



CGHC010465112025



2026:CGHC:30886-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 564 of 2025

1 - Ashraf Beg S/o Rajjab Beg Aged About 49 Years R/o Ward No. 6, Chhal Road, Gharghoda, Tahsil and P.S. Gharghoda, District Raigarh Chhattisgarh

... Petitioner

versus

1 - State of Chhattisgarh, Through Secretary Home and Jail Department, Mahanadi Bhawan Atal Nagar, Raipur (C.G.)

2 - Sub Divisional Magistrate Gharghoda, District- Raigarh (C.G.)

3 - Executive Magistrate/ Tahsildar Gharghoda, District- Raigarh (C.G.)

4 - Station House Officer Police Station Gharghoda, District- Raigarh C.G

... Respondents

(Cause-title taken from Case Information System)

For Petitioner : Mr. Ashutosh Mishra, Advocate.

For State : Mr. S.S. Baghel, Govt. Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, C.J.

21-07-2026

1. Heard Mr. Ashutosh Mishra, learned counsel for the petitioner. Also heard Mr. S.S. Baghel, learned Govt. Advocate appearing for the State-respondents.
2. The present writ petition has been filed by the petitioner seeking the following relief(s):

“10.1 That, the Hon'ble High Court may kindly be pleased call the relevant records pertaining to Istgasha No. 63/2025 registered by the Executive Magistrate Gharghoda, District - Raigarh (C.G.).

10.2 That, the Hon'ble Court may kindly be pleased to direct the respondent authorities to release the petitioner from jail immediately.

10.3 That, the Hon'ble Court may kindly be pleased to direct to take suitable action against the officers misusing their official position in order to harass the petitioner.

10.4 That, the Hon'ble High Court may kindly be pleased to direct the respondent/state to grant a sum of rupees 5,00,000/- (Rs. Five Lakh) towards compensation to the petitioner for suffering harassment and humiliation by him due to inaction of respondent authorities.

10.5 That, the Hon'ble High Court may kindly be pleased to grant any other relief(s), which the Hon'ble Court deems fit & proper in favour of petitioner.”

3. Learned counsel for the petitioner would submit on a complaint made by one Feroz Kashyap and taking cognizance of the complaint, the petitioner was called by the police at police station Gharghoda where the police pressurized the petitioner to compromise with the complainant Feroj Kashyap, when he denied the same, the petitioner was arrested with the allegation that he is creating nuisance in the police station and by his act there is apprehension of breach of peace and to maintain law and order situation, one Istgasa under Section 170/126, 135(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS, 2023') was prepared on 25-10-2025 and he was produced before the Executive Magistrate, Ghaghoda where he was directed to be released on furnishing bail bond of rupees one lakh. The petitioner, though furnished bail bond as per the order passed by the Executive Magistrate dated 25-10-2025, but instead of releasing the petitioner on bail bond, the bail bond furnished by the petitioner was sent for its verification to the Revenue Inspector and fixed the case for 28-10-2025 and till then the petitioner was sent to jail. He would further submit that on 28-10-2025 the presiding officer was on leave and the case was fixed for 29-10-2025, whereas the other persons have been produced before the

another Magistrate and they were released after furnishing bail bond and sureties. It is also submitted that on 29-10-2025 only the petitioner could be released on bail bond. He would also submit that there is no cognizable offence registered against the petitioner for which he was called to police station that too without any written notice and he was intentionally sent to jail by the police authorities as well as the State authorities. Despite furnishing the bail bond and sureties, the act of the respondents authorities is violative of Article 21 of the Constitution of India. He would also submit that the petitioner is entitled to get compensation for his wrongful detention as the Hon'ble Supreme Court has awarded appropriate compensation to the person compelled to face humiliation for wrongful detention in violation of Article 21 of the Constitution of India. The order dated 25-10-2025 is totally illegal and arbitrary. Therefore, the petitioner is entitled for compensation for his humiliation and wrongful detention.

4. Learned counsel for the petitioner would further submit that the impugned order sending the petitioner behind the bar is beyond jurisdiction and the police has no power to produce the petitioner before the learned Executive Magistrate without having any case diary and in the present case, the petitioner has been arrested in connection with Istgasha for the offence under Sections 170/126 and 135(3) of BNSS. He would further submits that the petitioner has not been arrested in connection with any offence under IPC as there is no report in Police Station Gharghoda, regarding any

offence against the complainant Firoj Kashyap. Thus, it is clear that no offence has been committed by the present petitioner and he was arrested merely on suspicion under Sections 170/126 and 135(3) of BNSS, 2023 which does not amount an offence, much less, a cognizable or non-cognizable offence. The Magistrate must satisfy himself that a non-cognizable offence appears to have been committed by the arrested person and that an investigation into such offence has been commenced and that detention of the arrested person in custody is really necessary. Thus, it is clear that in the case of the petitioner as there is no report of commission of any cognizable offence, the police has no power to investigate the matter and the Magistrate has no power to send the person to jail. Thus, the police and learned Executive Magistrate erred in sending the petitioner in jail. He would also submit that Section 151 of the Cr.P.C. (170 of BNSS, 2023) only provides for arrest of a person to prevent the commission of a cognizable offence and the person so arrested can be detained in custody only upto 24 hours and in the absence of anything else, such person should be released by the arresting officer himself on the expiry of the said 24 hours. If no offence is made against a person arrested under Section 151 of the Cr.P.C. (170 of BNSS, 2023), there cannot be any investigation and consequently Section 167 of the CrPC (187 of BNSS, 2023) cannot have any application so as to enable the Magistrate to remand the arrested person to custody. Therefore, the Magistrate has no jurisdiction to send the petitioner under

Section 167(2) of the CrPC [187(2) of BNSS, 2023]. Therefore, the arrest and detention of the petitioner are not only bad and illegal, but it is against the law and in violation of Article 21 of the Constitution of India. As such, the writ petition deserves to be allowed and the respondents authorities may be directed to pay a sum of Rs. 5,00,000/- as compensation to the petitioner for mental harassment and illegal detention from 25-10-2025 to 29-10-2025.

5. On the other hand, learned State counsel submits that the petitioner was arrested by the police personnel on suspicion, thereafter he was produced before the Executive Magistrate and the learned Executive Magistrate passed a judicial order of granting remand of the petitioner to the police. The petitioner was sent behind the bar under the judicial order passed by the learned Executive Magistrate. The custody of the petitioner was judicial custody and cannot be named or termed as illegal detention. He would also submit that against the petitioner as many as 8 criminal antecedents are there. He further submits that the judicial order cannot violate the fundamental right of the petitioner and against the judicial order, a writ petition in nature of criminal under Article 226 of the Constitution of India is not maintainable and liable to be dismissed.
6. Regarding the criminal antecedents learned counsel for the petitioner has submitted that those criminal antecedents are prior to year 2020 and are of the nature of trivial offences.

7. We have heard learned counsel for the parties and perused the records of the case.
8. Section 41 of the Cr.P.C. [Section 35(1) and (2) of BNSS, 2023] reads as under :-

“41. When police may arrest without warrant. (1)

Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

a.a who commits, in the presence of a police officer, a cognizable offence;

a.b against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

a.i the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

a.ii the police officer is satisfied that such arrest is necessary-

9.a to prevent such person from committing any further offence; or

9.b for proper investigation of the offence; or

9.c to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

9.d to prevent such person from making any

inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

9.e as unless such person is arrested, his presence in the Court whenever required cannot be ensured; and the police officer shall record while making such arrest, his reasons in writing;

[provided that a police officer shall, in all cases, where the arrest of a person is not required under the provisions of the sub-section; record the reasons in writing for not making the arrest.]

(ba) against whom credible information has been received that he has committed a cognizable offence punishable without imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;],

c who has been proclaimed as an offender either under this Code or by order of the State Government; or

d in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

e who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

f who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

g who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

h who, being a released convict, commits a breach of any rule made under sub- section (5) of section 356; or (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

[(2) Subject to the provisions of section 42, no person concerned in a non cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.]”

- 9 From bare perusal of Section 41 of the CrPC [Section 35(1) and (2) of BNSS, 2023], it is apparent that the Police can exercise power given in the above section as preventive measure and this Section does not include penal provision. It is well settled principle of law that life and liberty of a citizen guaranteed under Article 21 of the Constitution of India includes life with dignity and liberty with dignity. Liberty must mean freedom from humiliation and unnecessary/false/mischievous arrest, indignities at the hand of the authority would include police excesses in a given case. The petitioner was arrested in connection with non-cognizable offence as till filing of the return, State could not bring any material to establish that the petitioner had committed any cognizable offence, therefore, there was no need for the petitioner to furnish any security for his enlargement on bail.
- 10 Further Section 167 of the CrPC (187 of BNSS, 2023) does not permit the Magistrate to remand an arrested person to custody merely as a matter of routine. The Magistrate must satisfy himself that a non-bailable offence appears to have been committed by the arrested person and that an investigation into such offence has commenced and that detention of the arrested person in custody is really necessary. The duty of the Magistrate becomes all the more insistent in the case of a person who has been arrested on a mere suspicion under Section 41(1)(d) of the CrPC [35(1)(d) of

BNSS, 2023]. The Magistrate has to be watchful since the power to arrest on suspicion under Section 41(1)(d) of the CrPC [35(1)(d) of BNSS, 2023] without a warrant is liable to be abused by the police.

- 11 Section 41 of the CrPC has been dealt at length by the Hon'ble Supreme Court in the matter of ***Arnesh Kumar v. State of Bihar***, reported in ***(2014) 8 SCC 273*** and the Hon'ble Supreme Court observed in para 5, 7.1, 7.3, 9 as under :

“5. Arrest brings humiliation, curtails freedom and cast scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had

committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.3 *In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C.*

9. *Another provision i.e. Section 41A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008(Act 5 of 2009), which is relevant in the context reads as follows:*

“41A. Notice of appearance before police officer.-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of subsection (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

2 Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

3 Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

4 Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as

envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.”

12. The petitioner has sought compensation for wrongful detention and the Hon’ble Supreme Court in violation of Article 21 of the Constitution of India, has awarded appropriate compensation to the persons compelled to face humiliation for wrongful detention. The word ‘harassment’ has been dealt by the Hon’ble Supreme Court in the matter of ***Mehmood Nayyar Azam vs. State of Chhattisgarh***, reported in **2012(8) SCC 1** in para 22 as under :

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

“Harass. “injure” and “injury” are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word “harass” excluding the latter from being comprehended within the word “injure” or “injury”. The synonyms of “harass” are: to weary, tire, perplex, distress, tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit.”

The term “harassment” in its connotative expanse includes torment and vexation. The term “torture” also engulfs the concept of torment. The word “torture” in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment. ”

- 13 The Hon’ble Supreme Court while emphasizing on dignity in the same judgment held in para 36 as under :

“36. From the aforesaid discussion, there is no shadow of doubt that any treatment meted out to an

accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history." The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. That is why, an investigator to a crime is required to possess the qualities of patience and perseverance as has been stated in Nandini Sathpathy v. P.L. Dani, 1978(2) SCC 424."

- 14 The Hon'ble Supreme Court in the matters of ***Nilabati Behera (Smt.) Alias Lalita Behera Vs. State of Orissa and others, 1993 (2) SCC 746, D.K. Basu V. State of West Bengal, 1997(1) SCC 416, Sube Singh Vs. State of Haryana and others, 2006(3) SCC 178, Hardeep Singh Vs. State of Madhya Pradesh, 2012(1) SCC 748 and Shreya Singhal Vs. Union of India, 2015(5) SCC 1***, held that the Investigating Officers in no circumstances can flout the law with brazen proclivity. It is also observed that the constitutional Courts taking note of suffering and humiliation are entitled to grant compensation.
- 15 From above discussion, in the light of the judgments passed by the Hon'ble Supreme Court in the matters of ***Nilabati Behera (Smt.) Alias Lalita Behera (supra), D.K. Basu (supra), Sube Singh (supra), Hardeep Singh (supra) and Shreya Singhal***

(supra) and the provision of law, it is quite vivid that on mere suspicion, a person cannot be arrested against whom the commission of cognizable or non-bailable offence is not made out and he cannot be remanded to judicial custody. On the contrary, such person should be released on bail by invoking power under Section 436 of the CrPC (478 of BNSS, 2023) treating the case as bailable one.

- 16** In the instant case, the petitioner was arrested by the Investigating Agency, he was produced before the concerned Court and from where he was sent to judicial custody. The above facts clearly reveal that the right of life and liberty of the petitioner enshrined under Article 21 of the Constitution of India has been violated, therefore, the petitioner is entitled to get appropriate compensation. We deem it fit to award compensation of **Rs. 25,000/-** to the petitioner, and same shall be payable by the State Government to the petitioner within a period of 30 days from today.
- 17** With the aforesaid observations and directions, this writ petition is **allowed.**

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice