



2026:CGHC:3546-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 553 of 2025

Akash Kumar Sahu S/o Shri Ramashankar Prasad Aged About 30
Years R/o Avantibai Chowk, Bhilai, District- Durg, (C.G.)

... Petitioner(s)

versus

- 1** - State Of Chhattisgarh Through The Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District- Raipur (C.G.)
- 2** - Director General Of Police Chhattisgarh, Police, Headquarters Raipur, District- Raipur (C.G.)
- 3** - Inspector General Of Police Durg Range, Durg, Office Of The Inspector General Of Police, District- Durg (C.G.)
- 4** - Superintendent Of Police Durg, District- Durg (C.G.)
- 5** - Collector Division- Durg, District- Durg (C.G.)
- 6** - Shri Hitesh Pisda Sub-Divisional Magistrate, Bhilai, District- Durg (C.G.)
- 7** - Station House Officer Police Station- Supela, District- Durg (C.G.)
- 8** - Sub Police Station Through Officer In-Charge Smriti Nagar, District- Durg (C.G.)
- 9** - Shri Gurvindra Singh Singhu Thana In-Charge, Smriti Nagar, Police Station, Smriti Nagar, District- Durg (C.G.)
- 10** - Smt. Promod Singh Assistant Sub-Inspector, Smriti Nagar Police Station, Smriti Nagar, District- Durg (C.G.)

11 - Shri Ashish Rajput Constable, Smriti Nagar Police Station, Smriti Nagar, District- Durg (C.G.)

12 - Shri Harshit Shukla Constable, Smriti Nagar Police Station, Smriti Nagar, District- Durg (C.G.)

13 - Shri Vivek Singh Constable, Smriti Nagar Police Station, Smriti Nagar, District- Durg (C.G.)

14 - Shri Ajit Singh Constable Smriti Nagar Police Station, Smriti Nagar, District- Durg (C.G.)

15 - Omkareshwar Vaishnav Driver, Smriti Nagar Police Station, Smriti Nagar, District- Durg (C.G.)

... Respondent(s)

For Petitioner(s) : Mr. Dhiraj Kumar Wankhede, Advocate

For Respondent(s) : Mr. Vivek Sharma, A.G. and Mr. Praveen Das,
Add. A.G.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

21.01.2026

1. Heard Mr. Dhiraj Kumar Wankhede, learned counsel for the petitioner. Also heard Mr. Vivek Sharma, learned Advocate General along with Mr. Praveen Das, learned Additional Advocate General appearing for the respondents/State.
2. By way of this writ petition the petitioner has prayed for following reliefs:-

“10.1 This Hon'ble Court may kindly be pleased to directed the respondents to call relevant records, pertaining to the instant matter.

10.2 This Hon'ble Court may kindly be pleased to quash the order dated- 08.09.2025 as well as all the proceedings of Criminal Case No. 1379/2025, pending before respondent No. 6

10.3 This Hon'ble Court may kindly be pleased to quash the Istagasha dated – 08.09.2025, prepared by the Police Chowki, Smriti Nagar against the petitioner.

10.4 This Hon'ble Court may kindly be pleased to issue an appropriate writ or direction to take disciplinary action against the private respondent no. 9 to 15.

10.5 This Hon'ble Court may kindly be pleased to direct the respondent No. 1/State, taking note of suffering and humiliation caused to the petitioner by granting a sum of Rs. 5,00,000/- (Rupees five lakhs) towards compensation to petitioner to be paid by the 'State of Chhattisgarh'.

10.6 Any other relief, which this Hon'ble Court deems, fit in the facts and circumstances may also be granted in favor of the petitioner.”

3. The grievance of the petitioner, in detail, is that the petitioner is a permanent resident of Bhilai, District Durg, and is presently pursuing graduation in law. In order to support his family and to earn his livelihood, the petitioner is managing and running a hotel situated at Kohka, Bhilai, District Durg, which is a duly registered and licensed establishment. The hotel has been established and operated strictly in accordance with law after obtaining all necessary statutory permissions, licenses, and renewals from the

competent authorities under the Chhattisgarh Shops and Establishment Act, 1958, the Trade and Factory Bye-Laws, 1992, and other applicable municipal laws. The petitioner asserts that the hotel is his sole source of income and forms part of his fundamental right to livelihood.

The grievance of the petitioner further is that despite the hotel being lawfully operated, local police officials have been repeatedly interfering with the functioning of the hotel without any lawful authority. Such interference earlier compelled the petitioner to approach this Court by filing Writ Petition (C) No. 5208 of 2023. This Court, vide order dated 21.12.2023, granted interim protection in favour of the petitioner and categorically directed the respondents not to cause any hindrance in running the petitioner's hotel. The petitioner submits that the said order continues to remain in force and is binding upon the respondent authorities.

It is the specific grievance of the petitioner that in complete disregard of the aforesaid order of this Court, on 08.09.2025, respondent police officials arrived at the petitioner's hotel under the pretext of conducting an inquiry regarding certain guests. It is alleged that the police officials checked the hotel register and identity documents and thereafter entered a room occupied by a male and a female guest without associating any lady police constable and without adhering to the procedure prescribed under law. The guests were thereafter brought out of

the room and the hotel manager was allegedly abused and intimidated without any lawful justification.

The grievance of the petitioner further is that after some time, the respondent police officials returned to the hotel and falsely alleged theft of gold ornaments by the hotel staff. Despite the hotel staff informing the police officials about the presence of CCTV cameras in the hotel premises, the police officials allegedly refused to verify the footage and instead conducted an arbitrary search of the room. Thereafter, the police officials allegedly assaulted the hotel manager, forcibly detained him, and threatened the petitioner to appear at the hotel.

It is further alleged that when the petitioner reached the hotel and attempted to explain the factual position as the owner of the establishment, the respondent police officials subjected him to severe verbal abuse, humiliation, and intimidation, including the use of derogatory and caste-based remarks directed not only at the petitioner but also at his family members. The petitioner submits that the police officials continued such conduct in public view, despite repeated requests to desist, thereby causing grave mental agony, humiliation, and damage to reputation.

The grievance of the petitioner further is that he was forcibly taken to Smriti Nagar Police Station, where he was again subjected to physical assault and custodial violence by the

respondent police officials, including the Station House Officer. The petitioner submits that he was beaten mercilessly in a closed room to such an extent that he lost consciousness and regained it only after water was sprinkled upon him. The petitioner asserts that at no point was he informed of the grounds of his arrest or the nature of the alleged offence, in gross violation of the safeguards guaranteed under Articles 21 and 22 of the Constitution of India.

It is further the grievance of the petitioner that on the same date, i.e., 08.09.2025, the respondent police officials illegally arrested him under Section 170 of the BNSS, 2023, and initiated preventive proceedings under Sections 126 and 135 thereof in a mechanical, arbitrary, and mala fide manner. The petitioner was thereafter produced before the learned Sub-Divisional Magistrate, Durg, who, according to the petitioner, acted solely on the police papers without due application of mind and remanded the petitioner to judicial custody, thereby perpetuating the illegality committed by the police authorities.

The petitioner submits that he was detained in Central Jail, Durg, and was subjected to medical examination thereafter. He was released on bail on 09.09.2025 only after his family furnished the requisite bail bond. The petitioner asserts that his arrest, detention, and remand were wholly unjustified, disproportionate, and motivated, resulting in illegal deprivation of his personal liberty, loss of dignity, mental trauma, and damage to

reputation.

It is also the grievance of the petitioner that the incident dated 08.09.2025 is not an isolated one but part of a continuing pattern of harassment by the respondent police officials, who have been frequently visiting the petitioner's hotel and demanding illegal gratification for permitting the hotel to operate smoothly. The petitioner submits that despite multiple representations made to the Collector, Inspector General of Police, and Senior Superintendent of Police, Durg, seeking action against the erring officials and protection from further harassment, no effective action has been taken, and the threats and intimidation have continued.

The petitioner, therefore, contends that the actions of the respondent police officials and the consequential proceedings initiated against him are arbitrary, illegal, without authority of law, and violative of Articles 14 and 21 of the Constitution of India. The petitioner submits that he has been subjected to illegal arrest, custodial violence, and wrongful detention, and that the continued inaction of the authorities has compelled him to invoke the extraordinary jurisdiction of this Court for redressal of his grievances

4. Learned counsel for the petitioner submits that the petitioner is the owner of a duly licensed hotel situated at Kohka, Bhilai, District Durg, and is a law-abiding and respectable citizen of the society. It

is contended that even if the entire prosecution story as reflected in the Istgasha dated 08.09.2025 is taken at its face value and accepted in its entirety, no offence whatsoever is made out against the petitioner. There is neither any FIR registered at Police Station Smriti Nagar alleging theft of gold ornaments of one Srishti Silhare nor any complaint or report suggesting that the petitioner was running the hotel illegally or without valid licences. It is further submitted that the petitioner has been arrested merely on suspicion under Section 170 of the BNSS, 2023, without there being any substantive offence disclosed against him. The arrest of the petitioner was not in connection with commission of any cognizable offence but was allegedly on account of an altercation with police officials, and therefore the petitioner could not have been detained beyond 24 hours nor could he have been remanded to judicial custody by invoking Section 187(2) of BNSS. It is argued that in absence of any offence, there could not have been any investigation, and consequently, the learned Magistrate lacked jurisdiction to exercise powers under Section 187(2) of BNSS to remand the petitioner to judicial custody.

5. Learned counsel further submits that Section 35 of BNSS, 2023 (corresponding to Section 41 of the CrPC) is purely preventive in nature and does not contain any penal consequences, and therefore its misuse results in gross violation of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, which includes the right to live with dignity

and freedom from unnecessary, humiliating, and illegal arrest. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 173***, wherein strict compliance of Section 41 CrPC (now Section 35 BNSS) has been mandated and mechanical arrests have been deprecated. It is further contended that Section 187 of BNSS (earlier Section 167 CrPC) does not empower a Magistrate to remand an arrested person to custody as a matter of routine, particularly when the arrest is based merely on suspicion. The Magistrate is required to independently apply his mind and satisfy himself regarding the existence of an offence and the necessity of custody, which has not been done in the present case. Learned counsel also places reliance on ***Joginder Kumar vs. State of U.P., (1994) 4 SCC 260***, and ***Kasireddy Upender Reddy vs. State of Andhra Pradesh, SLP (Crl.) No. 5691/2025***, to submit that informing the grounds of arrest is a mandatory constitutional requirement under Articles 21 and 22(1), which was admittedly not complied with in the present case. Lastly, it is argued that the mandatory proviso under Section 35(3) of BNSS, requiring issuance of a notice of appearance prior to arrest, was completely ignored, thereby rendering the arrest of the petitioner illegal, arbitrary, and unsustainable in the eyes of law.

6. Learned counsel for the petitioner further placed reliance upon the recent judgment of the Hon'ble Supreme Court in ***Mihir Rajesh Shah vs. State of Maharashtra and Another, reported in 2025 SCC OnLine SC 2356***, to contend that compliance with the

constitutional and statutory mandate of informing the grounds of arrest is mandatory and not a mere formality. Relevant paras of which are quoted herein below:

“54. In view of the above, we hold with regard to the second issue that non supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50 of the CrPC 1973 (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the magistrate for remand proceedings.

55. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the explanation for non- supply thereof within the above stipulated schedule. On receipt of such an application, the magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

56. In conclusion, it is held that:

- i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under Penal Code, 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.”
7. Learned counsel for the petitioner submits that the Hon’ble Supreme Court has conclusively reiterated that the constitutional mandate of informing the arrestee of the grounds of arrest is mandatory in respect of all offences and under all statutes, including offences under the BNS, 2023. The grounds of arrest are required to be communicated in writing and in a language understood by the arrestee, and even in cases where immediate written communication is not possible, the same must be supplied within the stipulated timeframe before remand. Learned counsel submits that in the present case, the petitioner was arrested without warrant, the grounds of arrest were neither communicated in writing nor supplied within the mandatory timeframe prescribed by law, and yet the petitioner was mechanically remanded to judicial custody. In view of the authoritative pronouncement of the

Hon'ble Supreme Court, it is contended that the arrest of the petitioner and the subsequent remand order are rendered illegal, arbitrary, and unsustainable in the eyes of law.

8. On the other hand, learned Advocate General submits that in compliance with the order dated 17.10.2025 passed by this Court, the Senior Superintendent of Police, Durg, District- Durg has filed his personal affidavit. It is stated therein that the petitioner is the owner of Hotel Evening Star, situated at Avanti Bai Chowk, Bhilai. On receipt of information regarding Missing Person No. 128/2025 registered at Police Station Supela, Police Outpost Smriti Nagar, Bhilai, in respect of one Srishti Silhare, a police team comprising the In-charge of Police Outpost Smriti Nagar along with other police personnel proceeded to the said hotel to inquire about the missing girl. During inquiry, the missing person was found in the hotel room along with one Praveen Sahu, and while the police team was bringing them to the police station, the missing person disclosed that her bag containing jewellery and cash had been left inside the hotel room.

It is further submitted that when the police personnel requested the petitioner to open the locked room, the petitioner allegedly started arguing with the police team and the driver of the requisitioned vehicle, snatched the vehicle keys, and assaulted the driver. It is stated that despite counselling, the petitioner allegedly continued to behave aggressively, creating a situation where there

was likelihood of breach of peace and occurrence of an unpleasant incident. In view thereof, it is contended that the police had no option but to take preventive action and, accordingly, the petitioner was arrested under Section 170 of the BNSS, 2023. Preventive proceedings under Sections 126 and 135 of BNSS were initiated, and an Istgasha was presented before the learned Sub-Divisional Magistrate, Chhawani, Bhilai, District Durg.

9. Learned Advocate General further submits that after arrest, the petitioner's father was duly informed of the arrest through his mobile number. It is also stated that since the petitioner was unable to furnish a bail bond with competent surety on the date of arrest, he was sent to Central Jail pursuant to a jail warrant. On the following day, i.e., 09.09.2025, the petitioner's mother produced documents of immovable property before the learned Sub-Divisional Magistrate, on the basis of which bail was granted and the petitioner was released from jail, as reflected from Annexure P/6 of the petition.
10. To which, learned counsel for the petitioner, in rejoinder, submits that by way of the present writ petition, the petitioner is seeking quashment of the criminal proceedings initiated pursuant to the impugned order dated 08.09.2025 passed by the learned Sub-Divisional Magistrate, whereby a case under Sections 170, 136 and 135(3) of the BNSS, 2023 (corresponding to Sections 151, 136 and 135 of the CrPC) has been registered against the

petitioner. The petitioner has also challenged the manner in which the respondent police officials initiated the proceedings by preparing a false and fabricated Istgasha, on the basis of which the petitioner was sent to judicial custody. The petitioner further assails the conduct of the private respondents/police officers in humiliating, abusing, torturing, and physically assaulting the petitioner, which action, according to him, is wholly illegal, arbitrary, and violative of his fundamental rights.

Learned counsel for the petitioner submits that the writ petition has been filed, inter alia, on the following grounds: firstly, that there is no FIR registered at Police Station Smriti Nagar against the petitioner for any cognizable offence; secondly, that the petitioner was not arrested for commission of any offence but merely on suspicion of alleged altercation with police personnel; thirdly, that the power under Section 35 of BNSS is purely preventive in nature and cannot be converted into a punitive or penal action; fourthly, that the learned Magistrate failed to discharge his statutory duty under Section 187 of BNSS (earlier Section 167 CrPC) by mechanically remanding the petitioner to judicial custody without verifying the legality of the arrest and the existence of any offence; fifthly, that the petitioner was arrested without warrant and without being informed of the grounds of arrest either at the time of arrest or soon thereafter, in clear violation of Articles 21 and 22(1) of the Constitution of India; and sixthly, that the mandatory requirement of issuance of notice under Section

35(3) of BNSS prior to arrest was completely ignored.

It is further submitted that the reply filed by respondent Nos. 1 to 5, 7 and 8/State and the Senior Superintendent of Police, Durg, is vague, formal, and evasive in nature. The said reply does not specifically rebut the material averments raised by the petitioner and merely contains bald and baseless allegations without any supporting material. In particular, the allegations made in paragraph 3 of the reply to the effect that the petitioner locked the hotel, snatched the keys of the police vehicle, and assaulted the driver are categorically denied. The petitioner asserts that he was not present at the hotel during the first visit of the police team for enquiry regarding the missing girl and had arrived only later, during the second visit, when allegations of theft of gold ornaments were raised against the hotel staff. The allegations made in the reply are stated to be an afterthought, concocted only to justify the illegal arrest of the petitioner.

Learned counsel further submits that although the respondents have stated that the petitioner's father was informed about the arrest, such intimation does not satisfy the mandatory constitutional requirement of informing the arrestee himself of the grounds of arrest. It is reiterated that the petitioner was arrested without warrant and was never informed of the grounds of his arrest, either orally or in writing, despite repeated requests, thereby violating Articles 21 and 22(1) of the Constitution. With regard to

the allegation that the petitioner was unable to furnish bail bond with competent surety, it is submitted that no document has been placed on record by the respondents to substantiate such claim. On the contrary, the petitioner asserts that he was ready and willing to furnish bail bond with his parents as sureties, but was not permitted to do so for reasons best known to the authorities, resulting in his illegal detention in Central Jail, Durg.

It is lastly submitted that the petitioner was neither supplied with the written grounds of arrest nor informed thereof within the mandatory timeframe, in clear violation of the law laid down by the Hon'ble Supreme Court. It is pointed out that in the arrest memo (Annexure P/5 colly), the petitioner has specifically recorded in his own handwriting the endorsement "I don't know the matter?", which clearly demonstrates that he was kept completely uninformed about the grounds of his arrest. This, according to learned counsel, reflects the arbitrariness and apathy on the part of the respondent police officials. It is submitted that informing the grounds of arrest is not a mere procedural formality but a mandatory constitutional safeguard, the non-compliance of which renders the arrest and subsequent remand illegal.

11. To which, learned Advocate General lastly submits that the action taken by the police authorities was strictly in accordance with law and within the four corners of the BNSS, 2023. It is contended that the petitioner was not arrested arbitrarily but was taken into

custody only after his conduct created a situation likely to cause breach of peace and public order, leaving the police with no option but to invoke preventive provisions. Learned Advocate General submits that due procedure was followed, the petitioner's family was duly informed about the arrest, and the petitioner was produced before the learned Sub-Divisional Magistrate within the stipulated time, who, after due consideration, passed the remand order. It is further submitted that no mala fide intention can be attributed to the police officials and that the allegations of custodial violence and illegal detention are exaggerated and denied. Learned Advocate General, therefore, prays that the writ petition being devoid of merit deserves to be dismissed.

12. We have heard learned counsel for the parties and perused the documents appended with writ petition.
13. After considering the pleadings, the material available on record, the affidavits filed by the respondent-State, and the rival submissions advanced by the learned counsel for the parties, this Court finds that certain foundational facts are not in dispute. It is undisputed that no FIR has been registered against the petitioner in respect of any cognizable offence. It is also undisputed that the petitioner was taken into custody on 08.09.2025 by the police officials of Police Outpost Smriti Nagar, Bhilai, purportedly by invoking the provisions of Section 170 of the BNSS, 2023, and that on the basis of an Ishtagasha prepared by the police, the petitioner

was produced before the learned Sub Divisional Magistrate and was remanded to judicial custody. The record further reveals that the petitioner was sent to Central Jail despite the absence of any registered offence and without any material demonstrating the necessity of his custodial detention.

14. From a careful scrutiny of the Ishtagasha dated 08.09.2025 and the affidavit of the Senior Superintendent of Police, Durg, it is evident that the petitioner was not arrested for the commission of any substantive offence, but merely on an alleged suspicion of creating disturbance and engaging in altercation with police personnel. Even if the version of the respondent-State is taken at its face value, the allegations against the petitioner, at the highest, disclose a situation of momentary altercation, which could have been dealt with by less intrusive measures available under law. The drastic step of arrest and subsequent judicial remand, in the absence of any registered offence, is wholly disproportionate and cannot be sustained in the eyes of law.
15. Section 35 of the BNSS, 2023 (corresponding to Section 41 of the CrPC) confers power of arrest as a preventive measure and not as a punitive one. The provision is circumscribed by strict safeguards and is not intended to authorize routine or mechanical arrests. Further, Section 35(3) of the BNSS, 2023 mandatorily requires the police officer to issue a notice of appearance in cases where arrest is not necessary. In the present case, there is no material on

record to demonstrate that the mandatory requirement of issuance of notice under Section 35(3) was complied with. The failure to follow this statutory mandate vitiates the arrest itself and renders the entire action of the police illegal.

16. This Court also finds substance in the grievance of the petitioner that he was arrested without warrant and that the grounds of arrest were not informed to him either at the time of arrest or immediately thereafter. The arrest memo placed on record, wherein the petitioner has specifically written “I don’t know the matter”, lends credence to the petitioner’s contention that he was kept completely in the dark about the grounds of his arrest. Merely informing a family member about the arrest does not amount to compliance with the constitutional and statutory requirement of informing the arrestee himself of the grounds of arrest, as mandated under Articles 21 and 22(1) of the Constitution of India and Section 47 of the BNSS, 2023.
17. The recent judgment of the Hon’ble Supreme Court in ***Mihir Rajesh Shah Vs. State of Maharashtra and Another (2025 SCC OnLine SC 2356)*** has categorically held that while the grounds of arrest may initially be communicated orally, they must necessarily be supplied in writing within a reasonable time and, in any case, at least two hours prior to the production of the arrestee before the Magistrate. The Hon’ble Supreme Court has further held that non-compliance with this requirement would render the arrest and

subsequent remand illegal, entitling the arrestee to be set at liberty.

In the present case, there is not even a whisper in the State's affidavit to show that the grounds of arrest were ever supplied to the petitioner in writing, either before or after his production before the learned Magistrate.

18. Equally concerning is the manner in which the learned Sub Divisional Magistrate exercised jurisdiction under Section 187(2) of the BNSS, 2023. The power of remand is not to be exercised as a matter of routine. The Magistrate is duty bound to satisfy himself that an offence appears to have been committed, that investigation has commenced, and that custodial detention is necessary. In the present case, where no FIR was registered and no offence was disclosed, the remand of the petitioner to judicial custody reflects a mechanical exercise of power, in complete disregard of the constitutional mandate and the law laid down by the Hon'ble Supreme Court in ***Arnesh Kumar vs. State of Bihar, reported in (2014) 8 SCC 273*** and ***Joginder Kumar vs. State of U.P., reported in (1994) 4 SCC 262***. The Magistrate was required to act as a judicial sentinel, which duty, unfortunately, was not discharged.
19. In ***D.K. Basu v. State of West Bengal*** reported in 1997 (1) SCC 416 the Hon'ble Supreme Court has exhaustively considered this question and held that monetary compensation should be awarded for established infringement of fundamental rights under

Article 21 of the Constitution of India i.e. right to life and held thus;-

"Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society."

20. Hon'ble Supreme Court in violation of Article 21 of the Constitution of India has awarded appropriate compensation to the persons compelled to face humiliation for wrongful detention. The word 'harassment' has been dealt by the Hon'ble Supreme Court in the case of "**Mehmood Nayyar Azam Vs State of Chhattisgarh, reported in 2012(8) SCC 1** in para 22 as under:

"22. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term "harassment". In P. Ramanatha Aiyar's Law Lexicon, Second Edition, the term "harass" has been defined, thus: -

"Harass. "injure" and "injury" are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word "harass" excluding the latter from being comprehended within the word "injure" or "injury". The synonyms of

"harass" are: To weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit." The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment."

21. The Hon'ble Supreme Court while emphasizing on dignity in the same judgment held in para 36 of above mentioned judgment, as under:

"36. From the aforesaid discussion, there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history." The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. That is why, an investigator to a crime is

required to possess the qualities of patience and perseverance as has been stated in *Nandini Sathpaty v. P. L. Dani*[14]."

22. The above quoted judgements make it clear that for the violation of fundamental rights of a citizen by the State or its servants, in the purported exercise of their powers, the affected citizen can resort to the remedy in public law by taking recourse to Article 226 of the Constitution of India. It further makes it clear that the compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal law. Thus, it is settled law that compensation can be awarded for violation of fundamental rights in public law domain.
23. Above being the position of fact and law, we have no hesitation in holding that the petitioner, along with his parents has suffered severe mental, emotional, and financial hardship due to illegal detention. The humiliation and harassment occurring in custody, irrespective of its precise medical cause, is sufficient to engage the State's constitutional obligation under Article 21 to compensate the victim and for the violation of their right to a dignified life.

24. The cumulative effect of the aforesaid facts unmistakably establishes that the petitioner was subjected to an illegal arrest, unlawful detention and unwarranted incarceration, resulting in serious infringement of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Liberty with dignity is the essence of Article 21, and any arrest or detention in violation of statutory safeguards amounts to constitutional wrongdoing by the State.
25. It is now well settled that for violation of fundamental rights by the State or its instrumentalities, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can grant monetary compensation as a public law remedy. Such compensation is not in the nature of damages under private law but is intended to provide redress for the breach of public duty and to act as a deterrent against arbitrary and illegal exercise of power by State authorities.
26. Now the question that arises for consideration is with regard to the quantum of compensation to be awarded. The Courts have, time and again, deprecated such conduct on the part of police as noticed hereinabove, and it has been consistently held that where the State, through its officers, is found responsible for violation of the fundamental right of a person in its custody, the award of compensation must serve not only as restitution but also as a deterrent against recurrence of such inhuman acts. The object of awarding compensation in such cases is twofold i.e. first, to

provide some solace to the victim for the humility suffered, and second, to remind the State that it bears a constitutional and moral responsibility to ensure that no individual in its custody is subjected to torture, cruelty, or indignity.

27. In the present case, the petitioner, a law-abiding citizen and hotel owner, has been subjected to humiliation, loss of liberty and social stigma on account of the illegal acts of the police officials and the consequential unlawful remand. Having regard to the totality of the facts and circumstances, this Court is of the considered opinion that the petitioner deserves to be compensated for the violation of his fundamental rights.
28. Accordingly, this Court directs the respondent-State to pay a compensation of Rs.1,00,000/- (Rupees One Lakh only) to the petitioner within a period of four weeks from the date of this order, failing which the said amount shall carry interest at the rate of 9% per annum from the date of this judgment till its realization. The Secretary, Department of Home, Government of Chhattisgarh (respondent No.1) shall ensure strict compliance of this direction and effect payment within the time stipulated so that some measure of justice is extended to the victim and an institutional message is sent that such police atrocities shall not go unaccounted for. The amount shall be paid by the State in the first instance, without prejudice to its right to recover the same from the erring officials, in accordance with law, after due inquiry.

29. In view of the above discussion, the order dated 08.09.2025 along with the impugned proceedings of criminal case No. 1379/2025 and the istagasha dated 08.09.2025, are hereby quashed.
30. The writ petition is **allowed** in the aforesaid terms.
31. The Registry as well as the learned State counsel are directed to send a copy of this order to all the respondents, forthwith for information and necessary compliance.
32. Before parting, this Court deems it appropriate to reiterate that illegal acts of the police officials, the consequential unlawful remand and police atrocities erode the very foundation of public trust in the criminal justice system. Every such incident diminishes the credibility of the law-enforcement machinery and shakes the faith of citizens in constitutional governance. The State must, therefore, take earnest steps to sensitize police personnel regarding human rights, ensure strict adherence to the Mihir Rajesh Shash (supra) and D.K. Basu (supra) guidelines, and enforce accountability measures to prevent recurrence of such barbaric practices within the police force.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Headnote

“Preventive arrest under the BNSS must conform to statutory safeguards and constitutional requirements. Arrest without registration of a cognizable offence, without informing the arrestee of the grounds of arrest, and mechanical remand without application of mind violate Articles 21 and 22(1) of the Constitution of India. Such illegal detention justifies quashment of proceedings and award of compensation as a public law remedy.”