

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK
BLAPL No.8402 of 2025

(In the matter of application under Section 483 of the BNSS).

Vepanjeri Dileep Kumar ... ***Petitioner***

-versus-

State of Odisha ... ***Opposite Party***

For Petitioner : ***Mr. M.K.Chand, Advocate***

For Opposite Party : ***Mr. P.Satapathy, Addl. PP***

CORAM:

JUSTICE G. SATAPATHY

DATE OF JUDGMENT:11.05.2026

G. Satapathy, J.

1. This is the bail application U/S.483 of BNSS by the petitioner for grant of bail in connection with Raigarh PS Case No.93 of 2024 arising out of CT Case No.21 of 2024 for commission of offences punishable U/Ss. 370/370(3)/376-D/294/323/506 pending in the Court of learned Addl. Sessions Judge, Umakote.

2. The case arises out of an FIR lodged by Raibabu Bag by stating therein that on 14.03.2024, one Ghasiram Harijan of his village lured his brother, sister-in-law and nephew for earning Rs.35,000/- in four months by



working at Tirupati Bricks Factory. On 09.01.2024, around 14 persons of his village and another village namely Khalepara were being taken by said Ghasiram Harijan & his associates to engage them at Tirupati Bricks Kilns and accordingly, Ghasiram Harijan & his associates had handed over them to the in-charge of brick kilns and returned back to home, however, later on the informant came to know over mobile phone that the aforesaid persons were suffering a lot by working there in the brick kilns for more than eight hours without any proper wages and they have been tortured there.

On the aforesaid FIR, Raighar PS Case No. 93 of 2024 was registered and the matter was investigated into, and in the course of investigation, finding prima facie materials against the petitioner for his involvement in this case, he was taken into custody and produced before the Court, however, when the bail application of the petitioner was turned down, he is before this Court in this bail application.



3. Heard Mr. Manas Kumar Chand, learned counsel for the petitioner and Mr. P. Satapathy, learned Addl. PP in the matter and perused the record.

4. The primary ground on which bail is sought for to the petitioner is for infraction in compliance of the provision of Sec. 58 of BNS (57 CrPC)/Article 22(2) of the Constitution of India for not producing the petitioner before the Court within 24 hours of his arrest excluding the time necessary for the journey from the place of arrest to the Court. It is not disputed that the petitioner was arrested from a place beyond the territorial jurisdiction of the Court in which the criminal case is registered, but the plea as advanced for the petitioner relates to his claim not only for his statutory right, but also for his fundamental right which cannot be withheld in any circumstance. There cannot be any real limitation/restriction, albeit legally imposed prohibiting criminals in committing crime in one State and fleeing to other State, but with advancement of technology, this situation of committing crime in one State and fleeing to other State has become a common phenomenon for



offenders to avoid police arrest, however, the police force of the State where the crime was committed is also at liberty to pursue the criminals and apprehend them in different States where they have fled. In the aforesaid backdrop, when non-compliance of fundamental and mandatory right of the accused for his production before the Court within 24 hours of his arrest without warrant exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court has often been challenged as in this case, it would be appropriate to deal with the relevant provisions of law, more particularly in a case where the arrest of the accused without warrant has been made beyond the local jurisdiction of the Court in which the case of the accused has been registered. To start with this issue, it needs to be emphasized that Sec. 45 of the BNSS/48 of CrPC provides pursuit of offenders into other jurisdiction as "a police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, pursue such person into any place in India". Similarly, Sec. 79 of the BNSS/77 of CrPC provides power for execution of warrant at any place in India, but Sec. 78 of BNSS/76 of CrPC prescribes that



person arrested on warrant shall be brought before the Court issuing such warrant without unnecessary delay and it is accordingly stated therein that the police officer or other person executing a warrant of arrest shall (subject to the provisions of section 73 of BNSS/71 of CrPC as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person; Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court which is akin to the provision of Sec. 58 of BNSS/57 of CrPC.

5. Normally, the arrest of the offender with or without warrant at a place outside the local jurisdiction of the Court is done without any difficulties, but sometimes complaints are raised about non-cooperation by the local police at the place of arrest beyond the jurisdiction of the Court as alleged in this case that the local police did not cooperate during legal procedure as per law, however, Sec. 45 of BNSS/48 of CrPC and Sec.79 of BNSS/77 of CrPC makes it apparently clear that a person can be



arrested with or without warrant anywhere in India, provided there is reasonable/credible allegation disclosing of commission of cognizable offence or existence of warrant of arrest, but arrest on warrant directed to the police officer for execution outside its jurisdiction is provided in Sec. 81 of the BNSS/79 of CrPC which provides that when a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a Police Officer not below the rank of an officer in charge of a Police Station, within the local limits of whose jurisdiction the warrant is to be executed. Sec. 81(2) of BNSS/79(2) of CrPC provides that such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant. Ordinarily, non-compliance of Sec.81(1)(2) of BNSS/79(1)(2) of CrPC cannot be countenanced, but there may be situation which justify the non-compliance of the aforesaid



provisions such as non-cooperation of local police, however, in such situation Sec. 81(3) of BNSS/79(3) of CrPC comes to the aid since it is provided therein that whenever there is a reason to believe that the delay occasioned by obtaining endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it. The aforesaid provision of execution of warrant is never an empty formality, rather it is intended to lend assurance to the fairness in curtailing the liberty of a person according to procedure established by law.

6. Sec. 57 of BNSS/56 of CrPC lays down that a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions(BNSS/CrPC) herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station. Sec. 82(1) of BNSS/80 of CrPC provides



procedure on arrest of a person against whom warrant is issued and it is stated therein that when a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometers of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under Sec. 73 of BNSS/71 of CrPC be taken before such Magistrate or District Superintendent or Commissioner. Sec. 82(2) of BNSS which is an additional provision not provided in CrPC speaks that on arrest of any person referred to sub-section(1) of Sec. 82 of BNSS, the police officer shall forthwith give the information regarding such arrest and the place where the arrested person is being held to the designated police officer in the district and to such officer of another district where the arrested person normally resides. Sec. 83 of BNSS/81 of CrPC provides that the Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which



issued the warrant, direct his removal in custody to such Court; provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed U/S. 73 of BNS/71 of CrPC on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant; provided further that if the offence is non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of Sec.480 of BNS/437 of CrPC), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section(2) of Sec. 80 of BNS/78 of CrPC to release such person on bail.

7. Even though there is no express provision provided for arrest of a person outside the local jurisdiction without warrant to be taken to the local police



station or Magistrate for endorsement, however, Sec. 187(1) of BNSS/167 of CrPC makes it very clear that whenever any person is arrested and detained in custody, and it appears that investigation cannot be completed within the period of twenty four hours fixed by Sec. 58 of BNSS/57 of CrPC 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 Judicial Magistrate** a copy of the entries in the diary specified relating to the case, shall at the same time forward the accused to such Magistrate and subsection(2) to Sec.187 of BNSS/167 of CrPC makes it very clear that whether the Magistrate to whom an accused person is forwarded under this section may irrespective of whether has or has not jurisdiction to try the case, from time to time may authorize 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 part and **if such Magistrate has no jurisdiction to try the case or commit it for trial, and considers further**

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detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Similarly, sub-section(6) to Sec. 187 of BNSS/2-A of Sec. 167 of CrPC further clarifies that notwithstanding anything contained in Sub-section(1) to Sub-section (5) of BNSS/ Sub-section(1) or Sub-section(2) of CrPC, the Officer-in-Charge of the Police Officer or the Police Officer making the investigation, if he is not below the rank of Sub-Inspector, may, where a Judicial Magistrate is not available, transmit to the **nearest** Executive Magistrate on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of entry in the diary prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate for authorizing further detention of the accused and such Executive Magistrate may for reasons to be recorded in writing authorize the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate. What is significant is that all the laws derive power from our Constitution and all the provisions must be in conformity with the Constitution of



India. According to Sec. 22(2) of the Constitution of India makes it not only mandatory, but also obligatory that 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.**

8. A careful consideration of the provisions as discussed above makes it very clear that the person arrested beyond the local jurisdiction of the Court in the case concerning the accused may be produced without unnecessary delay 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 such Magistrate. The aforesaid provision never intends to suggest taking of the accused who was arrested for commission of non-cognizable offence back to the Court concerning his case situated at a long distance in another State by means of



quicker transport without following the provisions and possibility of taking/producing the accused to/before such nearest Court of Magistrate. It has been experienced that in many cases, the police officers carrying out arrest in another State bring back the arrestee and produce such arrestee before the Magistrate in their own jurisdictional Court which is possible because of quicker means of transport, but this procedure cannot be countenanced since it is not in accordance with law inasmuch as, right to personal liberty of a person is his fundamental right and the provisions as stated above and prescribed under statutory law are not empty formalities, rather it provides the arrestee/accused to seek redressal of his grievance for bail before the competent Court. This is the precise reason as to why the provision of bail is conceived in Sec. 57 of BNSS/56 of CrPC and 83 of BNSS/81 of CrPC.

9. In the above context, it is also apt to refer to one communication vide No. 24013/33/Misc./2012-CSR.III Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya dated 16.05.2012 addressed to Chief Secretaries of all States which issues



interalia appropriate instruction in the matter by taking into consideration the conduct of the police officers of different States which reads as under:-

*"It is seen that in many cases, the police officers carrying out arrest in another State bring back the arrested person and produce him before the Magistrate in their own jurisdiction. This may be possible because of quicker means of transport and also because the stipulated period of 24 hours excludes the journey time. **However, this procedure is not in accordance with law.** According to Sec. 80 CrPC, a person arrested must be produced before the Executive Magistrate or the Deputy Superintendent of Police of the Commissioner of Police within whose local jurisdiction the arrest was made **unless the Court which issued the warrant is within 30 kilometers of the place of arrest or is nearer than the Executive Magistrate or the Deputy Superintendent of Police or the Commissioner of Police** within whose jurisdiction the arrest was made. It is emphasized that Section 80 CrPC must be complied with in every case."*

10. Arrest definitely curtails the liberty of a person which is guaranteed under Article 21 of the Constitution of India, but such curtailment of liberty must be according to procedure established by law, otherwise such arrest cannot bear the seal of approval of law. Besides, the sentence "every person who is arrested and detained in custody shall be produced before the nearest



Magistrate within 24 hours” as contemplated under Article 22(2) of the Constitution of India is not only mandatory in nature, but also it does not distinguish arrest with or without warrant and the very use of word “nearest Magistrate” makes it obligatory for the Arresting Officer to produce the arrestee before a Magistrate within 24 hours exclusive of time necessary for the journey from the place of arrest to the Court of Magistrate and at the same time, it does not mean such nearest Magistrate to be the Magistrate having jurisdiction over the case of the arrestee. It is, therefore, mandatory for the Arresting Officer to take such arrestee immediate after the arrest, but not later than 24 hours to produce before a Magistrate exclusive the time required for the journey, but such Magistrate need not to be the jurisdictional Magistrate, however, the arrestee must be produced before the jurisdictional Magistrate within 24 hours exclusive of journey by taking authorization of the nearest Magistrate. The aforesaid compliance is mandatory in nature.



11. On coming back to the case at hand, the IIC Raighar Police Station in response to the order of the Court seeking reply to the plea of the petitioner for his illegal arrest and detention has come up with an affidavit by stating inter alia the following in Paragrphs-5, 6 & 7(reproduced in exact verbatim).

*"5. That, it is further respectfully submitted that, the then I.O left along with P.S staff to Tirupati, Andhra Pradesh on 14.03.2024 at 11:00 PM and arrived at Vedarukupam, Dist-Chitore, Andhra Pradesh (near about 1260 K.M.) on 16.03.2024 at 04:00 A.M. **for rescue the victim labour and apprehend to alleged accused person.** During course of investigation she examined the victim Manjulata Katual @ Bagh, aged 25, D/o-Raibabu Bagh of Junani, P.S.- Raighar, Dist-Nabarangpur, victim alleged one Vepanjeri Dileep Kumar and his brother V. Bansilal committed rape and capturing her video recording. Thereafter, both the brother threatening the victim not to disclose this fact to anybody otherwise they will circulate the video in the social media.*

*6. That, it is respectfully submitted that, the I.O. conducted raid **on 16.03.2024 and apprehended the accused person namely Vepanjeri Dileep Kumar at 4:00 P.M.** and interrogation the said accused person confess his guilty but during apprehension of accused his relatives and associate oppose the police team for which, the police team due to personal safety and security left this place immediately with apprehended accused person, **as the local police did not co-***



operate during legal procedure as per law.

7. That, it is respectfully submitted that, the I.O. left with victim and alleged **accused person on 16.03.2024 at 9:00 P.M.** and reached at Raighar P.S. on 18.03.2024 at 7:00 A.M. Due to medical procedure of accused said **I.O arrested the accused on same date at 2:00 P.M.** and forward to the learned Court Grama Nayalaya, J.M.F.C. Raighar, Dist- Nabarangpur on 19.03.2024 at 10:00 AM."

12. It is, therefore, very clear from the affidavit as referred to above that the petitioner was apprehended at about 4PM on 16.03.2024 and the Police left for Raighar at about 9PM on the same day, but reached at Raighar at about 7AM on 18.03.2024 and the IO shown the accused to be arrested at about 2PM on the same day i.e. 18.03.2024, however, forwarded the petitioner at about 10AM on 19.03.2024. The affidavit also makes it very clear that the arrestee was neither produced before the nearest Magistrate nor was taken to local police for making any endorsement with regard to the date and time of arrest and other necessary particulars in the diary of the local police station and with regard to the explanation offered for non-compliance of the Constitutional provision as contemplated under Article



22(2) of the Constitution of India, which is mandatory in nature, it is stated in the affidavit that due to opposition of relatives and associates of the petitioner and non-cooperation of local police, the police team for personal safety and security left the place with apprehended accused person(petitioner), however, such an explanation does not justify for the apprehending police team for not taking the petitioner to nearest Magistrate which is mandatory and there is in fact no explanation at all offered in the affidavit of the IIC with regard to petitioner being not taken to nearest Magistrate immediate after his arrest.

13. Be that as it may, the petitioner was apprehended at 4PM on 16.03.2024, however, he was formally shown to be arrested after reaching at Raigarh at about 2PM on 18.03.2024, but it is insignificant whether the arrestee was formally shown to be arrested at 2PM on 18.03.2024 when he was already apprehended at 4PM on 16.03.2024. What is significant is that arrest has not been defined either in BNSS or in any statute, but how arrest is made has been provided in Sec. 43(1) of



BNSS/ Sec. 46 of CrPC and it is stated therein that in making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. It is, therefore, plain and simple that if the Officer arresting the person touches or confines the latter, it can be said that the said person (the latter) is arrested and such person can also be said to have been arrested, if he submits to the custody by word or action. However, the "custody" and "arrest" are not synonymous and in every arrest, there must be custody, but not vice versa, since a person in custody may not be under arrest if he voluntarily surrenders in Court. Further, the custody means physical surrender of the person and even if a person is not arrested, he can surrender in the Court, but one thing is very clear that during custody in a criminal matter, the person is considered to be in duress. It is, however, very clear that if a person is either arrested or confined in custody of a law enforcing agency, he is under duress. Protection of life and personal liberty of a person is the fundamental right of such person and Article 22 of



the Constitution of India provides protection against arrest and detention in certain cases and, therefore, the provision of Sec. 58 of BNSS/Sec. 57 of CrPC flows from Article 22(2) which makes it mandatory that 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.**

14. Reverting back to the facts of the present case, the apprehension of the petitioner at 4PM on 16.03.2024 is the time to be reckoned for the purpose of Sec. 58 of BNSS/57 of CrPC and, therefore, the petitioner was under custody from 4PM to 9PM on 16.03.2024 before the journey and the arrest time starts for the purpose of calculating in terms of Sec. 58 of BNSS/57 of CrPC and since the arresting team as per their own version arrived at Raigarh at 7AM in the morning on 18.03.2024, the detention period of the petitioner in



custody would continue thereafter w.e.f. 7AM till he was produced in the jurisdictional Court at about 10AM on the next date i.e. 19.03.2024 irrespective of his formal arrest is being shown at 2PM on 18.03.2024. Thus, the petitioner was in fact produced before the Court after 5 hours + 27 hours= Total 32 hours excluding the time of journey from the place of arrest to the jurisdictional Court which is beyond the 24 hours as provided under law and, therefore, the arrest and detention of the petitioner can be well considered to be illegal in violation of the provision of Sec. 58 of BNSS/under Article 22(2) of the Constitution of India. Once the arrest and detention of an accused is found to be illegal, the necessary consequence thereof has been well explained in ***Directorate of Enforcement Vrs. Subash Sharma; 2025 SCC On Line SC 240*** wherein the Apex Court at Paragraph-8 has held as under:-

*8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under **Articles 21 and 22 of the Constitution of India have been violated** while arresting the accused or after arresting him, **it is the duty of the Court dealing with the bail application to release the accused on bail.** The reason is*



that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."

In the aforesaid situation and facts and failure of the police authority for not adhering to the mandatory and statutory provision as prescribed U/S. 58 of BNSS/57 of CrPC read with Article 22(2) of the Constitution of India which is the fundamental right of an accused, the inevitable conclusion thereof necessitates grant of bail to the petitioner.

15. Hence, the bail application of the Petitioner stands allowed and he is allowed to go on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it. Accordingly, the BLAPL stands disposed of.

16. In the situation as involved in this case together with avoiding situation like this in future on the face of conspectus of mandatory and statutory provision as contemplated under Article 22(2) of the Constitution of India read with Sections 57, 58, 78, 82



& 187 of BNSS together with its corresponding provision of CrPC, the following guidelines are issued to the State Administration and other stake holders to bring fairness in the procedure of arrest, detention and production of the accused before the Court in a case of arrest without warrant outside the jurisdiction of the Court for commission of cognizable offence.

Directions

(i) Whenever a person is arrested without warrant outside the State or outside the jurisdiction of the Court in a case for commission of cognizable offence(s), and unless the jurisdictional Court is within 30 kilometers of the place of arrest and he cannot ordinarily be produced before the jurisdictional Court within 24 hours from the place of arrest, he shall without unnecessarily delay be taken and produced before the nearest Judicial Magistrate to satisfy the compliance of constitutional and statutory right of the accused as provided under Article 22 of the Constitution of India and Sec. 36/47/48 of the BNSS corresponding to Sec.41B/50/50A of CrPC.

(ii) The Arresting Officer after satisfying the Magistrate about the formality as stated in preceding paragraph shall be required to obtain a transit remand for removing the arrestee immediately to jurisdictional Court.

(iii) The officer making arrest shall follow all the guidelines of arrest and detention of accused in custody and may provide the information/notify the local police about the arrest of the accused.

(iv) The officer arresting the accused without warrant outside the State shall immediately inform the date, time and place of arrest through electronic mode such as e-mail and otherwise to the jurisdictional Court who upon receipt of such information shall reflect such information in the record and there upon



the jurisdictional Court shall later on satisfy itself for compliance of the mandatory and statutory provision of arrest and detention when the accused is produced before it.

(v) the Arresting Officer effecting arrest outside jurisdiction of the Court without warrant may take the assistance of the local police, but he shall inform and request the local police to make entry in the concerned book the date, time and arrest of the arrestee who was arrested without warrant.

(vi) the Arresting Officer on arrest of the arrestee as per (i) of this guidelines shall forthwith give the information regarding such arrest and the place where the arrested person is being held to the designated Police Officer in the district and to such officer of another district where the accused person normally resides.

A copy of this order be sent to Addl. Chief Secretary, Home Department, Odisha/ DG of Police, Odisha for compliance and the soft copy of order be made available to all the criminal Courts of the State, Director, Odisha Judicial Academy & Member Secretary, OSLSA for guidance.

(G. Satapathy)
Judge