



2026:AHC-LKO:70349

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 528 BNSS No. - 2601 of 2026

Moti Ram Jaat @ Moti Ram Jaat Fauji

.....Applicant(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Prin. Secy.
Home Lko. And Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Saiyad Farhan Ali, Shailendra Yadav
Counsel for Opposite Party(s) : G.A.

A.F.R.

Reserved on 11.09.2026

Delivered on 01.10.2026

Court No. - 12

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Shantanu Singh and Mr. Saiyad Farhan Ali learned counsel for petitioner and Mr. Shivnath Tilhari, learned Additional Government Advocate for respondents.

2. Petition under section 528 BNSS has been filed challenging the order of formal arrest of petitioner dated 29th August 2025 and subsequent remand orders dated 29th August 2025 and 11th September 2025 whereby judicial/police custody of remand of petitioner was allowed.

3. It is submitted that present case arises out of FIR registered as case crime number 4 of 2025 pertaining to offences under section 148, 152 and 61 (2) BNS and is a complaint case. It is further submitted that petitioner has been arrayed as accused number 2 in supplementary charge sheet/supplementary final report filed by UP Anti-terrorist Squad in sessions case number 131 of 2025 under the aforesaid sections.

4. It is submitted that Anti-Terrorist Squad (hereinafter referred to as 'ATS') sought production of petitioner on 29th August 2025 through the production warrant dated 13th August 2025 and in pursuance thereof, was initially

remanded to judicial custody on 29th August 2025 and subsequently to police custody on the remand application dated 11th September 2025. The petitioner was produced before special court on the basis of production warrant dated 13th August 2025 and was formally arrested on the P.T. warrant and remanded to judicial custody.

5. The primary ground of challenge to the aforesaid orders of remand is violation of fundamental right enshrined under article 22 (1) of Constitution of India. It is submitted that since no grounds of arrest were provided either to the petitioner as an accused or even to his family members, the fundamental rights under article 22 (1) having been infringed, the remand order is liable to be set aside. It is also submitted that there is no specific order approving judicial custody of the petitioner on 29th August 2025. Non-compliance of section 48(4) BNSS has thereafter been alleged.

6. Learned counsel has placed reliance on judgments rendered by Supreme Court in the cases of Vihaan Kumar versus State of Haryana, LAWS (SC)-2025-2-20; Prabir Purkayastha versus state (Nct of Delhi) LAWS(SC)-2024-5-46; Pankaj Bansal versus Union of India LAWS (SC) -2023-10-3; Mihir Rajesh Shah v. State of Maharashtra, (2026) 1 SCC 500, Kasireddy Upender Reddy versus State of Andhra Pradesh, LAWS (SC)-2025-5-148 to buttress his submissions.

7. Learned AGA appearing on behalf of respondents has opposed the petition with submission that at the time of passing of remand order which is under challenge, the petitioner was already under custody and remand with regard to previous FIR and therefore since there was only a change of custody and not a fresh arrest, there was no occasion to comply with the provisions of Article 22 (1) of Constitution of India or even section 48(3) BNSS.

8. It is secondly submitted that after the impugned remand order has been passed, charge sheet was filed on 25th November, 2025 and cognizance order was also passed on 27th January 2026. It is therefore submitted that once charge sheet has been filed and cognizance order has been passed, the remand sought and granted under section 167 (2) Cr.P.C. loses its

significance and the remand order can now be challenged only once the cognizance order is under challenge. Learned counsel has placed reliance on judgment rendered in the case of Neeraj and another versus State of U.P. and another, Habeas Corpus Writ Petition No. 218 of 2026 passed by Division Bench of this Court to buttress his submissions.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the questions therefore requiring adjudication are as follows:-

(A) Whether the order of remand passed against an accused pertaining to a particular FIR while he is under custody with regard to an earlier FIR would amount to merely change of custody or would be a fresh arrest?

(B) Whether in the scenario envisaged in question number 1, non-compliance of Article 22 of constitution of India would render the remand/detention illegal ?

(C) Whether the division bench judgment rendered in the case of Neeraj (supra) would amount to stare decisis and would be a binding precedent in the present case.

Answer to question No. A

10. With regard to said question, it is admitted between the parties that present remand order which is impugned in the petition has been passed while the petitioner was already in custody with regard to an earlier FIR.

11. The aforesaid aspect has been dealt with by Supreme Court in the case of Dhanraj Aswani versus Amar S. Mulchandani and another (2024) 10 SCC 336 and had noticed conflicting judgments on that issue by various High Courts. After elaborate analysis and discussion, the Supreme Court accepted the version indicated by Orissa High Court in the case of Sanjay Kumar Sarangi versus State of Odisha, 2024 SCC OnLine Ori 1334 which held that there are two ways in which a person who is already in custody may be arrested with the first being that no sooner than he is released from custody in the first case, arrest can occasion with regard to a different case and

secondly, even before he is set free from custody in the first case, he can again be formally arrested and a prisoner transit order can be obtained under section 267 Cr.P.C. from the jurisdictional magistrate for the other offense. Another condition envisaged was that instead of effecting a formal arrest, the investigating officer could make an application before the jurisdictional magistrate seeking a transit warrant for production of accused from prison.

12. The aforesaid judgment therefore is a proposition that an accused who is in custody with regard to a previous criminal case can subsequently also be arrested again. It has also been held that such formal arrest does not bring the accused in the custody of the police officer as the accused continues to remain in custody of magistrate who remanded him to judicial custody with regard to the first offence and it is only once the formal arrest has been made that the police officer has to make an application under section 267 Cr.P.C. for issuance of a transit warrant and based on the requirements prescribed under section 267 Cr.P.C., a transit warrant can be issued by the jurisdictional magistrate whereafter the accused has to be produced before such magistrate.

13. It has therefore been held that in such circumstances, the second arrest/detention cannot be construed to be a continuing arrest and would in fact come within scope of a fresh arrest.

14. Relevant paragraphs of the judgment rendered by Supreme Court in the case of Dhanraj Aswani versus. Amar S. Mulchandani, (2024) 10 SCC 336 are as follows:-

"56. As pointed out in the preceding paragraphs, a police officer can formally arrest a person in relation to an offence while he is already in custody in a different offence. However, such formal arrest does not bring the accused in the custody of the police officer as the accused continues to remain in the custody of the Magistrate who remanded him to judicial custody in the first offence. Once such formal arrest has been made, the police officer has to make an application under Section 267CrPC before the jurisdictional Magistrate for the issuance of a PT warrant without delay. If, based on the requirements prescribed under Section 267CrPC, a PT warrant is issued by the jurisdictional Magistrate, then the accused

has to be produced before such Magistrate on the date and time mentioned in the warrant, subject to Sections 268 and 269 respectively of CrPC. Upon production before the jurisdictional Magistrate, the accused can be remanded to police or judicial custody or be enlarged on bail, if applied for and allowed.

57. The only reason why we have delineated the procedure followed in cases where a person already in custody is required to be arrested in relation to a different offence is to negate the reasoning of the Rajasthan, Delhi and Allahabad High Courts that once in custody, it is not possible to re-arrest a person in relation to a different offence. When a person in custody is confronted with a PT warrant obtained in relation to a different offence, such a person has no choice but to submit to the custody of the police officer who has obtained the PT warrant. Thus, in such a scenario, although there is no confinement to custody by touch, yet there is submission to the custody by the accused based on the action of the police officer in showing the PT warrant to the accused. Thereafter, on production of the accused before the jurisdictional Magistrate, like in the case of arrest of a free person who is not in custody, the accused can either be remanded to police or judicial custody, or he may be enlarged on bail and sent back to the custody in the first offence. A number of decisions have held that although Section 267CrPC cannot be invoked to enable production of the accused before the investigating agency, yet it can undoubtedly be invoked to require production of the accused before the jurisdictional Magistrate, who can thereafter remand him to the custody of the investigating agency. Such an interpretation of the provision would give true effect to the words “other proceedings” as they appear in the text of Section 267CrPC, which cannot be construed to exclude proceedings at the stage of investigation. [See : C. Natesan v. State of T.N. [C. Natesan v. State of T.N., 1998 SCC OnLine Mad 931] , Ranjeet Singh v. State of U.P. [Ranjeet Singh v. State of U.P., 1994 SCC OnLine All 797 : 1995 Cri LJ 3505] and State of Maharashtra v. Yadav Natthuji Kohachade [State of Maharashtra v. Yadav Natthuji Kohachade, 1999 SCC OnLine Bom 422 : 2000 Cri LJ 959] .]

58. Thus, contrary to the view taken by the Rajasthan, Allahabad and Delhi High Courts, a person, while in custody in relation to an offence,

can be arrested in relation to a different offence, either after getting released from custody in the first offence, or even while remaining in custody in the first offence. In such circumstances, it follows that a person, while in custody in relation to an offence, can have “reason to believe” that he may be arrested in relation to a different cognizable offence. We find no restriction in the text of Section 438 or the scheme of CrPC precluding a person from seeking anticipatory bail in relation to an offence while being in custody in relation to another offence. In the absence of any such restriction, we find no valid reason to read any prohibition in the text of Section 438CrPC, to preclude a person in custody from seeking anticipatory bail in relation to different offences.”

15. In view of aforesaid judgments and discussion made herein-above, it is thus evident that arrest of an accused while he is under remand in a previous case would amount to a fresh arrest in case of subsequent detention and the subsequent remand order having been passed.

16. The question number A therefore is answered to the extent that second arrest while in custody would amount to a fresh arrest.

17. The question is answered accordingly.

Answer to question No. B

18. Once it has been held that subsequent formal arrest of an accused who is already under custody would amount to a fresh arrest, it necessarily follows that provisions of Article 22(1) read with section 48(2) BNSS would require to be followed.

19. It is quite evident that such a right of an accused to be informed with regard to grounds of arrest have been clearly indicated as a fundamental right in part III of the Constitution of India. The consequential right emanating from section 48(2) of BNSS would thus require to be followed without any violation.

20. The said aspect has also been considered by Supreme Court in the case of Vihaan Kumar versus State of Haryana, LAWS (SC)-2025-2-20 in the

following manner:-

" CONCLUSIONS

21. Therefore, we conclude: a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is

established."

21. The said enunciation has been concurred with by the other member of the Bench in the following manner:-

" 2. The issue on the requirement of communication of grounds of arrest to the person arrested, as mandated under Article 22(1) of the Constitution of India, which has also been incorporated in the Prevention of Money Laundering Act, 2002 under Section 19 thereof has been succinctly reiterated in this judgment. The constitutional mandate of informing the grounds of arrest to the person arrested in writing has been explained in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] so as to be meaningful to serve the intended purpose which has been reiterated in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] . The said constitutional mandate has been incorporated in the statute under Section 50CrPC (Section 47 of the BNSS). It may also be noted that the aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50-ACrPC. As may be noted, this is in the addition of the requirement as provided under Section 50(1) CrPC.

3. The purpose of inserting Section 50-ACrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained

person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal. "

22. The aforesaid judgment therefore clearly indicates that non compliance of Article 22 (1) of constitution of India would be a violation of fundamental rights of accused guaranteed under the said Article and non compliance therefore not only vitiates the arrest of accused but further orders also passed by criminal court of remand. It has also been held that filing of charge sheet will not validate a breach of constitutional mandate under Article 22(1) of the Constitution. The judgment also holds that when violation of Article 22(1) is established, it is the duty of the court to forthwith order release of accused. In the concurring but separate judgment, reliance has been placed on the judgment rendered by Supreme Court in the case of Pankaj Bansal versus Union of India 2024 7 SCC 576 as well as the case of Prabir Purkayastha versus State (NCT of Delhi) 2024 8 SCC 254 and it has been held that constitutional mandate under Article 22(1) of Constitution of India also extends for communicating the grounds of arrest not only to the accused but also to the friends, relatives or other such persons interested in the welfare of the accused who may be disclosed or nominated by the arrested person for purposes of providing such information in terms of Section 50-A Cr.P.C. It has therefore been held that in terms of Section 50-A Cr.P.C., it is obligatory upon the person making arrest to inform the grounds of arrest not only to the accused but also to his relatives, friends and other nominated person.

23. The aforesaid judgment rendered in the case of Vihaan Kumar (supra) has recently been followed by division bench of this court in the case of Rakesh versus State of UP and others, Criminal Misc. Writ Petition No. 25626 of 2025 wherein it has been held that in case of failure to ensure

compliance of requirements of Article 22 (1) of Constitution of India, an order of remand would be rendered illegal.

24. In view of aforesaid pronouncements by Supreme Court as well as by division bench of this court, it is therefore held that in case of violation of specific provisions of Article 22 (1) of Constitution of India, the initial detention as well as an order of remand would be rendered illegal due to which an accused is required to be set at liberty forthwith.

25. The question No. B therefore answered accordingly.

Answer to question No. C

26. A discordant note however is noticed in the judgment rendered by division bench of this court in the case of Neeraj and others (supra) whereunder the division bench noticing the judgments rendered in the cases of Vihaan Kumar versus State of Haryana, LAWS (SC)-2025-2-20; Prabir Purkayastha versus state (Nct of Delhi) LAWS(SC)-2024-5-46; Pankaj Bansal versus Union of India LAWS (SC) -2023-10-3; Mihir Rajesh Shah v. State of Maharashtra, (2026) 1 SCC 500, Kasireddy Upender Reddy versus State of Andhra Pradesh, LAWS (SC)-2025-5-148 has held the same not to be a binding precedent on the proposition that they have been rendered without considering previous judgments of Supreme Court particularly the case of Naranjan Singh Nathawan 1952 1 SCC 118; Sanjay Dutt versus State through CBI, Bombay, 1994 5 SCC 410, Col. Dr. B.R. Ramachandra Rao versus State of Orisa and others 1972 3 SCC 256.

27. It is on that basis that it has been held in the case of Neeraj (supra) that subsequent set of judgments of Vihaan Kumar (supra), Prabir Purkayastha (supra) and Pankaj Jaiswal (supra) etc. would not have any binding effect. It is however a relevant aspect that the questions under consideration in the case of Neeraj (supra) pertain to maintainability and entertainability of a writ petition in the nature of habeas corpus on the ground of violation of Articles 21 and 22 of Constitution of India. The questions so framed in the case of Neeraj (supra) are as follows:-

" (i) whether it is open for the person arrested / detained to prefer a

habeas corpus petition on the ground of violation of Article 21 and 22 of the Constitution of India any time after his remand, till the conclusion of trial, at any stage of investigation and trial.

(ii) whether there is no time line fixed for filing a habeas corpus petition before the court. "

28. The division bench has thereafter examined the scope and came to a conclusion that there are two sets of judgments rendered by Supreme Court and made a distinction between the old set and a new set with the judgments of old sets being in the cases of Naranjan Singh Nathawan (Supra); Sanjay Dutt (Supra); A.K. Gopalan and Another, AIR 1966 SC 816; Col. Dr. B.R. Ramachandra Rao (Supra); Kanu Sanyal versus District Magistrate, Darjeeling and others, (1974) 4 SCC 141 and few others and second set of recent judgment of the Apex Court in the cases of Vihaan Kumar (Supra); Prabir Purkayastha(Supra), Pankaj Bansal (Supra) and Mihir Rajesh (Supra) and some other judgments.

29. After analysis, the division bench held that old judgments of Supreme Court indicate that there is presumption of legality of custody when a petition of habeas corpus is filed and it was also held that initial detention cannot be held to be illegal when subsequent stages of investigation/trial have passed after filing of charge sheet or while serving sentence awarded by court.

30. The second set of judgments of Supreme Court have thereafter been examined and it has been held that they have been passed without considering the earlier set of judgments and it is on that ground that the second set judgment were held not to be binding.

31. The division bench has therefore followed the earlier set of judgments and came to the conclusion that once charge sheet has been filed and cognizance order has been passed, no challenge can be raised to the first order of remand in light of Sections 209 and 309 Cr.P.C.

32. Learned AGA has heavily relied upon the aforesaid judgment rendered by division bench in the case of Neeraj (supra).

33. At the very outset, it is evident from the questions framed in the case of Neeraj (supra) that it is confined to the aspect of maintainability of a petition for habeas corpus on the ground of violation of Articles 21 and 22 of Constitution of India any time after remand and it is on that basis that it has been held that there will be a presumption of validity of custody of an accused due to which a petition for habeas corpus would not be maintainable.

34. Evidently the aforesaid judgment would be inapplicable in the present case where a petition under section 528 BNSS has been filed challenging the very legality of the detention/remand order. If left to itself, such a finding by this court would suffice for inapplicability of judgment rendered in the case of Neeraj (supra) in the present facts and circumstances since the questions which have been answered subsequently would be inapplicable to record a finding on that basis in the present case where Habeas Corpus has not been sought.

35. Nonetheless since the said division bench judgment of Neeraj (supra) has also held the subsequent judgments of Supreme Court in the cases of Vihaan Kumar etc. not to be binding precedent, this court is compelled to adjudicate upon the aforesaid aspect as well since the primary thrust of submissions of learned counsel for petitioner is based on the very same judgments of Vihaan Kumar(supra), Prabir Purkayastha(supra), Pankaj Bansal(supra) etc.

36. In the case of Neeraj (supra) the division bench has examined the aforesaid both sets of judgments and has indicated its view that the validity of initial detention and subsequent detention orders can be considered as the basis of maintaining a petition for habeas corpus only till investigation is in progress and once charge sheet is submitted and order of cognizance is passed, the right to challenge the initial illegality in the order of remand cannot be enforced.

37. The division bench also was of the view that once the charge sheet has been filed and cognizance is taken, it amounts to a judicial order which stands on a higher footing than an order of remand passed under Section

167 Cr.P.C. which is merely a pre investigation judicial order and till order of cognizance is passed, the initial order of detention and remand could be challenged.

38. In view of the finding which has been recorded in the case of Neeraj (supra), the judgments enunciated by Supreme Court which have been identified by division bench as the first set of judgments would require examination.

39. The case of Naranjan Singh Nathwan (supra), was a case of preventive detention where a fresh order of detention had been passed and cognizance had not been taken. The judgment examined the proposition laid down in earlier judgment of Basanta Chandra Ghosh versus Emperor, AIR 1945, FC 18 and enunciated that the question was not whether the latter order validates earlier detention but whether in the face of latter valid order, a court can direct release of petitioner. After examining proposition laid down in the case of Makkhan Singh Tarsikka versus State of Punjab, 1951 SCC 1440, it has been enunciated that a detention order may at any time be revoked or modified and that such revocation shall not bar making of a fresh detention order. It has also been held that the aspect of valid detention is to be seen not with regard to the date of institution of proceedings but with regard to the time of return of notice. The relevant paragraphs of the judgment rendered in the case of Naranjan Singh Nathwan (supra) are as follows:

"9. It is contended by the Advocate General of the Punjab that the decision in Basanta Chandra Ghose v. Emperor [Basanta Chandra Ghose v. Emperor, AIR 1945 FC 18 : (1945) 7 FCR 81 : 1945 SCC OnLine FC 3] is a clear authority in support of the validity of the aforesaid order. On essentially similar facts the Court laid down two propositions both of which have application here : (1) where an earlier order of detention is defective merely on formal grounds, there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases in which the sufficiency of the grounds is not examinable by the courts, and (2) if at any time before the court directs the release of the detenu, a valid order directing his detention is produced, the court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention.

The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the court can direct the release of the petitioner. The learned Judges point out that the analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings has no application to proceedings in the nature of habeas corpus where the Court is concerned solely with the question whether the applicant is being lawfully detained or not.

10. The petitioner's learned counsel conceded that he could not challenge the correctness of the second proposition, but took exception to the first as being no longer tenable after the Indian Constitution came into force. It was urged that Article 22 lays down the procedure to be followed in cases of preventive detention and the said procedure must be strictly observed as the only prospect of release by a court must be on the basis of technical or formal defects, a long line of decisions having held that the scope of judicial review in matters of preventive detention is practically limited to an enquiry as to whether there has been strict compliance with the requirements of the law. This is undoubtedly true and this Court had occasion in the recent case of Makhan Singh Tarsikka v. State of Punjab [Makhan Singh Tarsikka v. State of Punjab, 1951 SCC 1140] to observe : (SCC p. 1142, para 7)

“7. ... It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected.”

This proposition, however, applied with equal force to cases of preventive detention before the commencement of the Constitution, and it is difficult to see what difference the Constitution makes in regard to the position. Indeed, the position is now made more clear by the express provisions of Section 13 of the Act which provides that a detention order may at any time be revoked or modified and that such revocation shall not bar the making of a fresh detention order under Section 3 against the same person. Once it is conceded that in habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention at the time

of the return and not with reference to the date of the institution of the proceeding, it is difficult to hold, in the absence of proof of bad faith, that the detaining authority cannot supersede an earlier order of detention challenged as illegal and make a fresh order wherever possible which is free from defects and duly complies with the requirements of the law in that behalf."

40. The second judgment on the point is in the case of Ram Narayan Singh versus State of Delhi [(1953) 1 SCC 389] which pertained to a petition of habeas corpus and it was held that legality or otherwise of detention is not to be seen with reference to institution of proceedings but with regard to time of return of notice. The relevant paragraph of the judgment rendered in the case of Ram Narayan Singh (supra) is as follows:

"4. It has been held by this Court that in habeas corpus proceedings, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. The material date on the facts of this case is 10th March, when the affidavit on behalf of the Government was filed justifying the detention as a lawful one. But the position, as we have stated, is that on that date there was no order remanding the four persons to custody. This Court has often reiterated before that those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of the law. That has not been done in this case. The petitioners now before us are therefore entitled to be released, and they are set at liberty forthwith.

Writ petition allowed"

41. In the case of Kanu Sanyal (supra) which also pertained to a petition of habeas corpus, the aspect of examination of validity of detention has again been enunciated upon that in case the detention is seen as legal at the time of hearing of the application for habeas corpus, a court cannot order release of a person detained by issuing a writ of habeas corpus. The relevant paragraph of the judgment rendered in the case of Kanu Sanyal (supra) is as follows:

"4. These two grounds relate exclusively to the legality of the initial

detention of the petitioner in the District Jail, Darjeeling. We think it unnecessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court. This Court speaking through Wanchoo, J., (as he then was) said in A.K. Gopalan v. Government of India: [AIR 1966 SC 816 : (1966) 2 SCR 427 : 1966 Cri LJ 602]

“It is well settled that in dealing with the petition for habeas corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the hearing.”

In two early decisions of this Court, however, namely, Naranjan Singh v. State of Punjab [(1952) 1 SCC 118 : AIR 1952 SC 106 : 1952 SCR 395 : 1952 Cri LJ 656] and Ram Narayan Singh v. State of Delhi [(1953) 1 SCC 389 : 1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] a slightly different view was expressed and that view was reiterated by this Court in B.R. Rao v. State of Orissa [(1972) 3 SCC 256, 259 : 1972 SCC (Cri) 481] where it was said (at p. 259, para 7):

“in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings”.

and yet in another decision of this Court in Talib Hussain v. State of Jammu & Kashmir [(1971) 3 SCC 118, 121] Mr Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at p. 121, para 6):

“in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing.”

Of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of

hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus. But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and the Court is not, to quote the words of Mr Justice Dua in B.R. Rao v. State of Orissa, "concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus". Now the writ petition in the present case was filed on January 6, 1973 and on that date the petitioner was in detention in the Central Jail, Vizakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the petitioner in the Central Jail, Vizakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Vizakhapatnam. See para 7 of the judgment of this Court in B.R. Rao v. State of Orissa. The legality of the detention of the petitioner in the Central Jail, Vizakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them.

Re: Ground C."

42. The case of Sanjay Dutt (supra) pertained to default bail under Section 20(4)(bb) of Terrorist and Disruptive Activities (Prevention Act) 1987 in which it has been held that such an aspect can be seen pertaining to custody of accused only till the issue is governed by Section 167 Cr.P.C. but if such a right specifically pertaining to default bail, remain unenforced till filing of challan/(sic charge sheet), then there is no question of enforcement of such a right since it extinguishes the moment challan/(sic charge sheet) is filed because Section 167 Cr.P.C. ceases to apply. It has also been held that if on

the date of return of the rule, the custody or detention is on the basis of a valid order, a writ of habeas corpus cannot be issued. The relevant paragraph of the judgment rendered in the case of Sanjay Dutt (supra) is as follows:

" 48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. State of Punjab [(1952) 1 SCC 118 : 1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] ; Ram Narayan Singh v. State of Delhi [(1953) 1 SCC 389 : 1953 SCR 652 : AIR

1953 SC 277 : 1953 Cri LJ 1113] and A.K. Gopalan v. Government of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] .)"

43. The said aspect has also been dealt with by Full Bench of this Court in the case of Bal Mukund Jaiswal versus Superintendent, District Jail, Varanasi and another, 1997 SCC OnLine All 960 wherein it has been held that where an accused is in judicial custody on the basis of a valid remand order under Sections 209 or 309 Cr.P.C., such a person cannot be set at liberty by issuing a writ of habeas corpus on the ground that his initial detention was violative of constitutional guarantee under Articles 21 and 22 of the Constitution of India. The relevant paragraphs of the judgment rendered in the case of Bal Mukund Jaiswal (*supra*) are as follows:

11. Sri D.S. Mishra has placed very strong reliance of this observation of the Supreme Court in paragraph 13 in Madhu Limaye's case ((1969) 1 SCC 292 : AIR 1969 SC 1014) (supra) that the petitioners were entitled to be released on this ground alone. However what is to be noted at this very juncture is another important observation in the case of Madhu Limaye. In the very next paragraph i.e. paragraph 14 their lordships observed as follows:—

“Once it is shown that the arrest made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State has failed to do. The remand orders are patently routine and appear to have been made mechanically. All that Mr. Chagla has said is that if the arrested persons wanted to challenge their legality the High Court should have been moved under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this Court under Article 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions. If their detention in custody could not continue after their arrest because of the violation of Article 22(1) of the Constitution they were

entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities. This disposes of the third contention of Madhu Limaye.”

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12. From this observation of their lordships of the Supreme Court in the case of Madhu Limaye ((1969) 1 SCC 292 : AIR 1969 SC 1014) (supra) it is clear that their lordships did not stop after holding in paragraph 13 that Madhu Limaye and others were entitled to be released on the ground of non-compliance of the provisions of Article 22(1) of the Constitution but they further examined the second point formulated in paragraph 7 of the said judgment to examine whether a valid order of remand existed or not. Once their lordships found that the remand order by the magistrate directing detention in jail custody was without application of mind to all relevant matters and were not such as could cure the constitutional infirmities, their lordships observed that the detention in custody being in violation of Article 22(1) of the Constitution Madu Limaye and other were entitled to be released forthwith. This observation negatives the contention of Sri D.S. Mishra that the Courts are not competent to examine in a case similarly placed where despite violation of the provisions of Article 27(1) of the Constitution rendering initial detention illegal that the custody at a subsequent stage had been validated by a valid order of remand passed by the magistrate.

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24. We are afraid that Sri Misra is not right in his contention that in the case of Madhu Limaye ((1969) 1 SCC 292 : AIR 1969 SC 1014) (supra) the Supreme Court was not considering the question of legality of detention of the ground whether after the initial arrest of Madhu Limaye and others had been found to be bad in the eyes of law it would be still validated by a subsequent valid order. We have quoted paragraph 14 of the judgment of the Supreme Court in the case of Madhu Limaye (supra) earlier which clearly shows that their lordships in the case of Madhu Limaye also considered the question of validity of Madhu Limaye's detention pursuant to orders of remand. It is a different matter that in the

case of Madhu Limaye their lordships of the Surpeme Court did not find the remand orders to be valid and hence the petition of Madhu Limaye was allowed whereas in the case of Kanu Sanyal the subsequent order passed by the Visakhapatnam Court was found to be valid and hence the petition was dismissed. That however does not mean that the Supreme Court in the case of Madhu Limaye did not consider the question of illegal detention being validated at subsequent stage despite the fact that the initial illegality was rendered on account of non-compliance of the provisions of the Constitution.

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28. We have not been able to agree with the view taken in the case of Hazari Lal v. State of U.P. (1991 Lucknow LJ 230) (supra) as also in the case of Ashok Kumar Singh v. State of U.P. (1997 Lucknow LJ 273) (supra) which have gone to the extent of saying that once the detentioin of a person is rendered illegal on account of non-fulfilment of provisions of Article 22(1) of the Constitution, then such an illegality cannot be cured even by a subsequent valid order of remand. Accordingly the case of Hazari Lal and Ashok Kumar Singh as also the cases mentioned therein taking the same view are overruled. Our answer to the question referred, therefore, is as follows:—

“Where an accused person is in judicial custody on the basis of a valid remand order passed u/ss. 209 or 309 Code of Criminal Procedure by the magistrate or by any other competent Court then such accused person cannot be set at liberty by issuing a writ of habeas corpus solely on the ground that his initial detention was violative of a constitutional guarantee enshrined in Articles 21 and 22 of the Constitution of India.”

44. The proposition as enunciated in the aforesaid judgments therefore clearly is to the effect that if on the date of either filing of charge sheet or return of notice, the detention order is found to be valid, the detained person cannot be released only on the ground of invalidity of earlier detention order, either for violation of any statutory principle or even for violation of Articles 21 or 22 of the Constitution of India.

45. It is however a relevant fact that aforesaid judgments pertained either to issuance of writ in the nature of habeas corpus or to preventive detention and in none of the aforesaid judgments was the remand order under challenge.

46. In the second set of judgments, subsequently in the case of Pankaj Bansal (*supra*) the aspect pertained to detention under Prevention of Money Laundering Act, 2002 whereunder the arrest orders, consequential proceedings arising therefrom and remand order were under challenge. Hon'ble Supreme Court after considering various aspects, distinguished the earlier judgments essentially on the ground that the previous judgments dealt with the issue of a writ of habeas corpus and therefore the ratio laid down in such cases were inapplicable. The issue considered was the arrest of appellants therein under Section 19 of the said Act and it was held that mere passing of an order of remand would be insufficient to validate the arrest if such arrest was not in conformity with the requirements of Section 19 of the said Act. After examination of provisions of Article 22 of the Constitution of India, the Court enunciated that grounds of arrest recorded in terms of Section 19 (1) of the Act of 2002 would be necessarily required to be provided to the arrested person. The form of communication was also indicated and it was held that since the arrest therein did not comply with the said provisions, it was bad in law.

47. It is however relevant that the said judgment pertained to the aspect that an FIR was registered against the appellant therein registered as enforcement case information report, (ECIR) in which interim protection was granted whereafter the appellants therein had been summoned by the Enforcement Directorate for their statements but upon their presentation, were arrested in a subsequent ECIR. The said judgment also is not a proposition pertaining to challenge to any order of remand in exercise of power under Section 209 or 309 Cr.P.C., as in the present case. It was also held that it is in terms of Section 19(3) of the Act of 2002 that provisions of Section 167 Cr.P.C. would necessarily have to be complied with.

48. The aspect of violation of Article 22 of Constitution of India has thereafter been a subject matter of consideration of Supreme Court in the case of Prabir Purkayastha (*supra*), wherein provisions of unlawful Activities

(Prevention) Act, 1967 read with provisions of IPC were examined. The said judgment also noticed the previous judgments and was again primarily on the ground of challenge to the initial order of remand but it was held that despite arrest having been made under provisions of UAPA, the arrested person had a fundamental right to be informed of grounds of arrest. It was also held that the mere fact that a charge sheet has been filed in the matter would not validate the illegality and unconstitutionality committed at the time of arresting of accused and the ground of initial police custody remand to the accused (emphasis supplied). The relevant paragraph of the judgment rendered in the case of Prabir Purkayastha (supra) is as follows:

"22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused."

49. Subsequently the Supreme Court in the case of Vihaan Kumar (supra) has also held that non-compliance of Article 22(1) of Constitution of India would be a violation of fundamental rights and also a violation of right to personal liberty guaranteed under Article 21 of Constitution of India, which would vitiate the arrest. The Hon'ble Court has also held that further orders passed by a tribunal court of remand would also be vitiated and that filing of a charge sheet would not validate a breach of constitutional mandate under Article 22(1) of Constitution of India. A note of caution was however added that such violation would not vitiate the investigation, charge sheet and trial.

50. The said judgment in the case of Vihaan Kumar (supra) therefore has been specifically relied upon by learned counsel for petitioner to submit that once non-compliance of Article 22(1) of Constitution of India is established, further orders passed by a criminal court of remand would also be vitiated even if subsequent remand orders are passed under Sections 209 and 309 Cr.P.C.

51. The aforesaid aspect has thereafter been considered by Supreme Court in

the case of Mihir Rajesh Shah (supra), particularly with regard to violation of provisions of BNS and IPC, particularly with regard to non-compliance of Section 50 Cr.P.C. (now Section 47 BNS 2023). After analysis of previous judgments it has been held in the case of Mihir Rajesh Shah (supra) as follows:

"52. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.

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54. In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings."

52. The aforesaid judgment therefore is only for a proposition that compliance of Section 50 Cr.P.C. could be made subsequent to the arrest as well but within a two-hour threshold before production for remand for purposes of safeguarding the arrestee's constitutional right under Article 22(1) of Constitution. This aspect was again considered by Supreme Court in the case of Kasireddy Upender Reddy Versus State of Andhra Pradesh and Others, 2025 SCC OnLine SC 1228 (supra) and while following the case of

Vihaan Kumar (supra) a distinction was drawn in following manner:

19. We must clarify one important aspect of Vihaan Kumar (supra). In Vihaan Kumar (supra) the case was that there was an absolute failure on the part of the police to provide the grounds of arrest. In Vihaan Kumar (supra) reliance was placed upon the entry in the case diary which recorded that the appellant therein was arrested after informing him of the grounds of arrest. In the case at hand, it is not in dispute that the grounds of arrest were supplied to the arrestee, however, the case put up is that those grounds are not meaningful and are bereft of necessary essential information.

20. In this appeal our endeavor would be to consider whether the grounds of arrest supplied to the appellant's son at the time of his arrest could be said to be meaningful and sufficient enough to give a broad idea to the person arrested of the accusations levelled and as to why he was being taken into custody.

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36. If a person is arrested on a warrant, the grounds for reasons for the arrest is the warrant itself; if the warrant is read over to him, that is sufficient compliance with the requirement that he should be informed of the grounds for his arrest. If he is arrested without a warrant, he must be told why he has been arrested. If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial. In order to inform him that he has committed a certain offence, he must be told of the acts done by him which amounts to the offence. He must be informed of the precise acts done by him for which he would be tried; informing him merely of the law applicable to such acts would not be enough. (See : Vimal Kishore Mehrotra (supra))"

53. The aforesaid judgment therefore is a proposition to the effect that in case a person is arrested on a warrant, the grounds for reasons of arrest are the warrant itself and in case such a warrant is read over to the said person, there would be sufficient compliance of Article 22(1) of Constitution.

54. However, after analysis of the aforesaid judgments, it transpires that

same pertain to compliance of Article 22(1) of Constitution of India at the stage of initial arrest which would be governed by Section 167 Cr.P.C. Although in the case of Vihaan Kumar (supra), it has been held that in case of violation of Article 22(1) of Constitution, further orders passed by a Criminal Court of remand would be vitiated but has also held that it would not vitiate investigation, charge sheet and trial. It is thus evident that judgment rendered in the case of Vihaan Kumar (supra) would be restricted till the operation to the stage of Section 167 Cr.P.C. and not subsequently.

55. The primary reason of this court for reaching such a finding is due to the fact that in the case of Vihaan Kumar (supra), the aspects governing remand under Section 209 and 309 Cr.P.C. have neither been discussed nor considered.

56. For proper appreciation of the current controversy, it would be conducive to refer to the aforesaid two sections along with Sections 167, 204, 207 Cr.P.C., which are as follows:

167 Cr.P.C.

"167. Procedure when investigation cannot be completed in twenty-four hours.

(1)Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, 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 hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the

whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :Provided that -

(a)[the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, - [Substituted by Act 45 of 1978, Section 13, for paragraph (a) (w.e.f. 18-12-1978).]

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) [no Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (i), for Cl. (b). Prior to its substitution, Cl (b) read as under.-(b) no Magistrate shall authorise detention in any custody under this Section unless the accused is produced before him;].]

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

[Explanation I - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]
[Original Explanation numbered as Explanation II thereof and Explanation I inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).]

[Explanation II. - If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:] *[Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (ii), for Explanation II. Prior to its substitution, Explanation II read as under :-*

[Explanation II. - If any question arises whether an accused persons was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention].]

[Provided further that in case of woman under eighteen years of is, the detention shall be authorised to be in the custody of a remand home or recognized social institution.] *[Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (b).]*

[(2-A) Notwithstanding anything contained in sub-section or (1) sub-section (2), the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of a 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 the entry in the diary, hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may

think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order, and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2) :

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer-in-charge of the police station or the police officer making the [investigation] [Inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).], as the case may be.]

(3)A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4)Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5)If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

(6)Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made

under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

Section 204 Cr.P.C.

"204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87. "

Section 207 Cr.P.C.

"207. Supply to the accused of copy of police report and other documents.

- In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of post, a copy of each of the following:-

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all

persons whom the prosecution proposes to examine as its witnesses, excluding there from any part in regard to which a request for exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173 :

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused : Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

Section 209 Cr.P.C.

"209. Commitment of case to Court of Session when offence is triable exclusively by it.

- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall -

(a) [commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;] [Substituted by Act 45 of 1978, Section 19 for Cl (a) (w.e.f. 18-12-1978).]

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session. "

Section 309 Cr.P.C.

"309. Power to postpone or adjourn proceedings.-

[(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: Provided that when the inquiry or trial relates to an offence under section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB of the Indian Penal Code, the inquiry or trial shall] [Substituted by Criminal Law (Amendment) Act, 2013] be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused if in custody : Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time : Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing : [Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.] [Inserted by Act 45 of 1978, Section 24 (w.e.f. 18-12-1978).] [Provided also that-

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not

present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]

Explanation 1. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2. - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

57. Upon a subjective analysis of the aforesaid sections, the cobwebs of obfuscation stand removed and situation appears to be clarified to the extent that initial detention and remand is under Section 167 Cr.P.C., which continues till filing of charge sheet under Section 173 Cr.P.C. with filing of police report on completion of investigation and cognizance thereof is taken under Section 190 Cr.P.C. It also appears that upon taking cognizance, summons are issued under Section 204 Cr.P.C. and Section 207 Cr.P.C. provides for supply to accused a copy of police report and other relevant documents, which are indicated in the body of the section. Once the said proceedings conclude, commitment of a case is required to be done to the Court of Session under Section 209 Cr.P.C., which also provides remand of the accused to custody during, and until conclusion of trial. Charges are thereafter framed under Section 211 Cr.P.C. and in cases not covered by Section 209 Cr.P.C., remand can be directed under Section 309 (2) Cr.P.C.. It thus transpires that first arrest and remand is the initial stage of proceedings under Section 167 Cr.P.C. and prior to that there is no provision for intimating the accused of any reasons or ground of arrest as envisaged under Article 22 of Constitution of India. It is in such circumstances that the provisions of Article 22(1) of Constitution would be applicable to make an accused and his family members aware with regard to the grounds and reasons for his arrest so as to raise an effective defence.

58. From a perusal of Section 207 Cr.P.C., it therefore transpires that once the copy of police report and other documents indicated in the body of Section have been supplied to the accused, then only any further remand under Section 209 or Section 309 Cr.P.C. can take place. Evidently, once provisions of Section 207 Cr.P.C. stand complied with, obviously the accused is aware of the allegations levelled against him and also with regard to the outcome of the investigation against him. At this stage, therefore, it cannot be said that he is again required to be made aware of the reasons and grounds of arrest as envisaged under Article 22(1) of Constitution.

59. The aforesaid provisions therefore clearly implicate a situation where provisions of Article 22(1) of Constitution would be required to be followed only till the existence of the stage of Section 167 Cr.P.C. and not thereafter, particularly not after Section 207 Cr.P.C. stands complied with.

60. In the alternative, if it is held that even after compliance of Section 207 Cr.P.C., Article 22(1) of Constitution is required to be adhered to between the stages of Section 207 Cr.P.C. and Section 209/309 Cr.P.C., it would render Section 207 Cr.P.C. redundant, which cannot be the intention of legislature or even of the purpose of incorporating the provisions of Article 22(1) of Constitution of India.

61. The underlying purpose of Article 22(1) of Constitution is that an accused should not remain in the dark with regard to allegations levelled against him and the reasons and grounds of his arrest so that he or his family members can raise an effective defence against such allegations. The broad contours of Article 22(1), therefore, stand substantively satisfied at the stage of Section 207 Cr.P.C.

62. It is in this context that judgment rendered by Supreme Court in the case of Vihaan Kumar (supra) assumes particular importance. It is relevant that the aforesaid judgment of Vihaan Kumar (supra) does not discuss the aspects of Sections 204, 207, 209, or 309 Cr.P.C. In the considered opinion of this Court, the non-consideration of such sections is useful to understand the purport of the judgment. It is thus obvious that judgment rendered in Vihaan Kumar (supra) by its very discussion is applicable only till stage of Section 167 Cr.P.C and certainly not after applicability of Section 207 Cr.P.C.

63. The conclusion recorded in the case of Vihaan Kumar (supra) in paragraph 21 to the effect '*that in view of non-compliance of requirements of Article 22(1) would vitiate the arrest of accused and also further orders passed by a criminal court of remand*', obviously pertains to the initial stage of remand after arrest and not subsequent remand either under Section 209 or Section 309 Cr.P.C particularly since in the same paragraph, it has been held that such violation of Article 22 (1) would not vitiate the investigation, charge sheet and trial. Since trial in a criminal case commences with charge sheet having been filed and framing of charges, obviously as indicated herein above, once cognizance is taken under Section 190 Cr.P.C and after Section 204 and 207 Cr.P.C. have been complied with, the said observations made in Vihaan Kumar (supra) would be of no consequence. It is also relevant as held in the case of Kasireddy (supra) that when a person has been arrested on warrant, the grounds of reasons for arrest is the warrant itself and if such warrant is read over to accused, it has been held that it would render sufficient compliance with requirement that he should be informed of the grounds of arrest. The said judgment therefore has carved out this distinction with regard to warrant cases.

64. In the light of discussion made herein above, it thus appears that there is no contradiction in judgments rendered in the case of Vihaan Kumar (supra) with earlier judgments of Supreme Court including Constitution bench judgments in the cases of Naranjan Singh Nathawan (supra), Sanjay Dutt (supra), A.K. Gopalan (supra), Kanu Sanyal (supra), Col. Dr. B.R. Ramchandra Rao (supra), etc.

65. Another relevant aspect requiring consideration is the terminology used in Section 309(2) Cr.P.C that court after taking cognizance of an offence or commencing a trial finds it necessary to postpone the inquiry or trial for reasons to be recorded, may postpone or adjourn the same on such grounds as it thinks fit for such time as it considers reasonable *and may by warrant remand of accused if in custody*. The said provision that the subsequent remand under Section 309 Cr.P.C can be made only in case the accused is in custody is also to be read in conjunction with Section 167 Cr.P.C, particularly Explanation I, which is as follows:

"[Explanation I - For the avoidance of doubts, it is hereby declared that,

notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]
[Original Explanation I renumbered as Explanation II and Explanation I added by CR.P.C.(Amendment) Act, 1978, S.13.]"

66. The said explanation therefore is a proposition that in case an accused does not furnish bail till applicability of provisions of Section 309 Cr.P.C, he would be considered to be under custody even if he has been granted bail and in such circumstances the subsequent remand order under Section 309 Cr.P.C would be valid.

67. In view of discussion made herein above, it is therefore evident that challenge to the initial detention and initial order of remand can be challenged for violation of Article 22(1) Cr.P.C. only till existence of the stage of Section 167 Cr.P.C and not thereafter.

68. In the present case, it is evident that the stage of Section 167 Cr.P.C is over with charges having been framed and trial on its way. In view of discussion made herein above, since the petitioner did not furnish bail till existence of proceedings under Section 167 Cr.P.C, he would be considered to be under custody and therefore now cannot raise a plea of violation of Article 22(1) of Constitution at this belated stage.

69. The question is therefore answered negatively against petitioner.

70. Considering aforesaid facts and circumstances, the petition being devoid of merits is hereby dismissed.

(Manish Mathur,J.)

October 1, 2026

prabhat