IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA
&
HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 2 of 2026

ANIL KUMAR MISHRA
Versus
STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri R.K.Sharma, Senior Advocate with Shri Prashant Sharma, Shri Rajiv Sharma, Shri Sameer Shrivastava and Shri Sankalp Sharma, Advocates for the petitioner.

Shri Prashant Singh, Advocate General with Shri Bramhadatt Singh, Additional Advocate General through Video Conferencing, Shri Vivek Khedkar and Shri Deependra Singh Kushwaha, Additional Advocate Generals, Shri S.S. Kushwaha and Shri Sohit Mishra, Government Advocates for respondent Nos.1 to 4/State.

Shri Rameshwar, Senior Advocate through Video Conferencing with Shri Ashok Ahirwar and Shri Vijay Sundaram, Advocates for respondent No.5/complainant.

Reserved on : 05.01.2026

Pronounced on : 07.01.2026

JUDGMENT

Per*: *Justice Gurpal Singh Ahluwalia

1. Heard on I.A. No. 56/2026 filed by complainant for deferment of hearing on the ground that immediately after serving the notice of this petition, he has been arrested therefore, he could not give instructions to his Counsel.

2. It is one of the stands of the petitioner that a perpetual warrant of arrest has already been issued against the complainant in some other case and inspite of that he went to police station to lodge FIR but he was not arrested.

3. Shri Vivek Khedkar, Additional Advocate General submits that he has filed the compliance report i.e. Document No.54 of 2026 to show that notices of the writ petition along with a copy of the writ petition has been served on all the five complainants. It was also submitted by Shri Vivek Khedkar, Additional Advocate General that since, an old perpetual warrant of arrest was pending against the complainant, therefore, in execution of the same, he has been arrested.

4. Shri Rameshwar Thakur, Learned Senior Advocate who has entered appearance through Video Conference, Shri Ashok Ahirwar and Shri Vijay Sundaram, Advocates appearing on behalf of complainant/respondent no.5, submitted that some time may be granted to file reply as the complainant is in jail. However, it is submitted by Shri Prashant Singh, learned Advocate General that a written complaint was made by five victims namely, the respondent no.5, Ravi Katoria, Rambabu Jatav, Swatantra Parashar, and Keshav Ahirwar and copy of writ petition has been supplied to all of them. The copy of acknowledgment of receipt of complete copy of writ petition

given by all the five victims has also been annexed with compliance report (Document No.54/2026).

5. None appears on behalf of Ravi Katoria, Rambabu Jatav, Swatantra Parashar and Keshav Ahirwar. Thus, it is clear that only one victim has entered appearance whereas the other four victims have decided to stay away from these proceedings. Looking to the fact that the petition involves issue of personal liberty and also since we are not inclined to go into the factual aspects, this Court is of the considered opinion, that the hearing of this writ petition cannot be deferred. Accordingly, I.A. No.56/2026 is hereby **rejected.**

6. During the course of arguments, the respondent no.5 has filed his reply though without affidavit. Since, the respondent no.5 is in jail, therefore, reply filed without affidavit of respondent no.5 is taken on record.

7. Case diary of Crime No. 1/2026 registered at Police Station Crime Branch, Gwalior and two pen drives kept in two different sealed envelops are available. It is made clear that if playing of two pen drives is found essential, then the same shall done be in the Court chamber and not in the open Court.

8. This petition under Article 226 of Constitution of India has been filed seeking the following relief(s) :

> It is, therefore, most humbly prayed that the instant petition may kindly be allowed and a writ of mandamus and/or a suitable writ, order or direction in the nature of a writ be issued against the respondents and following reliefs may kindly be granted :-
> (1) That, this Hon'ble Court may further be pleased to direct the respondents to strictly abide by and comply with the mandate of law laid down by the Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar**, including issuance of notice under Section 35-A of the BNSS, 2023 and not to arrest the petitioner unless the statutory conditions are fully satisfied and reasons are recorded in writing in the interest of justice.

(2) That, this Hon'ble Court may also be pleased to stay the effect and operation of any further proceedings arising out of the impugned FIR, including arrest, detention or any coercive steps against the petitioner, till final disposal of the present writ petition, so as to protect the personal liberty and fundamental rights of the Petitioner.

(3) That, upon final hearing of the present writ petition, this Hon'ble Court may graciously be pleased to allow the petition and be further pleased to order release of the petitioner on bail in connection with crime no. 1 of 2026 registered at Police Station Crime Branch, District Gwalior (M.P.) or in the alternative, to extend to the Petitioner the benefit of the law laid down in Arnesh Kumar Vs. State of Bihar by directing that the Petitioner shall not be arrested and shall be dealt with strictly in accordance with law.

(4) That, the order dated 2-1-2026 passed by the learned Judicial Magistrate First Class, Gwalior, whereby the petitioner has been sent to judicial remand and the application under Section 480 of the Bhartiya Nagrik Suraksha Sanhita, 2023 has been dismissed, may kindly be set aside and/or quashed in the interest of justice.

(5) That, the FIR bearing crime no. 1 of 2026 registered at Police Station Crime Branch, Distt. Gwalior (M.P.) for offences punishable under Sections 223(b), 196(1)(a),196(1)(b), 353(1)(c), 353(2) of the Bharatiya Nyay Sanhita, 2023 and Sections **3(1)**(u) and 3(1)(v) of the SC/ST (Prevention of Atrocities) Act may kindly be quashed with respect to the present petitioner, in the interest of justice.

(6) That, the respondent authorities or superior authorities may kindly be directed to take most appropriate (either departmental or penal action) action against the erring officers in the interest of justice.

9. In the present case, the FIR has been lodged on the written complaint made by five persons namely, the respondent no.5, Ravi Katoria, Rambabu Jatav, Swatantra Parashar and Keshav Ahirwar.

10. **It is not out of place to mention here that no arguments were advanced by the Counsel for the Petitioner with regard to their relief to**

quash the FIR, therefore, challenge to the FIR is treated as given up in this writ petition. Even otherwise, the investigation in Crime No.1/2026 is at the very early stage.

11. Challenging the action of the respondents no.1 to 4, it is submitted by the Counsel for the Petitioner that his arrest is illegal for the reasons that (i) he was arrested even prior to the registration of FIR, and (ii) grounds of arrest were not communicated to him.

12. In reply, a preliminary objection was raised by learned Advocate General that since, the Petitioner was produced before the J.M.F.C., Gwalior and a remand order has been passed and even his application under Section 480 of BNSS has been rejected by the J.M.F.C., Gwalior, therefore, now this Petition in the nature of Habeas Corpus is not maintainable. If the petitioner is aggrieved by the order of remand, then he has to challenge the same before appropriate forum under appropriate provision of law. He also submitted that one P.G. Nagpande has filed a PIL before Principal Seat of this Court at Jabalpur, thereby challenging the order dated 20-3-2025 passed by Collector, Gwalior by which permission was granted to install statute of Dr. B.R. Ambedkar in the High Court premises of Gwalior bench and in the said writ petition, an interim order dated 12-11-2025 has been passed thereby directing the State Govt. to ensure the maintenance of law and order. The petitioner herein is respondent no.5 in W.P. No.44524/2025, therefore, this Court should not hear this matter and the petitioner must approach the Principal Seat of this Court for redressal of his grievances. It was also submitted that the factum of communication of grounds of arrest was also admitted by the Petitioner before JMFC, Gwalior during remand proceedings. The learned Advocate

General also read out the statements of Constable Bhavnesh Singh, Sub-Inspector Shubham Singh Parihar, and Dr. Santosh Yadav, Inspector/S.H.O., Police *Station Purani Chhavani*, Gwalior. He also submitted that in compliance of interim order dated 12-11-2025 passed by Division Bench of this Court at Principal Seat, proceedings under Section 126 and 135 of B.N.S.S. were initiated by Executive Magistrate, City Center, Gwalior, and the Petitioner was directed to execute bond or bail bond, for keeping the peace and maintaining good behavior until the conclusion of enquiry but inspite of multiple opportunities he has not executed the bond or bail bond. It was further submitted that the District Magistrate, Gwalior has passed an order under Section 163 of B.N.S.S., thereby prohibiting certain acts without permission and in utter violation of the said order, the Petitioner had gone along with 50-60 Advocates to give memorandum to the Inspector General of Police, Gwalior Zone and while coming back, the offence in question was committed by burning and trampling under foot photo of Baba Sahab Bhimrao Ambedkar as well as raising insulting slogans and circulating video thereof on social media on 1-1-2026. It is also submitted that as per the provisions of Sections 168,169,170 and 35 of B.N.S.S., the police has acted swiftly in bonafide manner.

13. Taking clue from the statements of Bhavnesh Singh which was read out by the learned Advocate General during the course of arguments, it is submitted by Counsel for the Petitioner, that in the FIR, it is mentioned that as one of the accused had made the video of above act viral therefore, complaint has been made, but from the statement of Bhavnesh, it is clear that immediately after the incident, the police was aware of the commission of

alleged cognizable offence, but did not register the FIR and the FIR was lodged belatedly at 19:56 and much prior thereto the petitioner was already arrested. He thus, submitted that the police had acted in a malafide manner.At the cost of repetition, it is once again clarified that no arguments were advanced by the Counsel for the Petitioner, with regard to alleged offence.

14. The Counsel for the complainant/respondent no.5, submitted that since, the State Govt. has already put forward the case in detail, therefore, he has nothing to add on factual matrix of the incident, but submitted that the petitioner has a criminal record also.

Discussion

15. It is not out of place to mention here that the alleged incident took place in front of the office of Senior Superintendent of Police, Gwalior and Inspector General of Police, Gwalior Zone, but it appears that the police did not take any action to prevent the commission of alleged offence, or to implement the prohibitory order issued by District Magistrate, Gwalior under Section 163 of B.N.S.S.

Whether Writ Petition is maintainable or Not?

16. A specific stand was taken by the learned Advocate General with regard to maintainability of this petition on two grounds:

(i) That once, an order of remand has been passed by a Judicial Officer and an application for grant of bail under Section 480 of B.N.S.S. has also been rejected by the JMFC, Gwalior, then the writ petition filed under Article 226 of Constitution of India in the form of Habeas Corpus is not maintainable;

(ii) That a PIL i.e., W.P. No.44524/2025 is already pending before the Division Bench at Principal Seat of this Court, and an interim order was also

passed on 12-11-2025, thereby directing the State of M.P. and other official respondents to ensure maintenance of Law and Order situation in the city of Gwalior and since, the very genesis of the offence in question arises out of the controversy which is directly and substantially sub-judice in WP. No.44524/2025, therefore, the Petitioner should have either filed the present petition before the Principal Seat or could have filed an interlocutory application in W.P. No.44524/2025, and thus, this Court should not hear the matter.

Whether a Habeas Corpus writ petition would become not maintainable after the order of remand is passed or whether the scope of interference under such circumstance would get narrowed down?

17. To substantiate the aforesaid contention, the Counsel for the State has relied upon the judgment passed by Supreme Court in the case of **V. Senthil Balaji Vs. State** reported in **(2024)3 SCC 51** and **Gautam Navlakha Vs. NIA** reported in **(2022)13 SCC 542.** Counsel for respondent/complainant relied upon the judgment passed by Supreme Court in the case of **Kanu Sanyal Vs. Distt. Magistrate** reported in **(1974) 4 SCC 141.**

18. Whereas, it is submission of the Counsel for the Petitioner that if the initial arrest is illegal on account of non-compliance of mandatory provisions, then the petition in the nature of Habeas Corpus would be maintainable irrespective of the fact that whether remand order has been passed or whether charge sheet has been filed. It is however submitted that the illegal arrest would not vitiate the investigation or charge sheet or trial. He relied upon the judgment passed by Supreme Court in the case of **Vihaan Kumar Vs. State of Haryana and another** reported in **(2025)5 SCC 799**, **Mihir Rajesh Shah**

Vs. State of Maharashtra reported in **2025 SCC OnLine SC 2356.** It is further submitted that in the case of **Vihaan Kumar (Supra)**, the Supreme Court has considered the judgment passed in the case of **V. Senthil Balaji (Supra).**

19. Considered the submissions made by Counsel for parties with regard to maintainability of writ petition after the passing of remand order.

20. The Supreme Court in the case of **V. Senthil Balaji (Supra)** has held as under :

> ***Writ of habeas corpus***
> **28.** A writ of habeas corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of habeas corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of habeas corpus and that too by way of a challenge.
>
> (Underline supplied)
>
> **29.** In a case where the mandate of Section 167 CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of habeas corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of habeas corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the court as mandated under

sub-section (3), since it becomes a judicial custody thereafter and the court concerned would be in a better position to consider due compliance.

30. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. *State of Maharashtra* v. *Tasneem Rizwan Siddiquee* : (SCC p. 751, para 10)

"*10*. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in *Saurabh Kumar* v. *Jailor, Koneila Jail* and *Manubhai Ratilal Patel* v. *State of Gujarat*. *It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued*."

(emphasis supplied)

* * * *

Discussion

89. We have already narrated the foundational facts without going in detail. This case has got a chequered history with the pendulum swinging in favour of one side to another. On the earlier two occasions, the appellant has succeeded before the High Court to be reversed only by this Court. We would record only one fact, namely, that the order rejecting the bail has attained finality.

90. We shall first consider the maintainability of the writ petition

filed. A writ of habeas corpus was moved questioning the arrest made. When it was taken up for hearing on a mentioning, the next day by the Court, the appellant was duly produced before the learned Principal Sessions Judge in compliance with Section 19 of the PMLA, 2002. The custody thus becomes judicial as he was duly forwarded by the respondents. Therefore, even on the date of hearing before the High Court there was no cause for filing the writ petition being HCP No. 1021 of 2023. Added to that, an order of remand was passed on 14-6-2023 itself. The two remand orders passed by the Court, as recorded in the preceding paragraphs, depict a clear application of mind. Despite additional grounds having been raised, they being an afterthought, we have no hesitation in holding that the only remedy open to the appellant is to approach the appropriate court under the statute. This was obviously not done. We may also note that the appellant was very conscious about his rights and that is the reason why, by way of an application he even opposed the remand.

91. Despite our conclusion that the writ petition is not maintainable, we would like to go further in view of the extensive arguments made by the learned Senior Advocates appearing for the appellant. As rightly contended by the learned Solicitor General the scheme and object of the PMLA, 2002 being a *sui generis* legislation is distinct. Though we do not wish to elaborate any further, we find adequate compliance of Section 19 of the PMLA, 2002 which contemplates a rigorous procedure before making an arrest. The learned Principal Sessions Judge did take note of the said fact by passing a reasoned order. The appellant was accordingly produced before the court and while he was in its custody, a judicial remand was made. As it is a reasoned and speaking order, the appellant ought to have questioned it before the appropriate forum. We are only concerned with the remand in favour of the respondents. Therefore, even on that ground we do hold that a writ of habeas corpus is not maintainable as the arrest and custody have already been upheld by way of rejection of the bail application.

92. The arguments of the learned Senior Advocates on the interpretation of Section 167(2) CrPC, 1973 cannot be accepted as the law has been quite settled by this Court in *Deepak Mahajan*. One cannot say that while all other safeguards as extended under

Section 167(2) CrPC, 1973 would be available to a person accused but nonetheless, the provision regarding remand cannot be applied. Section 167(2) CrPC, 1973 merely complements and supplements Section 19 of the PMLA, 2002. We do not find any inherent contradiction between these two statutes. Obviously, an arrest under Section 19 of the PMLA, 2002 can only be made after the compliance of much more stringent conditions than the one available under Section 41 CrPC, 1973.

93. The interplay between an investigation and inquiry conferring the same meaning is only for the usage of common materials arising therefrom. Such materials are to be utilised for both the purposes. This is the basis upon which they are read together, giving the same meaning at a particular stage. In *Vijay Madanlal Choudhary* it was in the context of a challenge to the enactment, particularly in the light of Section 25 of the Evidence Act, 1872.

94. Shri Kapil Sibal, learned Senior Advocate, in his inimitable style once again placed reliance upon *Vijay Madanlal Choudhary* to press home his view that an authorised officer under the PMLA, 2002 is not a police officer as declared in *Vijay Madanlal Choudhary*. As stated, an officer is expected to perform as per the statute. In the process of investigation, he has been given certain powers. One shall not confuse such powers conferred under the statute with the police power, however, when it comes to application of Section 167(2) CrPC, 1973 such an authority has to be brought under the expression "*such custody*" especially when the words "*police custody*" are consciously omitted. Therefore, the ratio laid down in *Vijay Madanlal Choudhary* has to be understood contextually, in its own perspective.

95. Much arguments have been made on the basis of *Anupam J. Kulkarni*. As rightly submitted by the learned Solicitor General, the facts are different and therefore distinguishable. In the case on hand, there is no custody in favour of the respondents, a fact even acknowledged by the appellant earlier through the arguments of his advocates. The learned Solicitor General is right in his submission that apart from the fact that the word "*custody*" is different from "*detention*", it can only be physical. As pointed out by him even the High Court has observed that the appellant continues to be in judicial custody. Admittedly, physical custody has not been given to

the respondents. Admission of the appellant to the hospital of his choice cannot be termed as a physical custody in favour of the respondents. Custody could not be taken on the basis of the interim order passed by the High Court which certainly shall not come in the way of calculating the period of 15 days. An investigating agency is expected to be given a reasonable freedom to do its part. To say that the respondents ought to have examined the appellant in the hospital, and that too with the permission of the doctors, can never be termed as an adequate compliance.

96. Any order of the Court is not meant to affect a person adversely despite its ultimate conclusion in his favour. The doctrine *actus curiae neminem gravabit* would certainly apply in calculating the period of 15 days.

97. *Summation of law*

97.1. When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002 no writ of habeas corpus would lie. Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.

97.2. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non-compliance, the competent court shall have the power to initiate action under Section 62 of the PMLA, 2002.

97.3. An order of remand has to be challenged only before a higher forum as provided under CrPC, 1973 when it depicts a due application of mind both on merit and compliance of Section 167(2) CrPC, 1973 read with Section 19 of the PMLA, 2002.

97.4. Section 41-A CrPC, 1973 has got no application to an arrest made under the PMLA 2002.

97.5. The maximum period of 15 days of police custody is meant to be applied to the entire period of investigation — 60 or 90 days, as a whole.

97.6. The words "*such custody*" occurring in Section 167(2) CrPC, 1973 would include not only a police custody but also that of other investigating agencies.

97.7. The word "*custody*" under Section 167(2) CrPC, 1973 shall mean actual custody.

97.8. Curtailment of 15 days of police custody by any extraneous circumstances, act of God, an order of Court not being the handy

work of investigating agency, would not act as a restriction.
97.9. Section 167 CrPC, 1973 is a bridge between liberty and investigation, performing a fine balancing act.
97.10. The decision of this Court in *Anupam J. Kulkarni*, as followed subsequently requires reconsideration by a reference to a larger Bench.

21. The Supreme Court in the case of **Gautam Navlakha (Supra)** has held as under :

Whether a writ of habeas corpus lies against an order of remand under Section 167 CrPC
76. A habeas corpus petition is one seeking redress in the case of illegal detention. It is intended to be a most expeditious remedy as liberty is at stake. Whether a habeas corpus petition lies when a person is remanded to judicial custody or police custody is not res integra. We may notice only two judgments of this Court. In *Manubhai Ratilal Patel* v. *State of Gujarat*, we may notice para 24 : (SCC p. 324)
"*24*. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. *While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand*. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner."

(emphasis supplied)
77. However, the Court also held as follows : (*Manubhai Ratilal*

Patel case, SCC p. 326, para 31)

"*31. … It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in* B. Ramachandra Rao *and* Kanu Sanyal, *the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted*."

(emphasis supplied)

78. One of us (U.U. Lalit, J.) speaking for a Bench of two, followed the aforesaid line of thought in the decision of *Serious Fraud Investigation Office* v. *Rahul Modi* and held as follows : (SCC p. 289, para 21)

"*21*. The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition."

79. We may also notice para 19 from the same judgment : (*Rahul Modi case*, SCC p. 285)

"*19*. The law is thus clear that 'in habeas corpus proceedings a 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'."

80. Thus, we would hold as follows : If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a habeas corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of habeas corpus. Barring such situations, a habeas corpus petition will not lie.

22. The Supreme Court in the case of **Kanu Kanyal (Supra)** has held as under :

3. The learned Counsel appearing on behalf of the petitioner put forward three grounds challenging the legality of the detention of

the petitioner and they may be briefly summarised as follows:

"A. The initial detention of the petitioner in the District Jail, Darjeeling was illegal because he was detained without being informed of the grounds for his arrest as required by clause (1) of Article 22 of the Constitution.

B. The Sub-Divisional Magistrate, Darjeeling had no jurisdiction to try the two Phansidewa, P.S. Cases against the petitioner and he could not, therefore, authorise the detention of the petitioner under Section 167 of the Code of Criminal Procedure for a term exceeding fifteen days in the whole. It was only the Sub-Divisional Magistrate, Siliguri who had jurisdiction to try the two Phansidewa P.S. Cases and he alone could remand the petitioner to custody after the expiration of the initial period of fifteen days under Section 344 of the Code of Criminal Procedure. The orders of remand under which the petitioner was detained in the District Jail, Darjeeling were, however, made by the Sub-Divisional Magistrate, Darjeeling and the detention of the petitioner in the District Court, Darjeeling was, therefore, illegal.

C. The officer in charge of the District Jail, Darjeeling was bound to abstain from complying with the warrant for production issued by the Special Judge, Vizakhapatnam by reason of Section 6 of the Prisoners (Attendance in Courts) Act, 1955 and the production of the petitioner before the Special Judge, Vizakhapatnam pursuant to such warrant for production and his detention in the Central Jail, Vizakhapatnam were consequently without the authority of law."

Re: Grounds A and B.

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*:

"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* and *Ram Narayan Singh* v. *State of Delhi* a slightly different view was expressed and that view was reiterated by this Court in *B.R. Rao* v. *State of Orissa* 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* 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.

23. The Supreme Court in the case of **Sanjay Dutt v. State through CBI, Bombay (II),** reported in **(1994) 5 SCC 410** has held as under :

> 48……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*; *Ram Narayan Singh* v. *State of Delhi* and *A.K. Gopalan* v. *Government of India*.)

24. The Supreme Court in the case of **Serious Fraud Investigation Office v. Rahul Modi,** reported in **(2019) 5 SCC 266** has held as under :

> **19.** The law is thus clear that "in habeas corpus proceedings a 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". ……..

25. From plain reading of judgments passed by Supreme Court, it is clear that the relevant date for consideration of factual matrix in a petition filed in the nature of Habeas Corpus is the date of return/hearing. It is also clear that even if any judicial order has been passed in the form of Remand or rejection

of bail during the pendency of the Writ Petition, the said aspect has to be considered and for the purposes of deciding habeas corpus writ petition, the factual position prevailing on the date of filing of writ petition is not material.

26. In the present case, an order of remand as well as order of rejection of bail by J.M.F.C. has already been passed. In view of the law laid down by Supreme Court, now it is not permissible for this Court to adjudicate the correctness of the order of remand or rejection of bail by JMFC, Gwalior. **Therefore, this writ petition so far as it relates to challenge to the order of remand passed by JMFC, Gwalior is hereby rejected on the ground of maintainability and the Petitioner has a liberty to assail the said order before appropriate forum under appropriate provisions of B.N.S.S.**

27. However, in the case of **V. Santhil Balaji (Supra)** as well as **Gautam Navlakha (Supra)**, it has also been held by Supreme Court that in case of non-compliance of mandatory provisions or remand order is absolutely illegal or has been passed in mechanical manner or is afflicted with the vice of lack of jurisdiction, the Habeas Corpus writ petition would still be maintainable.

28. The Supreme Court in the case of **Vihaan Kumar (Supra)** has held as under :

> **Conclusions**
> **26.** Therefore, we conclude:
> **26.1.** The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);
> **26.2.** 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;

26.3. 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);

26.4. 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 charge-sheet will not validate a breach of constitutional mandate under Article 22(1);

26.5. 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

26.6. 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.

29. Thus, it is held that even after the order of remand has been passed, the habeas corpus writ petition would be maintainable on limited ground i.e. whether the initial arrest was illegal or not?

30. Therefore, it is made clear that the entire arguments shall be considered in the light of limited scope of interference i.e. whether the initial arrest was illegal on account of non-compliance of mandatory provisions of law or not?

Whether the present petition should not be entertained by this Court in the light of pendency of W.P. No.44524 of 2025 before Principal Seat of this Court ?

31. The copy of W.P. No.44524 of 2025 (P.G. Nagpande Vs. State of M.P.) has been filed by the respondent/State and following relief(s) have been sought in the said case :

(i) a writ in the nature of **mandamus** directing the respondent no.1 to ensure that there is no danger to life and property of the common people on account of issue of installation of statute of Dr. B.R. Ambedkar in the High Court Premises at Gwalior as well as call of Protest Day on 16-11-2025 by the respondent no. 5;

(ii) a writ in the nature of **certiorari** quashing the impugned order, dated 20-3-2025 **(Annexure P/10)**;

(iii) a writ in the nature of mandamus directing the respondent no.s 2 and 4 to reconsider the installation of statute of Dr.B.R. Ambedkar in the preincts of High Court of Madhya Pradesh Bench at Gwalior strictly as per Circular, dated 10-2-2009 (Annexure P/9);

(iv) Any other relief or reliefs that this Hon. Court deems fit and proper in the facts and circumstances of the case may also be kindly passed.

32. On 12-11-2025, the Division Bench of this Court at Principal Seat passed the following interim direction :

"In the meantime, respondent no.1 is directed to ensure maintenance of law and to ensure that life and property of the common people is protected. Further direction is issued to the Collector Gwalior to instruct the print and electronic media particularly the local media of Gwalior not to publish any news with regard to the call given by Respondent no. 5 for 16-11-2025 and its connected and related

issues till the next date of hearing."

33. It is the submission of Counsel for State that since, the petitioner who is respondent no.5 in W.P. No.44524/2025, has acted in flagrant violation of interim order therefore, the Petitioner should have either filed the present writ petition before the Principal Seat of this Court at Jabalpur or should have filed an interlocutory application in the said writ petition thereby pointing out his grievances, therefore, this Court should not hear the matter. However, it was not contended by learned Advocate General that if this petition is entertained by this Court, then there would a possibility of conflict of judgments.

34. *Per contra*, it is submitted by Counsel for Petitioner, that the subject matter of both the writ petitions are different. In the PIL, the main relief is with regard to challenge to the order of Collector, Gwalior by which permission was granted to install the statute of Dr. B.R. Ambedkar in the High Court premises, whereas the dispute in the present case is with regard to an alleged offence having no nexus with main subject matter of W.P. No.44524 of 2025. It is further submitted that in the present case, the controversy is that whether the Fundamental Right of the Petitioner has been violated by arresting him illegally or not? It is, further submitted that since, this Court has territorial jurisdiction over the controversy in question, therefore, this Court must hear the case.

35. Considered the submissions made by Counsel for the parties.

36. In W.P. No.44524/2025, the order of Collector, Gwalior dated 20-3-2025 has been challenged by which permission was granted to install statute of Dr. B.R, Ambedkar in the High Court premises at Gwalior and therefore, it was also prayed that the State Govt. should ensure that there is no danger to

life and property of the common people on account of issue of installation of statute of Dr. B.R. Ambedkar in the High Court premises.

37. In the present case, the controversy is with regard to manner of execution and compliance of the interim order dated 12-11-2025, and whether the initial arrest of the petitioner is illegal or not and not with regard to the main controversy involved in W.P. No.44524 of 2025.

38. The Supreme Court in the case of **Arnab Manoranjan Goswami Vs. State of Maharashtra** reported in **(2021)2 SCC 427** has held as under :

> **J. *Human liberty and the Role of courts***
> **67.** Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty.

> The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

39. Thus, it is clear that “the fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the

High Courts and Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both the ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment." In the present case, the grievance of the Petitioner is non-compliance of mandatory provisions resulting in illegal arrest. Therefore, the subject matter of this petition is primarily regarding the validity of initial arrest of the petitioner which is incidentally touching the manner of implementing the interim order passed in W.P. No.44524/2025 as well as statutory duty of the State to maintain law and order in the State, whereas in W.P. No.44524/2025, the primary controversy is with regard to permission granted by Collector Gwalior for installation of statute of Dr. B.R. Ambedkar in the High Court premises and possible inconvenience or danger to the life and property of common people. Thus, it is held that the reasons for commission of offence in question may have remote or close, direct or indirect connection with the main grievance raised in W.P. No.44524/2025, but there is no possibility of any conflicting judgments, because in this case, we are only concerned with the fact that whether the arrest of the petitioner is illegal or not? Furthermore, the entire cause of action has taken place within the territorial jurisdiction of this Court.

40. For the above mentioned reasons, this Court is of considered opinion that where the life and liberty of a person is in question, and there is no possibility of conflict of judgment, it is not necessary for this Court to refuse to hear the matter and to relegate the Petitioner to either file writ petition

before Principal Seat of this Court or to file an interlocutory application in W.P. No.44524 of 2025.

41. Thus, the contention of the Counsel for the State that this Court should avoid hearing this case, is hereby **rejected.**

Whether the arrest of the Petitioner was illegal on account of non-communication of grounds of arrest or not?

42. By referring to the order of remand dated 2-1-2026, it is submitted by Counsel for the State that the J.M.F.C. Gwalior has specifically held that the grounds of arrest were communicated to the Petitioner and the Petitioner had also admitted the said fact before the J.M.F.C. Gwalior.

43. It is the contention of the Petitioner that grounds of arrest were not communicated to him.

44. Considered the submissions made by Counsel for the parties.

45. The relevant part of the order dated 2-1-2025 passed by J.M.F.C., Gwalior reads as under :

> " अभियुक्तगण को गिरफ्तारीकर्ता अधिकारी द्वारा गिरफ्तारी के आधारों व अपराध के संबंध मे पुर्ण विशिष्टियां संसूचित की है। अभियुक्तगण ने भी व्यक्त किया है कि उन्हे गिरफ्तारी के आधार व अपराध की पूर्ण विशिष्टियां संसूचित कर दी गई है।"

46. Although the Counsel for the Petitioner tried to make a feeble attempt to challenge the said observation made by the J.M.F.C., Gwalior, but there is no pleading in the writ petition that the aforesaid observation made by J.M.F.C. Gwalior in its order dated 2-1-2025 is factually incorrect. It is well established principle of law that there is a presumption of correctness of the order-sheet of the Court unless and until it is proved otherwise. Therefore, in absence of any challenge to the above mentioned observation made by J.M.F.C. Gwalior in her order dated 2-1-2026, the feeble attempt made by

Counsel for petitioner to controvert the aforesaid observation is hereby **rejected**.

47. Now the next question for consideration is that whether grounds of arrest were ever communicated to the Petitioner in writing or not and whether oral communication is substantial compliance or not?

48. The Supreme Court in the case of **Mihir Rajesh Shah (Supra)** has held as under:

> **45.** From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse. The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard. The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1). There is no harm in providing the grounds of arrest in writing in the language the arrestee understands, this approach would not only fulfil the true intent of the constitutional mandate but will also be beneficial for

the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.

46. This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.

47. It would not be out of context now to refer to an obligation which has been imposed on a person making arrest, as provided under Section 50A read in relation to Section 50 of the CrPC 1973 (now Section 48 and 47 of BNSS 2023 respectively), to inform the arrestee of his right to indicate his relative, friend or such other person for the purpose of giving information with regard to his arrest. Simultaneously, a duty has also been cast on the person making arrest to forthwith thereafter inform of such arrest with reasons and the place where the arrested person is being held to the such indicated person. The police officer/person making any arrest shall make an entry of the fact as to who has been informed of such an arrest in a book to be kept in the police station. Further protection in this regard is reflected when a duty has been cast on the magistrate to satisfy himself, when the arrestee is produced before him, that the above requirement stands complied with. This requirement is in addition to the rights of an arrestee to be made aware of the grounds of arrest.

48. The second issue which requires consideration is when grounds of arrest are not furnished either prior to arrest or immediately after the arrest, would it vitiate the arrest for non-compliance of the provisions of Section 50 of CrPC 1973 (now Section 47 of BNSS 2023) irrespective of certain exigencies where furnishing such grounds would not be possible forthwith.

49. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the

arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says 'as soon as may be' which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.

50. It may so happen that in the presence of a police officer a cognizable offence is being committed and the factual matrix presents a tangible and imminent risk of the suspect absconding or committing further offence(s). For instance, in a case involving a murder being committed in front of a police officer, it may not be possible for the officer to provide the grounds of arrest in writing before the arrest or forthwith on the arrest to the accused. A rigid insistence upon informing of written ground(s) of arrest before or at the time of effecting the arrest or immediately thereafter may result into police officer not being able to discharge their duty and responsibility efficiently and effectively. 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 of the constitutional as also the statutorily mandated safeguards on the one hand vis-a-vis the effective discharge of lawful statutory law enforcement duties and responsibilities cast upon the State agencies must be struck.

51. Supplanting the above situation, there may be a case wherein the Investigating Officer has sent a notice for appearance of the accused to join the investigation under Section 41A of CrPC 1973 (now Section 35(3) to 35(6) of BNSS 2023) pursuant to which the accused has joined the investigation. The Investigating Officer, after perusal of material available before him and/or on interrogating the accused, makes up his mind that the arrest of the accused person is

required for further investigation or has other reason(s) for arrest, in such cases, since the accused is under the supervision of the Investigating Agency and there exists no apprehension of him absconding, it becomes incumbent upon the Police Officer to supply the grounds of arrest in writing on arresting the accused person. This can also be followed, for instance, in cases involving offences which are primarily based on documentary evidence/records, economic offences such as under PMLA where the grounds of arrest in writing be furnished to the arrested person on arrest simultaneously.

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.

53. The above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively. This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. Any shorter interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between

safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations.

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 50 of the CrPC 1973 (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.

55. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under Penal Code, 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

49. Undisputedly, in the present case, grounds of arrest in writing were never communicated to the Petitioner. It is the case of the respondents themselves that grounds of arrest were communicated orally and there is an admission by the petitioner before the J.M.F.C., Gwalior that grounds of arrest have been communicated to him.

50. In order to understand the controversy involved in the present case, it is necessary to understand the entire action of the Gwalior Police.

51. The learned Advocate General invited the attention of this Court towards the statements of Bhavnesh Singh, Constable District Special Branch, Gwalior, Subham Singh Parihar S.I., Crime Branch, Gwalior, and Police Inspector Dr. Santosh Yadav S.H.O., Police Station Vishwavidyalaya, Gwalior.

(Note: Since, this Court is of the considered opinion, that some part of the statements of these three witnesses should not be reproduced verbatim, therefore, this Court would try to mention some facts in an indicative manner)

52. Bhavnesh Singh, Constable has stated that he was assigned the duty to remain present at the time of presentation of memorandum by Petitioner and his companions, to the Inspector General of Police against the act of a particular community of burning a holy book in Khaniyadhana, District Shivpuri and to inform the senior police officers in case of any law and order situation as well as to record the entire proceedings.

53. Since, it was very vehemently argued by the learned Advocate General that not only there was an interim order in W.P. No.44524/2025 for

maintaining law and order and also it is the statutory and bounden duty of the State to otherwise also maintain the law and order situation, therefore, they have acted swiftly in the present case, therefore, a specific question was put to him as to whether any action was taken in respect of alleged incident which took place in Khaniyadhana, District Shivpuri or not? It was also made clear that it is the case of the police itself that the senior officers were aware of the fact that the petitioner is likely to present memorandum to Inspector General of Police, Gwalior Zone against the incident which has taken place in Khaniyadhana.

54. It was submitted by the learned Advocate General that since, the aforesaid question has arisen during the course of arguments, therefore, some time may be granted to seek instructions in that regard. Accordingly, the learned Advocate General was requested to answer the aforesaid query after lunch sessions.

55. At 2:30 P.M., it was submitted by the learned Advocate General, that since, the alleged incident appears to have taken place in Khaniyadhana, District Shivpuri, therefore, the Gwalior Police was not aware of the said fact and even the Inspector General of Police, Gwalior Zone, came to know about the said fact only after the memorandum was given to him. Accordingly, he has directed to conduct a preliminary enquiry and the outcome of the preliminary enquiry is yet to come.

56. The aforesaid submissions made by the learned Advocate General, which is based on the information given to him by the Gwalior Police, runs contrary to the statement of Bhavnesh Singh, Constable. Bhavnesh Singh has specifically stated that Incharge D.S.P. had assigned him the duty to remain

present at the time of presentation of memorandum by petitioner to the Inspector General of Police against the alleged incident of Khaniyadhana. Therefore, it is clear that Gwalior police was already aware of the fact that some incident has taken place in Khaniyadhana and only because of that, the petitioner is going to present memorandum to Inspector General of Police, but unfortunately, it is not known that whether any action has been taken in respect of incident of Khaniyadhana or not? This Court would like to observe that interim order dated 12-11-2025 passed in W.P. No. 44524 of 2025 was/is applicable to all the persons and not only to the petitioner.

57. Be that as it may. The aforesaid aspect has been touched only because of submission made by learned Advocate General that not only there is an interim order but it is also the bounden duty of the State to maintain law and order. However, looking to stage of investigation in Crime No.1/2026 registered at Police Station Crime Branch, Gwalior further deliberations on this aspect is being avoided. However, it is made clear that it is the duty of every member of the society irrespective of his caste or creed to act in accordance with law.

58. It is further submitted that the Police had an intelligence input, that the petitioner may indulge himself in some act which may be prejudicial to the maintenance of law and order, therefore, on two occasions, the Senior Police Officers had talked to the petitioner and he always stated that he would not do anything. Thus, it is submitted that the Police was not aware that the Petitioner would go to hand over memorandum to the Inspector General of Police and therefore, no action was taken at the initial stage.

59. Even the above mentioned information given by the police to the learned Advocate General appears to be false in the light of statement of their own witness Bhavnesh Singh, because he has specifically stated that he was assigned the duty of remaining present at the time of handing over of memorandum to the I.G. Police against the incident of Khaniyadhana and to videograph and inform the Senior Officers if any incident takes place. Thus, it is clear that the police was aware of the fact that the petitioner is going to handover the memorandum to I.G. Police, Gwalior Zone and the Police was also aware of order of District Magistrate passed under 163 of B.N.S.S.

60. The later part of the statement of Bhavnesh Singh is that the entire incident was videographed by this witness and he informed the senior officers verbally and also sent the Video on their whatsapp account. Thus, it is clear that the Senior Police Officers were aware of the commission of cognizable offence, but still they did not register the FIR and the FIR was registered at 19:56 whereas the incident is alleged to have taken place at around 1:00 P.M.

61. Since, the learned Advocate General had referred to Section 35 of B.N.S.S. to submit that it is the duty of the police officer to arrest a person if any offence is committed in his presence, therefore, a specific question was put to learned Advocate General that whether Bhavnesh Singh is a police personal having all powers under B.N.S.S. or not? It was submitted by Shri Prashant Singh, Advocate General, that Bhavnesh Singh is a police personal having all powers under B.N.S.S., but he was assigned the duty of vigilance and to videograph the incident. However, it was specifically submitted that there is no direction by the police head quarter or by Superintendent of Police Gwalior, that any police personal/officer who has been assigned the duty of

vigilance shall not exercise his powers of a police officer, even if they are required.

62. From the spot map, it is clear that the entire alleged offence took place in front of the office of Superintendent of Police and Inspector General of Police where, the presence of police personal(s) is natural. But it is not the case of the State that any of the police personal/officer tried to prevent the incident or was even present on the spot. Be that it may. Once again it is pointed out that the aforesaid observation has been made in the light of submission of Shri Prashant Singh, Advocate General that the police was committed to maintain law and order situation in the city of Gwalior.

63. Shubham Singh Parihar has stated that some time in between 5:30 to 6:00 P.M., he was informed by C.S.P. Crime about the incident and also instructed him to find out the whereabouts of the petitioner and others so that similar incident may be avoided. Accordingly, he took out the location of the petitioner, according to which he was in Morena and therefore, he also went to Morena. He found that one black colour car was coming in which Petitioner and others were sitting and they were asked to come to Gwalior and accordingly they agreed to come to Gwalior. On the way back to Gwalior, he received instructions from the Senior Police Officers that the Petitioner and others should be brought to Police Station *Purani Chhavani*, Gwalior and the S.H.O. of Police Station *Purani Chhavani* Dr. Santosh Yadav also met him at *Naryavali Triangle* and thereafter all of them (including Petitioner) came to Police Station *Purani Chhavani*.

64. Dr. Santosh Yadav has stated that he met with Shubham Parihar, the Petitioner and others at *Naryavali Triangle* at about 19:40 and he was

informed by his Senior Police Officers that since steps are being taken to register the FIR, therefore, from security point of view, the Petitioner and others should be made to sit in Police Station *Purani Chhavani*, and later on, the S.H.O., Police Station Vishwavidyalay came to the Police Station *Purani Chhavani* for further action in FIR in question.

65. Thus, it is clear that the Petitioner was taken into custody after 18:00 P.M. but certainly much before 19:40, and the FIR was lodged at 19:56 and arrest was made at 23:40 in Police Station *Purani Chhavani*, Gwalior therefore, undisputedly the petitioner was already under custody at the time of registration of FIR. Further more, it is clear from the case diary that information of arrest of petitioner was given to one "Priyanshu Verma son of Dharmendra Verma, aged about 19 years (Guard), R/o Gadaipura, Gwalior" and not to any family member of the petitioner. From the information memo, it appears that the police had treated Prinyanshu Verma as relative of the Petitioner because it is mentioned that "आपको सूचित किया जाता है कि आपके परिजन अनिल पुत्र स्व. डॉ गणेश बिहारी मिश्रा उम्र 58 साल निवासी पटेल नगर सिटी सेन्टर ग्वालियर मो. ....." whereas the use of word गार्ड (Guard) clearly shows that he was the employee and not family member of Petitioner and there is nothing in the panchnama and even in the case diary proceedings that either house was locked or family members of the petitioner were not available.

66. Although the Counsel for the Petitioner tried to make a submission that in a given case, the custody may amount to arrest and in the present case, in fact the custody by Shubham Singh Parihar was nothing but was arrest without any formal memo of arrest therefore, it is clear that the petitioner was arrested much prior to registration of FIR, but the same cannot be accepted. "Arrest" would necessary mean "Custody" but "Custody" does not

necessarily mean that the person has been formally arrested. In other words, the impression "Custody" has a wider meaning in comparison to the word "Arrest".

67. The word "Custody" has been clarified by Supreme Court in the case of **Perumal Raja @ Perumal Vs. State Rep. by Inspector of Police** decided on **3-Jan-2024** in **S.L.P (Cri) No. 863 of 2019** and has held as under :

> 29. This Court in **Deoman Upadhyay** (supra), while rejecting the argument that the distinction between persons in custody and persons not in custody violates Article 14 of the Constitution of India, observed that the distinction is a mere theoretical possibility. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer. Reference can also be made to decision of this Court in **Vikram Singh and Ors. v. State of Punjab** , which discusses and applies **Deoman Upadhyay** (supra), to hold that formal arrest is not a necessity for operation of Section 27 of the Evidence Act. This Court in **Dharam Deo Yadav v. State of Uttar Pradesh** , has held that the expression "custody" in Section 27 of the Evidence Act does not mean formal custody, but includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time of giving information, the accused is, for all practical purposes, in the custody of the police and the bar vide Sections 25 and 26 of the Evidence Act, and accordingly exception under Section 27 of the Evidence Act, apply. Reliance was placed on the decisions in **State of A.P. v. Gangula Satya Murthy** and **A.N.Vekatesh and Anr. v. State of Karnataka**.

68. Faced with such a situation, it is submitted that under no circumstances, a person can be taken into custody prior to registration of FIR. However, this

Court is not convinced with above mentioned submission. For example, if any offender is running away from the spot after committing offence, then whether the police officer can refuse to take offender in custody on the ground that FIR has not been lodged? The Answer is "No". However, in the considered opinion of the Court, if a person is taken into custody even prior to registration of FIR, then he cannot be kept in custody for an unreasonable period without there being any FIR against him. Since, detailed deliberations on the abovementioned submission is not required under the facts and circumstances of this case, therefore, this Court does not wish to dwell upon this issue any further.

69. The learned Advocate General fairly conceded that there is no Rojnamchasanha to show that Shubham Singh Parihar was instructed to take the petitioner and others in custody; there is nothing on record to show that at what time, the petitioner was intercepted and taken into custody by Shubham Singh Parihar. However, it was fairly conceded that Petitioner was intercepted near *Sidh Baba Ka Mandir*, Morena which is approximately 35 Kms away from the police station *Purani Chhavani*. Therefore, important fact as to when the petitioner was intercepted/taken into custody is not available on record.

70. Thus, it is clear that the Petitioner was already available with the police as he was taken into custody by Shubham Singh Parihar after 18:00 whereas the arrest was made at 23:40 i.e., approximately after 5 hours of custody of the petitioner.

71. The aforesaid aspect is necessary to consider whether the direction given by the Supreme Court in the case **Mihir Rajesh Shah (Supra),** and **Vihaan Kumar (Supra)** were followed or not?

72. At the cost of repetition, the directions given by Supreme Court in the case of **Mihir Rajesh Shah (Supra)** are once again reproduced as under :

> i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under Penal Code, 1860 (now BNS 2023);
> ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;
> iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

73. Therefore, it is clear that the arrestee should be informed about the grounds of arrest and the same must be communicated to him in writing in the language he/she understands and in case, where the arresting officer is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally and in that situation, the grounds must be communicated in writing within a reasonable time and in any case at least 2 hours prior to production of the arrestee for remand proceedings.

74. Thus, the first mandatory requirement is communication of grounds of arrest in writing and only for any reason, if the arresting officer is unable to communicate in writing on or soon after his arrest, then he can do so orally

subject to making communication of grounds of arrest in writing at least 2 hours prior to production for remand.

75. This Court has already found that the petitioner was in the custody of the Police for atleast 5 hours as he was formally arrested at 23:40 and according to Shubham Singh Parihar, when he asked the petitioner and others to come back to Gwalior then they agreed for the same. Thus, it is clear that even it is not the case of the respondent/police that there was any non-cooperation by the petitioner but on the contrary it is their own stand that the petitioner had followed the instructions given by Shubham Singh Parihar. Under these circumstances, it is clear that there was no situation or urgency or eventuality which may render the arresting officer unable to communicate the grounds in writing specifically when the arrest was made approximately after 4 hours of registration of FIR and the Petitioner was already under custody of the police much prior to registration of FIR.

76. Further more, undisputedly, no grounds have been communicated by the Police in writing at all. Therefore, the further requirement that in case of oral communication, the police must inform the arrestee in writing at least 2 hours prior to his production for remand was not complied with.

77. So far as the admission made by the Petitioner before the J.M.F.C., Gwalior at the time of remand is concerned, the same will not amount to waiver of his fundamental right of being informed about the grounds of his arrest.

78. The Police has recorded Rojnamcha Sanha on 2-1-2026 at 1:59 which mentions that "गिरफ्तारी के कारण व आधारों से अपराधीगण को अवगत करवाकर तथा गिरफ्तारी किए जाने के कारणों को लिपिबद्व कर गिरफ्तारी आवश्यक होने से (उक्त अरोपीगण द्वारा लगातार सार्वजनिक तौर व सोशल मीडिया के माध्यम से अनावश्यक व अनर्गल टीका टिप्पणी

कर जाति वर्ग विशेष का भावनाओं को आहत किया जा रहा है जिससे समाज व क्षेत्र मे वैमनस्यता व वर्ग संघर्ष की स्थिति उत्पन्न होने से कानून व्यवस्था की स्थिति निर्मित हुई है।)"

79. In the Rojnamchasanha it is nowhere mentioned that what grounds of arrest were verbally communicated to the Petitioner. On the contrary it is clear from the further comment of the arresting officer in the Rojnamchasanha that "their arrest was necessary as they were involved in passing unwanted remarks either publicly or through social media resulting in hurting the feelings of one class of the society which is giving rise to caste war and bitterness in the society". It is nowhere mentioned that the petitioner had committed an offence of a particular nature which has resulted in hurting the feelings of the members of particular class of the Society, therefore, his arrest has become necessary. Therefore, this Court is of the considered opinion, that if the aforesaid entry made in the rojnamchasanha is read, then the arresting officer must have communicated that their action is causing bitterness in the society and is causing hurt to feelings of a particular class of society, but the fact that they have committed an offence in question therefore, they are being arrested, were never communicated. Thus, it is clear that even if the petitioner had admitted that ground of arrest has been communicated to him, then **also** it does not mean that the ground that the petitioner has committed the offence in question was also communicated to him.

80. Therefore, this Court is of considered opinion that the police has violated the fundamental rights of the petitioner ensured under Article 22(5) of Constitution of India and by not complying with the mandatory provision of Section 47 of BNSS**.** Thus, **the arrest of the Petitioner is held to be illegal**.

81. Although this Court cannot comment upon the correctness of the order of remand, but it is clear that the said order was passed by J.M.F.C. without due application of mind as well as in mechanical manner in the light of law laid down by Supreme Court in the case of **Vihaan Kumar (Supra)** and **Mihir Rajesh Shah (Supra).**

Other grounds raised by the Petitioner

82. The Supreme Court in the case of **Vihaan Kumar (Supra)** has held that the illegal arrest would not vitiate the investigation or charge sheet or Trial and filing of charge sheet would not validate the illegal arrest. This Court has already come to a conclusion that the arrest of the petitioner was illegal. Since, the investigation is still in progress and is at the earliest stage, therefore, this Court would not like to consider the other grounds which may have some effect on the ongoing investigation.

Consequences of illegal arrest

83. Once, this Court has held that the arrest of the petitioner was illegal as the grounds of arrest were not communicated to him, therefore, this Court has no option but to direct for release of the Petitioner.

84. However, this Court cannot lose sight of certain facts which were submitted by learned Advocate General i.e. (i) That proceedings were initiated by Executive Magistrate, City Center, Gwalior under Sections 126,135 of B.N.S.S. and the Petitioner was directed to execute a bond or bail bond, for keeping the peace and maintaining good behavior until the conclusion of enquiry, but inspite of multiple opportunities he has not executed the bond or bail bond so far.

85. It is submitted by Counsel for petitioner, that if the petitioner has not executed the bond or bail bond in compliance of order passed by Executive Magistrate, City Center Gwalior, then the Executive Magistrate, City Center, Gwalior, has an option of proceeding further under Section 141 of B.N.S.S. and so long as no such action is taken by the Executive Magistrate, City Center, Gwalior, then non execution of bond or bail bond may not be taken as a circumstance against the petitioner. It is further submitted that not only the petitioner was directed to execute bond or bail bond but even the complainant and others were also directed to execute the bond or bail bond, but even they have not executed the bond or bail bond.

86. Merely because the Executive Magistrate, City Center, Gwalior, has failed to proceed in accordance with provisions of Section 141 of B.N.S.S. or the complainant and others have also not executed the bail bonds or bond, the act of non-execution of bail bond or bond by the Petitioner, inspite of order by the Executive Magistrate, City Center, Gwalior would not get validated and cannot be ignored.

87. Furthermore, subject matter of W.P. No.44524 of 2025 is having connection may be close or distant, direct or indirect with the alleged offence committed by the Petitioner (the above observation regarding commission of offence by petitioner should not be taken as a finding, and the guilt shall be subject to trial, but this observation has been made because no arguments were advanced for quashment of the FIR in question.) Further more, there is a specific direction to the State to ensure maintenance of law and order and to ensure that life and property of the common people is protected.

88. During the course of arguments it was submitted by Counsel for the Petitioner that not only the petitioner is the Ex-President of the Bar Association but has long standing in the bar. Therefore, it is expected that responsible member of the society should also act responsibly specifically when there is a specific direction by the High Court to the State Govt. to ensure maintenance of law and order in the light of relief no. (ii) in W.P. No.44524 of 2025.

89. The Supreme Court in the case of **Arnab Manoranjan Goswami (Supra)** has held as under :

> **64.** While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarised as follows:
> **64.1.** The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction.
> **64.2.** Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses.
> **64.3.** The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice.
> **64.4.** The antecedents of and circumstances which are peculiar to the accused.
> **64.5.** Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR.
> **64.6.** The significant interests of the public or the State and other similar considerations.
> **65.** These principles have evolved over a period of time and emanate from the following (among other) decisions : *Prahlad Singh Bhati* v. *State (NCT of Delhi)*; *Ram Govind Upadhyay* v. *Sudarshan Singh*; *State of U.P.* v. *Amarmani Tripathi*; *Prasanta Kumar Sarkar* v. *Ashis Chatterjee*; *Sanjay Chandra* v. *CBI* and *P. Chidambaram* v. *CBI*.

66. These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 CrPC. In the backdrop of these principles, it has become necessary to scrutinise the contents of the FIR in the case at hand. In this batch of cases, a prima facie evaluation of the FIR does not establish the ingredients of the offence of abetment of suicide under Section 306 IPC. The appellants are residents of India and do not pose a flight risk during the investigation or the trial. There is no apprehension of tampering of evidence or witnesses. Taking these factors into consideration, the order dated 11-11-2020 envisaged the release of the appellants on bail.

90. Therefore, it is directed that :

(i) The Petitioner shall be released on bail on furnishing personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of C.J.M., Gwalior;

(ii) The Petitioner shall execute the bond or bail bond as directed by the Executive Magistrate, City Center, Gwalior under Section 126 and 135 of B.N.S.S.;

(iii) That the Petitioner shall also submit his undertaking before the CJM Gwalior that he shall not act in any manner which may be prejudicial/detrimental to the maintenance of law and order as directed by Division Bench of Principal Seat at Jabalpur in W.P. No.44542 of 2025;

(iv) Other conditions of bail shall also apply;

(v) **The conditions no. (ii) and (iii) shall be condition precedent for release of the Petitioner**. Since, the Petitioner is under arrest therefore, the Senior Superintendent of Police, Gwalior shall make immediate arrangements for enabling the petitioner to execute bond or bail bond in compliance of order of Executive Magistrate City Center, Gwalior as well as undertaking as required under condition no. (iii).

91. Before parting with this order, this Court would like to mention that any observation made in this order is confined to this petition only and the investigation as well as trial, if any, shall be done strictly in accordance with law without getting influenced or prejudiced by any of the observation made in this order.

92. Although Shri Vivek Khedkar, Add. Advocate General had provided two pen drives in two different sealed covers allegedly containing the video of the incident, but since, we have not touched the merits of the case, therefore, both the sealed envelops were not opened. Accordingly, two sealed envelops containing two pen drives be returned back to Shri Vivek Khedkar, Add. Advocate General in its original sealed condition with original seal impressions. The case diary be also returned back to Shri Vivek Khedkar, Add. Advocate General and acknowledgement of both the pen drives and case diary be also taken from Shri Vivek Khedkar, Add. Advocate General.

93. The Petition succeeds and is hereby **allowed**. No order as to costs.

(G.S. AHLUWALIA)
JUDGE

(ASHISH SHROTI)
JUDGE