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901-WP-3221-2026

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3221 OF 2026

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Manohar Sharad Pathare

..Petitioner

Versus

The State of Maharashtra & Ors.

..Respondents

Ms. Priyanka Dubey a/w Mr. Saurabh Kamble, Mr. Utkarsh Shukla,
Hitanshi Gajaria for the Petitioner.

Ms. Supriya Kak, APP for the State/Respondent.

Ms. Syed Shabana M. Ali, for Intervenor/victim.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 21 AUGUST 2026

JUDGMENT [PER : SARANG V. KOTWAL, J] :-

1. The Petitioner has preferred this Petition for release of his brother (the detenu) from custody and for declaration that his arrest was illegal, being in violation of Article 21 and 22(2) of the Constitution of India and in violation of Sections 47, 48 and 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Heard, Ms. Priyanka Dubey, learned Counsel for the Petitioner, Ms. Supriya Kak, learned APP for the State/Respondent and Ms. Syed Shabana M. Ali, learned Counsel for the victim.

3. The Petitioner's brother (the detenu) is an accused in C.R. No. 376 of 2026 registered at Dongri Police Station on 4th June 2026 under Sections 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 74 of the BNS, 2023.

4. The allegations against the detenu are as follows:-

The F.I.R. was lodged by the father of the victim girl, who was aged 11 years. The first informant was working abroad. He was residing with his family in Mumbai in the year 2023. When he had gone to Saudi Arabia for work, the detenu developed close relations with the informant's wife. There are allegations amounting to the offences mentioned in the FIR as far as the victim girl is concerned. The informant's brother told him about all these incidents. When the informant came to India, he took his elder son aged 19 years and the victim girl with him and started residing together. There was a dispute between the informant and his wife. The first informant lodged the FIR in respect of these allegations.

5. The main contention of the Petitioner is that, the

detenu was actually called to the Police Station in the morning of 10th June 2026. He attended the Dongri Police Station at 11.00 a.m. to 12.00 p.m. on 10th June 2026 and, from that moment onwards, he was under the complete control and custody of the Police Officers attached to Dongri Police Station. However, he was shown as arrested only at 8.15 p.m. in the evening on 10th June 2026. He was produced before the Special Court on 11th June 2026 at 3.46 p.m. and thereafter, police custody remand was granted. According to the Petitioner, the detenu was produced before the Special Court after the expiry of the period of 24 hours from his arrest and, therefore, his arrest was illegal and hence he deserves to be released.

6. Learned Counsel for the Petitioner submitted that, the detenu had reached the Police Station approximately between 11.00 a.m. to 12.00 p.m. From that point onwards, he was not allowed to go out and, hence, his movements were completely restricted. He was under complete control of the Police Officers which amounted to arrest, and therefore, his arrest had taken place between 11.00 a.m. to 12.00 p.m. on 10th June 2026. Hence,

since the production of the detenu before the Special Court at 3.46 p.m. on 11th June 2026 is clearly beyond the statutory period of 24 hours, there is violation of the constitutional provisions as well as the provisions of the BNSS.

7. In support of her contention, the learned Counsel for the Petitioner relied on the following Judgments:

- (i) ***Hanumant Jagganath Nazirkar Vs. State of Maharashtra*** as reported in 2025 SCC OnLine Bom 2508
- (ii) The Order dated 21st January 2025 passed by the Hon'ble Supreme Court in the case of ***Directorate of Enforcement Vs. Subhash Sharma*** passed in Special Leave Petition (Criminal) No. 1136 of 2023.
- (iii) The Order passed by a Division Bench of this Court on 7th October 2025 in Criminal Writ Petition No. 4539 of 2025 in the case of ***Dhanshala Prakash Vishwakarma Vs. The State of Maharashtra & Ors.***

8. Learned APP relied on the Affidavit filed by the Police

Inspector attached to Dongri Police Station. She submitted that, the detenu was actually arrested at 8.15 p.m. on 10th June 2026. She submitted that, the detenu was produced before the Special Judge at 3.46 p.m. on 11th June 2026, which is within the period of 24 hours and, hence, there is no violation of any of the provisions.

9. Learned Counsel appearing for the victim submitted that, there is a difference between custody and arrest. The detenu was not actually arrested when he reached the Police Station, and therefore, the period will not start from that point of time. In support of her contention, she relied on the Judgment of a Division Bench of this Court at Nagpur Bench passed in Criminal Writ Petition No. 380 of 2026 in the case of ***Mohd. Avesh Mohd. Hanif Potiyawala Vs. State of Maharashtra***.

10. We have considered these submissions. Before referring to the Judgments cited by both the sides, it is necessary to refer to the stand taken by the Police Officer in the Affidavit. It is mentioned in the Affidavit that, during the course of the

investigation, the Investigating Agency added Section 10 of the POCSO Act in C.R. No. 376 of 2026 of Dongri Police Station which is the subject matter of this Petition. The statement of the minor victim was recorded under Section 183 of BNSS before the learned Judicial Magistrate First Class, Mumbai on 17th June 2026.

11. As far as the arrest of the detenu is concerned, the Affidavit mentions that the detenu had come to Dongri Police Station on 10th June 2026 at 11.00 a.m. The detenu was contacted on his mobile number and was called to the Police Station for investigation. During the period between 11.00 a.m. to 8.15 p.m. on 10th June 2026, the Investigating Officer was involved in the investigation of another offence. It was in connection with C.R. No. 392 of 2024 registered at Sewri Police Station under Sections 125, 287 of the BNS and under Sections 3 and 7 of the Essential Commodities Act. The accused in that case was one Mahir Husain Munir, who was in Police Custody Remand at Sewri Police Station. Dongri Police Station had submitted a letter dated 5th June 2026 in a competent Court to obtain his custody. The said Accused was lodged in Taloja jail. The competent Court had directed the

Superintendent of Taloja jail to hand over the custody of that accused for investigation. Accordingly, the custody of that accused was taken on 9th June 2026. The Investigating officer in the present crime was also the Investigating Officer in connection with C.R. No. 392 of 2024 of Sewri Police Station. Therefore, he was involved in that investigation. The said accused Mahir Munir was experiencing chest pain and, therefore, the Police Officer of Dongri Police Station escorted him to Sir J. J. Hospital for medical treatment. The said accused was produced before the competent Court for remand at 2.30 p.m on 10th June 2026. The Court remanded him to judicial custody and then the said accused was sent to Taloja Central Prison, Mumbai. During all this period, the detenu in the present case was present at the Police Station. According to the learned APP, as mentioned the Affidavit, the detenu was not taken into custody and enjoyed complete personal liberty. His mobile phone was with him and he was conversing on it throughout the day. Upon examining the call data records of the detenu, it could be seen that he was continuously conversing with various persons till about 7.00 p.m. on 10th June 2026. The

learned APP therefore, submitted that the Police had not detained him in any manner. It is further mentioned in the Affidavit that, after conducting thorough investigation and after confirming his involvement in the crime, he was taken into custody on 10th June 2026, after being informed of the grounds of his arrest. The present Petitioner was informed about the detenu's arrest. He was produced before the competent Court as mentioned earlier.

12. In this background, we had considered the submissions made by both the parties. The question is whether the detenu could be said to be arrested as soon as he reached the Police Station at about 11.00 a.m. or can he be said to be under arrest at 8.15 p.m. to calculate the statutory period of 24 hours.

13. In this context the relevant provisions are as follows:-

(i) **Article 22 : Protection against arrest and detention in certain cases**

(1)-----

(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.

(ii) Section 58 of the BNSS :

58. Person arrested not to be detained more than twenty-four hours.

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

14. In support of her contention, the learned Counsel for the petitioner relied on the case of *Hanumant Jagganath Nazirkar*. In that case, it was mentioned in paragraph 38 that merely because the detenu in that case was in touch with his family members over the cell phone would not mean that the said detenu in that case was not in custody or control of the Police Authorities.

Based on this observation, learned Counsel for the Petitioner in the present case submitted that, the stand taken by the Police that the detenu was in touch with his family members or

was conversing on his mobile phone would not mean that he was not arrested or was not in custody and, therefore, it cannot be said that he was a free man till 8.15 p.m. on 10th June 2026.

In this context, the facts in the said case of *Nazirkar* need to be taken into consideration. Paragraph 31 and 32 in that Judgment mention that, the accused in that case was taken into custody at Shivajinagar Metro Station, Pune and then was produced before the Shivajinagar Police Station. After taking him into custody at 1.00 p.m. on 25th October 2024 at Shivajinagar Metro Station, he was produced before Shivajinagar Police Station and then he was taken to Baramati. They reached Baramati at 5.07 p.m. on 25th October 2024. He was produced before the Magistrate on 27th October 2024 at 12.20 p.m.

The Division Bench of this Court referred to the general diary wherein it was mentioned that, Shivajinagar Police Station had taken custody and control of the Petitioner. Thus, in that case, the accused was arrested at Shivajinagar Metro Station and since then he was under control and custody of the Police Authorities. In

that context, those observations were made.

The facts in the present case are completely different therefore, the said Judgment is not applicable in the facts of the present case.

15. The learned Counsel for the Petitioner then relied on the Judgment of the Hon'ble Supreme Court in the case of *Directorate of Enforcement Vs. Subhash Sharma*. In that case also, there is a clear observation that, the physical custody of the accused in that case was taken at 11.00 hours on 5th March 2022 and thereafter at 01.15 a.m. on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3.00 p.m. on 6th March 2024. In this background, it was observed that the accused was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March 2022. In that background, the relief was given to the accused in that case. The facts in that case before the Hon'ble Supreme Court are hence different from the facts of the present case.

16. Similar is the case with the Order in *Dhanshala*

Vishwakarma's matter. In that case, the accused was in the Police Station at 0.38 hours on 20th April 2025 and he was actually shown arrested at 23.20 hours on 20th April 2025. In that case F.I.R. was lodged at 7.13 hours on 20th April 2025. Thus, the accused in that case was taken in custody even before lodging of the F.I.R., who was in the Police Station at odd hours in the midnight before registration of the F.I.R. and, therefore, he was not a free man. In that context, it was held that, the statutory limit of 24 hours was not followed and benefit was given to that accused.

17. Learned Counsel for the Respondent No.2 referred to the case of ***Mohd. Avesh Mohd. Hanif Potiyawala***. It is a Division Bench Judgment passed by the Nagpur Bench. In the said Judgment, the concept of custody and arrest was extensively considered. It was held in paragraph 22 that, the concept of being in custody cannot be equated to the concept of a formal arrest and there is a difference between the two. It was further observed that, in every arrest there is a custody but not vice versa. The custody may amount to an arrest in certain cases but not in all cases.

18. In the background of these legal principles, the present facts can be considered.

19. Admittedly, in this case, the F.I.R. was lodged on 4th June 2026. The detenu was named as an accused. Learned Counsel for the petitioner submitted that, in the aforementioned Judgment of *Mohd. Avesh Mohd. Hanif Potiyawala*, the detenu in that case was merely a suspect and not an accused and thus this is a distinguishing feature in the present case.

20. In the present case, the detenu was undoubtedly mentioned as an accused. However, he was called for enquiry at the Police Station. The Police had not gone to his residence or any other place to arrest him. Once the detenu came to the Police Station, it was well within the powers of the Police to make enquiry with him and only after being satisfied that his arrest was necessary, the arrest could be effected. In the present case, the Investigating Officer has sufficiently explained as to why the enquiry could not be made with the accused immediately. The Investigating Officer was involved in another investigation where

the accused in that case had suffered health issues and had to be taken to hospital. This is a reasonable explanation. For that purpose, if the detenu in this case was made to wait in the Police Station, that would not amount to his arrest. There is nothing to show that, he was not allowed to contact or converse with his relatives. In fact, there is a phone record which shows that he was in touch with others till about 07.00 p.m. in the evening. In the case of ***Hanumant Nazirkar***, the accused was taken to hospital, his son was with him and there was record of phone conversations. But in that case, the accused was taken to the hospital by the Police themselves. Therefore, he was always under the control of Police. This is the distinguishing feature as far as the present case is concerned. The detenu was made to wait so that the preliminary enquiry could be conducted. It is reasonable to expect from the Police Officers to satisfy themselves about the involvement of an accused before effecting actual arrest. The Police had taken sufficient precaution in this case. Therefore, we do not find fault with the procedure. In this situation, the case of the prosecution that, the detenu was kept under arrest at 8.15 p.m. on 10th June

2026 is acceptable. He was produced within 24 hours from that point onwards. It can not be accepted that, the moment the detenu stepped into the Police Station at around 11.00 a.m. on 10th June 2026, he was under arrest. Article 22(2) uses the phrase 'arrested and detained in custody'. Therefore, we do not find that this is a case of illegal detention. No relief can be granted in this Petition.

21. The Petition is disposed of. It is needless to add that the detenu is at liberty to file a bail application, which shall be decided on its own merits without being influenced by the dismissal of this Petition.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)