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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on:- 28.07.2025.**Date of Decision:- 27.08.2025.*+ W.P.(CRL) 3101/2024
YASH MISHRA

.....Petitioner

Through: Mr. Yash Mishra (in person)
Mr. Yuvraj Singh, Mr. Harshvardhan Singh, Mr. Siddhant Kumar, Mr. Nikhil Kr. Singh, Ms. Tanushree Karnawat and Ms. Shasya Singh, Advocates.

versus

STATE OF NCT OF DELHI & ORS

.....Respondent

Through: Mr. Amol Sinha, ASC (Crl) with Mr. Ashvini Kumar and Mr. Kshitiz Garg, Advocates for State.
Mr. Ishkaran Singh Bhandari, CGSC with Mr. Piyush Yadav, Advocate for UOI.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****DEVENDRA KUMAR UPADHYAYA, CJ**

1. The instant Public Interest Litigation(hereinafter referred to as PIL) petition has been filed with the following prayers:-

“In view of the above facts and circumstances it is most respectfully prayed that this Hon’ble Court may be pleased to issue any order/ direction/ declaration:

“a) Section 193 (9) read with 187 (3) is arbitrary to article 21 of constitution of India and hence ultra vires;



b) directing that the powers granted with the usage of words “further investigation” under section 193(9) of BNSS, 2023, is not unlimited and the accused cannot be detained for more than the maximum amount of detention period as specified under section 187(3) of BNSS, 2023 if the chargesheet has been filed, he shall be released by virtue of default bail;

c) Pass any such order as this Hon’ble Court may feel fit and proper in the facts and circumstances of the case.”

2. Heard the petitioner in person and the learned counsel representing the respondents.

3. It has been contended in support of the prayers made in this writ petition by the petitioner that the impugned provision of Section 193(9) read with Section 187(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS, 2023) is arbitrary and violates Article 21 of the Constitution of India *qua* the accused persons, who are facing criminal trial, and accordingly, specific guidelines need to be formulated to ensure timely completion of further investigation under Section 193(9) of BNSS, 2023. Further submission of the petitioner is that the provision of Section 193(9), if read in conjunction with the provision of Section 187(3) of the BNSS, 2023, camouflages the statutory right of ‘default bail’ as provided for in Section 187(3) of the BNSS, 2023.

4. The petitioner submits that Section 187 (2) and (3) of BNSS 2023, embodies a statutory right to ‘default bail’ to the accused in cases where investigation is pending exceeding beyond the period of 90 days in cases of cognizable offences from the date of arrest, however by virtue of the impugned provision of Section 193(9) of BNSS 2023, the said right of seeking default bail, may be denied for which no plausible reason or rationale exists.



5. Drawing our attention to specific language in which Section 193(9) of BNSS 2023, is couched, it has been argued that the said provision does not provide for any duration within which further investigation is to be completed, whereas Section 187(3) of the BNSS 2023, states that accused shall be released on bail if charge-sheet is not filed within the time stipulated therein. Accordingly, the submission is that by resorting to further investigation, an incomplete charge-sheet is being filed, as a result of which an accused is not able to exercise their right of 'default bail'.

6. The petitioner has further submitted that Right to Personal Liberty is a Fundamental Right emanating from Article 21 of the Constitution of India and any curtailment thereof has to be in compliance of due process, and further the time limit prescribed in Section 187(3) is, in fact, a safeguard against arbitrary detention which also ensures that investigating agencies do not prolong the detention without any lawful reason. To bring home the grounds of challenge to the impugned provision of the BNSS 2023, the petitioner has relied on the following judgments:-

- i. ***Maneka Gandhi vs Union of India* [(1978) 1 SCC 248]**
- ii. ***Bikramjit Singh vs. State of Punjab* [(2020) 10 SCC 616]**
- iii. ***Rajnikant Jivanlal & Anr vs. Intelligence Officer, Narcotic Control Bureau, New Delhi* [(1989) 3 SCC 532]**
- iv. ***Tunde Gbaja vs. Central Bureau of Investigation* [(2007) SCC OnLine Del 450]**
- v. ***Ritu Chabbaria vs. Union of India and Others* [2023 SCC OnLine SC 502]**
- vi. ***Anand Prakash & Anr. vs. Assistant Registrar, Cooperative***



Societies and Others [(1966) SCC OnLine All 378]

vii. *Arvind Kejriwal vs. Central Bureau of Investigation [(2024) SCC OnLine SC 2550]*

viii. *K Vadivel vs. K. Shanti & Ors [2024 SCC OnLine SC 2643]*

7. Opposing the prayers made in this petition, the Central Government Standing Counsel has argued that the grounds urged by the petitioner challenging Section 193(9) of BNSS 2023, are completely misconceived for the reasons that the alleged misuse by Police/investigating agencies to deny the right to ‘default bail’ under Section 187(3) is not tenable as the proviso appended thereto contains complete safeguard against any possible misuse. It has further been argued that the Hon’ble Supreme Court in *Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd. (2000) 5 SCC 515* has held that when a statutory provision is unambiguous, any apprehension regarding possible misuse is not a valid ground to challenge its constitutional validity.

8. It has also been argued on behalf of the Union of India that if the words and phrases occurring in a statute are clear and unambiguous, it is not permissible for the Courts to interpret any word into the statute. Placing reliance on *Padma Sundara Rao (Dead) & Ors. vs. State of Tamil Nadu & Ors. [(2002) 3 SCC 533]*, it has been contended that, in case, a provision of law is misused and subjected to abuse of process of law, it is for the legislature to amend or repeal or modify if it is found necessary to do so and not for the Court.

9. In sum and substance, the submission is that any apprehension of possible potential misuse of a statute will not render the provision itself to



be unconstitutional or arbitrary. In support of this submission, the learned counsel representing the Union of India has placed reliance on the following judgments:-

- i. ***Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd.*** (2000) 5 SCC 515
- ii. ***Saregama India Limited vs. Next Radio Limited & Ors.*** [(2022) 1 SCC 701]
- iii. ***Mafatlal Industries Ltd. vs. Union of India*** [(1997) 5 SCC 536]
- iv. ***Collector of Customs, Madras vs. Nathella Sampathu Chetty*** [1962 SCC OnLine SC 30]
- v. ***Sushil Kumar Sharma vs. Union of India*** [(2005) 6 SCC 281]
- vi. ***State of Jharkhand vs. Shiv Shankar Sharma & Ors.*** [(2022) 19 SCC 626]

10. Having heard the petitioner, who appears in person and the learned counsel representing the Union of India, we do not find any reason, much less any plausible reason, to interfere in the petition.

11. The provision of Section 193(9) of BNSS 2023, reads as under:-

“193. Report of police officer on completion of investigation.

1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012(32 of 2012) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

(3) (i) As soon as the investigation is completed, the officer in charge



of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating—

- (a) the names of the parties;*
- (b) the nature of the information;*
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;*
- (d) whether any offence appears to have been committed and, if so, by whom;*
- (e) whether the accused has been arrested;*
- (f) whether the accused has been released on his bond or bail bond;*
- (g) whether the accused has been forwarded in custody under section 190;*
- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;*
- (i) the sequence of custody in case of electronic device;*

(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(4) Where a superior officer of police has been appointed under section 177, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(5) Whenever it appears from a report forwarded under this section



that the accused has been released on his bond or bail bond, the Magistrate shall make such order for the discharge of such bond or bail bond or otherwise as he thinks fit.

(6) When such report is in respect of a case to which section 190 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 180 of all the persons whom the prosecution proposes to examine as its witnesses.

(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(8) Subject to the provisions contained in sub-section (7), the police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230:

Provided that supply of report and other documents by electronic communication shall be considered as duly served.

(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in



relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):

Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.”

(emphasis supplied)

12. As per the afore-quoted provision of BNSS 2023, further investigation in respect of an offence is permissible even after a report under Section 193(3) is filed before the Magistrate. The provision further provides that if, on further investigation, any further evidence is to be obtained, the same is to be forwarded to the Magistrate with further report/reports regarding such evidence.

13. The proviso appended to sub-section 9 of Section 193 of the BNSS 2023, provides for further investigation that may be conducted during trial with the permission of the Court trying the case and that such further investigation is to be completed within 90 days, which may further be extended with the permission of the Court. Thus, what we find is that the power to conduct further investigation as conferred on the investigating agencies under Section 193(9) is not unfettered; the proviso appended thereto contains adequate safeguards on the arbitrary use of the power for further investigation, for the reason that further investigation during trial can be conducted only with the permission of the Court. We may also note that such further investigation to be conducted with the permission of the Court is to be completed within 90 days, which, though, is extendable; however, such extension is permissible only with leave of the Court. Thus, it is difficult to hold that Section 193(9) of BNSS 2023 contains a provision



which is unfettered and, therefore, it is arbitrary.

14. So far as the submission that provision of ‘further investigation’ as contained in Section 193(9) is camouflage to defeat the right of the accused person to seek ‘default bail’ under Section 187(3) of BNSS 2023, we may only observe that the provision contained in Section 193(9) and those of Section 187(3), operate in different fields and further that Section 193(9) does not in any manner acts as a camouflage to such right.

15. So far as the submission of the petitioner that Section 193(9) does not contain any time period for completion of further investigation is concerned, we may indicate that Section 193(1) mandates that investigation shall be completed without unnecessary delay, and as already pointed out above the proviso clearly stipulates 90 days period for completion of further investigation that too with the permission of the Court, which is extendable only if the Court permits such extension.

16. Accordingly, we are unable to agree with the submission of the petitioner that adequate safeguards have not been provided to the accused persons to make them realise their right of seeking a ‘default bail’ in a situation where further investigation is undertaken by the investigating agencies. Even otherwise, any possible potential misuse of a statutory provision is not a ground available to challenge the same and to term it unconstitutional.

17. Hon’ble Supreme Court in ***Padma Sundara Rao (Dead)*** (*supra*) has observed that it is for the legislature to amend, modify or repeal in case a provision of law is found to be misused and is subjected to abuse of the process of law. Para 14 of the said judgment is extracted hereinbelow:-

“14. While interpreting a provision the court only interprets the law



and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd. [(2000) 5 SCC 515]) The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case [(1996) 3 SCC 88] . In Nanjudaiah case [(1996) 10 SCC 619] the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.”

18. In view of the aforesaid declared principle by Hon’ble Supreme Court in ***Padma Sundara Rao (Dead)*** (*supra*), the Courts appear to be precluded from striking down any statutory provision if it is prone to misuse.

19. The judgment in the case of ***Rishabh Agro Industries Ltd.*** (*supra*) can also be referred to observe that Courts are empowered only to interpret the law and they cannot legislate. The said observations can be found in para 6 of the said judgment, which is extracted hereinbelow:-

“6. Learned counsel appearing for the respondent has submitted that such an interpretation would defeat the ends of justice and make the petitions under the Companies Act, infructuous inasmuch as any unscrupulous litigant, after suffering an order of winding up, may approach the Board merely by filing a petition and consequently get the proceedings in the company case stayed. Such a grievance may be justified and the submission having substance but in view of the language of Sections 15 and 16 of the Act particularly the Explanation to Section 16 inserted by Act 12 of 1994, this Court has no option but to adhere to its earlier decision taken in Real Value Appliances [(1998) 5 SCC 554] . While interpreting, this Court only



interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it by having recourse to appropriate procedure, if deemed necessary.”

20. Yet in another judgment in **Mafatlal Industries Ltd.** (*supra*), the Hon’ble Supreme Court has clearly held that the mere possibility of abuse of a provision cannot be a ground for holding a provision procedurally or substantively unreasonable. The said observations have been made in para 88 of the said judgment, which is extracted hereinbelow:-

“88. To the same effect are the observations by Khanna, J. in Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225 : 1973 Supp SCR 1] (SCR at p. 755 : SCC p. 669). The learned Judge said : (SCC p. 821, para 1535)

“In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error. Constitutional law like other mortal contrivances has to take some chances. Opportunity must be allowed for vindicating reasonable belief by experience.”

To the same effect are the observations in T.N. Education Deptt. Ministerial and General Subordinate Services Assn. v. State of T.N. [(1980) 3 SCC 97 : 1980 SCC (L&S) 294 : (1980) 1 SCR 1026] (SCR at p. 1031) (Krishna Iyer, J.). It is equally well-settled that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding the provision procedurally or substantively unreasonable. In Collector of Customs v. Nathella Sampathu Chetty [(1962) 3 SCR 786 : AIR 1962 SC 316] , this Court observed: “The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity.” It was said in State of Rajasthan v. Union of India [(1977) 3 SCC 592 : (1978) 1 SCR 1] (SCR at p. 77), “it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its



legitimate needs and at the same time incapable of mischief". (Also see Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282] (SCR at p. 1030).

21. For the discussions made and reasons given above, we find ourselves in complete disagreement with the submissions made by the petitioner.
22. Resultantly, the writ petition fails which is hereby dismissed.
23. However, there will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

AUGUST 27, 2025
S.Rawat