obtained by fraud by coercion or under the influence. He has not made any grievance that the said statement was not in his language and he could not understand what is written in the said statement. Thus, it is apparent that, the said statement is made by the present Petitioner after understanding the use of the said statement and the consequences of his statement. His second statement was recorded on 28.02.2025. Thereafter also he was produced before the Magistrate and at the relevant time also he has not made any complaint despite he was not knowing that in which language his statement was recorded by the Investigating Agency. Now, at this stage this contention of the learned Counsel for the Petitioner cannot be taken into consideration.

49. As far as the evidential value of the said statement is concerned which is to be taken into consideration in the light of the judgment of the Hon'ble Apex Court in the case of *Prahlad*

Singh Bhati Vs. NCT Delhi & Anr., (2001) 4 SCC 280 ; Emerico D'Souza Vs. State, Thr. the Deputy Conservator of Forests, 1995 Forest Law Times 72 and Sardarkhan s/o Khalilkhan Pathan Vs. Range Forest Officer, Yavatmal & Ors., 2006 (1) Mh.L.J. 606, wherein the consistent view is that the Range Forest Officer is not a Police Officer, a confession made before the Range Forest Officer would not be a confession under Section 25 of the Evidence Act and would at best be akin to an admission or former statement of a witness suggesting an inference as to a fact in issue or relevant fact and, therefore, it can be read as a statement against the co-accused, as long as it discloses a relevant fact. Thus, even the confessional statements of the co-accused in a crime like the present can be considered and, therefore, we found no substance in the said argument of learned Counsel for the Petitioner that his statement is not recorded as per the procedure.

50. Learned Counsel for the Petitioner, vehemently submitted that there is non-compliance of the Manual.

51. Learned PP for the Respondent/State, submitted that these are mere administrative instructions and not statutory rules. He submitted that, moreover that Manual is not issued by forest department. The said Manual is the only administrative instructions.

52. He placed reliance on the decision of ***G.J. Fernandez Vs. The State of Mysore & Ors., AIR 1967 SC 1753***, wherein the Hon'ble Apex Court observed that, Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive power of the State. Of course, under such executive power, the State can give administrative instructions to its servants how to act in ; certain circumstances; but that will not make such instructions statutory rules which are justifiable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefore. It is not in dispute that there is no statute which confers any authority on the State Government to issue rules in

matters with which the Code is concerned; nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules. It only provides, for the extent and scope of the executive power of the State Government, and that coincides with the legislative, power of the State legislature. Thus under Article 162, the State Government can take executive action in all matters in which the legislature of the State can pass laws. But Article 162 itself does not confer any rule making power on the State Government in that behalf.

53. In view of above observations of the Hon'ble Apex Court, admittedly this Manual is issued only to regularize the procedure, it does not have any statutory binding.

54. Coming to the next submission of the learned Counsel for the Petitioner that, search and seizure is not in compliance with the said Manual. From the documents on record it reveals that, the Investigating Agency approached to

the Government of Meghalaya Department of Forest & Environment Office of the Divisional Forest Officer Khasi Hills Wildlife Division Shillong. The said Department by its order dated 09.02.2025 No. MWL/OR/GENL/Pt-1/1919 issued warrant to search suspected place of deposit. In view of said search warrant issued under Section 50(8)(a) of WPA, 1972 to Shri. Julius R.B. Blah, Range Forest Officer, Protection Range, Shillong was authorized to conduct a search warrant at the residential premises of Mrs. Ning San Lun and accordingly the search was carried out. The intimation was given to the District and Session Judge/Additional Deputy Commission (Judicial), Shillong which shows that the report was also given to the District and Sessions Judge regarding said search and seizure. On that ground also, the contention of the learned Counsel for the Petitioner that search and seizure was not as per the Manual, is also not sustainable.

55. In the above context deficiency and concept of arrest, search and seizure admittedly the accused was arrested and within 24 hours he was produced before the jurisdictional Magistrate.

56. In the light of the judgment of the Hon'ble Apex Court in the case of ***Vihaan Kumar*** (supra) as well as ***Mihir Rajesh Shah*** (supra), the grounds of arrest were communicated to the present Petitioner. When the present Petitioner was produced before the Magistrate he was duly represented by his Counsel. When he was produced before the Magistrate he has no complaint that the grounds of arrest are not explained to him in his language, and therefore, he could not understand why he was arrested. On the contrary, the record shows that the grounds of arrest are communicated to him by narrating the incident as well as why his arrest is required. The said grounds of arrest and information as to his arrest was also communicated to his relatives on the same day. He was produced before the Magistrate within 24 hours and he was represented by his Counsel. He has not made any grievance that he is not communicated with the grounds of arrest in his language. Here in the case in hand, from the record of the Trial Court, remand orders, arrest remand and the grounds of arrest which are communicated to the present Petitioner, it appears that the accused person in custody was well aware of the reasons of his arrest. He was all along represented by his

engaged Counsel and applied for bail knowing and understanding the accusations. There is no material before this Court, at this stage, which shows that any prejudice is caused due to the non-supply of the grounds of arrest to him in his language or it was not communicated to him but in fact it is very well communicated to him and he is very well represented before the Court.

57. The only question which we are concerned within the above backdrop is whether the Petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the Petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent Court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of *habeas corpus* is in the circumstances, totally misplaced. Having said that, we are of the view that the Petitioner could and indeed ought to have filed an application for grant of bail but instead of filing an application for grant of bail he preferred this Petition which is no substitute for his enlargement from custody.

58. In *Sanjay Dutt Vs. State, (1994) 5 SCC 410*, the Hon'ble Apex Court in para 48 observes that, it is settled by Constitution Bench decisions that a petition seeking the writ of *habeas corpus* on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.

59. Thus, a writ of *habeas corpus* shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of *habeas corpus*, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions alongwith a total non-application of mind, there may be a case for entertaining a writ of *habeas corpus* and that too by way of a challenge. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India. There is a detention becoming illegal for not difference between a following the statutory

mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of *habeas corpus* may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made as per the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. A writ of *habeas corpus* was moved questioning the arrest made. When it was taken up for hearing on a mentioning, it revealed that, the Petitioner was duly produced before the Magistrate. The custody therefore becomes judicial as he was duly forwarded by the Respondent before the Magistrate. The remand orders passed by the Court, as recorded earlier shows that considering the ground he was initially remanded to the Forest Custody and thereafter in the Judicial custody. In view of that, we have no hesitation in holding that the only remedy open to the Petitioner is to approach the appropriate Court for seeking bail, which was not done. As far as this Petition is concerned, in which the grounds raised by the Petitioner, are not maintainable. The Petitioner is at liberty to approach before the appropriate Court for seeking bail.

60. For the reasons as stated above, we are of the view that, the Petition seeking writ of *habeas corpus* in the facts cannot be entertained and as such dismissed the Petition. The grounds raised by the Petitioner that, the arrest of the Petitioner itself is illegal, and therefore, his illegal detention is also not sustainable. Needless to state that, as far as the Petitioner is concerned, it is open for him to avail other statutory remedies.

61. The Petition is accordingly **dismissed**.

62. Rule is discharged.

63. Pending application/s, if any, shall stand disposed of accordingly.

(NIVEDITA P. MEHTA, J.)

(URMILA JOSHI PHALKE, J.)