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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 54 OF 2025

Hanumant Jagganath Nazirkar
Age: 58 yrs, Occupation: Retired
Residing at: K – H-26, Swapnashilp
Housing Society, Kothrud
Pune – 411 038

... Petitioner

Versus

The State of Maharashtra
[Through PI of Baramati Taluka Police
Station]

... Respondent

Mr. Manoj Mohite, Senior Advocate a/w Mr. Pranav Pokale,
Mr. Priyanka Chavan, Mr. Aditya Bagal, & Mr. Chinmay
Sawant for the Petitioner.

Mr. S. V. Gavand, APP for the Respondent-State.

CORAM : M.S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 23 June 2025
PRONOUNCED ON : 27 June 2025

Judgment (Jitendra Jain, J.):

1. Rule. By consent and since pleadings are complete, same is taken for final hearing at the stage of admission itself.
2. This petition, under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), is filed for issuing writ of Habeas Corpus to declare the arrest of the Petitioner in C.R. No.128/2024, registered with Baramati Taluka Police Station, under Sections 420, 467, 468, 471 and 34 of the Indian Penal

Code, 1860 (IPC) to be illegal. The Petitioner in the present petition has also challenged the remand orders dated 27 October 2024 and 2 November 2024.

Brief facts:-

- (i) On 5 March 2023, a complaint was lodged against the Petitioner, his wife and other persons alleging cheating, forgery, and dishonestly obtaining an amount of Rs.3,37,30,000/-. The Anticipatory Bail Application filed by the Petitioner before this Court was rejected on 8 August 2023 and in the meanwhile chargesheet was filed by the Police. The challenge by the Petitioner to the rejection of anticipatory bail was dismissed by the Supreme Court on 25 August 2023.
- (ii) On 25 October 2024, a search was conducted of the Petitioner by the Investigating Officer.
- (iii) At around 1:00 p.m. on 25 October 2024, the Petitioner was taken into custody from Shivajinagar Metro Station and produced before the Shivajinagar Police Station. The Petitioner was thereafter immediately taken to Baramati and produced before the Baramati Police Station at around 5:07 p.m on the same day.
- (iv) At around 7:40 p.m. on 25 October 2024, the Petitioner was taken to the Government Medical College, Baramati for pre-arrest medical examination. The doctors at the Government Hospital referred the Petitioner to Sassoon Hospital, Pune. However, the Police decided to take the

Petitioner to a private hospital in Baramati for cardiac evaluation at around 9:03 p.m. on 25 October 2024.

- (v) On 26 October 2024 at midnight 1:26 a.m. the Petitioner was admitted to Giriraj Hospital, Baramati and was discharged at around 4:54 p.m./7:00 p.m. on the said day.
- (vi) On 26 October 2024, after the above discharge, the Petitioner was taken back to the Government Medical College at around at 8:07 p.m. for obtaining a certificate of fitness for custody.
- (vii) At 9:00 p.m./10:13 p.m. on 26 October 2024, the Petitioner was shown as formally arrested at 9:00 p.m. as per the station diary entry, remand report and affidavit-in-reply. However, the arrest panchanama shows that the Petitioner was arrested at 10:13 p.m.
- (viii) On 27 October 2024 at 12:20 p.m., the Petitioner was produced before the learned JMFC, Baramati and remand order was passed.

Submissions of the Petitioner:-

3. At the outset, the learned senior counsel for the Petitioner, Mr. M. Mohite, stated that for the present, he is not pressing his case on non-furnishing of grounds of arrest and, therefore, this Court need not delve into it. He submitted that this was because the issue was pending consideration before the Hon'ble Supreme Court.

4. Based on the above facts, it is the contention of Mr. Mohite, learned counsel for the Petitioner that the Petitioner was produced before the learned Magistrate after the expiry of 24 hours, contrary to Article 22 of the Constitution of India and Section 57 of the Cr.P.C. The said period is calculated by the Petitioner from 25 October 2024 at 1:00 p.m. i.e. the time when the Petitioner was taken into custody from Shivajinagar Metro Station or in the alternative from 5:07 p.m. on 25 October 2024, time when the Petitioner was taken from Shivajinagar Police Station and produced before the Baramati Police Station.

5. It is the contention of the learned senior counsel that on a reading of Article 22 of the Constitution of India and Section 57 of the Cr.P.C., the period of 24 hours would start from 1:00 p.m. on 25 October 2024 or at least from 5:07 p.m. on 25 October 2024. Since the Petitioner was produced after the period of 24 hours, there was violation of the fundamental right granted under the Constitution of India and, therefore, the arrest is illegal.

6. The Petitioner's counsel has relied upon various case laws in support of his contention that the time taken from 7:40 p.m. on 25 October 2024 till 26 October 2024 8:07 p.m. being the pre-arrest medical examination period cannot be excluded in calculating 24 hours. The Petitioner, therefore, prayed for issuance of writ of Habeas Corpus to declare the arrest illegal.

7. Learned senior counsel relied upon various decisions of the Supreme Court and High Courts in support of his submissions.

Submissions of the learned APP:-

8. The learned APP for the State opposed the petition on two grounds namely, that the Petitioner's son was present, when the Petitioner was taken for pre-medical examination at Baramati and the Petitioner was in touch with his family members over the phone and, therefore, it cannot be said that the Petitioner was under arrest during pre-arrest medical examination till 9:00 p.m. 26 October 2024 when he was formally arrested.

9. The learned APP further submitted that the Petitioner's bail application was rejected where the issue of arrest being illegal was raised and rejected and, therefore, the Petitioner cannot now, by this petition, seek a relief to declare the arrest illegal. The learned APP relied upon the order passed by the Session Judge rejecting the bail application by the Additional Sessions Judge, Baramati on 13 February 2025. The learned APP, therefore, prayed for dismissal of the petition.

10. The learned APP has not controverted legal precedents cited by the counsel for the Petitioner.

11. We have heard learned senior counsel for the Petitioner and the learned APP for the State and have perused the documents brought to our attention.

Analysis & Conclusions:-

12. The short issue which arises for our consideration is whether the period from 25 October 2024 1:00 p.m. to 26 October 2024 9:00 p.m. when the Petitioner was taken into custody from Shivajinagar Metro Station, Pune and produced in custody at Baramati Police Station and thereafter at Baramati where he was taken for pre-arrest medical examination can be considered as the period when the Petitioner can be said to have been arrested.

13. If the answer is 'Yes' then the period of 24 hours provided under Article 22 of the Constitution of India and Section 57 of Cr.P.C. would begin from 25 October 2024 1:00 p.m. and since he was produced before the learned Magistrate at Baramati on 27 October 2024 at 12:20 p.m., same would amount to having not been produced within 24 hours, and consequently, the arrest will have to be treated as illegal.

14. If the answer is 'No', then the period of 24 hours would start from 26 October 2024 at 9:00 p.m. to 27 October 2024 at 12:20 when he was produced before the learned Magistrate at Baramati and since the said period is less than 24 hours, there would be no violation of Article 22 of the Constitution of India and Section 57 Cr.P.C. and consequently arrest would be treated as legal.

15. The Tabular contention of both the parties can be stated as under:-

Sr no.	Period of Custody	Remand	Total time in custody
i.	From 25.10.2024 at 1 pm	To 27.10.2024 at 12.20 pm	47 hours 20 minutes (as per Petitioner)
ii.	From 25.10.2024 at 5.07 pm	To 27.10.2024 at 12.20 pm	43 hours 7 minutes (deducting travel hours from Pune to Baramati)
iii.	From 26.10.2024 at 9 pm	To 27.10.2024 at 12.20 pm	15 hours 20 minutes (as per Respondent)

16. The relevant provisions for our consideration are reproduced hereunder:-

Article 22(2) of the Constitution of India

22. Protection against arrest and detention in certain cases

... ..

*(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.***

Section 57 of Cr. P.C.

57. Person arrested not to be detained more than 24 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 167, exceed 24 hours **exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.***

(emphasis supplied)

17. The phrase “arrest” is neither defined under the Code of Criminal Procedure, 1973, nor defined under the Indian Penal Code, 1860 (IPC) or the Constitution of India. We have not been shown any statutory definition or meaning of the word “arrest.”

18. The word “arrest” is derived from the French word “arrater” which means “to stop or stay.” It signifies a restraint of a person. Therefore, “arrest” would mean a restraint of a man’s person, obliging him to be obedient to law thereby amounting to the execution of the command of a duly authorised officer. The word “arrest” would mean a restraint or the deprivation of one’s personal liberty.

19. The question of whether a person is under arrest or not must be decided based on whether they have been deprived of their personal liberty to go where they please. In the legal sense, an “arrest” would consist of taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. It starts with the arrester taking a person into his custody by action or words, “restraining him” from moving anywhere beyond the arrester’s control, and it continues until the person so restrained is either released from custody or brought before a Magistrate. The ‘arrest’ is complete when such restraint by an authority commences. The arrest commences with the restraint placed on the liberty of the person and not with the time of “arrest” recorded by the Arresting Officer.

20. “Arrest” consists in the actual touching of a person's body with a view to his restraint. The words may, however, amount to an "arrest" if they are calculated to bring to a person's notice that he is under compulsion and he, thereafter, submits to such compulsion. An authority is said to arrest

another person if it prevents the latter from freely making their movements and moving according to their will. To constitute an arrest, it is necessary that the officers should assume custody and control over the person, either by force or with his consent. "Arrest" is when one is taken and restrained from their liberty. Even if a person is touched with a view to detaining, it would amount to an arrest.

21. The phrase "arrest" has been considered by this Court in the case of ***Ashak Hussain Allah Detha @ Siddique & Anr. Vs. The Assistant Collector of Customs (P) Bombay and Anr.***¹ and the relevant observations in paragraphs 9, 10, 11 and 12 are reproduced hereunder:-

"9. Admittedly, the applicants were detained without any authority, from the midnight of 20th July 1989 to 5.20 pm of 21st July 1989- for 17 hours. Their arrest has been so recorded that their production before the Magistrate falls within 24 hours stipulated by Article 22(2) of the Constitution of India and section 57 of the Code of Criminal Procedure. The prosecution urges that after the "arrest" they were not detained beyond 24 hours. This submission is a distortion of the true meaning of the constitutional guarantee against detention without the sanction of judicial tribunal. They word "arrest", has not been defined in the Code of Criminal Procedure or in any other law. The true meaning needs to be understood. The word "arrest" is a term-of art. It starts with the arrester taking a person into his custody by action or words restraining him from moving anywhere beyond the arrester's control and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate is judicial Act. (Christie v Leachinsky), (1947) 1 All E. R. 667, (Holgate Mohammed v. Duke), (1934) 1 All E. R. 1054. Both quoted in WORDS AND PHRASES LEGALLY DEFINED Vol. 1. Third Edition page 113. In substance, "arrest" is the restraint on a man's personal liberty by the power or colour of lawful authority. In its natural sense also "arrest" means the restraint on or deprivation of one's personal liberty.

¹ 1990 SCC OnLine Bom 3

10. *It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences. Whether a person is arrested or not does not depend on the legality of the act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases. It stands to reason, therefore, that what label the Investigating Officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest, The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers.*

11. *The argument that the applicants were not arrested at the mid night of 19th July 1989 but were detained for interrogation is untenable. Since the offences under the N.D.P.S. Act are cognisable, the Investigating Officers possess the authority to arrest without warrant. They arrest a suspect or do not arrest at all. The "detention in custody for interrogation" is unknown to law. Interrogation is known. A person may be lawfully interrogated. But during such interrogation he is a freeman. If he is detained, not allowed to leave the office of the Respondent No. 1 and compelled to eat and sleep there, he is under detention. This restraint is in reality an arrest. In this case, the applicants were not allowed to leave the office of the Respondent No. 1 after the midnight of 19th July 1989. In the circumstances of this case, the applicants were arrested at the midnight of 19th July 1989.*

12. *The Investigating Officers may lawfully detain a suspect for an offence. But detention in custody for interrogation is not authorised by law. The Investigating Officers may detain for an offence only. In an English case where the Customs Officers detained a person "for helping with their inquiries", it was held that there was no authority in the Custom Officers to detain a person, except, for an offence. The principle that emerges is this: Any restraint on a person's liberty except for an offence is illegal. There is no authority in the Investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry."*

22. The phrase "arrest" had also recently come up for consideration before the Coordinate Bench of this Court in the

case of *Hem Prabhakar Shah vs. State of Maharashtra*,², reiterating what is explained by us above. The Court, after analysing the precedents on this issue, observed that the arrest amounts to detention of a person in contrast to the state of affairs when he is a free man.

23. In *Niranjan Singh Vs. Prabhakar Rajaram Kharote*³, Justice Krishna Iyer paraphrased the term “custody” in his inimitable style as below: -

"No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose."

24. The Telangana High Court in the case of *Smt. T. Ramadevi Vs. State of Telangana* in Writ Petition No.21912 of 2024 decided on 26 September 2024 also concurred with the view expressed by the judgment of this Court and other Courts that taking a person into custody would also amount to an arrest.

25. The meaning of the terms "arrest" and "custody" is exhaustively dealt with by the Full Bench of the Madras High

² 2024 SCC OnLine Bom 3006

³ (1980) 2 SCC 559

Court in the case of *Roshan Beevi vs. Joint Secretary to Government of Tamil Nadu & Ors.*⁴, and the same has been approved in *Dhanraj Aswani vs. Amar S. Mulchandani & Anr.*⁵.

26. Since the phrase “arrest” has been consistently interpreted to mean restraint on the personal liberty of a person, we do not propose to reproduce various paragraphs of all the judgments brought to our attention by the learned senior counsel for the Petitioner. The learned APP has, however, not brought to our attention any contrary judgment to that effect.

27. Chapter V of the Cr.P.C. consisting of Sections 41 to 60-A provides for arrest of persons. In none of these provisions, there is an exclusion for time taken for pre-arrest medical examination. There is no requirement for pre-medical arrest, and consequently, the exclusion as contended by the learned APP is to be rejected. Section 46 of Cr.P.C. provides that in making an arrest, the police officer shall actually touch or confine the body of the person to be arrested. Section 53 provides for medical examination when a person is arrested on a charge of committing an offence and such an examination will afford evidence as to the commission of an offence. Similarly, Section 53A provides for medical examination of person accused of rape by medical practitioner on the arrest of a person. Section 54 provides that when any person is arrested, he shall be examined by a medical officer

⁴ (1984) 15 ELT 289

⁵ (2024) 10 SCC 336

soon after the arrest is made. Section 57 provides that no person shall be detained in custody for a period exceeding 24 hours. Section 60-A provides that no arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

28. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 provides for protection against arrest and detention in certain cases. Article 22 (1) provides that no person who is arrested shall be detained in custody without being informed, of the grounds for such arrest. Article 22 (2) 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. Article 22 (3) provides that nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing that the person is in custody for preventive detention. Article 22 (5) provides that any person detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall communicate to such person the grounds on which the order has been made. Similarly, Article 22 (7) provides that the Parliament may by law prescribe the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than 3 months.

29. On a conjoint and harmonious reading of various decisions referred to above and meaning of “arrest” and

analysis of Chapter V of the Cr.P.C. and Article 21 and 22 of the Constitution of India, we are of the view that in the present case, the moment, the petitioner was taken into custody on 25 October 2024 at 1:00 p.m. or at least on 25 October 2024 at 5:07 p.m., the period of arrest begins and therefore, production of the petitioner on 27 October 2024 at 12:20 p.m. would violate Article 22 (2) of the Constitution of India and Section 57 of the Cr.P.C. since the Petitioner has been produced before the Magistrate after the expiry of 24 hours of arrest.

30. Applying the interpretation and judicial pronouncement referred to above, the issue which would require consideration in the present case to be decided is whether the Petitioner when taken into custody on 5 October 2024 at 1:00 p.m. at Shivajinagar Metro Station, Pune could be said to have been arrested on that day at that time or in the alternative, can he be said to be arrested on 25 October 2024 at 5:07 p.m. when he was produced at the Baramati Police Station after taking him into custody from Shivajinagar Metro Station, Pune.

31. In our view, there can be no doubt that the Petitioner's free movement and liberty were restrained on 25 October 2024 at 1:00 p.m. when he was taken into custody at Shivajinagar Metro Station, Pune and produced before the Shivajinagar Police Station. Even otherwise, the police authorities took the Petitioner from Pune to Baramati and reached Baramati on 25 October 2024 at 5:07 p.m. At least

from 5:07 p.m. on 25 October 2024, the Petitioner can be said to have been arrested.

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.*⁶.

33. The contention of the APP is that the time taken for the pre-arrest medical examination, from 7:40 p.m. on 25 October 2024 to 9:00 p.m. on 26 October 2024, should be excluded in computing the 24 hours. In our view, the learned APP's contention is required to be rejected. We have not been shown any statutory provision that provides for excluding such time for conducting a pre-arrest medical examination, nor have we been shown any statutory provision that requires police

⁶ Writ Petition 2989 of 2025 decided on 30 May 2025.

authorities to conduct a pre-arrest medical examination before arresting a person.

34. In the absence of any such statutory provision, the exclusion sought by the learned APP cannot be accepted. On the contrary, Sections 53 and 54 of the Cr.P.C. clearly show that the medical examination is obligatory after arrest. The provision of the Cr.P.C. clearly indicates that the medical examination is to be conducted only after the arrest is made. Therefore, the argument raised by the learned APP regarding the pre-arrest medical examination is required to be rejected. On the contrary, the fact that the Petitioner was taken for medical examination, by applying the provisions of Sections 53 and 54 of the Cr.P.C. clearly demonstrates that the Petitioner was arrested before the said medical examination.

35. Significantly, the Police have acted as the next kith and kin of the petitioner as is apparent from the medical discharge papers and other medical records. If the petitioner's son was said to be present, we fail to comprehend why the police were exercising control throughout. Therefore, the contention about the petitioner not being arrested on 25 October 2024 cannot be accepted. The provisions of the law and judicial precedents on the subject indicate that the only period that could be excluded for computing the 24 hours limit within which the arrested person must be produced before the nearest Magistrate is the time taken for the journey from the place of arrest to the Court of the Magistrate. This

Constitutional mandate cannot be frustrated or whittled by subterfuges.

36. Under Article 22 (2) of the Constitution of India, only the time taken for the journey from the place of arrest to the Court of the Magistrate is excluded. A similar provision of exclusion appears in Section 57 of the Cr.P.C. In the absence of any provision in the Constitution or in the Cr.P.C. to exclude the alleged “pre-arrest medical examination time”, we cannot accept the contention of the learned APP.

37. It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established by law. The Constitution further directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest. The only time permitted to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of the Magistrate". Only under two contingencies can the said direction be obviated. One is when the person arrested is an "enemy alien" and the second when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited peremptorily that "no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

38. The contention of the learned APP that the son of the Petitioner was with the Petitioner at the time of pre-arrest medical examination and, therefore, it cannot be said that the

petitioner was under arrest is to be rejected. The discharge certificate issued by the hospital clearly shows that the petitioner was under the control and custody of the police authorities. The PSI, Mr. Yuvaraj Patil of Baramati Taluka Police Station signed the discharge certificate on 26 October 2024. The paper formalities of admission and discharge clearly show that the Petitioner was in the custody and control of the police authorities. Merely because the Petitioner's son happened to be in the hospital or the Petitioner was in touch with his family members over the cell phone would not mean that the Petitioner was not in the custody or control of the police authorities. The police authorities restrained the liberty of the Petitioner from the time when he was taken into custody at Shivajinagar Police Station and/or at least on arriving at Baramati Police Station and continued even in the hospital. Therefore, we cannot accept the submission of the learned APP on this count.

39. Mr. Mohite, learned senior counsel for the Petitioner is justified in contending that nothing prevented police authorities to produce the Petitioner before the Judicial Magistrate either when he was taken into custody at 1:00 p.m. on 25 October 2024 at Shivajinagar Metro Station or when the Petitioner was taken to Baramati Police Station on 25 October 2024 at 5:07 p.m. or that the Petitioner could have been produced before the Magistrate through video conferencing when the alleged pre-arrest medical examination was underway. The learned senior counsel is also justified in

submitting that even if the person arrested was in the hospital, the Judicial Magistrate could have visited the hospital which would have complied with the constitutional mandate and Section 57 of the Cr.P.C. In our view, Mr. Mohite, learned senior counsel is justified in contending so. We have not been shown any circumstances or reasons which prevented the police authorities from producing the Petitioner before the Judicial Magistrate within 24 hours from 1:00 p.m. or 5:07 p.m. of 25 October 2024. There is no reason given as to why the Petitioner could not have been produced by video conferencing or why the Judicial Magistrate or Executive Magistrate could have not visited the hospital to comply with the mandatory conditions of Article 22(2) of the Constitution of India and Section 57 of the Cr.P.C.

40. We quote paragraph 15 of the decision of Hon'ble Gauhati High Court in the case of ***Bittu Kumar vs. State of Assam***⁷ which reiterates the course of action to be adopted in case of medical emergency. The said paragraph 15 reads as under:-

“15. It is settled constitutional position that an arrestee shall have to be produced before the nearest Magistrate within 24 hours excluding the time required for his production before such Magistrate. There may be exceptions to such requirement, like in the instant case where the arrestee is injured and requires urgent medical care so that instead of producing such an arrestee before the Magistrate, he might have to be rushed to the hospital for providing urgent medical treatment. However, in such cases also the Magistrate may ascertain the condition of

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2025 SCC OnLine Gau 2842

the arrestee through video conferencing or personally visiting such arrestee whose arrest has been reported to him by the Police. After the arrest of a person if he is not released on bail, an order for remand to judicial custody has to be made though it can be qualified by clarifying that the petitioner may continue to stay in the hospital after ascertaining such a requirement. For the said purpose, the Magistrate may also call for a report from the hospital where the arrestee has been admitted.”

41. Based upon the pre-arrest medical examination theory, the legal and constitutional mandate of production of the arrested person before the Magistrate within 24 hours of his detention cannot be violated. Such action on the part of the police officer is likely to lead to unscrupulous tendencies, where after a person is arrested, he is not produced before the Magistrate till the hospital authorities declare him fit. This will give wrong signals to society and to the public at large. In our view, such a pre-arrest medical examination theory can be fraught with mischief and highly deplorable.

42. In view of the above, the justification sought to be made by the learned APP for not complying with the constitutional mandate on the pretext of pre-arrest medical examination is required to be rejected.

43. The next contention of the learned APP that because the regular bail was rejected, in which the present issue was raised and came to be rejected, the present petition cannot be entertained and is to be rejected. Firstly, the present petition is filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus. The said Writ can be entertained only

by this Court and not by the Sessions Court. Secondly, as held by the Hon'ble Supreme Court in the case of ***Manubhai Ratilal Patel vs. State of Gujarat & Ors.***⁸ and ***Senthil Balaji vs. State & Ors.***⁹ if the arrest itself is without jurisdiction or illegal or violates Article 22 of the Constitution of India, then even if the regular bail is rejected or remand is allowed, still this Court can exercise its discretionary jurisdiction to issue appropriate Habeas Corpus Writ, if it is found that the arrest itself was illegal. In the instant case it has been observed by us that the Petitioner was not produced before the Magistrate within 24 hours as constitutionally mandated by Article 22(2) of the Constitution of India and, therefore, this Court has exercised its jurisdiction in accordance with law laid down by the above decisions of the Hon'ble Supreme Court. In any case, the present petition can be treated as a petition challenging that part of the bail order which has dealt with the effect of non-production of the Petitioner within 24 hours. The Petitioner in the instant petition has also challenged remand orders.

44. Therefore, looked at from any angle, the contention raised by the learned APP that this Court should not entertain the present petition is required to be rejected.

45. The Co-ordinate Bench of this Court very recently had an occasion to examine a similar issue in the case of ***Kaushik Rameshchandra Thakkar @ Anam Vs. State of Maharashtra***¹⁰.

⁸ (2013) 1 SCC 314

⁹ (2024) 3 SCC 51

¹⁰ Writ Petition No.139 of 2025 decided on 16 April 2025

The relevant paragraphs of the said judgment reads as under :-

“28. It has been argued by the learned Senior Advocate on behalf of the Informant, as well as by the learned APP, that the time required for the transportation of the Accused to the Court of the concerned Magistrate in Mumbai and for the medical examination, will have to be excused in the light of Section 58 of the Bharatiya Nagarik Suraksha Sanhita.

Section 58 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.

29. Even if the aforesaid submission is taken at its best, there has to be a reasonable link and proximity between the taking over of the custody of the Petitioner, his medical examination and production before the Magistrate. In short, the journey to be undertaken from the place of arrest to the Magistrate's Court, whether having jurisdiction or not, should be direct without being interjected by events not covered by Section 58. In the instant case, the distance between the place of arrest and the Court, is 500 meters.

30. If the aforesaid contention is to be accepted, it would mean that the time beginning from 7.00 AM, when the Petitioner was taken into custody on 16.08.2024, inclusive of the journey by air to the office of the EOW in Mumbai, the medical examination, his overnight confinement in the lock-up and then production at 1.15 PM before the Magistrate on 17.08.2024, will have to be excused. This submission is palpably fallacious. If such submission is to be accepted, an Accused could be detained even beyond 24 hrs. with the justification on the spacious plea that the entire time required for the journey, interjected with several events up to the Court of the Magistrate, will have to be excluded. Such submission could be accepted if there is a close connection and proximity between the arrest, movement to the medical facility for

medical examination and further movement to the Court of the Magistrate.

31. In the case in hands, the journey of the Petitioner, in custody of the Police, from Palanpur to Ahmedabad to Mumbai, was followed with the Police team taking him to the office of the EOW where he was detained and shown to be arrested at 2.20 PM. There is no explanation as regards the transportation of the Petitioner, after medical examination, for an overnight stay in the lock-up, only to be produced in the Court of the Magistrate, at 1.15 PM, on 17.08.2024. In the light of the above facts, the violation of Article 22(2) is writ large. Section 58 does not contemplate the exclusion of the time required for such a journey, interjected with several events, while computing the time of 24 hrs.

46. Learned senior counsel for the Petitioner submitted that if the present petition is allowed, then the Court may put the Petitioner to terms and conditions which were imposed on the Petitioner in another case being Crime No. 736/2020 by the Additional Sessions Judge, Pune vide order dated 17 September 2022. The learned APP opposed the grant of any relief in this petition but submitted that if this petition is to be allowed interests of justice would require that the Petitioner abides by the bail conditions.

47. Therefore, since the learned counsel for the Petitioner and the learned APP agreed, we are of the view that on release of the Petitioner by this order, the conditions mentioned in order dated 17 September 2022 in Crime No.736/2020 granting bail to the Petitioner in another case would apply as conditions herein mentioned for release of the Petitioner even in the present matter being Crime No.128 of 2024. The necessary conditions are as under:-

ORDER

1] Petitioner/accused Hanumant Jagannath Nazirkar arrested in Crime No.128/2024 registered with Baramati Police Station be released on PR Bond of Rs. 1,00,000/- (Rs. One Lakh only) with one or more sureties of like amount.

2] The Petitioner shall not leave India without permission of this Court.

3] The Petitioner directly or indirectly shall not mortgage, pledge, transfer and rent out any movable or immovable property described in the charge-sheet as disproportionate to known source of the accused.

4] The Petitioner shall not tamper with the prosecution evidence nor shall pressurize the prosecution witnesses and shall attend the trial regularly.

5] The Petitioner shall attend the Office of Baramati Police Station as and when called through written notice.

48. During the course of the hearing, we brought to the notice of the learned senior counsel for the Petitioner the decision of the Supreme Court in the case of *Correspondence, RBANMS Educational Institution Vs. Gunashekar & Anr.*¹¹ which requires directions to refer cash transaction to Income-tax authorities. In the present case also, there are allegations of cash transactions of substantial amounts. The learned senior counsel, in his usual fairness, did not oppose such directions being given in the present matter.

49. The Petitioner must, therefore, furnish a Permanent Account Number (PAN) issued by the Income Tax Authorities of himself and his wife to the Registrar, Appellate Side of this

¹¹ 2025 SCC OnLine SC 793

Court within two weeks from the date of uploading the order. The Registrar to direct the Chief Commissioner of Income Tax, having jurisdiction over the Petitioner and his wife, to conduct an enquiry and investigate into the cash transactions alleged in the present C.R.128 of 2024 and take necessary action against all the persons involved in the cash transactions.

50. In view of above, we allow this petition in terms of prayer clauses (a) and (b) and direct the Petitioner to be released forthwith with a direction that Petitioner would comply with the conditions mentioned hereinabove. This is of course if the Petitioner is not required to be detained with regard to any other matter by following the procedure prescribed by law.

51. The petition is made absolute in the above terms. No costs.

(Jitendra Jain, J)

(M.S. Sonak, J)