



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

CRIMINAL APPLICATION NO.374 OF 2026

Vishal s/o Ishwar Walke

..vs..

State of Maharashtra

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

Court's or Judge's orders

Shri M.A. Deo, Advocate for the applicant.
Ms S.Z. Haider, APP for the State.

CORAM: M.M. NERLIKAR, J.

DATE : 15.04.2026.

Heard.

2. By way of this application the applicant is seeking bail in connection with Crime No.231 of 2025 registered with Gadchiroli Police Station for the offence punishable under Sections 103, 311, 332(a), 332(b), 238 of the Bharatiya Nyaya Sanhita (BNS), 2023.

3. The FIR came to be lodged by the informant alleging that on 13.04.2025 he received a call from his wife that she has been informed that the elder sister of the informant is lying on the floor with head injury. Therefore, the informant rushed to his elder sister's house and found that she was lying with head injury and therefore, he lodged the report against the unknown person. During the investigation, present applicant came to be arraigned as an accused.

4. Learned Counsel for the applicant has raised a ground that though he was taken into custody by the Police from Pune on 17.04.2025 at about 12.00 p.m., noon, he was shown arrested on 18.04.2025 at about

8.35 am at Gadchiroli and he was produced before the Magistrate on 18.04.2025 at about 5.00 p.m. and therefore, his arrest is illegal and is vitiated as it violates the provisions of Article 22 of the Constitution of India so also, Section 58 of the Bharatiya Nyaya Suraksha Sanhita (BNSS). He submits that if the accused/applicant is not produced before the Magistrate within 24 hours then it is incumbent on the Investigating Agency to produce the accused before the nearest Magistrate as contemplated under Section 187 of the BNSS and violation of the same would give rise to release the applicant on bail.

5. To substantiate his contention he has relied on the judgments of the Hon'ble Supreme Court in the case of *Directorate of Enforcement vs. Subhash Sharma 2025 SCC OnLine SC 240*, judgment of the Principal Seat of Bombay High Court in the case of *Vachhalabai vs. State of Maharashtra and ors. 2019 SCC OnLine Bom 2937* and judgment of the Co-ordinate Bench of this Court passed in Writ Petition No.54 of 2025 (Hanumant Jagganath Nazirkar vs. The State of Maharashtra) dated 27.06.2025. He further submitted that in case the police machinery failed to produce the accused before the Magistrate within 24 hours from the time of taking him into custody, the applicant deserves to be enlarged on bail by declaring that the arrest itself is vitiated.

6. On the other hand, learned APP strongly opposes the application on the ground that the applicant was arrested in connection with serious crime under Section 103 of the BNS. Though the applicant was taken into custody on 17.04.2025 at about 12.00 p.m.,

however he was arrested on 18.4.2025 at about 8.35 a.m. and the time will have to be calculated from the date and time of arrest and not from the custody. Thus, there is no violation of Section 58 of the BNSS as the applicant was produced on the same day at about 5.00 p.m. before the Magistrate. i.e. within 24 hours. Though the applicant was taken into custody from Pune however the period of transit will have to be excluded. Therefore, only on 18.04.2025 the applicant was arrested and as no liberty of the applicant was curtailed during the transit period therefore, it cannot be termed as an arrest. It is the settled position of law that custody does not include arrest however arrest includes custody. Merely taking a person in the custody that by itself is not sufficient as there should be an arrest in order to invoke Section 58 of the BNSS. As the applicant was arrested on 18.04.2025 at about 8.35 a.m. and on the same day at about 5.00 p.m. he was produced before the Magistrate. So there is no violation of Article 22 of the Constitution of India or Section 58 of BNSS and therefore, the application deserves to be rejected.

7. I have considered the rival submissions and perused the record.

8. Article 21 speaks about protection of life and personal liberty. In Article 21 the term 'liberty of a person' is of paramount consideration, as violation of the same would tantamount to depriving him from enjoying his personal liberty. However, the said right is not absolute and is subject to procedure established by law. Article 22 of the Constitution of India also concurrently

provides certain safeguards. Article 22(2) of the Constitution of India provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest. So far as Article 22(2) of the Constitution of India and Section 58 of the BNSS are concerned, both relates to that if a person is arrested shall not be detained for more than 24 hours. Section 58 of the BNSS reads as under :

“58. Person arrested not to be detained more than twenty-four hours.- No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 187, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court, whether having jurisdiction or not.”

9. Section 187 of the BNSS provides that in case it is not possible for any reason to produce the accused before the Magistrate with whom the jurisdiction vests to try the case in such circumstances he can be produced before the nearest Magistrate and after that the transit period can be excluded. It would be useful to refer to the judgment of this Court at Aurangabad Bench in the case of *Vacchalabai v. State of Maharashtra and ors. (supra)*, wherein *particularly in paragraphs 54 and 56, this Court has observed as under :*

“54. The provision of Section 167 quoted above has made it clear that the nearest Magistrate means the Magistrate, who is nearest to the place of arrest. If the nearest Magistrate has jurisdiction to try the offence

then there will be no problem, but the problem arises when the nearest Magistrate has no jurisdiction to try the offence. The Section is clear and it shows that whether the nearest Magistrate has power to try the offence or not, the accused needs to be produced before such nearest Magistrate. The period of authorized detention by police of fifteen days mentioned in Section 167 of Cr.P.C. starts from the date of order made by the Magistrate. So, the Magistrate, who is not having jurisdiction to try the offence, but before whom the accused is produced, is expected to direct production of such accused before the Magistrate having jurisdiction over the offence and only for that period such Magistrate will be authorising detention of the accused by police. The provision of Section 167(2)(b) of Cr.P.C. also shows that actual production of accused before such Magistrate for the first time is compulsory. Only the subsequent detention can be authorized through the medium of electronic video linkage. It is already observed that as per the provisions of Chapter VI and particularly Section 81 of Cr.P.C., the person arrested under warrant is required to be produced before the Executive Magistrate, having jurisdiction over the place where the arrest was made and the Chief Judicial Magistrate or the Sessions Judge has the power to decide the bail application filed by the accused arrested under warrant. A person who is arrested without warrant cannot be treated differently. When warrant of arrest is issued by the Magistrate, he applies the mind to the facts of the matter before issuing the warrant and in that case also, the accused arrested under warrant has a right of aforesaid nature and his bail application also needs to be considered by the Chief Judicial Magistrate under Section 81 of Cr.P.C.. In view of these circumstances, it is not possible to infer that a person arrested without warrant need not be produced before the nearest Magistrate. The difference between Sections 81 and 167 of Cr.P.C. is that the nearest Magistrate (Judicial Magistrate, when

available) can order the accused to be forwarded to a Magistrate having jurisdiction and for period required to produce, this Magistrate may authorise the detention.

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56. The aforesaid provisions are safeguards for protection of fundamental rights mentioned in Article 21 of the Constitution of India. They need to be strictly followed by the officers effecting arrest. If there is a material to infer that there was actual arrest, but after the arrest the accused was not taken before the nearest Magistrate and he was taken far away from that place for production before the concerned Magistrate, the moment the accused is taken out of the jurisdiction of nearest Magistrate, his detention becomes unauthorized and illegal. Such detention will not become legal only because subsequently the accused is produced before the Magistrate having jurisdiction to try or inquire into the offence within 24 hours of the actual arrest. Here only it needs to be mentioned that the contention of police that formal arrest was made after taking the accused to the local jurisdiction of the concerned Magistrate and the period needs to be counted from that time and the case needs to be considered from that angle cannot be accepted. There are other provisions in Cr.P.C. like issuing notice or summons for making inquiry and by that process calling a person to the police station is possible. If that procedure is not followed and accused is picked up from a place over which the police station has no jurisdiction and he is taken to the place over which the police has jurisdiction, inference become easy that the accused was taken away from the first place only by illegally detaining him. If such interpretation is not made then the aforesaid provisions mentioned like Section 41B, 41C and all subsequent provisions will become otiose and that will be against all the provisions made to safeguard the fundamental rights of such person."

10. This Court in the case of *Hanumant Jagganath Nazirkar v. State of Maharashtra (supra)* particularly in paragraph 32 has specifically dealt with the word “ताब्यात”, which reads as under :

“32. The general diary detail annexed at page 83 of the present Writ Petition records that on 25 October 2024, at Shivajinagar Police Station at 13:11 hours, the Petitioner was taken into custody. The phrase used in the general diary details of Shivajinagar Police Station is "ताब्यात" which would mean custody or control of the Petitioner. Similarly, on reaching Baramati on 25 October 2024 at 17:07 hours, Baramati Police Station in their general diary details recorded that the Petitioner was taken into custody or control since the phrase "ताब्यात" is mentioned even in the general diary details at Baramati. Therefore, the time of arrest would begin from 25 October 2024 at 1:00 p.m. or at least from 5:07 p.m. on 25 October 2024. The phrase "ताब्यात" in English would mean “custody” has been resolved by the Co-ordinate Bench of this Court in the case of Hemang Jadhavji Shah Vs. State of Maharashtra & Ors.”

11. The Hon’ble Supreme Court in the case of *Directorate of Enforcement vs. Subhash Sharma*, while dealing with the identical issue, has observed in paragraph 8 as under :

“8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under

Articles 21 and 22 of the Constitution.”

12. Therefore, considering the above observations of the Hon'ble Supreme Court as well as this Court and so far as the facts of the present case is concerned, the remand report shows that applicant was taken into custody from Pune. The document annexed in the charge-sheet at page no.97 which is an application seeking police remand wherein it has been specifically stated that the applicant was taken into “ताब्यात” from Pune. The word “ताब्यात” has been clarified by this Court in *Hanumant Jagganath Nazirkar v. State of Maharashtra (supra)* to mean custody or control. Further it is also supported by the Station diary entry maintained at Shivaji Nagar Police Station Pune, wherein it is disclosed that the applicant was taken into custody. Said entry is of dated 17.04.2025 at 15.13 hours meaning thereby the applicant, admittedly was taken into custody prior to making entry in the station diary. As was argued by the learned Counsel for the applicant that he was taken into custody at about 12.00 p.m. will have to be accepted, to this learned APP has not opposed.

13. Considering the admitted position that on 17.04.2025 at about 12.00 p.m. the applicant was taken into custody from Pune, and on 18.04.2025 at about 8.35 a.m. the applicant was shown as arrested at Gadchiroli and at 5.00 p.m. the applicant was produced before the Magistrate at Gadchiroli. From perusal of the record it reveals that the applicant was not produced before the nearest Magistrate as contemplated under Section 187 of the BNSS and also not within 24 hours

from his arrest as per Section 58 of the BNSS as well as Article 22(2) of the Constitution of India.

14. Considering the facts and circumstances of the case and as was observed by the Hon'ble Supreme Court in the Subhash Sharma (supra) that in case fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail as the arrest in such cases stands vitiated. It is abundantly clear that arrest of the applicant is vitiated as he was not produced before the Magistrate within 24 hours. It is further to be noted that the Investigating Officer, who has taken the applicant into the custody from Pune was under an obligation to produce him before the nearest Magistrate in case he was not able to be produced before the Magistrate with whom the jurisdiction vests. Considering all these factors, I am inclined to enlarge the applicant on bail by imposing certain terms and conditions. Hence the following order :

- (a) The application is allowed.
- (b) The applicant Vishal s/o Ishwar Walke in connection with Crime No.231 of 2025 registered with Gadchiroli Police Station be released on bail on furnishing P.R. bond of Rs.50,000/- with one surety in the like amount.
- (c) The applicant 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.

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

(e) The applicant 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 entail the State to ask for cancellation of bail.

15. All Misc. application(s), pending if any, shall stands disposed of accordingly.

(M.M. NERLIKAR, J.)

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