

supriya

1 of 10

903-WP-4598-2026

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

WRIT PETITION NO. 4598 OF 2026

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Kalim Isaq Shaikh,

Age : 31 years, Occ : Driver,

R/o : Ghari, Tal. Barshi,

VTC Ghari, Dist. Solapur

(At present Thane Central Prison)

..Petitioner

Versus

1. The State of Maharashtra

Through Senior Police Inspector of
Kashigaon Police Station, Thane

2. The Superintendent

Thane Central Prison, Thane

..Respondents

Mr. Priyal Sarda along with Shubham Sane, Seema Dighe for the
Petitioner.

Ms. M. M. Deshmukh, A.P.P, for the Respondent-State.

Mr. Ashutosh Chavan, API, Kashigaon Police Station, Mira-Bhayander-
Vasai-Virar Commissionerate is present.

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

DATE : 23rd SEPTEMBER 2026

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

1. This Petition is preferred by the Petitioner for issuance of
Writ of Habeas Corpus for declaring his arrest as illegal in connection

with C.R. No. 322 of 2026 registered at Kashigaon Police Station, Mira-Bhayander, Vasai-Virar.

2. Heard, Mr. Priyal Sarda, learned Counsel for the Petitioner and Ms. M. M. Deshmukh, learned A.P.P, for the Respondent-State.

3. Before referring to the issue raised in this Petition, it is necessary to refer in brief to the allegations in the FIR. The FIR was lodged on 30th June 2026 at Kashigaon Police Station vide C.R. No. 322 of 2026 under Sections 69, 89, 75, 351(4), 324(4), 305(a), 115(2), 351(2), 352 of the BNS. The case of the informant was that the Petitioner established physical relations with her, sometimes with her consent, sometimes by force on the false promise of marriage. There are allegations of theft of her ornaments as well. There are allegations of threats and assault. On these allegations, the FIR is lodged.

4. The Petitioner was taken into custody at Barshi at 6.14 p.m. and was taken to Kashigaon Police Station at 4.50 a.m. on 22nd August 2026. He was produced before the learned Magistrate Mira Bhayander Road on 22nd August 2026. It is the case of the Petitioner that he was produced before the learned Magistrate beyond 24 hours from his arrest. More importantly, his contention is that when he was arrested at Barshi, he ought to have been produced before the nearest Magistrate

from where he was arrested in Barshi. Instead of that, the Petitioner was taken to Kashigaon and was produced before the learned Magistrate at Mira Bhayandar. This is clear violation of Article 22 of the Constitution and the statutory provisions under the BNSS.

5. Learned Counsel for the Petitioner specifically relied on ground (I) of this Petition, wherein the ground was raised that no transit remand was taken at Barshi and the Petitioner was not produced before the Magistrate at or near Barshi before he was taken to Kashigaon, which was at a distance of about 380 to 400 km. It was thus violation of Article 22(2) of the Constitution and was in breach of Section 58 and 187 of BNSS. In support of his contention, learned Counsel Shri. Sarda relied on the Judgment of a Division Bench of this Court at Aurangabad Bench in the case of ***Vachhalabai Vs. State of Maharashtra***, reported in ***2019 SCC OnLine Bom 2937***.

6. Learned APP, on the other hand, relied on the Affidavit of the Investigating Officer. She submitted that the Petitioner was produced before the Judicial Magistrate within 24 hours from his arrest and, therefore, there was no violation of any provision.

7. We have considered these submissions. The Petitioner has raised this specific issue before the learned Magistrate at Mira Road

when he was produced before that Magistrate. A pursis was filed on his behalf on 22nd August 2026 before the learned Magistrate. It was contended in that pursis that the Petitioner was arrested by the police at Barshi, Dist. Solapur, at about 4.30 p.m. on 21st August 2026. After that, he was taken to Barshi City Police Station where a family member was informed about the arrest and grounds were furnished to him at about 5.30 p.m. to 6.00 p.m. on 21st August 2026. After that, he was brought to Kashigaon Police Station. He was produced before the learned JMFC at Mira Road at about 7.45 p.m. on 22nd August 2026. He had specifically claimed violation of the Article 22(2) and of Sections 57, 58 and 187 of BNSS. The learned Magistrate passed a remand order and held that the Petitioner was taken into custody at Barshi at 6.14 p.m. on 21st August 2026 and was taken to Kashigaon Police Station at 4.50 a.m. on 22nd August 2026 and was produced for remand at 1.30 p.m. to 2.00 p.m., but since the learned Magistrate was attending Judicial workshop at Thane, the remand order could not be passed. The learned Magistrate held that it did not appear that the production was beyond the period of 24 hours and, therefore, granted police custody remand at the first instance till 24th August 2026.

8. The Affidavit-in-Reply filed on behalf of the Investigating

Agency endorses the same time-line. It is mentioned therein that the FIR was lodged on 30th June 2026 and the investigation commenced. During investigation, on 21st August 2026, the Police team visited Barshi and the Petitioner was taken into custody with the help of local Police Station, i.e. Barshi Police Station. Notice under Section 47(1)(2) of BNSS was served on him mentioning the reasons and grounds of his arrest. The notice under Section 48 of BNSS was served on the relative of the Petitioner. The Police team took the Petitioner towards Kashigaon Police Station and Station Diary Entry was made at Barshi Police Station to that effect at 6.14 p.m. on 21st August 2026. He was brought to Kashigaon Police Station at 4.50 a.m. on 22nd August 2026. The Arrest Form was made at Kashigaon Police Station on 22nd August 2026. The Police took the Petitioner from Kashigaon Police Station to proceed towards the Court of JMFC, Mira Road at 1.58 p.m. on 22nd August 2026.

The learned Judge was attending a Judicial workshop at Thane, therefore, the Petitioner was brought back to Kashigaon Police Station at 2.34 p.m., and the Petitioner was to be produced at 5.00 p.m. The Station Diary Entries were made to that effect. After that, the Petitioner was produced before the learned JMFC at 7.40 p.m. on 22nd

August 2026. Thus, it is contended that he was produced before the learned Magistrate within 24 hours and there was no illegality in his continued detention.

9. In the backdrop of these facts, we have considered the submissions made by the learned Counsel for the Petitioner. He relied on the case of Division Bench of this Court in the case of **Vacchalabai**. The Division Bench specifically considered the expression “nearest Magistrate”. In that case, the Police from Karnataka had arrested the Petitioner in that case from Maharashtra but had not produced him before the nearest Magistrate. In that context, the Division Bench made certain observations. The relevant paragraphs are paragraph 26, 55 and 56 which are as follows :

26. The aforesaid reasons given to have the Article in the present form show that no scope is left to police to keep arrested person in their custody for the purpose of investigation for more than 24 hours excluding the time required for taking the accused from the place of arrest to the Court of Magistrate. Only to ensure such observance, mandate, the term “nearest magistrate” is used and specific period is also given. The period of 24 hours is given in relation to the term “nearest magistrate” and it cannot be read separate from this term. Further, as per the aforesaid reasoning given, “nearest magistrate” cannot be presumed as the Magistrate having jurisdiction over the crime, in which the accused is arrested. Further, right to inform the Magistrate of the charge under which that man is arrested given in this Article shows that it was intention to see that the Magistrate within whose territorial jurisdiction the man is

arrested is expected to be informed about such arrest and such Magistrate is expected to exercise the power, which can be like bail, remand etc. No other interpretation of the aforesaid obligation, to inform to the Magistrate about the arrest mentioned by Dr. Ambedkar is possible. In view of this object behind using the term “nearest” the subsequent reference of terms like “Court of Magistrate” and “Magistrate” in Article 22(2) can have the same object. So, the subsequent terms used as “Court of Magistrate” and “Magistrate” means that “nearest magistrate” mentioned in the Article. If the purpose behind Article 22(2) of Constituent Assembly is kept in mind, only the aforesaid meaning can be given to the term “nearest magistrate”.

55. The provision of Section 167(2-A) of Cr. P.C. already quoted shows that no excuse is available to the police officer arresting the accused like nearest Judicial Magistrate was not available. In that case also, as per this provision, the accused needs to be transmitted to the nearest Executive Magistrate on whom powers are conferred of Judicial Magistrate. In that case also, some record is required to be prepared by the police officer under this Section. This provision shows that no scope is left to police to say that they could have produced such arrested accused before the concerned Magistrate, the Magistrate having jurisdiction over the offence within 24 hours from the time of arrest and so, the accused was taken before the concerned Magistrate. In view of the aforesaid provisions, the interpretation suggested for the Respondents by the learned APP is not at all acceptable.

56. The aforesaid provisions are safeguards for protection of fundamental rights mentioned in Article 21 of the Constitution of India. They need to be strictly followed by the officers effecting arrest. If there is a material to infer that there was actual arrest, but after the arrest the accused was not taken before the nearest Magistrate and he was taken far away from that place for production before the concerned Magistrate, the moment the accused is taken out of the jurisdiction of nearest Magistrate, his detention becomes unauthorized and illegal. Such detention will not become legal only because subsequently the accused is produced before the Magistrate having jurisdiction to try or inquire into the offence within 24 hours of the actual arrest. Here

only it needs to be mentioned that the contention of police that formal arrest was made after taking the accused to the local jurisdiction of the concerned Magistrate and the period needs to be counted from that time and the case needs to be considered from that angle cannot be accepted. There are other provisions in Cr. P.C. like issuing notice or summons for making inquiry and by that process calling a person to the police station is possible. If that procedure is not followed and accused is picked up from a place over which the police station has no jurisdiction and he is taken to the place over which the police has jurisdiction, inference become easy that the accused was taken away from the first place only by illegally detaining him. If such interpretation is not made then the aforesaid provisions mentioned like Section 41-B, 41-C and all subsequent provisions will become otiose and that will be against all the provisions made to safeguard the fundamental rights of such person.

10. The said judgment was followed by another Division of this Court in the case of ***Shakoor Ahmed Jamaluddin Sayed Vs. State of Maharashtra*** in Criminal Writ Petition No. 2297 of 2025, vide the Order dated 2nd May 2025.

11. Thus, it is clear that the Investigating Agency was duty bound to produce the Petitioner before the “nearest Magistrate” at Barshi, from where he was arrested. The contention that he was produced within 24 hours by itself is not sufficient. The arrested person has to be produced before the nearest Magistrate as per the requirement of the above provisions, as is held by the Division Bench in the case of ***Vacchalabai***.

12. In this view of the matter, there is clear violation of these provisions and, therefore, the Petitioner deserves relief in this case. However, the allegations against him are serious and, therefore, the learned APP submitted that the Court may consider directing the re-arrest of the Petitioner. In that context, the learned Counsel for the Petitioner relied on the Judgment of the Hon'ble Supreme Court in the case of *Jaskaran Jeet Singh Deol Vs. State of Punjab* in Criminal Appeal No. 4234 of 2026. The Order is dated 21st September 2026. In the Judgment of *Shakoor Ahmed Jamaluddin Sayed* also, reference is made to a Judgment of another Division Bench of this Court in the case of *Kavita Manikikar Vs. Central Bureau of Investigation*, wherein the question of re-arrest was considered. In *Shakoor Ahmed's case*, the Investigating Agency was permitted to take steps in accordance with law to re-arrest the Petitioner only if it was absolutely necessary, by giving proper reasonable notice to the Petitioner. Considering this situation, similar Order can be passed. Hence, the following Order :-

ORDER

- (1) The Petitioner is directed to be released on bail on his executing PR. bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with one or two sureties in the like amount on the

following conditions :-

- (i) The Petitioner shall cooperate with the investigation. He shall not tamper with the evidence. He shall not contact or threaten any witnesses.
 - (ii) He shall attend Kashigaon Police Station once in fortnight till filing of the chargesheet and, thereafter, on every 1st Sunday of the month between 3.00 p.m. to 5.00 p.m.
 - (iii) The Petitioner shall deposit his passport, if any, with the Investigating Agency before being released.
- (2) It is made clear that if it is absolutely necessary to re-arrest the Petitioner, the Investigating Agency shall take steps in accordance with law and in particular by following the guidelines issued by the Hon'ble Supreme Court in the case of *Jaskaran Jeet Singh Deol (supra)*.

13. The Petition is accordingly disposed of.

(RANJITSINHA RAJA BHONSALE, J.)

(SARANG V. KOTWAL, J.)