IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

FRIDAY, THE 23RD DAY OF OCTOBER 2026 / 1ST KARTHIKA, 1948

WP(PIL) NO. 165 OF 2025

PETITIONER:

ADV.P.S.SUBEESH, S/O. SHANKARAN,
AGED 46 YEARS
AKP JUNCTION, IRINJALAKKUDA,
NORTH THRISSUR, PIN - 680125

BY ADVS.
SHRI.T.K.SANDEEP
SMT.RESHMA VISWANATHAN
GOVERNMENT PLEADER

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695016

2 THE SECRETARY
DEPARTMENT OF HOME AFFAIRS,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

3 THE DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, PIN - 695010

4 THE DIRECTOR GENERAL OF PROSECUTION
DIRECTORATE OF PROSECUTION, PANAKKAL TOWER,
KOMBARA COCHIN, PIN - 682018

BY ADVS.
SR.GOVERNMENT PLEADER, LALIZA T.Y.
DIRECTOR GENERAL OF PROSECUTION, SRI. ASIF ALI
SHRI.RASHEED C.NOORANAD, SPL.GOVERNMENT PLEADER

THIS WRIT PETITION (PUBLIC INTEREST LITIGATION) HAVING COME UP FOR FINAL HEARING ON 23.10.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T **"CR"**

Raja Vijayaraghavan V, J.

This Writ Petition is filed in the public interest, challenging the constitutional and legal validity of Ext. P1 Guidelines, bearing G.O.(Ms) No.202/2023/Home dated 21.09.2023 issued by the Government of Kerala. The above guidelines lay down the protocol that is to be followed while producing accused before the Registered Medical Practitioners in Hospitals or Judicial Officers for medical examination/procedures/medico legal examination. Along with Ext.P1, an annexure styled as "Additional Medico-legal Protocol/Additional Guidelines that are to be followed while producing persons before the registered medical practitioners in Hospitals or before the Judicial Officer for medical examination/procedures/medico-legal examination" was issued.

2. The petitioner impugns Clauses 17 to 21 of the Guidelines, which read as under:

> "(17) In the case of mentally unstable or disturbed persons being produced before Judicial Officer, the matter should be informed in detail by an officer of and above the rank of sub inspector to the Judicial Officer.
>
> (18) The accused shall be produced before the Judicial Officers, as far as possible, in between 10:00 A.M. and 5:00P.M.

> (19) If there exists any exceptional circumstance for the production of the accused before the Judicial Officer after 5:00 P.M., there shall be a prior intimation by the superior officer of the investigation officer to the Judicial Officer. Further, the investigation officer shall be present at the time of production of the accused to explain such circumstances.
>
> (20) If the production of the accused is made at a time after 7:00 P.M., the Prosecutor concerned shall also accompany the police party to certify as to the exceptional circumstance which led to the delay.
>
> (21) Chief Judicial Magistrates shall monitor the production of the accused after 7:00 P.M within their jurisdiction by obtaining monthly reports from the Judicial Officers so as to ensure scrupulous compliance of the protocol."

3. In essence, clauses 17 to 21 seek to regulate the circumstances and the procedure for producing a mentally unstable or disturbed person, or an accused person, before Judicial Officers, particularly outside ordinary Court hours. Additional conditions are imposed insofar as reporting, attendance, and monitoring requirements by the Police and the prosecution. Clause 17 says that if a mentally unstable or disturbed person is produced before a Judicial Officer, an Officer of and above the rank of Sub-Inspector of Police shall inform in detail the circumstances. Clause 18 imposes a condition that, as far as possible, an accused shall be produced during working hours, i.e., in between 10:00 a.m. and 5:00 p.m. Clause 19 states that if there exists any exceptional circumstance for the production of the accused before the Judicial Officer after 5:00 P.M., there

shall be a prior intimation by the superior officer of the investigation officer to the Judicial Officer. It also mandates that the investigation officer shall be present at the time of production of the accused to explain such circumstances. Clause 20 states that if the production of the accused is made any time after 7:00 P.M., the Prosecutor concerned shall also accompany the police to certify as to the exceptional circumstance which led to the delay. Under Clause 21, the Chief Judicial Magistrate is required to monitor the production of the accused after 7:00 P.M. within their jurisdiction by obtaining monthly reports from the Judicial Officers so as to ensure scrupulous compliance of the protocol.

4. The petitioner states that he is a lawyer by profession and, according to him, impugned guidelines would deeply impact and affect the constitutional rights of every person in the society. He asserts that the clauses above are worded in such a fashion that it creates a restriction as well as a procedural embargo upon the police officers from producing the accused persons before the learned Magistrate outside the prescribed time range, even when such production is prompt and immediate and thus disincentivises the exercise of the statutory duty. It is contended that the clauses above would cause an unreasonably chilling effect on the statutory and constitutional duty of the police in producing a person who has been arrested before a magistrate as required under Section 57 and Section 58 of the Bhartiya Nagarik Suraksha Sanhitha,

2023 (hereinafter referred as 'BNSS').

5. A counter affidavit has been filed by the 2nd respondent on behalf of the 1st respondent. It is stated therein that in the aftermath of the tragic incident leading to the death of Dr. Vandana Das, a house surgeon at the Taluk Hospital Kottarakkara, this Court had directed the State Government to evolve a protocol to ensure the protection of doctors, healthcare professionals, students etc. This Court had also directed the Government to hear all stakeholders, including the Kerala Judicial Officers Association, Indian Medical Association (IMA), etc. After considering the inputs from all stakeholders, the guidelines were issued. It is stated that the impugned Government Order does not in any manner dilute, override, or extend the time limit prescribed under Article 22(2) of the Constitution of India, 1950 or under Section 58 of BNSS which mandate the production of an accused person before the Magistrate within 24 hours. It is further stated that the Government Order constitutes only a set of reasonable administrative guidelines, regulating the manner of production without affecting the substantive rights of the accused. It is stated that the use of the phrase "as far as possible" in Clause 18 serves as a directive to the Investigating Officer and does not impose a total ban on production after 5:00 p.m. The Government Order has also clarified that in exceptional circumstances, the police can produce an accused after 5:00 p.m. with intimation by a superior officer. It is further

stated that the protocol expressly allows late-night production in "exceptional circumstances", particularly when the 24-hour limit is approaching. It is stated that the protocol operates strictly within the constitutional and statutory mandate and reinforces safeguards against arbitrary detention rather than diluting them.

6. While the petition was pending consideration, a memo was filed, bringing to the notice of this Court that Clauses 18 to 21 of Ext.P1 Guidelines stand modified. The modified guidelines read as under:

> "Clause: (18) The accused shall be produced before the Judicial Officers, **as far as possible,** in between 10:00 A.M. and 5:00 P.M. strictly adhering to the 24 hours time limit prescribed under Section 58 of BNSS, Article 22(1) *(sic)* of the Constitution of India.
>
> Clause: (19) If there exists **any exceptional circumstance** for the production of the accused before the Judicial Officer after 5:00 PM there shall be a prior intimation to the Judicial Officer, concerned about the production of accused during late hours."

7. We have heard the submissions of Sri. T. K. Sandeep, the learned counsel appearing for the petitioner and Sri. Asif Ali, the learned Director General of Prosecution.

8. The learned counsel for the petitioner submits that, though Ext. P1

was diluted by the subsequent guidelines dated 24.09.2026, the restrictions contained therein are tantamount to imposing unreasonable restrictions. The learned counsel would point out that the guidelines were issued on the strength of representation of the Association of Judicial Officers and, according to him, the same is violative of Article 22(2) of the Constitution of India and Section 58 of the BNSS. The learned counsel would refer to modified Clause 18 and submit that exclusions like "as far as possible" and "exceptional circumstances" effectively place a presumption of delay and force Police Officers and Prosecutors to justify their lawful action. According to the learned counsel, Sections 56 and 57 of the Code of Criminal Procedure (Cr.P.C.) and Sections 57 and 58 of the BNSS lay down in unequivocal terms that every arrested person must be presented before the Magistrate without unnecessary delay and in no case beyond 24 hours. The learned counsel points out that these provisions do not impose any restriction based on court hours or the time of day. The learned counsel would also submit by relying on Article 22(2) of the Constitution of India, that the right of every person arrested to be produced before a Magistrate within 24 hours is a fundamental right and the same is not merely procedural. It was urged that any executive order which has the effect of limiting or conditioning the exercise of right is ultra vires the Constitution. The learned counsel would then refer to the judgment rendered by the Hon'ble Supreme Court in **Jaskaran**

Jeet Singh Deol v. State of Punjab[1] and specifically to paragraph No. 37 of the judgment, and it is argued that when a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, it is the duty of the court to ensure that such procedure is rigorously observed, however strange this might sound to some ears. The learned counsel would also refer to the observations made by the Hon'ble Supreme Court in **Enforcement Directorate Government of India v. Kapil Wadhawan**[2]**,** and it was urged that Article 22(1) read with Article 21 of the Constitution would be consistent with the inviolable right of personal liberty and dignity and the same is to be reckoned in tune with the provisions of the Code. The learned counsel has also referred to the principles of law laid down by the Apex Court in **State of Gujarat v. Lalsingh Kishansingh**[3], a judgment of the High Court of Gujarat in **Pravinkumar Chandrakant Vyas v. State of Gujarat**[4], that of this Court in **Chadayam Makki Nandanan v. State of Kerala**[5] and that of the Apex Court in **Uday Mohanlal Acharya v. State of Maharashtra**[6] to bolster the submissions. According to the learned counsel, if the guideline is allowed to stand, it would be violative of the fundamental rights guaranteed to the accused in Articles 21 and 22 and contrary to the provisions of the Cr.P.C. as well as the

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[1] [2026 INSC 1022]
[2] [(2024) 7 SCC 147]
[3] [AIR 1981 SC 368]
[4] [2001 (3) GLR 2755]
[5] [1980 KHC 423]
[6] [(2001) 5 SCC 453]

BNSS.

9. The submissions advanced by the learned counsel appearing for the petitioner are vehemently opposed by the learned Director General of Prosecution. It is submitted, by specifically referring to Clauses 18 and 19 of the guidelines, that the intent of the Government was only to ensure the production of the accused in tune with the provisions of Article 22(2) of the Constitution and Section 58 of the BNSS, and the Clauses cannot be interpreted to mean that any rights of the accused have in any manner been diluted.

10. According to the learned counsel, such guidelines were issued after consultation with various stakeholders, and the objective was only to streamline the production of the accused who was arrested in connection with the crime before the Magistrate in strict compliance with the provisions of the Code. The learned Director General of Prosecution has also referred to Section 50 of the Kerala Police Act, 2011 and submitted that there are eventualities where a particular person becomes physically injured after being taken into custody by the police, and these aspects were also considered while framing the guidelines.

11. We have carefully considered the submissions advanced by both sides.

12. The question is whether Clauses 18 and 19 of the Additional

Guidelines issued by the Government of Kerala to be followed while producing accused persons before the Judicial Officer are violative of the statutory as well as constitutional rights of the accused, as contended by the petitioner.

13. We have already extracted the modified guidelines. Clause 18 prods the police to produce the accused before Judicial Officers, as far as possible between 10:00 a.m. and 05:00 p.m. Though it is added that the police shall strictly adhere to the timeline to the 24-hours time limit, prescribed under Section 58 of BNSS and Article 22(2) of the Constitution of India, the following Clause 19 speaks about exceptional circumstances. At this juncture, it needs to be noted that the guidelines refers to Article 22(1), whereas the constitutional provision governing production before a Magistrate within 24 hours is Article 22(2). Article 22(1) deals with being informed of the grounds of arrest and the right to consult and be defended by a legal practitioner. A reading of the guideline would reveal that the production of an accused before the Judicial Officer after 5:00 p.m. is considered as an exceptional circumstance. The specific contention of the petitioner is that imposing such conditions would violate the provisions of Article 22(2) of the Constitution of India and Section 58 of BNSS.

14. The question is whether an executive direction can be issued to dilute the minimum safeguards guaranteed to an accused person under Article 22(2) of the Constitution of India and the statutory safeguards governing arrest

and detention. On a prima facie reading of the guidelines, we are of the view that any direction which would make it easier for the executive to detain an accused or to delay the production before the Magistrate or curtail the procedural protections prescribed by law, cannot be sustained. Before going further, it would be appropriate to refer to the provisions.

> Article 22(1) and Article 22(2) are as follows:
>
> 22. Protection against arrest and detention in certain cases. -
>
> (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
>
> (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

15. Clause (1) of Article 22 is a negative prohibition. It says that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice. Insofar as clause (2) is concerned, there is a clear mandate here. Every person who is arrested and detained in custody shall be produced before the nearest

Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate, and no such person shall be detained in custody beyond the said period without the authority of the Magistrate.

16. The constitutional mandate of Article 22(1) has been provided for as a statutory protection to an arrestee under Section 50 of Cr.P.C. Section 50 of the Cr.P.C. reads thus:

> 50. Person arrested to be informed of grounds of arrest and of right to bail. -
>
> (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.
>
> (2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

17. While sub-section (1) of Section 50 mandates every police officer or other person arresting any person without warrant to forthwith communicate to the arrestee full particulars of the offence for which he is arrested or other grounds for such arrest, as per sub-section (2), where a police officer arrests without warrant any person other than a person accused of a non-bailable

offence, he shall inform the person arrested that he is entitled to be released on bail for which he may arrange his sureties.

18. Section 50 of the Cr.P.C. corresponds to Section 47 of the BNSS. The protection of clause (2) of Article 22 finds manifestation in Section 57 Cr.P.C., which reads as under:

> 57. Person arrested not to be detained more than twenty-four hours. - No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

19. Section 57 prohibits a police officer from detaining in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court. It needs to be borne in mind that these are outer limits, and not a general entitlement to keep an arrested person in custody until the deadline.

20. Section 58 BNSS is the present provision corresponding to Section

57 Cr.P.C., providing for the same time frame of twenty-four hours.

21. The Apex Court in **Sheela Barse v. State of Maharashtra**[7]**,** and in **Joginder Kumar v. State of U.P.**[8], has laid down that the protection of an arrested person's rights must commence immediately upon arrest. The police are required to ascertain from the arrestee the name of a friend or relative who should be informed of the arrest and communicate the same to such person. Where the arrestee has no friend or relative to inform, or declines to furnish such details, the police must intimate the nearest Legal Aid Committee so that immediate steps can be taken to provide legal assistance at State expense. These safeguards give effect to Articles 22(1) and 39A of the Constitution and the right of an arrested person to consult and be defended by a legal practitioner of choice. Under the BNSS, these protections find statutory expression, inter alia, in Sections 36 and 38, which prescribe safeguards upon arrest and recognise the right of the arrested person to meet an advocate of choice during interrogation, though not throughout the interrogation. Section 48 further requires the police to inform a relative, friend or other nominated person of the arrest and to record the prescribed particulars. Read with Sections 47, 57, 58 and 187 of the BNSS, these safeguards underline that the rights of an arrested person and the obligation to secure timely judicial oversight arise from the moment of arrest and

[7] (1983) 2 SCC 96
[8] (1994) 4 SCC 260

cannot be postponed merely for administrative convenience.

22. Section 187 of the BNSS has also some relevance while testing the guidelines. The said provision provides for the procedure to be followed when an investigation cannot be completed within twenty-four hours. Where there are grounds for believing that the accusation is well-founded, the investigating officer, if not below the rank of Sub-Inspector, shall forthwith forward the accused to the nearest Judicial Magistrate along with the relevant entries in the case diary. The Magistrate may authorise detention in such custody as deemed fit, subject to the statutory limits. Police custody may be authorised only when the accused is produced in person for the first time and on every subsequent occasion during which police custody continues, whereas further detention in judicial custody may be authorised on production either in person or through electronic video linkage. Under Section 187(2A), where a Judicial Magistrate is unavailable, the accused may be forwarded to the competent Executive Magistrate, who may, for reasons recorded in writing, authorise detention for a period not exceeding seven days in the aggregate, subject to the statutory conditions. Any police custody authorised by a Magistrate must be supported by recorded reasons.

23. Upon production of the accused for remand under Section 187 of the BNSS, the Magistrate is required to examine whether the statutory and

constitutional safeguards governing arrest have been complied with, including whether the grounds of arrest have been duly communicated as required under Section 50 of the Code, corresponding to Section 47 of the BNSS. Where non-compliance is established, it may furnish an additional ground for refusing remand or granting appropriate relief, including release on bail, in accordance with law.

24. Keeping in mind the constitutional and statutory rights we shall test the provisions by considering a scenario which happens day in and day out before the Magistrate Courts in the State.

25. In **Prabir Purkayastha v. State (NCT of Delhi)**[9], while dilating on the necessity for furnishing the grounds of arrest to the arrested person, the Apex Court held thus:

> "19. .....The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India."

26. The Bench observed that the right to life and personal liberty is the

[9] [2024 AIR SC 2967]

most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon the fundamental rights guaranteed under the aforesaid provisions of the Constitution has not only been frowned upon by this Court in a catena of judgments but would have to be dealt with strictly.

27. 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 would also be a ground to grant bail even if statutory restrictions on the grant of bail exist. The Apex Court held that:

> "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."

28. In **Jaskaran Jeet Singh Deol** (supra), the Apex Court had summed up the core principles qua Article 22(1). It was held that the grounds of arrest must be in writing and in a language which is understood by the accused. A copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception. An accused has a fundamental and statutory right to be informed about the grounds of his arrest

in writing and a copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception at the earliest. Any attempt to encroach upon the fundamental rights guaranteed under Article 22(1) of the Constitution has to be frowned upon by the courts and dealt with strictly. It would vitiate the process of arrest and remand. Such a fundamental right being sacrosanct, cannot be breached under any situation. Any breach or non-compliance would entail immediate release of the arrested person because such arrest is unconstitutional. Subsequent filing of chargesheet and order of cognizance will not validate such an arrest. Article 22(1) applies across the spectrum including offences under the IPC/BNS or under special enactments, and is not statute-specific. When an accused is released for violation of his fundamental rights under Article 22 (1), he is not enlarged on bail. He is released from illegal and unconstitutional detention.

29. In **Mihir Rajesh Shah v. State of Maharashtra**[10], it was observed that early access to legal assistance at the remand stage is essential to protect personal liberty. Legal assistance must be effective and meaningful, enabling the accused to understand the allegations and grounds relied upon by the prosecution, oppose police custody and place relevant circumstances before the Magistrate. Where the accused is unrepresented, the Magistrate must ensure that the entitlement to free legal aid is brought to the accused's attention. The

[10] AIR 2025 SC 5554

judgment further emphasises that, under Section 187 of the BNSS, the accused must be physically produced before the Magistrate for authorisation of police custody, thereby ensuring both the accused's physical presence and an opportunity to be heard and represented by counsel. The Magistrate must independently apply judicial mind to the material and cannot act as a mere rubber stamp for the investigating agency's request for remand. The Apex Court has further held that the constitutional safeguards, valuable as they are, cannot be interpreted in a manner so as to allow it to metamorphose into a procedural impediment that handicaps the law enforcing agencies in due lawful discharge of their duties. Therefore, a balance between compliance with the constitutional and statutory safeguards, on the one hand, and the effective discharge of lawful statutory law enforcement duties and responsibilities cast upon the State agencies must be struck.

30. We shall now examine the practical consequences of the impugned guidelines in the light of the constitutional safeguards, the relevant statutory provisions and the principles laid down by the Hon'ble Supreme Court.

31. Let us consider the case of an accused arrested on the allegation of having committed a non-bailable offence. If the accused is arrested at or after 5:00 p.m., the investigating officer may be reluctant to produce the accused immediately before the Judicial Officer, having regard to the requirement that

production after 5:00 p.m. must be justified by exceptional circumstances and preceded by intimation to the Judicial Officer. In the counter affidavit, it is specifically stated that an exceptional circumstance would arise if the twenty-four-hour period is nearing its expiry. If the guidelines are understood as treating the impending expiry of the twenty-four-hour period as the exceptional circumstance warranting production after 5:00 p.m., their practical effect may be to encourage the police to wait until the following morning, when the ordinary court day commences. Such a course may, in a particular case, fall within the outer limit of twenty-four hours. However, compliance with that limit alone would not establish compliance with the separate obligation to produce the arrested person without unnecessary delay. More importantly, such postponement would delay the accused's opportunity to obtain legal assistance, challenge the legality of the arrest, oppose remand and seek appropriate relief before the Magistrate. If the applicable safeguards governing arrest have been violated, the grounds of arrest have not been furnished as required by law, or the accused is otherwise able to establish a legally sustainable ground for bail, the Magistrate would be required to consider the matter in accordance with law and grant appropriate relief where warranted. The concern is therefore not merely theoretical. A procedural arrangement intended to regulate the timing of production may, in its practical operation, discourage the promptness that the constitutional and statutory safeguards are designed to secure.

32. A different difficulty may arise where an accused is arrested at about 4:30 p.m. and, during interrogation, makes a disclosure that may lead to the recovery of a weapon, stolen property or other material evidence. Even in such circumstances, the investigating officer may consider it expedient to produce the accused before the Magistrate before 5:00 p.m. and seek police custody on the following day, rather than arrange for production after ordinary court hours and proceed with time-sensitive investigative steps in the meantime. Although the subsequent grant of police custody may enable the investigation to continue, the need to defer the recovery may, depending on the facts, compromise the effectiveness of the investigation or result in the loss of an opportunity to secure material evidence. This example illustrates how the guidelines may influence the decisions of investigating officers in ways that are not necessarily conducive either to prompt judicial scrutiny or to the effective conduct of a lawful investigation. The issue is not whether the police may retain an accused in custody at their discretion, but whether an executive protocol should create avoidable procedural impediments to the timely exercise of investigative powers recognised by law.

33. The two situations illustrate the consequences that may arise from the impugned provisions. On the one hand, the police may be encouraged to postpone production until the following morning, thereby delaying judicial

scrutiny and the effective exercise of the accused's rights. On the other hand, the investigating officer may curtail or defer time-sensitive investigative steps in order to comply with the preferred hours of production. Neither consequence is expressly mandated by the language of the guidelines. Nevertheless, their constitutional validity must be assessed not merely by reference to their literal terms, but also with due regard to the manner in which they may operate in practice. The expressions "as far as possible" and "exceptional circumstances", when read together, may create a disincentive to production outside ordinary court hours, even where the circumstances warrant immediate production.

34. The fact that the guidelines refer to the twenty-four-hour limit does not, by itself, answer the objection. Article 22(2) of the Constitution and Section 58 of the Bharatiya Nagarik Suraksha Sanhita, 2023 prescribe the maximum period for which a person arrested without warrant may be detained without being produced before a Magistrate, excluding the time necessary for the journey from the place of arrest to the Magistrate's Court. They do not confer a general right upon the investigating agency to defer production until that period is about to expire. Nor can an administrative preference for production during ordinary court hours override the obligation to produce an arrested person without unnecessary delay. Equally, the legitimate objectives of ensuring the safety of Judicial Officers and facilitating orderly production cannot justify

procedural requirements that operate to the detriment of the arrested person's fundamental rights or unnecessarily impede a lawful investigation.

35. The question, therefore, is whether the impugned guidelines merely facilitate coordination and accountability or whether, by treating production after 5:00 p.m. as exceptional and attaching additional requirements to such production, they create a practical impediment to the prompt production of an arrested person before the Magistrate. If the latter is their effect, the guidelines would risk subordinating constitutional safeguards to administrative convenience. The provisions must accordingly be examined against the requirement that an arrested person be afforded prompt judicial scrutiny, timely access to legal assistance and an effective opportunity to challenge the legality of arrest and detention, while preserving the investigating agency's ability to undertake lawful and time-sensitive investigative steps. An executive protocol cannot dilute the safeguards guaranteed by the Constitution and the governing statute, whether directly or through procedural arrangements that have the effect of discouraging compliance with them. Though the State is entitled to adopt reasonable measures for the safety of Judicial Officers and other persons involved in the remand process, those measures must operate consistently with the statutory powers of investigation, the duty to produce an arrested person without unnecessary delay, and the constitutional protection of personal liberty.

36. Resultantly, the petitioner is entitled to succeed. The modified guidelines vide G.O. (Ms) No. 173/2026/HOME dated 24.09.2026, insofar as they stipulate that an accused shall, as far as possible, be produced before the Judicial Officer between 10 a.m. and 5 p.m. and that production after 5:00 p.m. shall be permitted only in exceptional circumstances, cannot be sustained as constitutionally valid and are accordingly set aside to that extent. However, the provision requiring prior intimation to the learned Magistrate in cases of production after 5:00 p.m. is upheld. The 1st respondent is directed to issue fresh guidelines in accordance with the observations and findings hereinabove.

This Writ Petition is allowed.

Sd/-
RAJA VIJAYARAGHAVAN V
JUDGE

Sd/-
K. V. JAYAKUMAR
JUDGE

PS/22/10/26

APPENDIX

PETITIONER EXHIBITS

Exhibit-P1	**A TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS) NO. 202/2023 DATED 21.09.2023 ISSUED BY THE HOME DEPARTMENT, GOVERNMENT OF KERALA**
Exhibit-P2	**A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE JUDICIAL OFFICERS ASSOCIATION TO THE GOVERNMENT OF KERALA DATED 01.06.2023**

RESPONDENT EXHIBITS

Exhibit-R2(a)	**TRUE COPY OF G.O.(Ms)No.205/2024/HOME dated 6-9-2024**