



121 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-5659-2026

Date of decision: 14.05.2026

SURAJ KUMAR @ KANCHA

...PETITIONER

V/S

STATE OF UT CHANDIGARH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA

Present: Mr. Sandeep Sharma, Advocate
 for the petitioner.

SUBHAS MEHLA, J. (ORAL)

1. Present petition has been filed under Article 226 of Constitution of India for issuance of a writ in the nature of Habeas Corpus directing official respondents to release the petitioner in connection with FIR bearing No.0086 dated 21.10.2025 registered under Sections 103(1) and 3(5) of Bharatiya Nyaya Sanhita, 2023 at Police Station Sarangpur, UT Chandigarh.

2. Learned counsel for the petitioner submitted that the petitioner has been remanded to police custody by learned Illaqa Magistrate vide impugned order dated 23.10.2025; that at the time of arrest of the petitioner, grounds of arrest were not communicated to him in writing, which is mandate of law under Article 22(1) of Constitution of India and Section 47 of BNSS, 2023; when the petitioner moved an application for his release before the Court concerned, the police authorities admitted that the grounds of arrest were orally communicated to the petitioner and no separate written document was supplied for ground of arrest. Learned counsel placed reliance upon the judgment passed by Hon'ble the Supreme Court in *Vihaan Kumar vs. State of*



Haryana, [2025 INSC 162]; *Ashish Kakkar vs. UT Chandigarh*, [2025 (2) R.C.R(Criminal) 425]; *Mihir Rajesh Shah vs. State of Maharashtra* [2025 INSC 1288] wherein it has been held that the arrest memo and grounds of arrest are separate and distinct documents, and mere mentioning of penal sections in the arrest memo does not render compliance of Article 22(1) of Constitution of India.

3. Notice of motion.

4. Mr. Rajesh K. Sheoran, Addl. P.P., UT Chandigarh who is present in the Court, accepts notice on behalf of respondent-State and submitted that during the investigation, the grounds of arrest were disclosed to the accused verbally and all the grounds of arrest are mentioned in arrest memo and signatures of petitioner have also been taken on the arrest memo. It is further submitted that ground of arrest was given to the petitioner along with co-accused, but the petitioner had refused to give his signatures on the document pertaining to ground of arrest form and the petitioner along with co-accused was arrested on the basis of extra judicial confession made before one Ashok Kumar. Learned counsel further stated that the crime is heinous in nature and CFSL report is still awaited. Learned State counsel also stated that the present petition is not maintainable as the petitioner was arrested in the present FIR and has not been illegally detained.

5. Heard.

6. Present petition has been filed by way of Writ in the nature of Habeas Corpus, assailing an impugned order dated 23.10.2025 passed by learned Illaqa Magistrate whereby petitioner has been remanded for further police custody. Before proceeding towards the factual aspect of the present



case, it is incumbent for this court to consider the petition from the vantage of maintainability of petition in the present form. This court is of the view that since, the act of directing remand of an accused is a judicial function and the challenge to the order of remand should not be entertained in a Habeas Corpus petition. The order of remand ought to have been challenged in accordance with the provisions of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Hon'ble the Supreme Court in **State of Maharashtra & Ors. vs. Tasneem Rizwan Siddiquee [2018 INSC 783]**, observed that when accused is in custody of police pursuant to remand granted by Magistrate, no writ in nature of Habeas Corpus can be issued. The relevant para of the judgment is:

“xxx

*9. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in the case of **Saurabh Kumar through his father v. Jailor, Koneila Jail and Anr., 2014(3) RCR (Criminal) 856 : (2014) 13 SCC 436, and Manubhai Ratilal Patel v. State of Gujarat and Ors., 2012(4) RCR (Criminal) 655 : (2013) 1 SCC 314. It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18th/19th March, 2018 and decided by the High Court on 21st March, 2018 her husband Rizwan Alam Siddique was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No.I-31 vide order dated 17th March, 2018 and which police remand was to enure till 23rd March, 2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during***



investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.
xxx”

It is well settled that the writ of Habeas Corpus is an extraordinary and prerogative remedy, to be exercised sparingly and only in cases of manifestly illegal or unauthorized detention. Where the custody of the detainee is founded upon a remand order passed by a Judicial Magistrate in exercise of jurisdiction vested under BNSS, such custody cannot be termed as unlawful so as to invite interference in writ jurisdiction. In such circumstances, the appropriate remedy for the aggrieved party lies in availing the statutory remedies provided under criminal law and not by invoking the extraordinary writ jurisdiction of this Court. Ergo, the present petition seeking to quash the remand order under the guise of habeas corpus is misconceived and not maintainable.

7. Keeping in view the above, the present writ petition, challenging the impugned orders in the present form, is dismissed being not maintainable.

May 14, 2026
manisha

(SUBHAS MEHLA)
JUDGE

- | | | |
|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |