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Reserved On : 03/12/2025
Pronounced On : 16/01/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO. 15962 of 2025

With
R/SPECIAL CRIMINAL APPLICATION NO. 15963 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA

and
HONOURABLE MR.JUSTICE D. M. VYAS

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Approved for Reporting	Yes	No

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VINODBHAI TILAKDHARI TIWARI
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR BHARGAV BHATT, ADVOCATE, A/W. MR. DEVARSH PANDYA, ADVOCATE, MR. MANAN S DOSHI(9795), MR KISHAN R CHAKWAWALA(9846) for the Applicant(s) No. 1
MR. HARDIK DAVE, PUBLIC PROSECUTOR A/W. MR. CHINTAN DAVE, ADDL. PUBLIC PROSECUTOR, MS. MONALI BHATT, ADDL. PUBLIC PROSECUTOR and MR. PRANAV DHAGAT, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**
and
HONOURABLE MR.JUSTICE D. M. VYAS

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

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1. The father of Vipul Tiwari and Pratik Tiwari has presented this petition seeking for issuance of a writ of habeas corpus contending that his sons have been under illegal detention and are therefore required to be set at liberty forthwith.

I. FACTS OF THE CASE

2. Vipul Tiwari was arraigned as accused No.1 and Pratik Tiwari was arraigned as accused No. 2 in a crime which was registered on 23.09.2024 against them for offences under sections 189, 189(2), 115(2), 296(B), 103(2), 76 and 61(2) of the BNS and

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Section 135(1) of the G.P. Act. There was also another accused (A-3) namely Brijeshkumar S/o Ravindrakumar Shrikrishna Tiwari.

3. On 26.09.2024 Vipul Tiwari was arrested, and he filed an application seeking for bail on 07.10.2025 before the Sessions Court. However, by an order dated 06.11.2025 this bail application was rejected and as against the rejection of the bail application, Vipul Tiwari has filed Cr.M.A No. 24597 of 2025 before this Court and the same is stated to be pending consideration.

4. Pratik Tiwari, the second accused, was filed an application seeking for anticipatory bail on 04.10.2024, but the Sessions Court rejected the same on 18.10.2024. He, thereafter, approached this Court in Cr.M.A No. 21543 of 2024, but this application was also withdrawn by the applicant, on 28.10.2024. He was thereafter arrested on 09.12.2024.

5. Pratik Tiwari, thereafter, filed a bail application before the Sessions Court on 13.01.2025. However, the Sessions Court rejected this regular bail application on 07.02.2025 and he thereafter approached this Court in Cr.M.A No. 3581 of 2025

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but this Court also rejected this regular bail application on 26.03.2025.

6. As against the rejection of his bail applications by this Court, Pratik Tiwari approached the Hon'ble Supreme Court in SLP Criminal No. 7637 of 2025, but the Hon'ble Apex Court rejected this application. Thus, the request of Pratik Tiwari to be enlarged on bail was rejected by the District Court and was thereafter affirmed by this Court and by the Hon'ble Apex Court.

7. Pratik Tiwari filed a second bail application before the Sessions Court on 17.09.2025, but the same was also rejected on 01.10.2025. He thereafter approached this Court in Cr.M.A No. 21425/2025 seeking for a bail for the second time and this was also rejected by this Court on 13.11.2025.

8. Thus, it is clear from the above set of facts that both Vipul Tiwari and Pratik Tiwari were arrested in connection with committing a crime and their request for being enlarged on bail has been refused and they are therefore in the custody of the law.

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9. During the pendency of the above-mentioned proceedings relating to grant of bail, the police on completion of their investigation have laid a charge-sheet on 17.12.2024.

10. As the offences alleged against the accused were exclusively triable by the Sessions Court, the Magistrate, on 01.01.2025, committed the case to the Sessions Court. The Sessions Court, thereafter, registered the case as Sessions case No. 126/2025 on 13.01.2025.

11. The Sessions Case, thereafter, framed a Charge against the accused on 18.06.2025 and the framing of charges was challenged by Vipul Tiwari before this Court in Cr.M.A. 12883/2025. This Court, by an order dated 07.07.2025 set aside the said order framing charges and directed charges to be framed after hearing the matter afresh.

12. This order framing charge was challenged before this Court in Cr.M.A No. 17958/2025 but the said application was withdrawn with liberty to file a fresh application. Pursuant to the liberty granted by this Court, Vipul Tiwari filed another application in Cr.M.A No. 18503/2025 but the same was withdrawn. The Sessions Court, thereafter, on 29.07.2025 framed charges against the accused.

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13. It may be pertinent to state here that applications were made for compliance of Section 230 of the BNSS i.e., for supply of documents in the month of March, 2025 and the same was allowed in the month of June, 2025. However, in the month of July, 2025, applications were also made by Vipul Tiwari For transfer of the case under Section 448 of the BNSS, but the same was rejected on 23.07.2025. As against the said order a Special Criminal Application No. 11138 of 2025 was also filed before this Court for transfer of the presiding officer in Sessions Case No. 126 /2025 and the same pending for its adjudication.

14. It is also forthcoming from the pleadings that on 28.07.2025, the accused made an application seeking recusal of the presiding officer, but the same was rejected on 29.07.2025. On 30.07.2025, an application is also being preferred before the unit judge alleging grievances and apprehensions against the presiding officer. It is, therefore, clear that the accused did seek for transfer of their case and on their failure to obtain orders, they also sought for transfer of the presiding officer.

15. On 12.01.2025, the Sessions Court commenced the Trial and PW-1 (the original first informant) was examined in chief and the Sessions Court thereafter proceeded to adjourn the matter to 01.12.2025 i.e., beyond the period of 15 days.

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16. The father of petitioners, Vipul Tiwari and Pratik Tiwari, has at this stage presented these petitions seeking for issuance of a writ of habeas corpus on the ground that they have been illegally detained on the premise that the Sessions Court could not have remanded them to custody beyond 15 days and are hence entitled to be released from the illegal detention.

II. SUBMISSION ON BEHALF OF THE PETITIONERS:

17. Shri Bhargav Bhatt learned Counsel appearing for the petitioners basically contended that the order remanding the petitioners to custody beyond a period of 15 days was a flagrant violation of the First Proviso to Section 346 of the Bharatiya Nagarik Suraksha Sanhita (for short 'BNSS'), 2023 and therefore, they had a right to invoke the habeas corpus jurisdiction of this Court and they are required to be set at liberty forthwith.

18. Learned Counsel elaborated on his submissions to the effect that whenever the custody of any person is illegal or contrary to a statutory provision, the same would be an illegal confinement entitling the detenue to seek for liberty by filing a petition under Article 226 of the Constitution of India. He contended that the order of remand which gave the custody a color of legality need not be challenged since it was a non est

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order and this Court could direct such illegal detention to cease and the detenues be set at liberty. He relied upon a series of judgments to emphasize his proposition of law. The same are narrated in a tabular column for the sake of convenience.

Citation	Proposition of Law relied upon
(1953) 1 SCC 389: Ram Narayan Singh v. State of Delhi and Ors. :	To contend that if an order of remand was not passed, the detention of a person could be illegal and a writ of habeas corpus could be issued.
(2022) 13 SCC 542: Gautam Navlakha v. National Investigation Agency :	To contend that if a remand was absolutely illegal or that the remand was afflicted with the vice of lack of jurisdiction, an habeas corpus petition would be maintainable and so also, if an order of remand is passed in an absolutely mechanical manner.
(2024) 3 SCC 51: V. Senthil Balaji v. State represented by Deputy Director and Ors.:	To contend that a writ of habeas corpus petition is maintainable when there is non-compliance of the mandatory provisions along with a total non-application of mind while passing an order of remand and a habeas corpus petition would not be maintained only if the reasoning for remanding the person was being challenged.
1971 SCC Online Pat 155: (Patna High	To contend that the Magistrate could not remand an accused person to custody for a

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Court): Babu Nandan Mallah v. The State:	term exceeding 15 days at a time.
1974 SCC Online Ker 26: (Kerala High Court): K. P. Vasu and Ors. v. The State	To elaborate on submissions that a bail order is not a final order and the mere rejection of a bail application would not be of any consequence since bail can be granted at any time or be rescinded or modified.
(1974) 02 CAL CK 0019: Champalal v. State of West Bengal:	To contend that an order of bail is neither prospective nor retrospective, neither anticipated nor suspended and takes effect immediately from the time it is granted.
Writ Petition No. 54/2025: Hanumant Jagganath Nazirkar v. The State of Maharashtra (High Court of Judicature at Bombay Criminal Appellate Jurisdiction) :	To contend that if the arrest was illegal, a habeas corpus petition could be maintained even if the bail application had already been rejected and an order remand had been passed.
(2001) 4 SCC 667: State of U.P. v. Shambhu Nath Singh & Ors.:	To contend that a trial could not be adjourned when all the witnesses are present and to emphasize the fact that a trial should be conducted on a day-to-day basis and any order of remand made after the trial was commenced should not

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	exceed 15 days.
Criminal Misc. Case No. 797/1982: (High Court of Allahabad) Janki v. Stae of U.P.:	To contend that Section 309(2) could apply to cases even when enquiry or trial was pending.
2011 (0) AIJEL-SC 50737: State of Punjab v. Devinder Pal Singh Bhullar:	To contend that if the initial action was not in consonance with law, all subsequent and consequential proceedings would also fall through and consequently since the initial order of remand in the present case was illegal, all subsequent orders of remand would also be illegal.
1989 (0) AIJEL – HC 212791: (High Court of Gujarat) Suresh Ramtirth Yadav v. State of Gujarat:	To contend that under the Code of Criminal Procedure, 1973, Section 309(2) was applicable only to a Magistrate and not to a Session Judge but by the use of the term Court in BNSS, 2023, it is made applicable to all courts including the Sessions Court and consequently even the Sessions Court is bound by the mandate of first provision of Section 346(2).
Writ Petition (CRL.) No.491/2022: Bilkis Yakub Rasool v. Union of India & Ors.:	To contend that fraud would unravel everything and the action of the prosecution in securing an order of remand after the filing of this writ petition amounted to fraud.

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19. The sum and substance of the argument of Shri Bhatt is that when the order remanding a person to custody is illegal and contrary to an express provision, this Court is obliged to undo the wrong and set the person who has been illegally confined to liberty. He specifically contended that though the order of a Court could lawfully detain a person, the moment that the said order violated a statutory bar, in so far as it related to a timeline for custody, the same would become an illegal detention, entitling the detainee to be released.

III. SUBMISSIONS ON BEHALF OF THE STATE:

20. Learned PP, on the other hand, submitted that a writ of habeas corpus cannot be entertained when the accused had been remanded to custody under judicial orders. He submitted that so long as the custody of an accused was pursuant to a judicial order, it can never be argued that the custody was illegal.

21. Learned PP also submitted that though the petitioners had been remanded to custody by an order dated 12.11.2025 to 01.12.2025, which was no doubt beyond 15 days, but, on 01.12.2025 the custody of the accused was extended by a further period of 15 days and thus, their custody as on the date

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of return of the notice of this petition, was lawful and the petition could not therefore be maintainable. He submitted that the detention as on the date of the return of the notice was relevant and not as on the date of presentation of the writ petition.

22. Learned PP also contended that once it was admitted that the remand of the petitioners was under a judicial order, a writ of habeas corpus was not maintainable.

23. He also relied upon the following citations to emphasize his contentions and proposition of law.

Citation	Proposition of Law relied upon
(2001) 4 SCC 667: State of U.P. v. Shambhu Nath Singh & Ors: (Also relied upon by the learned Counsel for the Petitioners)	To contend that a trial by Sessions Court would have to be conducted on a day-to-day basis and cannot be adjourned for the mere asking.
(2014) 13 SCC 436: Saurabh Kumar through his Father v. Jailor, Koneila Jail and Anr.: (2018) 9 SCC 745: State of	To contend that if there is an order of remand, a writ of habeas corpus cannot be maintained and the order of remand cannot be subjected to a scrutiny in a petition under article 226 of the Constitution of India.

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Maharashtra & Ors. v. Tasneem Rizwan Siddiquee: (2019) 5 SCC 266: Serious Fraud Investigation Office v. Rahul Modi & Anr.:	
1989 (0) AIJEL – HC 212791: Suresh Ramtirth Yadav v. State of Gujarat (High Court of Gujarat) (Also relied by the learned Counsel for the Petitioners)	To contend that merely because no reasons are given for remand, the continued imprisonment of the accused was illegal.
1983 SCC Online All 895: Surjeet Singh v. State of U.P.:	To contend that the custody referred to Section 309(2) would be considered both legal as well as illegal custody.
1971 SCC Online Pat 155: Babu Nandan Mallah v. The State: (Patna High Court):	To contend that to determination the lawful custody would be dependent on the custody as existed on the date of return of the rule nisi and not the date on which the order to remand was passed.

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24. In reply, Learned Counsel Shri Bhatt contended that if the original order detaining the accused was non est, a subsequent extension cannot cure this fatal defect and the custody would always remain unlawful. In other words, he submitted that if the original order of detention dated 12.11.2025 was non est, all subsequent orders would stand automatically nullified since the subsequent orders are on the basis of the non est order dated 12.11.2025.

IV. QUESTIONS THAT ARISE FOR CONSIDERATION:

25. Whether a petition seeking for issuance of a writ of habeas corpus would be maintainable if the custody of the detenue was pursuant to a judicial order of remand?

26. Whether the custody of an accused during trial be rendered invalid or illegal because it was contrary to the timeline set in the Proviso to Section 346(2)?

V. REGARDING THE MAINTAINABILITY OF WRIT PETITIONS SEEKING FOR ISSUANCE OF A WRIT OF HABEAS CORPUS:

27. Article 22 of Part III of the Constitution of India reads as under:

22. Protection against arrest and detention in certain cases-

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(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(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.

3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order

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has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under [[sub-clause (a) of clause (4)].

28. As could be seen from the above, Article - 22 guarantees a protection to every person against an arrest and against detention unless the procedure stipulated therein is followed.

29. The Article does not bar the detention of any person but categorically states that on a person being arrested, he is required to be immediately informed of the grounds for which he is arrested, and he shall also not be denied the right to consult and be defended by a legal practitioner of his choice. Thus, immediately on the arrest of a person, the police are required to be informed of the reason for which he is being arrested and he

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shall also have the right to consult a legal practitioner, which will have to be acceded to by the Police. Thus, there is a constitutional requirement for the Police to follow two procedural safeguards meant to protect a person at the time of his arrest.

30. Article 22 (2) also provides for a safeguard regarding the extent of detention after the event of arrest. It declares that every person who is arrested and detained in custody should be produced before the nearest Magistrate within a period of 24 hours of such arrest. It also states that no such person can be detained beyond a period of 24 hours without the authority of a Magistrate. It also clarifies that the time taken for journey from the place of arrest to the Magistrate would have to be excluded.

31. Thus, firstly there is a fundamental right guaranteed to every person, that he is to be informed of the grounds of arrest the moment that he is arrested and that he should not be denied the right to consult a legal practitioner of his choice.

32. Secondly, and more importantly, the fundamental right makes it clear that the detention of a person arrested by the police can only be for a period of 24 hours and the person arresting him would have to necessarily produce the arrested

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person before a Magistrate and only if the Magistrate authorizes the extension of the detention, the detention be valid. In other words, the Police can detain the person arrested beyond 24 hours only if he has been produced before the Magistrate and the Magistrate has authorised his further detention i.e., beyond the period of 24 hours from the time of the arrest.

33. Article - 22 (3), however, provides an exception to the protection granted under Article - 22 (1) and (2) and makes it clear that the protection would not be available to an enemy alien or to a person who is detained under any preventive detention law. To put it in another way, every person in the country is guaranteed protection as aforesaid under Article - 22 in the event of his arrest except an enemy alien or a person who had been detained under any preventive detention law.

34. Article 22 would fundamentally indicate that the right of a person to be free is one of the most important freedoms contemplated under Part – III. This article stipulates that even if a person were to be detained, stringent safeguards are to be followed not only at the time he was detained but immediately thereafter during his period of detention, which is also explicitly stipulated. This armor of protection being a constitutional safeguard, it would obviously override and prevail over every

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other statute, except, of course, as provided under the subsequent sub clauses of Article 22, which relate to preventive detention.

35. As any infringement of the safeguards provided under Article - 22 would clearly be a violation of a fundamental right, the aggrieved person would have the constitutional remedy to approach the Supreme Court under Art 32 and the High Court under Article - 226. Thus, the right of a person who has been arrested or detained in contravention of Article - 22 can definitely maintain a writ petition either under Art 32 or Article - 226 of the Constitution.

36. In fact, this proposition of law has been explicitly stated by the Apex Court in a recent decision, after noticing and considering a long line of decisions in respect of illegal detention even under judicial orders, in the following terms:

> ***80.*** *Thus, we would hold as follows: If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie.*

37. In fact the same proposition is also reiterated and it is also clarified as to when a writ for issuance of a habeas corpus would not lie in the case of V. Senthil Balaji v. State represented

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by Deputy Director & Ors. reported in (2024) 3 SCC 51 where it is held as follows:

> *28. A writ of Habeas Corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of Habeas Corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of Habeas Corpus and that too by way of a challenge.*
>
> *29. In a case where the mandate of Section 167 of the CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of Habeas Corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India, 1950. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of Habeas Corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while noncompliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the Court as mandated under subsection (3), since it becomes a judicial custody thereafter and the concerned Court would be in a better position to consider due compliance.*

38. The Learned PP however sought to rely upon the judgment rendered in the case of Saurabh Kumar through his Father v. Jailor, Koneila Jail and Anr. reported in (2014) 13 SCC 436 and in the case of State of Maharashtra & Ors. v. Tasneem

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Rizwan Siddiquee, reported in (2018) 9 SCC 745 to contend that once an order of remand had been passed and the custody of the person was relatable to the order of remand, a writ seeking for habeas corpus would not lie. It is to be stated here that the Apex Court has basically stated that an order of remand cannot be questioned by filing a writ of habeas corpus and it has not laid down the proposition that a writ petition seeking for habeas corpus would not be maintainable. As already observed if it is to be urged that the detention is in violation of a constitutional safeguard or of a specific statutory mandate, a writ of habeas corpus would be maintainable since it would basically be a complaint about the infringement of a constitutional safeguard or a statutory mandate.

39. In the light of the above discussion, it is manifestly clear that a writ petition seeking to invoke the habeas corpus jurisdiction to question the detention made pursuant to a judicial order will be maintainable and the arguments of the Learned PP cannot be sustained. The 1st question is accordingly answered.

A. AN OVERVIEW OF THE BNSS ACT IN THE CONTEXT OF ARREST & CUSTODY IN LAW [BOTH DURING INVESTIGATION AND TRIAL]

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(i) AT THE TIME OF ARREST

40. BNSS 2023 is a statute enacted for the purposes of defining the procedure which is to be adopted by the investigating authority for investigation of any offence and the procedure to be adopted by the criminal courts over the investigating authorities both during the course of investigation and also while trying a person who is accused of the commission of offences.

41. BNSS consists of 39 chapters and is divided into 531 sections.

42. The provisions of the BNSS Act, abide by the constitutional safeguards provided to a person while being arrested. Chapter - V of the Act is an indication of this aspect. Section 35 of the Act empowers a police officer to arrest a person without a warrant if the 10 situations mentioned therein are found to exist.

43. Section 35(2) also makes it clear that if a person is accused of committing a non-cognizable offence, the police officer cannot arrest the person without a warrant.

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44. Section 35(3) also makes it clear that if the situations contemplated under 35(1)(a) to (j) do not exist, he would have to only issue a notice directing upon that person to appear.

45. Section 35(7) also makes it clear that an arrest is permissible if the offence is punishable with less than 3 years only if the police officer has secured the permission of the Deputy Superintendent. These provisions would thus indicate stringent statutory safeguards are provided under the BNSS to ensure a person arrested on the suspicion of committing an offence is treated fairly, while at the same time, enabling the police to investigate a crime.

46. Section 36 describes the procedure for arresting a person and narrates the details, the duties that the officer are required to comply with, while making the arrest. Firstly, the Police officer is required to be identifiable to the arrested person. Secondly, a memorandum of arrest would have to be prepared, which is required to be attested by at least one witness who is a member of the family of the arrested person or a respected member of the locality. This memorandum should state that an arrest is being made, and this memorandum should also be required to be countersigned by the arrested person.

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47. Section 36(c) casts an obligation on the police officer to inform the arrested person that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest (if the memorandum of arrest has not been attested by a member of his family).

48. These provisions would indicate that a police officer who is arresting a person who is suspected of committing an offence complies with certain requirements, which are essentially adherence to the constitutional safeguard provided under Article 22 of being informed about the grounds of arrest and in furtherance of his right to engage a counsel of his choice.

49. It must be stated here that the Magistrate under Section 41 is also conferred with the power to arrest and commit the offender to custody if the offence has been committed in his presence.

50. The actual way an arrest is to be effected is also enumerated in Section 43 of the BNSS and it permits a police officer to get in physical contact with the person and also permits him to use all such necessary force if the person resists arrest.

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(ii) AFTER THE ARREST

51. Section 47 of the Act mandates that every police officer arresting any person without warrant should forthwith communicate to him the full particulars of the offence for which he is being arrested and the other grounds for such arrest. If the police officer is arresting a person for an offence, which is bailable, he is also obliged to inform the arrested person that he is entitled to be released on bail and that he may arrange for sureties in his behalf.

52. Section 48 (1) of the Act goes one step beyond the Constitutional safeguard provided under Article 22 (about the arrested person being informed of the arrest and its grounds) and stipulates that the police officer making the arrest is forthwith required to give information regarding the arrest to any of the relatives or friends or such other persons whom the arrested person discloses or nominates for the purpose of giving information. The designated police officer of the district is also required to be informed of the arrest and the place where the arrested person is being held. Thus, the statutory provision creates an additional obligation on the police over and beyond the Constitutional safeguard of just the arrested person being

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informed about the grounds of arrest and his right to be defended by a legal practitioner.

53. S. 48 (2) obligates the police officer to inform the arrested person of his rights conferred under S. 48 (1) i.e., the factum of the arrest and the place where the arrested person is held, to the relatives or friends of the arrested person.

54. Section 48(3) mandates that an entry of the factum of arrest having been informed to the friends or relatives of the arrested person is to be made in a separate book prescribed by the government.

55. S. 57 of the BNSS mandates that the police officer making an arrest without warrant should without unnecessary delay ensure that the arrested person is produced before a Magistrate having jurisdiction in the case or before the officer in charge of the police station.

56. S. 58 of the BNSS declares that a person arrested shall not be detained for more than 24 hours unless there is a special order of the Magistrate.

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57. It is thus clear that exhaustive provisions are provided in Ch V which are designed to prevent the abuse of the power of arrest and the detention of an arrested person by the Police. The logic behind these provisions is clear and that is to provide a person, who has been arrested, to seek for release on bail and in the event of the offence being non-bailable to enable him to secure legal help through his friends and relatives to seek for his release. The legislature was conscious of the fact that an arrested person can effectively be kept in custody by denying him the right to have access to legal aid for securing bail and hence elaborate measures are also provided to ensure that the friends or relatives of the arrested person are informed of the arrest.

58. It is rather plain and obvious that this entire set of provisions in Ch V are meant to ensure compliance of the safeguards provided under Article 22 of the Constitution and to ensure that the person arrested and detained is afforded every opportunity to secure his release in the manner known to law. The explanation of the above provisions relating to the arrest of a person and his detention immediately thereafter has become necessary, for this case, to emphasize the degree of seriousness that is ascribed by the law when it comes to the liberty of a person being curtailed.

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59. The concept of arresting a person is basically to investigate the offence that he has committed by subjecting him to interrogation and to ensure that he does not get a chance to tamper with the evidence or to intimidate the witnesses who may have witnessed his crime or to flee from the jurisdiction of the court. Ultimately, it is to ensure that there is a smooth investigation conducted by the Police without there being any impediment.

60. Since the detention of a person infringes on his constitutional right to be at liberty, the statute has provided an elaborate mechanism to ensure that this detention is monitored at every stage and every attempt is made to ensure that the detention of a person is always within well-defined parameters.

(iii) CONCEPT OF CUSTODY OF LAW

61. As already explained above, Article - 22 grants a certain degree of protection when a person is arrested and is being detained. The moment the safeguards provided under Article - 22 and the provisions of Ch V of the BNSS are adhered to, the person arrested is legally deprived of his right to be free and his liberty stands curtailed. This arrest and detention of a person, thereby depriving him of the right to be free is what is known as

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the "custody of law". It simply means that the normal right of a person to be free is lost when he has been arrested and he has been taken into the custody of the police or by investigating authorities.

a. 'CUSTODY OF LAW' DURING INVESTIGATION

62. Ch XIII of the BNSS contains the provisions relating to the information to the Police and their powers to investigate. As a first step, the Police officer, under S. 173, is required to reduce the information in writing, if given to him orally and is required to read it over to the informant and obtain his signature. If the information is given by electronic communication, it is required to be taken on record and he is also required to get the signature of the person giving it. The Police officer, thereafter, in both cases referred to above, is required to enter the substance of the information in a book which is required to be kept by him in the form prescribed. The copy of the information so recorded is required to be given to the informant forthwith and free of cost. This procedure is commonly referred to registration of a FIR. A separate procedure is prescribed for offences against women.

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63. In respect of cognizable offences which are made punishable for three years and not exceeding seven years, on receipt of information, instead of registering a FIR, the Police Officer with the approval of Deputy Superintendent of Police is permitted to conduct a preliminary enquiry within 14 days to ascertain whether there exists a prima facie for proceeding further and if there exists a prima facie case, he can proceed with the investigation.

64. If the officer in charge of a police station refuses to record the information given to him, the informant is given the right to send substance of the information by post to the Superintendent of Police and he can thereafter either himself investigate the case or direct his subordinate to investigate the case. If the SP fails to act on the information provided to him by post, the informant under S. 173 (4) is permitted to move an application to the Magistrate.

65. S. 174 deals with the information that is provided to the Police of non-cognizable cases and their power to investigate the same. This provision stipulates that the Police officer is required to record the information in a book prescribed by the Government for such non-cognizable cases and he is required to refer the informant to the Magistrate. S. 174 (2) bars a Police

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officer to investigate a non-cognizable case unless there is a specific order by the Magistrate permitting investigation.

66. S. 175 deals with the power of the Police Officer to investigate a cognizable case without securing the permission of the Magistrate. S. 175 (3) empowers a Magistrate to order investigation in cases where an application is made by the informant after the SP has failed to order an investigation after the information was sent to him by post.

67. S. 176 deals with the procedure for investigation by a Police officer and it mandates that the Officer in charge of a police station, on receipt of information about the commission of a cognizable offence, to send a report to the nearest Magistrate and thereafter proceed either in person or send his subordinates to the spot to investigate the facts and circumstances of the case. The police officer is also empowered to take steps for the discovery and the arrest of the offender.

68. S. 187 of the BNSS stipulates the procedure to be followed when investigation cannot be completed within 24 hours. The said provisions reads as follows:

> *Section 187. Procedure when investigation cannot be completed in twenty-four hours.*

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(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

(4) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is

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produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means.

(5) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under sub-section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the audio-video electronic means, as the case may be:

Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution:

Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

(6) Notwithstanding anything contained in sub-section (1) to sub-section (5), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Magistrate have been conferred, a copy of the entry in the diary hereinafter specified relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was

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detained in custody under the orders made by an Executive Magistrate under this subsection, shall be taken into account in computing the period specified in sub-section (3):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(8) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(9) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(10) Where any order stopping further investigation into an offence has been made under sub-section (9), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (9) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

69. It specifically states that in cases where a person has been arrested and detained in custody and the investigation cannot be completed within 24 hours the police officer is of the view that the accusation or information is well founded, he should transmit to the Magistrate a copy of the entries in the

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specified diary and shall also at the same time forward the accused to the Magistrate.

70. Thus, from the time of the arrest, the Police officer has a right to detain the accused and have him in his custody for a maximum period of 24 hours. This arrest and the power to detain for a maximum period of 24 hours is the commencement of the custody of law of a person who is accused of committing an offence.

71. S. 187 (2) of the BNSS empowers a Magistrate before whom the arrested person is produced for the first time to authorize the detention of the accused (arrested person) in *such custody* as he deems fit. This detention cannot however be authorised for more than 15 days at a time and the maximum initial period of detention that can be authorised can only be 40 days or 60 days out of the maximum detention period of 60 days (for offences other than those punishable by death or life imprisonment) or 90 days (for offences punishable by death or life imprisonment).

72. Thus, the Magistrate before whom an arrested person is produced within 24 hours of his arrest is empowered to authorize the detention of the arrested person for a maximum

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period of 90 days (for offences punishable by death and life imprisonment) or 60 days (for other offences). However, the detention can only be for a period of 15 days at a time in the first 40 or 60 days of the initial detention. This detention, being under the authority of the orders of the Magistrate would be the retention of the custody of the person and would thus be custody of law.

73. It must be noticed here that S. 187 (2) empowers the Magistrate to authorize the detention of the arrested person *to the custody of the person to whom the Magistrate thinks fit*. It must also to be noticed here that the Magistrate also has the option of releasing the arrested person on bail or denying him bail and remanding him to custody. If a person is denied bail, he simply continues to be in the custody of law.

74. At this stage a brief overview of the kinds of custody of an arrested person who is in the custody of law would be necessary.

75. The custody of law over an arrested person can be broadly classified into two categories, i.e., Police custody and Judicial custody. If the custody of the arrested person is made over to the police/investigating authorities under the authority of the

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orders made by the Magistrate. This custody, in normal parlance, is termed as Police custody.

76. If, however, the Magistrate feels that there is no justification for the Police to have the custody of the arrested person for investigative purposes and the release of the arrested person would have a detrimental effect to the investigation or to the victim, the Magistrate would authorize the continuation of the detention of the arrested person in prison i.e., he would remand the arrested person to the Prison authorities and this is termed in normal parlance as 'judicial custody'.

77. It must also be kept in mind that when a person accused of committing an offence is enlarged on bail, he is, in fact, still under the custody of the court but the court has merely released him subject to him executing a bail bond and usually subject to the furnishing of sureties who basically undertake to the Magistrate that they would ensure that the person enlarged on bail attends the Court as and when required and if he defaults, they would be subjected to certain consequences. In other words, even if an accused is enlarged on bail, his freedom is not absolute and is curtailed and contained by conditions.

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78. It should be noted here that the custody of the arrested person, whether he is in Police custody or Judicial custody, would always be a custody of law. Thus, a person is in the 'custody of law' the moment he is arrested, and this 'custody of law' continues when the Magistrate authorizes the extension of his detention, either with the Police or in the Prison or even when he is released on bail.

79. To summarize, the *custody of the law* over a person accused of committing an offence, commences from the moment he is arrested and continues under the authority of the orders of the Magistrate. The custody of the law over such a person, during investigation, is however subject to specific and rigid timelines set by the provisions of S. 187 and is further subject to his production before the Magistrate who would authorize the detention of the person by either the investigating officer or the jail authorities. If the investigation is not concluded within the specified time-period of 60 days or 90 days, the arrested person is entitled for being released on bail statutorily. In a sense, the custody of law over a person accused of committing an offence during the investigation phase is circumscribed by conditions and an outer limit of 60 days or 90 days.

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b. CUSTODY OF LAW AFTER THE INVESTIGATION IS COMPLETE

80. The entire process of arrest and detaining the person arrested during the stage when the offence is still being investigated would however have a completely different complexion the moment the investigation is complete, and a final report i.e., a charge-sheet is laid against the person accused of the offence.

81. It is in this context that the definition of 'bail' becomes relevant and the same is reproduced as under:

> *(b) "bail" means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond.*

82. As could be seen from the definition of bail it essentially means it is the release of a person accused of or suspected of committing an offence *"from the custody of law"*. This definition would therefore presuppose that the moment a person is arrested he is under the custody of law. If a person is under the custody of law, it will always be lawful custody and can never be termed as unlawful custody. It is no doubt true that the lawful custody is subject to the provisions of the act relating to the

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custody aspect itself i.e., ensuring that the person arrested and who is in the custody of law is not detained beyond the periods specified during the course of investigation. This is only being stated to emphasize the fact that the moment a person is arrested, he is always in the custody of law.

83. Section 193 of the BNSS stipulates that a police officer on completion of the investigation must file a report commonly referred to as the "charge-sheet". On the final report under Section 197 being filed before the Magistrate, the Magistrate is empowered to take cognizance of the offence on the basis of the arrest report under section 210(1)(b). If the Magistrate finds that the offence alleged against the person is triable by only the Sessions Court, he is required to commit the same to the Sessions Court under Section 232 of the BNSS which reads as under:

> *232. Commitment of case to Court of Session when offence is triable exclusively by it.—When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall —*
>
> > *(a) commit, after complying with the provisions of section 230 or section 231 the case to the Court of Session, and subject to the provisions of this Sanhita relating to bail, remand the accused to custody until such commitment has been made;*

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(b) subject to the provisions of this Sanhita relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session:

Provided that the proceedings under this section shall be completed within a period of ninety days from the date of taking cognizance, and such period may be extended by the Magistrate for a period not exceeding one hundred and eighty days for the reasons to be recorded in writing:

Provided further that any application filed before the Magistrate by the accused or the victim or any person authorised by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case.

84. As could be seen from above, the Magistrate on noticing that the offences are triable exclusively by the Sessions Court, is required to commit the case to the Sessions Court, subject to the provisions of the BNSS relating to grant of bail. The Magistrate is also empowered to remand the accused to custody until such commitment is made. He is also further empowered to remand the accused to custody during and until the conclusion of the trial. He is thereafter required to send to the Court the record of the case and the documents and articles

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and notify the public prosecutor of the commitment of the case to the Court of Session.

85. It is to be noticed here that the Magistrate is empowered to remand the accused to custody till either commitment of the case is made to the Sessions Court or during and till the conclusion of the trial by the Court of Session. If the Magistrate takes a decision to remand the accused to custody till the conclusion of the trial, it is obvious that the accused is in the custody of the law till the conclusion of the trial.

86. Since the investigation is complete and the Police have come to the conclusion that the accused is guilty of commission of an offence, the question of the Police seeking for the custody of the accused will not arise and the Magistrate can ensure that the custody remains with the Prison authorities without any timeline, as compared to the timelines stipulated during the process of the investigation. It is for this reason S. 232 uses the expression *during and until the conclusion of trial*. This would therefore mean that once the investigation is complete, the Magistrate would have the authority to continue the detention till the conclusion of the trial. Thus, the custody of a person who is ordered to be remanded to custody till the conclusion of

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the trial would be the *custody of* law and this custody would necessarily be without reference to any timeline.

VI. CONCEPT OF BAIL & EFFECT OF REFUSAL TO GRANT BAIL

87. Bail, as already observed above, is the release of a person who has been arrested with an accusation of committing an offence, from the custody of law upon certain conditions imposed by the Court and on his execution of a bond.

88. If a person against whom an accusation is made of commission of an offence and the competent Court takes cognizance of this allegation and refuses to release him on bail as provided under the provisions of the Act, such a person obviously continues to be in the custody of law. The refusal of a Court to release a person on bail simply means that that the said person continues to be in *"the custody of law"*.

89. To put it differently, from the date of the arrest till the accused is ordered to be released either on bail or on other grounds such as discharge or acquittal, his custody shall always be a custody of law and it can never be said that the

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custody of that person is either unlawful or it amounts to illegal confinement.

VII. FRAMING A CHARGE AND TRIAL OF CASES BY THE SESSIONS COURT

90. The provisions of Chapter – XIX stipulate that the trial is to be conducted by the public prosecutor and the prosecution is required to open its case by describing the charge brought against the accused, when the accused appears or is brought before the Court pursuant to a commitment of the case to the Sessions Court. The prosecution is required to state what evidence it proposes to adduce to prove the guilt of the accused (Section 249).

91. The accused is thereafter entitled to make an application seeking for discharge within 60 days from the date of commitment under S. 250 and if such an application is made, the Sessions Court on consideration of the record and the documents and after hearing both the accused and the prosecution, can come to the conclusion that there are no sufficient grounds for proceeding against the accused and it can discharge the accused and record the reasons for so doing.

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92. If, on the other hand, on consideration of the record and the documents the Sessions Court is of the view that there is ground for presuming that the accused has committed an offence, he is required to frame a charge under Section 251 and record the plea of the accused.

93. If the accused pleads not guilty and claims to be tried, under Section 253, the Sessions Court is required to fix a date for the examination of witnesses, and it is also empowered to pass orders on the request of the prosecution for compelling the attendance of any witness or the production of any document or thing.

94. Thereafter, under Section 254, on the date fixed, the Sessions Court is required to take all such evidence as may be produced in support of the prosecution. The said provision also confers discretion on the Sessions Court to permit the cross examination of any witness to be deferred until other witnesses have been examined.

95. It may be pertinent to state here that Section 254 which is found in the chapter relating to trial by a Court of Session, there is no prescription of any time limit as such and it only states that on the date fixed for examination of witnesses, the

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witnesses are to be examined. There is no express stipulation barring the adjournment or adjourning the matter beyond a particular time.

96. Section 255 thereafter provides for the Sessions Court to record an order of acquittal if he finds that the evidence adduced by the prosecution and after examination of the accused and hearing the Counsel there is no evidence that the accused has committed the offence.

97. If, however, the Sessions Court does not record an acquittal under Section 255, it is required to call upon the accused to enter his defense and adduce any evidence that he wishes to adduce under Section 255 and if the accused produces any evidence, the prosecutor is required to sum-up his case and the counsel for the accused is required to give his reply.

98. The Sessions Court after hearing the arguments of the counsel for the prosecutor and the counsel for the accused is required to render a judgement as to whether the accused is guilty or not. As could be seen from Section 258, the Sessions Court is required to render a judgement within 30 days from the

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date of completion of the arguments or within a maximum period of 45 days for valid reasons.

99. It is therefore clear from the reading of the provisions in Chapter - XIX, there is no specific provision which dis-entitles the Sessions Court from adjourning the matter or for restricting the adjournment to a specified period once the trial has commenced.

VIII. AN OVERVIEW OF Ch XXVI OF THE BNSS RELATING TO GENERAL PROVISIONS RELATING TO TRIALS & INQUIRIES

100. Chapter - XXVI of the BNSS relates to the general provisions of as to inquiries and trials. The very nomenclature of heading of this chapter would indicate that these are general provisions regarding the inquiries and trials that will be conducted under the BNSS, and they are not exactly referable only to a trial by a Sessions Court. It is settled law that specific and express provisions relating to a particular aspect of a matter will prevail over the provisions which are meant for a general purpose. To put it differently, the provisions in chapter - XXVI are provisions which are to be generally followed, unless

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there are express provisions made for an inquiry or a trial under the other provisions of the BNSS.

101. It is in this context that Section 346, upon which the entire case of the petitioner is premised, will have to be considered.

102. Section 346 reads as follows:

346. Power to postpone or adjourn proceedings.—

(1) In every inquiry or trial, the proceedings shall be continued from day-to-day basis until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), the inquiry or trial shall be completed within a period of two months from the date of filing of the chargesheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Court shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

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Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him:

Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) where the circumstances are beyond the control of a party, not more than two adjournments may be granted by the Court after hearing the objections of the other party and for the reasons to be recorded in writing;

(c) the fact that the advocate of a party is engaged in another Court shall not be a ground for adjournment;

(d) where a witness is present in Court but a party or his advocate is not present, or the party or his advocate, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.— If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.— The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

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103. As could be seen from Section 346, it deals with the power conferred on the Court to postpone or adjourn the proceedings. Sub-section (1) states that in every inquiry or trial, the proceedings shall be continued on a day-to-day basis until all the witnesses in attendance have been examined. It states that the Court may adjourn the proceedings beyond the following day, if it found it to be necessary, but it will have to record its reasons. Thus, sub-section (1) basically stipulates that every attempt shall be made to conduct an inquiry or a trial on a day-to-day basis and the same should not be adjourned beyond the following day and even if there is such an adjournment, specific reasons are to be recorded.

104. The Proviso to Section 346(1) creates an outer limit of 2 months for conducting a trial in respect of offences under Section 64 to 68 and Section 70 to 71 of the BNSS Thus, it is only in the cases contemplated by the Proviso, the trial would have to be completed within a period of 2 months.

105. Section 346(2) states that after the Court has taken cognizance of the offence, if it finds it necessary to postpone the trial, it may from time to time, for reasons to be recorded, postpone, or adjourn the trial for such time as it considers reasonable. It stipulates that on such a postponement or

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adjournment being made, the Court may by warrant, remand the accused, if in custody.

106. It is to be noticed here that the term '***remand the accused, if in custody***' would mean that if the accused is already in custody, by issuance of a warrant, i.e., a written direction, the accused can be remanded. It may be pertinent to state here that there is no time limit prescribed for the custodial period in Section 346(2) when it comes to the remand of the accused who is already in custody.

107. However, the entire argument in this case is based on the first proviso which states that the Court shall not remand the accused to custody under this section for a term exceeding 15 days at a time.

108. It is to be noticed here that the proviso contemplates remanding "***an accused person to custody***" as compared to the expression in S. 346 (2) which is **"*remand the accused if in custody*"**. This Proviso which stipulates a maximum remand period of 15 days would basically come into operation only if the Court, while adjourning or postponing the trial, is remanding the accused who is not in custody and for the first time is ordered to be taken into custody while adjourning or postponing

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the trial. It is only in such a situation that the remand can only be for a period of 15 days. However, if a person is already in custody, no such time limit can be ascribed when remanding him to custody.

109. The difference in the terminology in Section 346(2) and the first proviso of section 346(2) gives a clue as to why the terminology used in the provision are different thereby making the difference in terminology relevant. Section 346(2) contemplates a postponement or an adjournment of a trial, for which reasons have to be recorded. The reason why the proviso provides for a Court to remand an accused person to custody is fundamentally because it is quite possible that the trial is being adjourned or postponed due to some act attributable to the accused. In other words, there could be an attempt to protract the trial by the accused who is facing the trial and in such a situation the legislature has thought it fit to empower the Session Court to remand the accused to custody.

110. It may be possible that the accused may have been on bail until then and yet he could be making attempts to protract the trial by ensuring that the witnesses do not turn up, etc. It is for this reason that power has been conferred upon the Session Court to remand the accused to custody with the obvious

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intention of facilitating an expeditious conduct of the trial and to remove any impediments that is being caused for the conduct of the trial.

111. It may be pertinent to state here that the Courts may not have the power to cancel the bail as provided in Section 478 of BNSS because there has been no violation of the conditions imposed while granting bail. Section 346(2) basically clears that ambiguity and makes it clear that while postponing or adjourning the trial the Session Court does have the power to remand an accused to custody who is causing impediments for the conduct of the trial.

112. If he has been taken to custody due to the postponement of the trial, obviously, his detention cannot be for a lengthy period thereby delaying the trial and frustrate the intent of the legislature in ensuring a speedy trial. It is specifically for this reason that the remand period is fixed as 15 days when the accused is being taken into custody while postponing or adjourning the trial.

113. If, however, the accused has already been in custody by virtue of the rejection of his request for bail, he is already under detention and there would be no such impediment for

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continuing the said detention. It must be kept in mind that by rejecting the request for bail, the Court had already come to the conclusion that incarceration of the accused was in the interest of justice. It is for this reason no time limit is prescribed while remanding a person, who is already in custody, while adjourning or postponing the trial.

114. If a person is already in custody after the investigation is complete, as already observed above, his custody is not limited by any timeline, and it would be till the conclusion of the trial. It is for this reason. S. 346 (2) simply states that the person in custody is to be remanded in custody and no time limit for the remand is stated.

115. It is to be stated here that under the provisions of the BNSS, it is only when a person is arrested or is being detained for the first time when the investigation is incomplete and underway, the period of detention is explicitly stated as 24 hours and not more than 15 days at a time and on the whole for 60 or 90 days. Even in such cases, the production of the accused to continue the detention is necessary and there is a definite outer limit for the detention during the investigation phase.

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116. It is this period of 15 days, which is contemplated during the investigation stage, that is incorporated in the first proviso to S. 346 (2) when the trial is being postponed or adjourned. This period of 15 days can apply only when the Court decides to remand an accused *to* custody while adjourning the matter. If the accused is already *in* custody, all that the Court is required to do is to remand him once again in custody by issuance of a warrant and there is no question of setting a timeline for the remand.

117. It is in this context that the definition and concept of bail would become highly relevant. As already stated above, the moment a person is arrested, he is in the custody of law. The moment the accused is produced before a Magistrate and the Magistrate orders him to be remanded to custody, he continues to be in the custody of law.

118. It is no doubt true that it is within the discretion of the Magistrate or the Sessions Court to release a person accused of an offence on bail. If, however, the Magistrate or the Sessions Court refuses to release the person on bail, such a person would always be in the custody of law. If a person is in the custody of law, the question of that person being illegal confinement or his custody being unlawful would not arise.

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119. It is to be pertinent to state here that when the request of the accused for bail has been rejected by the Sessions Court and by the High Court, the consequence would be that the accused will have to be within the custody of law until orders are passed subsequently either on bail or on discharge or on acquittal. In other words, when bail is refused and until the accused is released on bail subsequently or is discharged or is acquitted, he would always be in the custody of law and there is no time limit for this custody after the request for bail has been rejected. Such a person whose bail request has been rejected continues to be in lawful custody till the conclusion of the trial.

120. It is therefore clear that the argument of the learned Counsel for the Petitioner that the remand of the accused to custody beyond 15 days amounts to illegal detention cannot be accepted. If the petitioners were to be remanded to custody for the first time while the trial was being adjourned, the outer limit of 15 days would come into operation. If on the other hand, the accused were already in custody and the request for bail had been rejected, they will have to be in custody till the conclusion of the trial or till subsequent orders regarding their bail are passed. It is, therefore, clear that the entire argument of the petitioner that the custody of the petitioners became illegal after 15 days from 17.11.2025 cannot be accepted.

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IX. ENTITLEMENT TO BE RELEASED ON BAIL AFTER THE COMMENCEMENT OF TRIAL

121. It may be pertinent to state here that there are only two provisions which entitles an accused person of a right to be released on bail after the trial has commenced and the same are found only under S. 479 and S. 480(6). S. 479 of BNSS which reads as follows:

> ***Section 479. Maximum period for which under-trial prisoner can be detained.***
>
> *(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:*
>
> *Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:*
>
> *Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:*
>
> *Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*
>
> *Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.*

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> *(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.*
>
> *(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.*

122. Section 479 enables an accused who is under detention to be released on bail, if his detention has been for more than one half of the maximum period of imprisonment specified for that offense under that law, provided the offences are not punishable by death or life imprisonment. If he has been detained for more than 50% of the term of punishment that he would get ultimately on being convicted, he gets a right to be released on bail. This time limit is further reduced in case the person accused is a first time offender by reducing the period of detention to 1/3 of the maximum period. The only requirement of the Court is that it should hear the public prosecutor before it releases the person who has been in detention for more than half the period for which he could likely be sentenced.

123. Section 479(2), however, makes an exception saying that the benefit of bail will not be entitled to such a person, if he is facing an enquiry or trial in respect of multiple cases. It may be

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pertinent to state here that the Superintendent of the Jail, where the accused person is detained is imposed with an obligation of making an application in writing to the Court if the detenue under him has already spent more than half or 1/3 of the term of imprisonment that he could face. Thus, the entitlement to seek bail after the trial has commenced would be available, if the accused has been detained for more than 50% of the term or 1/3 of the term for which he is likely to be imprisoned even if he is convicted.

124. The second provision which entitles a person to be released on bail after the trial has commenced can be found under section 480(6),which reads as follows:

> *"(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs."*

125. As could be seen from the above, it is only if a case is triable by a Magistrate and the trial of a person who is accused of a non-bailable offence has not been concluded within 60 days, would an accused become entitled to be released on bail. In other words, only in respect of cases triable by a Magistrate,

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if the trial is not concluded within 60 days of its commencement, the accused can demand to be released on bail under Section 480 if he has remained in custody till that stage.

126. It may be pertinent to state here that there is no such provision when it comes to the release of a person for non-conclusion of trial by the Sessions Court for cases triable by it. If the provisions of the BNSS Act explicitly provide a right only in respect of cases triable by a Magistrate when there is a delay in the conclusion of a trial, by necessary implication, an accused who is being tried by Sessions Court will have no right to seek for bail because of any delay in the conclusion of the trial.

127. To put it differently, if the trial of a person accused of an offence which is triable by a Sessions Court is not concluded within any specified time frame, such a person cannot seek for bail. In other words, in respect of the trial of persons accused of committing offences triable by a Sessions court, the length of the trial would have no bearing at all. Even if the trial is not concluded for a reasonably long period of time, the accused cannot seek for the grant of bail in the same manner as an accused who is facing a trial of offences which are triable only by the Magistrate. This clear distinction made by the statute in

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respect of offences triable by the Sessions and by the Magistrate would only indicate that no accused can have a right to demand that he be released on bail because there is a delay in the conduct of his trial. If read in this context, the Proviso under Section 346(2) would lose all its relevance and no accused, who is accused of committing an offence which is exclusive trial by Sessions Court, can demand that he be remanded only to a period below 15 days.

128. We may hasten to add that this does not mean that the Sessions Court has the discretion to conduct the trial a leisurely pace. The general provision relating to inquiries and trials which mandate trial to be conducted on a day-to-day basis will have to be adhered to and reasons will have to be assigned, if the matter is being adjourned beyond the following day. This rigor would always remain, but at the same time, the non-adherence to this requirement of conducting a trial on a day-to-day basis would not transform into a right for the accused to contend that his detention or remand to custody is illegal and that he should be released on bail forthwith.

129. It should be clarified here that if there is a delay in the commencement or conclusion of the trial for reasons which are not attributable to the accused, the accused would have the

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right to seek for bail on the ground that his incarceration is unnecessarily being prolonged due to the delay in the conduct of the trial for no fault on his part. In such an event, the Court would have to consider this request and take a decision on merits of the said claim. This would not however mean that the accused has acquired an indefeasible right to secure bail. The accused would always be in the custody of law and it cannot not be urged that he is in illegal detention.

130. The judgments referred to above and upon which reliance was placed by Sri. Bhatt do not consider this aspect of the matter i.e., the difference in the term *remanded if in custody* used in S. 346 (2) and the term *remanded to custody* in the first proviso to S. 346 (2) and all the citations relate to other issues and they can be of no assistance to the arguments advanced by the learned counsel

131. We, therefore, find no ground to entertain these writ petitions. Accordingly, the present writ petitions are dismissed.

(N.S.SANJAY GOWDA,J)

(D. M. VYAS, J)

Mehul Desai