

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 13733 OF 2026**

1. Rohit Abhijit Oze,
Age: 25 Years, Occupation: Student,
Presently Residing at Flat No. 1201,
Om Aarti CHS, Vazira Naka, Opposite
SBI Bank, Borivali West, Mumbai 400092

...Petitioner

Versus.

1. The State of Maharashtra,
Through the Public Prosecutor,
High Court of Judicature at Bombay,
Appellate Side, Mumbai.

2. The Senior Police Inspector,
Kandivali Police Station,
Kandivali, Mumbai.

...Respondents

Mr. Aditya Sutrale, Advocate for the Petitioner.
Mrs. Rajeshree Newton, APP for Respondent Nos. 1 and 2.
WPSI Renuka Pardeshi, Kandivali Police Station, is present.

CORAM : ASHWIN D. BHOBE, J.
DATE : 6th August, 2026

ORAL JUDGMENT :

1. Heard Mr. Aditya Sutrale, learned Advocate for the Petitioner and
Mrs. Rajeshree Newton, learned APP for the Respondent – State.

2. Rule. Rule made returnable forthwith and with the consent of the
parties, heard finally.

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3. By the present Petition filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS 2023”), the Petitioner seeks to quash the FIR bearing No. 740 of 2026, dated 06.06.2026, registered at Kandivali Police Station, Mumbai (“impugned FIR”), for offences punishable under Sections 281 and 125 of the Bharatiya Nyaya Sanhita, 2023 (“BNS 2023”) and Section 185 of the Motor Vehicles Act, 1988 (“MV Act 1988”). The Petitioner is the sole Accused in the impugned FIR.

4. In brief, the case of the prosecution is that on 06.06.2026, at around 1:45 a.m., the Petitioner was found driving a Motor car bearing Registration No. MH-47-BK-4275, at Laljipada, New Link Road, Kandivali West, Mumbai, under the influence of alcohol. Petitioner was subjected to a breath alcohol intoxication test using a Breath Alcohol Analyser. The breath alcohol measurement taken from the Petitioner indicated a Blood Alcohol Concentration (BAC) of 30.1 mg/100 ml. Based on this BAC, the impugned FIR was registered.

5. Aditya Sutrale, learned Advocate for the Petitioner, submits that the Petitioner, a 25-year-old student, was driving his motor vehicle in accordance with the Traffic Rules. He submits that even if the BAC recorded on 06.06.2026 is considered, there remains a possibility of a

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technical margin of error, given the borderline reading of 30.1 mg, thereby undermining the scientific reliability of the prosecution's baseline data. To clarify, he submits that to attract an offence under Section 185 of the Motor Vehicles Act, 1988, the BAC should exceed 30.0 mg/100 ml. In the instant case, the excess is 0.1 mg/100 ml. He submits that the Petitioner is pursuing his postgraduate studies in the Netherlands. He therefore submits that prosecuting the Petitioner in such circumstances would amount to abuse of the process of law.

6. Mrs. Rajeshree Newton, learned APP for the Respondent – State, submits that the breath alcohol intoxication test conducted by Respondent No. 2 on the Petitioner on 06.06.2026 using the Breath Alcohol Analyser indicated that the BAC was more than 30 mg/100 ml, thereby establishing the offence under Section 185 of the MV Act, 1988. Accordingly, the offence was registered.

7. Perused the records with the assistance of the learned Advocates for the parties.

8. In the averments of this petition, the Petitioner is a 25-year-old student with an unblemished record and no prior criminal antecedents. After putting in all his efforts in his education, the Petitioner has

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secured admission to a postgraduate programme at Erasmus University Rotterdam in the Netherlands and obtained a student visa. The Petitioner was scheduled to board a flight to the Netherlands on 03.08.2026.

9. The prosecution case is based solely on the Breath Alcohol Analyser test. As per the Breath Alcohol Analyser test conducted on the Petitioner on 06.06.2026, the BAC was 30.01 mg/100 ml.

10. There is no material on record, let alone any allegations in the impugned FIR, indicating that the Petitioner's gait was unsteady, that his tone or speech on 06.06.2026 at the time of his apprehension was incoherent or that his pupils were dilated. Neither a blood nor a urine test of the Petitioner was conducted on 06.06.2026.

11. In *Bachubhai Hassanalli Karyani v. State of Maharashtra*¹, the Hon'ble Supreme Court in paragraph Nos. 3, 4 and 5 has observed as follows :-

“3. The High Court found that the appellant was drunk on that night and he was driving the car rashly and negligently at an excessive high speed.

¹ 1971 (3) Supreme Court Cases 930

4. *The learned counsel contends that the heavy sentence has been imposed on the appellant because he was found to have been drunk on that night. He says that Dr. Kulkarni, who examined the appellant, based his conclusion merely on the facts that the appellant's breath was smelling of alcohol, that his gait was unsteady that his speech was incoherent and that his pupils were dilated. The doctor had admitted that a person, placed in the circumstances in which the appellant was put as a result of the accident, would be under a nervous strain and his gait might be unsteady. The doctor had also admitted that a person could smell of alcohol without being under the influence of drinking. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of the analysis was produced by the prosecution.*

5. *It seems to us that on this evidence it cannot be definitely held that the appellant was drunk at the time the accident occurred."*

12. As stated by Mr. Aditya Sutrale, learned Advocate for the Petitioner and confirmed by Mrs. Rajeshree Newton, learned APP from the Investigating Officer investigating the impugned FIR, the make-model of the Breath Alcohol Analyser used for the breath alcohol intoxication test conducted on the Petitioner on 06.06.2026 is "*Alcovisor Jupiter X*".

13. Mr. Aditya Sutrale, learned Advocate for the Petitioner, has placed on record the catalogue of the Breath Alcohol Analyser, make "*Alcovisor Jupiter X*", which is taken on record and marked as "P-1" for identification. The specifications column pertaining to "*Accuracy*" is reproduced below:

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Accuracy	0 - 0.10% BrAC $\pm$ 5% 0.10 - 0.15% BrAC $\pm$ 8% > 0.15 %: $\pm$ 10%
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14. From the aforesaid specification, the recognized Operational Tolerance Margin is $\pm$ 5% to $\pm$ 8%.

15. To understand the mathematical application of the Operational Tolerance Margin to the recorded value of the alcohol content (30.01 mg), Mr Aditya Sutrale, learned Advocate for the Petitioner, was called upon to provide the calculations. He has tendered the calculations, which are not disputed by Mrs. Rajeshree Newton, learned APP, accordingly, with the consent of the parties, the same are reproduced here:-

“Applying $\pm$ 5% Standard Manufacturer / MHA Tolerance: Adjusted true value is 28.59 mg/100 ml.”

16. Though the offences under Sections 281 and 125 of the BNS, 2023 are charged in the impugned FIR, the material on record does not indicate the ingredients necessary to attract those offences. Apart from the allegation that the Petitioner was detected with BAC exceeding the permissible limits under Section 185 of the MV Act, 1988, there are no

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allegations that the Petitioner was driving the motor car in a rash or negligent manner.

17. On a query to Mrs. Rajeshree Newton, learned APP, as to indicate the material on record in respect of the ingredients of Sections 281 and 125 of the BNS, 2023, Mrs. Rajeshree Newton, learned APP, in all fairness, submitted that the said Sections are charged in view of the Petitioner being found to exceed the BAC.

18. The impugned FIR hinges on a baseline reading of 30.1 mg/100ml against the statutory limit of 30 mg/100 ml. The Breath Alcohol Analyser recording shows an extremely thin borderline variance, which would fall within the device's Operational Tolerance Margin. Given the technical variance in the BAC within the Operational Tolerance Margin, the certainty required to sustain a criminal charge is entirely consumed by the device's native tolerance window.

19. Section 33 of BNS 2023 incorporates the doctrine "*de minimus non curat lex*", meaning "*the law does not concern itself with trifles*". Forcing the Petitioner, a student pursuing his studies abroad, who holds a valid driver's license and has no criminal antecedents, to face a multi-year criminal trial over a 0.1 mg mechanical trifle would amount to an

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abuse of the judicial process.

20. The powers under Section 528 of the BNSS 2023 (Section 482 of the Code of Criminal Procedure 1973) serve two purposes: *first*, to prevent abuse of the process of any court; and *second*, to secure the ends of justice. The present case would fall within these two purposes under Section 528 of the BNSS 2023.

21. Guided by the enunciation in *State of Haryana vs. Bhajan Lal*², this is a fit case for exercising powers under Section 528 of the BNSS 2023.

22. In view of the above, this Petition is allowed in terms of prayer clause (a). Consequently, the impugned FIR No. 740 of 2026, dated 06.06.2026, registered at Kandivali Police Station, Mumbai, is quashed and set aside. Rule made absolute in the above terms.

23. No orders as to costs.

24. Writ Petition (ST) No. 13733 of 2026 is disposed of.

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(ASHWIN D. BHOBE, J.)

2 1992 supp(1) SCC 335

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