



IN THE COURT OF THE SESSIONS JUDGE AT AMBEDKAR NAGAR

Criminal Revision No. 261 of 2025

Sub-Inspector (Investigating Officer) Case Crime No. 202/2025 Sections 305/331(4)/317(2)/317(5) BNS P/s Maharua through DGC (Criminal) ...Revisionist

Versus

1. Vivek Kumar S/o Mishrilal, 23, R/o Kodra, P/s Kotwali Akbarpur, District Ambedkar Nagar,
2. Rajkaran aka Kariya S/o Muniram, 22, R/o Pithapur Saraiya, P/s Kotwali Akbarpur, District Ambedkar Nagar,
3. Vishal S/o Ramprasad, 22, R/o Kharagpur, P/s Kotwali Akbarpur, District Ambedkar Nagar, and
4. Rampal Agrahari S/o Late Santram Agrahari, about 23, R/o Bewana, District Ambedkar Nagar ...Opposite Parties / Accused

ORDER

(Under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023)

1. The present criminal revision has been filed by the Investigating Officer, challenging the order dated 18.11.2025, passed by the learned Civil Judge (S.D.) Additional Chief Judicial Magistrate Ambedkar Nagar in Case Crime No. 202 of 2025 Police Station Maharua, whereby the prayer for first remand of the accused under section 187 BNSS was refused on account of **non-compliance with the procedural mandate governing communication of written grounds of arrest** as clarified in *Mihir Rajesh Shah v. State of Maharashtra, 2025 INSC 1288*, and the accused was directed to execute a **personal bond to cooperate with the investigation**.
2. The accused was arrested in connection with an offence under Sections 305, 331(4), 317(2), 317(5) BNS and produced before the learned Magistrate. The Investigating Officer sought remand. The learned Magistrate declined to authorise detention on the ground that the mandatory requirement of furnishing the **grounds of arrest in writing** had not been complied with.
3. While refusing remand, the learned Magistrate directed the accused to furnish a **personal bond undertaking to cooperate with the investigation and to appear as and when required**.
4. The prosecution has challenged the said order, mainly contending that the direction to execute a personal bond has the effect of **restraining the police from re-arresting the accused**, thereby prejudicing the investigation.

5. I have carefully considered the arguments presented by the counsel representing both parties and have thoroughly reviewed the records with the utmost diligence.
6. The first question that arises for consideration is whether a criminal revision is maintainable against an order refusing remand and directing execution of a personal bond, in view of the bar contained in **Section 438(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023**.
7. The Allahabad High Court has consistently held that where provisions of the BNSS are **in pari materia** with the CrPC, earlier judicial interpretations continue to govern the field. Section 438(2) BNSS, 2023, which is **pari materia with Section 397(2) of the Code of Criminal Procedure, 1973**. The legislative intent behind the said provision remains unchanged under the BNSS, and the principles governing revisional jurisdiction continue to apply with full force.
8. The Hon'ble Supreme Court in *Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551*, held that an order which does not decide the rights of the parties finally and leaves the proceedings alive is an **interlocutory order**, against which revision is barred.
9. In *National Investigation Agency vs Owais Ahmad Dar & Ors on 24 March, 2022*, CRL.M.C. 3493/2021, CRL.M.A.20845/2021 and *Vikas Chawla @ Vicky vs The State NCT of Delhi on 28 March, 2025*, CRL.M.C. 4845/2024 & CRL.M.A. 18207/2024, CRL.M.A. 18283/2024, the Hon'ble Delhi High Court; in *Ambarish Rangshahi Patnigere v. State of Maharashtra, 2011 CrLJ 515 (Bombay)* and *Miss R. Shakuntala vs Roshanlal Agarwal And Others on 19 April, 1984*, 1984 Supreme(Bom) 151, the Hon'ble Bombay High Court; in *Kanddhal Sarman Jadeja vs State of Gujrat, 2012 CrLJ 4165*, the Hon'ble Gujrat High Court; in *P. Narayna vs State of Andhra Pradesh Through the Investigating Officer, rep. by its Public Prosecutor, 2022 SCC OnLine AP 2867*, the Hon'ble High Court of Andhra Pradesh at Amrawati and in *State, represented by its Dy. Superintendent of Police vs Ganti Venkata Satya Bhasker Prasad, 2023 SCC OnLine AP 466*, Hon'ble High Court of Andhra Pradesh have interpreted, enlarged the principle of finality and held that the order granting remand is interlocutory, while the order rejecting the remand is not interlocutory and is revisable based on the reasoning that refusal of remand infringes the rights of the investigating officer that may culminate in the trial against the prosecution. Considering the above case laws, I proceed to the merit.
10. At this juncture, it will be pertinent to consider the arrest safeguards. The law of arrest in India is anchored first and foremost in the Constitution. Personal liberty is not left to statutory grace but is protected by Articles 21 and 22, which together impose substantive and procedural limits on the power of arrest and detention. Any arrest or detention must conform to a procedure that is fair, just, and reasonable; arbitrary, routine, or mechanical arrests offend Article 21, as understood in *Maneka Gandhi vs Union of India, 1978 AIR 597*, and subsequent line of cases. Article 22(1) guarantees two immediate and enforceable rights to every arrested person: the right to be informed, as soon as may be, of the grounds of arrest, and the right to consult and be defended by a legal practitioner of one's choice. Article 22(2) complements these guarantees by mandating that the arrestee be produced

before the nearest Magistrate within twenty-four hours of arrest, excluding the time necessary for the journey, and by prohibiting detention beyond that period without judicial authorisation. The statutory law of arrest operates within, and must be read in light of, these constitutional commands.

11. Within this constitutional framework, the law of arrest under the Code of Criminal Procedure, 1973 and its successor, the Bharatiya Nagarik Suraksha Sanhita, 2023, lays down a detailed structure of safeguards. At the threshold lies the requirement that a person arrested without warrant must be immediately informed of the full particulars of the offence or the grounds of arrest, and, if the offence is bailable, of the right to be released on bail and to arrange sureties. What was earlier treated as a largely formal obligation has, after the decision in *Mihir Rajesh Shah*, acquired substantive content: the grounds of arrest must now be furnished in writing, in a language understood by the arrestee, and supplied at the latest two hours before the person is produced for remand before the Magistrate. Failure to adhere to this timeline does not remain a curable irregularity; it renders the arrest and any subsequent remand illegal, entitling the person to be set at liberty.
12. Closely allied to this is the right of the arrested person to have a friend, relative, or nominated individual informed of the arrest and the place of detention. The police are under a statutory duty to communicate this information promptly and to record compliance in the station diary. At the same time, the Magistrate is required to verify that this safeguard has been honoured. This requirement reinforces the constitutional requirement that arrest not occur in secrecy and that the arrestee not be isolated from legal or familial assistance during the critical initial phase of custody.
13. The power of the police to arrest without a warrant is itself narrowly structured. Officers are required to record the reasons justifying arrest as well as the reasons for not arresting where arrest is deferred. In *Arnesh Kumar v. State of Bihar*, AIR 2014 SUPREME COURT 2756, the Hon'ble Supreme Court transformed these statutory duties into enforceable protections by holding that for offences punishable with imprisonment up to seven years, arrest should not be automatic. Both the investigating officer and the Magistrate are under a duty to examine compliance with the statutory conditions governing arrest, giving concrete effect to the constitutional prohibition on **arbitrary deprivation of liberty**.
14. Instead of immediate arrest, the law now favours the issuance of a notice of appearance in a wide range of cases involving offences punishable up to seven years' imprisonment. Where such a notice is issued and complied with, arrest should ordinarily not follow. Arrest becomes permissible only upon non-compliance or when specific statutory conditions justify custodial intervention. This approach reflects the constitutional principle that **arrest is not to be used as a matter of convenience but only as a measure of necessity**.
15. When an arrest does take place, the procedure of arrest is regulated with precision. The arresting officer must bear clear identification and prepare an arrest memo specifying the date, time, and place of arrest. This memo must be attested by a family member or a respectable person of the locality and countersigned by the arrestee. These formal requirements serve as practical

mechanisms to ensure transparency and accountability in the exercise of coercive state power.

16. The law further mandates that restraint during arrest be limited strictly to what is necessary to prevent escape. Unnecessary force, humiliation, or excessive restraint is prohibited, affirming that the act of arrest does not extinguish the dignity or bodily integrity of the person detained, a value that flows directly from Article 21.
17. A safeguard of constitutional centrality is the requirement that every arrested person be produced before a Magistrate within twenty-four hours of arrest, excluding travel time. This requirement gives effect to Article 22(2) and ensures that detention beyond the first day is subject to judicial scrutiny. Any custody beyond this period without a Magistrate's order is illegal, **regardless of the seriousness of the offence alleged.**
18. During custody, the arrestee has the right to **medical examination**, and the police bear a continuing duty to protect the health and safety of the person detained. Periodic medical checks and access to treatment are integral to this obligation, recognising that custody creates conditions of vulnerability that demand heightened care by the State.
19. When the police seek remand, the **Magistrate's function is not mechanical but judicial in the fullest sense.** The Magistrate must examine the case diary, scrutinise the reasons for arrest and the necessity of custody, and ensure compliance with statutory and constitutional safeguards governing arrest, intimation, and notice of appearance. Reasons must be recorded for granting police or judicial custody, reinforcing the principle that the **deprivation of liberty requires reasoned, accountable decision-making.**
20. Access to legal assistance is an equally vital component of this framework. The Hon'ble Supreme Court has repeatedly held that providing free legal aid to an indigent accused at the stage of first production before the Magistrate is an essential facet of the right to life and personal liberty under Article 21. Without adequate legal representation at this early stage, the constitutional guarantees under Articles 21 and 22 would be reduced to empty formality.
21. Judicial guidelines have further strengthened these protections. In *D.K. Basu* (Supra), the Hon'ble Supreme Court articulated mandatory guidelines governing arrest and detention, including the preparation of an arrest memo, prompt intimation to relatives or friends, and regular medical examinations. These guidelines have become embedded in everyday arrest practice, supplementing statutory provisions and reinforcing constitutional norms.
22. The post-*Mihir Rajesh Shah* framework marks a decisive consolidation of these principles. The requirement of written grounds of arrest, coupled with a mandatory two-hour interval before remand, now operates as a general rule across offences under the IPC or BNS as well as special statutes. This safeguard is no longer confined to exceptional laws but applies uniformly to all arrests, reflecting the constitutional demand for fairness and transparency.
23. In *Mihir Rajesh Shah*, the Hon'ble Supreme Court clarified with precision the mode and timing of communicating the grounds of arrest. It held that in every case the **grounds must be communicated in writing and in a language the arrestee understands.** While oral communication at the moment of arrest

may suffice where immediate written communication is impracticable, a written copy must follow within a reasonable time and, in any event, not later than two hours before the remand hearing. This minimum interval was fixed to ensure that the accused and counsel have a meaningful opportunity to consult and to oppose custodial remand, thereby giving real content to the rights under Articles 21 and 22(1). **The assertion by the prosecution that the counsel for the accused did not oppose the remand is unfounded, as the fundamental right to life and liberty should not be infringed upon due to a lack of opposition. A magistrate is duty-bound to keep vigilant and ensure that safeguards are being followed in letter and spirit, even if counsel for the arrestee does not oppose the remand.**

24. The Court was unequivocal about the consequences of non-compliance. At the same time, the Court clarified that such a release does not confer immunity from lawful custody. The police or prosecution may seek a fresh remand after curing the defect by supplying proper written grounds of arrest and explaining the earlier lapse, with the Magistrate deciding the renewed request expeditiously. If the prescribed schedule is not followed, the arrest itself and any remand founded upon it are rendered illegal, and the arrestee is entitled to be released. No Magistrate should experience undue pressure from any external sources in the fulfilment of their responsibilities; failure to uphold this principle may lead to the erosion of the judicial system and diminish public trust.
25. In essence, *Mihir Rajesh Shah* gives concrete procedural shape to constitutional liberty. It elevates the grounds of arrest from a verbal, language-specific, and time-bound obligation to a written, language-specific, and time-bound obligation, and it makes explicit that failure to comply vitiates both arrest and remand, triggering an immediate right to release while preserving the possibility of a future lawful remand in accordance with the Constitution and the law.
26. The law of arrest in India is structured around a dense web of statutory safeguards under the Code of Criminal Procedure, 1973 and its successor, the Bharatiya Nagarik Suraksha Sanhita, 2023. At the threshold lies the requirement that a person arrested without warrant must be immediately informed of the **full particulars of the offence or the grounds of arrest**, and, if the offence is bailable, of the right to be released on bail and to arrange sureties. What was earlier treated as a largely formal obligation has, after the decision in *Mihir Rajesh Shah*, acquired substantive content: the grounds of arrest must now be furnished **in writing**, in a **language understood by the arrestee**, and supplied at the latest two hours before the person is produced for remand before the Magistrate. Failure to adhere to this timeline does not remain a curable irregularity; it renders the arrest and any subsequent remand illegal, entitling the person to be set at liberty.
27. Closely allied to this is the right of the arrested person to have a friend, relative, or nominated individual informed of the arrest and the place of detention. The police are under a statutory duty to communicate this information promptly and to record compliance in the station diary, while the Magistrate is required to verify that this safeguard has been honoured. This ensures that arrest does not occur in secrecy and that the arrestee is not cut off from the outside world during the crucial initial hours of custody.

28. The power of the police to arrest without a warrant is itself circumscribed by law. Officers must record not only the reasons justifying arrest but also the reasons for deciding not to arrest where arrest is avoided. In *Arnesh Kumar v. State of Bihar*, the Hon'ble Supreme Court transformed these requirements into enforceable protections by holding that for offences punishable with imprisonment up to seven years, arrest should not be automatic. Both the investigating officer and the Magistrate are required to actively examine compliance with the statutory conditions governing arrest and the issuance of notice of appearance.
29. Instead of immediate arrest, the law now prefers the issuance of a notice of appearance in a wide range of cases involving offences punishable up to seven years' imprisonment. Where such a notice is issued and complied with, arrest should ordinarily not follow. Arrest becomes permissible only upon non-compliance or when specific statutory conditions justify custodial intervention. This marks a shift from arrest as a default investigative tool to arrest as a measure of necessity.
30. When arrest does occur, the manner of arrest is regulated with precision. The arresting officer must bear clear identification and prepare an arrest memo specifying the date, time, and place of arrest. This memo must be attested by a family member or a respectable person of the locality and countersigned by the arrestee. These formalities are not ceremonial; they are designed to create an auditable record that protects against abuse and false implication.
31. The law further mandates that restraint during arrest be limited to what is strictly necessary to prevent escape. Excessive force or unnecessary handcuffing is prohibited, reinforcing the principle that arrest does not suspend a person's dignity or bodily integrity.
32. A constitutional safeguard of central importance is the requirement that every arrested person be produced before a Magistrate within twenty-four hours of arrest, excluding travel time. This flows directly from Article 22(2) of the Constitution and ensures that detention beyond the first day is subject to judicial scrutiny and authorisation. Any custody beyond this period without a Magistrate's order is illegal.
33. During custody, the arrestee has the right to medical examination, and the police bear a continuing duty to safeguard the health and safety of the person detained. Periodic medical checks and access to treatment are integral to this obligation, recognising that custody creates a heightened risk of physical and psychological harm.
34. When the police seek remand, the Magistrate's role is not mechanical. Under the law governing remand, the Magistrate must examine the case diary, scrutinise the reasons for arrest and the necessity of custody, and ensure compliance with all statutory safeguards relating to arrest, intimation, and notice of appearance. Reasons must be recorded for granting either police or judicial custody, reinforcing the principle that deprivation of liberty requires reasoned justification.
35. Access to legal assistance is an equally vital safeguard. The Hon'ble Supreme Court has consistently held that providing free legal aid to an indigent accused at the stage of first production before the Magistrate is an essential

component of the right to life and personal liberty under Article 21. Without effective legal representation at this stage, many of the procedural protections surrounding arrest and remand would remain illusory.

36. The Court was explicit about the consequences of non-compliance. If the prescribed schedule is not followed, the arrest itself and any remand founded upon it are rendered illegal, and the arrestee is entitled to be released. At the same time, the Court clarified that such a release does not create immunity from lawful custody. The police or prosecution may seek a fresh remand after curing the defect by supplying proper written grounds of arrest and explaining the earlier lapse, with the Magistrate deciding the renewed request expeditiously.
37. The prosecution argues that heavy recoveries (1.640 kilograms of yellow metal, 4.966 kilograms of white metal and Rs. 80,000) have been effected on the behest of the accused; the Investigating Officer was not aware of the case law *Mihir Rajesh Shah*, as it was very recent, i.e. dated 06.11.2025. He also contends that the grounds of arrest were communicated to the arrestees in the arrest memo. On perusal of the arrest memo, it is apparent that a copy of the arrest memo was given to the arrestee, Rampal Agrahari, for all arrestees. The arresting officer noted in the arrest memo that information about the arrest shall be provided to the relatives of the arrestees through the proper channel upon arrival at the police station.
38. Needless to say, procedural safeguards are applicable regardless of the severity of the case or the magnitude of the recovery. It is presumed that every individual is aware of the laws of the land following their publication. No individual can claim ignorance of the law.
39. The *Mihir Rajesh Shah's* directives have been circulated by the High Court of Allahabad through C.L. No. 16047/Admin. G-II/Allahabad Dated: 12/12/2025. The *Mihir Rajesh Shah* explicitly mandates that, in addition to providing a copy of the arrest memo or arrest information to the accused's relative (*D.K. Basu's mandate*), **written grounds for arrest must be communicated to all individuals in their native language at least two hours prior to their presentation before the Magistrate** (*Mihir Rajesh Shah's mandate*). Should the police fail to adhere to this requirement, the accused is entitled to be released. In the present case, the police did not comply with the directives established by *Mihir Rajesh Shah*. Consequently, the Learned Magistrate denied the remand and released the accused on personal bonds. **Even then, the police subsequently failed to address this oversight, despite being given an opportunity by *Mihir Rajesh Shah* to do so within 7 days, and instead pursued this revision.** In this set of scenarios, the order of the Learned Magistrate is deemed correct, legal, proper, lawful, and appropriate. This Court finds that there was no irregularity in refusing the remand. The *Mihir* guidelines are binding; non-compliance renders the arrest and subsequent remand illegal, and the accused becomes "entitled to be set at liberty".
40. The contention of the prosecution that the direction to execute a personal bond has seized or extinguished the power of the police to re-arrest as a personal bond amounts to bail is misconceived. The Learned Magistrate ordered the arrestees to file their personal bonds to the effect that they shall

cooperate in the investigation. It was a condition favourable to the IO and detrimental to the accused. Surety/security, personal bond, or undertakings are often required in court proceedings, whether civil, revenue or criminal, regardless of bail, though they are incorporated with the bail provisions in the criminal laws. It is a tool that requires anyone to do or refrain from something. These are not needed only for bail. In Chandrashekhar Bhimsen Naik vs State of Maharashtra (Writ Petition No. 5764 of 2025(Criminal)), 2025:BHC-AS:53286-DB, Hon'ble Bombay High Court after setting aside remand acceptance order of the Magistrate for want of non communication of written grounds of arrest to arestee held the arrest of arestee illegal, set him at liberty directing his release on bail by furnishing P.R. bond in the sum of Rs. 50,000/- with one or more sureties in the like amount to the satisfaction of the Magistrate. Post *Satyendra Antil*, custody is not a precondition for bail. In Ram Ashish & 4 others v. State of U.P., 2023 SCC OnLine All. 4695, it is held that **"the Magistrate may refuse to remand the accused to custody and may release the accused on personal bond with or without sureties after taking an undertaking from the accused to appear before the investigating officer or the Court when required and that such refusal of remand and the consequent release of the accused will not deter the IO to arrest him again as and when required strictly in accordance with law"**.

41. A personal bond directing cooperation with investigation does not amount to a grant of bail, does not confer immunity from arrest, and does not operate as a restraint on the statutory powers of the investigating agency.
42. In view of the above discussion, this Court finds that the order dated 18.11.2025 passed by the learned Judicial Magistrate refusing remand and seeking personal bond is not interlocutory. The order of the Learned Magistrate is correct, legal, proper, lawful, and appropriate and warrants no interference.

ORDER

21. **The criminal revision is dismissed sans merit.**
22. It is further clarified that the personal bond executed by the accused pursuant to the order of the learned Judicial Magistrate shall not be construed as a bar to lawful arrest, if circumstances so warrant and the requirements of law are duly complied with.

Pronounced in open Court on this 18th day of December, 2025.

(Sessions Judge)

Ambedkar Nagar