*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

&

*** THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR**

+WRIT PETITION No:26235 OF 2026

%13.10.2026

Sabena Prakash

……Petitioner

And:

$1. The State of Andhra Pradesh, rep. by its Principal Secretary (Home Department), Secretariat, Amaravati and others.

….Respondents.

!Counsel for the petitioner: : Sri G.V.S. Kishore Kumar

^Counsel for the respondents : Sri J. Krishna Praneet, A.G.P attached to the office of the Advocate General

<Gist:

>Head Note:

? Cases referred:

1.2023 Supreme (SC) 1164
2.2008 14 SCC 283
3.1997 KHC 245
4.2008 AIR (SC) 1788
5.2026 SCC OnLine Ker 13044
6.2013 1 SC 314
7.2026 1 SCC 500
8.2026 LiveLaw (SC) 82
9.2019 SCC OnLine Bom 2937
10.(2022)13 SCC 542
11.(1986) 3 SCC 141
12.1997 KHC 245
13.2013 1 SCC 314

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No:26235 OF 2026

DATE OF JUDGMENT PRONOUNCED: 13.10.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

1.	*Whether Reporters of Local newspapers may be allowed to see the Judgments?*	*Yes/No*
2.	*Whether the copies of judgment may be marked to Law Reporters/Journals*	*Yes/No*
3.	*Whether Your Lordships wish to see the fair copy of the Judgment?*	*Yes/No*

RAVI NATH TILHARI, J

ALAPATI GIRIDHAR,J

Date of reserved for orders :16.09.2026
Date of pronouncement : 13.10.2026
Date of uploading : 13.10.2026

APHC010469692026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3624]**
(Special Original Jurisdiction)

TUESDAY, THE 13TH DAY OF OCTOBER, 2026

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 26235/2026

Between:

1. SABENA PRAKASH, W/O. DR. RAVI PRAKASH, AGED ABOUT 62 YEARS,OCC HOUSE WIFE, R/O.AT KALA FARM, NEAR RNSIT COLLEGE, UTTARAHALLI-KENGERI MAIN ROAD, CHENNASANDRA, SUBRAMANYAPURA POST, RAJARAJESHWARI NAGAR, BENGALURU - 560098.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY PRINCIPAL SECRETARY (HOME DEPARTMENT), SECRETARIAT BUILDING, VELGAPUDI, GUNTUR DISTRICT
2. THE DIRECTOR GENERAL OF POLICE, STATE OF ANDHRA PRADESH, MANGALAGIRI.
3. THE SUPERINTENDENT OF POLICE, YSR KADAPA DISTRICT.
4. THE STATION HOUSE OFFICER, MYDUKUR POLICE STATION, YSR KADAPA DISTRICT.
5. THE STATE OF KARNATAKA, REP. BY ITS PRINCIPAL SECRETARY, HOME DEPARTMENT, VIDHANASOUDHA,

BENGALURU.

6. THE COMMISSIONER OF POLICE, BENGALURU CITY, KARNATAKA.

7. THE STATION HOUSE OFFICER, RAJARAJESHWARI NAGAR POLICE STATION, BENGALURU.

8. CHAGANABOINAMURALI MOHAN, S/O SUBBARAYUDU, AGED ABOUT 45 YEARS OCCUPATION BUSINESS, RESIDENT OF UPPAGUNTAPALLE VILLAGE, MYDUKUR MANDAL, YSR KADAPA DISTRICT, ANDHRA PRADESH.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Habeas Corpus, Writ of Certiorari and Writ of Mandamus, and be pleased to (a) Issue a Writ of Habeas Corpus directing the Respondents to forthwith produce the body of the detenu, namely Dr. Ravi Prakash, S/o Late L. Shivalingaiah, Aged About 63 Years, R/at Kala Farm, Near RNSIT College, Uttarahalli-Kengeri Main Road, Chennasandra, Subramanyapura Post, Rajarajeshwari Nagar, Bengaluru 560098, presently confined pursuant to a remand report dt.31.08.2026 in Crime No.229 of 2026 of Mydukur Police Station, YSR Kadapa District, before this Hon'ble Court and, upon examining the legality and constitutional validity of his apprehension, transportation, remand and continued detention, be pleased to declare the same as illegal, arbitrary and violative of Articles 21 and 22 of the Constitution of India, and consequently direct his immediate release from custody (b) Issue a Writ of Certiorari, or any other appropriate Writ, Order or Direction, calling for the entire original records relating to Crime No.229 of 2026 of Mydukur Police Station, YSR Kadapa District, including the First Information Report and the Remand Report dated 31.08.2026, and after examining the legality, validity and constitutional propriety thereof, be pleased to quash the said First Information Report and the consequential Remand Report insofar as they relate to the detenu, as being illegal, arbitrary, without jurisdiction and violative of Articles 21 and 22 of the Constitution of India. (c) Issue a Writ of Mandamus directing the respondent authorities to preserve, secure and produce before this Hon'ble Court the complete original records relating to the apprehension, arrest, transportation and remand of the detenu, including the Arrest Memo, Grounds of Arrest, Station Diary entries, General

Diary entries, Case Diary, Movement Register, arrest intimation, electronic communications, CCTV footage, call records, GPS movement records of the police vehicle, and every contemporaneous record pertaining to the apprehension and production of the detenu, so as to facilitate effective judicial scrutiny and to prevent any alteration, interpolation or destruction of material records (e) Issue a further Writ of Mandamus directing the competent authorities to conduct an independent departmental enquiry against the police officers responsible for the apprehension, transportation and remand of the detenu, in the event this Hon'ble Court finds violation of the constitutional safeguards governing arrest and detention, and to initiate appropriate disciplinary proceedings in accordance with law

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Direct the immediate release of the detenu, Dr. Ravi Prakash, on ad-interim bail or on such interim conditions as this Hon'ble Court may deem fit and proper, pending adjudication of the present Writ Petition

IA NO: 2 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased stay all further proceedings pursuant to Crime No.229 of 2026 of Mydukur Police Station, including all consequential proceedings arising out of the impugned Remand Report dated 31.08.2026, insofar as the detenu is concerned; subject to the result of the Writ Petition

IA NO: 3 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Direct the respondents to forthwith preserve, seal and produce before this Hon'ble Court the original Station Diary, General Diary, Case Diary, Movement Register, Arrest Memo, Grounds of Arrest, remand papers, communications exchanged between the Andhra Pradesh Police and Karnataka Police, and every contemporaneous record relating to the apprehension and transportation of the detenu, without permitting any alteration, destruction or interpolation thereof; of the Writ Petition

IA NO: 4 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Restrain the respondents from subjecting the detenu to any further custodial interrogation, coercive investigation or any action prejudicial to his rights during the pendency of the present Writ Petition; Writ Petition

IA NO: 5 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to permit the Petitioner to amend the Main Prayer and the Interim Prayer of the Writ Petition and the Affidavit filed in support thereof, in the manner set out above, in the interest of justice

Counsel for the Petitioner:

1. G V S KISHORE KUMAR

Counsel for the Respondent(S):

1. THE ADVOCATE GENERAL

The Court made the following:

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

1. Heard Sri G.V.S. Kishore Kumar, learned counsel for the petitioner, and Sri J. Krishna Praneeth, learned Assistant Government Pleader attached to the office of the learned Advocate General, appearing for the respondents.

I. Nature of the writ petition for Habeas Corpus, challenging the remand order:

2. The writ petition under Article 226 of the Constitution of India has been filed for a writ of Habeas Corpus to produce the alleged detenu namely Dr. Ravi Prakash and for his release. The writ petition has been filed by the wife of the detenu. The petitioner also challenges the remand order passed

by the learned Judicial Magistrate of the First Class, Mydukuru dated 31.08.2026 in Crime No.229 of 2026 of Mydukur Police Station, YSR Kadapa District and prays to quash the same.

3. The amended prayer in the writ petition is reproduced as under:

> "It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of a Writ of Habeas Corpus and Writ of Certiorari, and be pleased to:
>
> > (a) Issue a Writ of Habeas Corpus directing the Respondents to forthwith produce the body of the detenu, namely Dr. Ravi Prakash, S/o Late L. Shivalingaiah, Aged About 63 Years. R/at Kala Farm, Near RNSIT College, Uttarahalli-Kengeri Main Road, Chennasandra, Subramanyapura Post, Rajarajeshwari Nagar, Bengaluru 560098, presently confined pursuant to remand report and remand order dt.31.08.2026 in Crime No.229 of 2026 of Mydukur Police Station, YSR Kadapa District, before this Hon'ble Court and, upon examining the legality and constitutional validity of his apprehension, transportation, remand and continued detention, be pleased to declare the same as illegal, arbitrary and violative of Articles 14, 21 and 22 of the Constitution of India, and consequently direct his immediate release from custody
> >
> > (b) Issue a Writ of Certiorari, or any other appropriate Writ, Order or Direction, calling for the records relating to the Remand Order dated 31.08.2026 passed by the learned Judicial First Class Magistrate, Mydukur, in Crime No.229 of 2026 of Mydukur Police Station, YSR Kadapa District, and after examining the legality, validity and constitutional propriety thereof, be pleased to quash the said Remand Order insofar as they relate to the detenu as being illegal, arbitrary, without jurisdiction and violative of Articles 14, 21 and 22 of the Constitution of India; and

(c) Pass such other order or orders, writ or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interests of justice."

II. **Facts:**

4. The petitioner's case is that the detenu and Dr.Putta Ravi Kumar have been embroiled in long-standing civil litigation concerning immovable property situated in Bangaluru. In the year 2026, the detenu instituted O.S.No.25201 of 2026 in the civil court seeking adjudication of his civil rights for cancellation of sale deed in respect of the schedule property. In the said property Dr. Putta Ravi Kumar filed an application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint, which was allowed and challenging the said order regular First Appeal No.602 of 2026 was filed and it is pending before the High Court of Karnataka, in which by interim order dated 01.04.2026, all the parties were directed to maintain status quo, with respect to the schedule property pending disposal of the appeal, which interim order is operative. Dr. Putta Ravi Kumar also filed W.P.No.6708 of 2026 in the High Court of Karnataka seeking police protection and other consequential relief which petition was also pending. Following the civil disputes, other criminal cases were also registered between the parties arising out of the dispute the very same property. Crime No.99 of 2026 was registered on the complaint of Dr. Putta Ravi Kumar, whereas Crime No.100 of 2026 was registered as a cross-case on the complaint of the detenu in respect of the very incident. Both the matters were carried to High Court of Karantaka at Bengaluru and interim suspension was ordered against the respective crimes. Another FIR

being Crime No.137 of 2026 was registered against the detenu on the complaint of one Jayamma, at the behest of Dr. Putta Ravi Kumar, the de-facto complainant being a maid-servant of Dr.Putta Ravi Kumar. That was also challenged in the High Court of Karnataka, in which by order dated 16.06.2026 interim protection was granted by staying the further investigation insofar as the detenu is concerned.

5. Petitioner's further case is that another Crime No.229 of 2026 was registered by Mydukur Police Station (State of Andhra Pradesh) on 22.07.2026 alleging commission of offences by the accused Nos.1 to 4 therein, attributing motive to the existing civil dispute between the detenu and Dr.Putta Ravi Kumar, though the detenu was not physically present at the place of occurrence nor any over-tact was attributed to him in the F.I.R, in Crime No.229 of 2026, but he was implicated as Accused No.5, on the allegation of conspiracy.

6. In Crime No.229 of 2026, on 30.08.2026, the officials of the Andhra Pradesh Police apprehended the detenu from Bengaluru, State of Karantaka and transported him to the State of Andhra Pradesh. The apprehension and transportation of the detenu were in complete disregard of the constitutional safeguards. The detune was not produced before the Magistrate in the State of Karantaka for obtaining a valid transit remand prior to the transportation to the State of Andhra Pradesh. The requirement of producing the person arrested to the nearest Magistrate under Article 22(1) of the Constitution of India, as also the provisions of Bharatiya Nagarik Suraksha Sanhita, 2023 (for

short, the BNSS, 2023) were not complied with. On 30.08.2026 itself the petitioner had lodged a Crime No.267 of 2026 before Rajarajeshwari Nagar Police Station, Bengaluru, complaining the illegal apprehension and assault upon the detenu, during the course of his apprehension by the Andhra Pradesh Police officials. On 31.08.2026, the detenu was produced before the learned Judicial Magistrate of the First Class, Mydukur, Y.S.R Kadapa District (A.P) where upon the remand report was submitted seeking judicial custody and the learned Magistrate authorized the remand.

III.(a) **Submissions of the learned counsel for the petitioner:**

7. Learned counsel for the petitioner submitted that the writ petitioner's prayer is confined to writ of Habeas Corpus only with respect to the Crime No.229 of 2026, Mydukur Police Station (Andhra Pradesh).

8. Sri G.V.S Kishore Kumar, learned counsel for the petitioner submitted that the constitutional safeguards under Article 22(1) of the Constitution of India were violated. The detenu was not produced before the nearest Magistrate in Bengaluru (Karnataka State) but was produced before the jurisdictional Magistrate, Mydukur (State of Andhra Pradesh). The transportation of the detenu from the place of arrest in Bengaluru to the place of jurisdictional Magistrate (Andhra Pradesh) was without any transit remand from the Magistrate at Bengaluru. There was no transit remand to transport the detenu from Bengaluru to Mydukur. In the absence of such compliance the remand order by the jurisdictional Magistrate was without jurisdiction and

the continued detention of the detenu has been rendered unconstitutional and in violation of the detenu's Fundamental Rights. The detenu is entitled to be set free.

9. Learned counsel for the petitioner placed reliance in (1) **Priya Indoria vs. State of Karnataka and others etc.,**[1]**, (2) Pradeep J Mehta vs. Commissioner of Income Tax, Ahmedabad**[2]**, (3) Nithin Aggarwal vs. State of UP and 3 others** (High Court of Judicature at Allahabad in Habeas Corpus Writ Petition No.273 of 2026 dated 03.04.2026), (4) **D.K. Basu vs. State of West Bengal**[3]**,** (5) **Ashok Bhan and Dalveer Bhandari Pradip J. Mehta vs. Commissioner of Income Tax, Ahmedabad**[4]**,** (6) **Sandeep Kumar vs. The State (Govt. of NCT of Delhi)** (W.P. (Crl.) No.2189 of 2018 dated 12.12.2019) of the High Court of Delhi at New Delhi, (7) **Muhammed Ashfaq C. Vs Union of India, rep. by its Director**[5]**,** (8) **Manubhai Ratilal Patel TR. Ushaben vs. State of Gujarat and others**[6]**,** (9) **Mihir Rajesh Shah vs. State of Maharashtra and another**[7]**,** (10) **Sri Mukund Maheswar and another vs. Axis Bank Ltd and others**[8]**.**

10. No other point was raised.

III(b). **<u>Submission of the learned Government Pleader:</u>**

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[1] 2023 Supreme (SC) 1164
[2] 2008 14 SCC 283
[3] 1997 KHC 245
[4] 2008 AIR (SC) 1788
[5] 2026 SCC OnLine Ker 13044
[6] 2013 1 SC 314
[7] 2026 1 SCC 500
[8] 2026 LiveLaw (SC) 82

11. Sri J. Krishna Praneeth, learned Assistant Government Pleader submitted that there is no illegality in the remand order. The detenu was produced within 24 hours of arrest before the jurisdictional Magistrate at Mydukur. The remand was not in violation of Article 22(2) of the Constitution of India nor of any safeguards under the provisions of BNSS Act, 2023. The transportation of the detenu (Dr.Putta Ravi Kumar-A5) after his arrest by the Mydukur Police from Bengaluru on 30.08.2026, without first producing him before the Magistrate at Bengaluru for obtaining transit remand is not violation of Article 22 of the Constitution of India. To obtain transit remand is not mandatory. The detenu was produced before the jurisdictional Magistrate within 24 hours of his arrest.

12. Learned Government Pleader placed reliance in (1) **Sat Prakash Yadav vs. State (Government of NCT of Delhi) (2014 SCC OnLine Del 3012)** (2) **Uttam Daga @ Uttam Kumar Daga vs. The Union of India through the Assistant Director, Enforcement Directorate, Patna Zonal Office Bihar and others (Criminal Writ Jurisdiction Case No.196 of 2025 dated 08.04.2025), the High Court of Judicature at Patna** and (3) Chaganti Satyanarayana and others vs. State of A.P **(1986) 3 SCC 141).**

IV. **Points for determination:**

13. In view of the submissions advanced by the learned counsel for the parties, the following points arise for our consideration:

A) Whether the production of the accused (arrested person) before the Jurisdictional Magistrate within 24 hours of the arrest, excluding the journey time, but without transit remand, is violative of Article 22(2) of the Constitution of India?.

B) If the answer to Point-A is in affirmative, whether the remand order of the Jurisdictional Magistrate would be in valid, entitling the detenu for release by a writ of Habeas Corpus?

V. **Analysis:**

14. We have considered the submissions advanced by the learned counsels for both the parties and perused the material on record.

15. The only ground of challenge raised before us in the oral submissions advanced is that there was no transit remand from the nearest Magistrate in Bengaluru where the detenu was arrested for his transportation from the place of occurrence to the jurisdictional Magistrate in Andhra Pradesh. It being a case of inter State arrest, in the absence of a transit remand, there was violation of Article 22(2) of the Constitution of India and so notwithstanding the remand by the jurisdictional Magistrate the detention is illegal.

16. No dispute has been raised with respect to the production of the alleged detenu before the Jurisdictional Magistrate at Mydhukur (A.P) within 24 hours from the date and time of his arrest at Bengaluru.

17. Article 22(1),(2) and (3) of the Constitution of India provides for protection against arrest and detention in certain cases. It reads as under:

“22. Protection against arrest and detention in certain cases:

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

18. Section 45 of BNSS Act, 2023 is reproduced as under:

> “45.Pursuit of offenders into other jurisdictions.
>
> A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.”

19. Section 45 of BNSS permits a Police to pursue an accused in other jurisdiction. A police officer for the purpose of arresting without a warrant to pursue an accused in other jurisdictions. A police officer, for the purpose of arresting without a warrant, one whom he is allowed to arrest, may pursue an individual anywhere in India.

20. Placing much reliance in **Priya Indoria** (supra) (Paras 88 to 90), the learned counsel for the petitioner submitted that the transit remand is must to produce the person arrested before the jurisdictional Magistrate in case of interstate arrest.

21. Paragraphs 88 to 90 of **Priya Indoria** (supra) are as under:

> "88. Section 48 of CrPC permits the police to pursue an accused in other jurisdictions. A police officer, for the purpose of arresting without a warrant, one whom he is allowed to arrest, may pursue an individual anywhere in India. Prior to effecting the arrest outside a particular jurisdiction, the police is obligated to secure the transit remand i.e. the remand of the accused, for taking him from one place to another in their own custody, usually for the purpose of producing him before the concerned magistrate who has jurisdiction to try/commit the case. The primary purpose of such a remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated and tried. However in various cases, the police and investigating agencies have failed to exercise necessary restraint while functioning within their legal remit. It is for the aforesaid reason that an accused apprehending arrest seeks pre-arrest bail. The Courts in India have to be vigilant about such applications being filed particularly when a person alleged to have committed an offence can be proceeded with by setting the criminal law in motion in a place other than the place where the offence has actually occurred. In such circumstances the Courts must balance the interest of the accused in the context of the salutary principle of access to justice which is a facet of Article 21 of the Constitution as well as a Directive Principle of State Policy, especially Article 39(A). More importantly, it is a facet of Article 14 of the Constitution which guarantees to every person in the country, equality before the law and equal protection of the law.
>
> 89. In this case, we are concerned with what is loosely termed as 'transit anticipatory bail'. As we have seen, the expression 'anticipatory bail' is not defined in the CrPC though it is traceable to Section 438 of CrPC This Court in Balchand Jain had defined anticipatory bail to mean bail in anticipation of arrest. The Constitution Bench in Gurbaksh Singh Sibbia has held that filing of FIR is not a condition precedent for exercising power under Section 438 of CrPC What is required for invocation of power under Section 438 is that the person seeking anticipatory bail should show reasonable belief of imminent arrest. If the expression 'anticipatory bail' is not a defined expression, then it is quite but

natural that the larger expression 'transit anticipatory bail' would not find any exposition in the CrPC. Perhaps the need and necessity for transit anticipatory bail has occasioned because the police has been conferred power under the CrPC to pursue an accused in other jurisdictions. Immediately upon affecting the arrest of a person outside the jurisdiction where the offence is registered, the police is obligated to secure a transit remand. The arrested person has to be produced before the nearest magistrate. If such a magistrate finds that he has no jurisdiction to try the case in which the accused has been arrested, he may order the accused to be forwarded to a magistrate having the jurisdiction to try the case or to commit it for trial. Thus, the police is obligated to secure a transit remand of the accused for taking him from the place where he is arrested to the place where the crime is registered, for production before the competent magistrate in terms of the requirement of Article 22. As we have already noted, the primary purpose of such a transit remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated. It appears that from the aforesaid requirement of transit remand, has arisen the necessity of 'transit anticipatory bail' for, an affected person cannot be without a remedy.

90. The word 'transit' is derived from the Latin word transitus which means passage from one place to another. Since the word 'transit' is an undefined expression in CrPC, we may take recourse to the dictionary meaning of the word 'transit'. The Concise Oxford English Dictionary, 10th Edition, Revised, defines the word 'transit' to mean carrying of people or things from one place to another; the conveyance of passengers on public transport; an act of passing through or across a place. 'Transited' or 'transiting' would mean pass across or through. Similarly, the word 'transition' means the process of changing from one state or condition to another. Likewise, the adjective 'transitory' means not permanent; short-lived. An useful example of the above expression is transit visa which means a visa allowing its holder to pass through a country only, not to stay there. The word 'transit' has also been defined in the Black's Law Dictionary, 11th Edition, to mean the transportation of goods or person from one place to another; passage; the act of passing.

22. The Hon'ble Apex Court in **Priya Indoria** (supra) held that the word 'transit' is derived from the Latin word 'transitus' which means 'passage from one place to another'. Since the word 'transit' is an undefined expression in Cr P.C, recourse may be had to the dictionary meaning of the word 'transit'. The Concise Oxford English Dictionary, 10th Edition, Revised, defines the word

‘transit’ to mean carrying of people or things from one place to another; the conveyance of passengers on public transport; an act of passing through or across a place. ‘Transited’ or ‘transiting’ would mean pass across or through. Similarly, the word ‘transition’ means the process of changing from one state or condition to another. Likewise, the adjective ‘transitory’ means not permanent; short-lived. An useful example of the above expression is transit visa which means a visa allowing its holder to pass through a country only, not to stay there. The word ‘transit’ has also been defined in the Black’s Law Dictionary, 11th Edition, to mean the transportation of goods or person from one place to another; passage; the act of passing”.

23. In **Priya Indoria** (supra), the Hon’ble Apex Court held that prior to effecting the arrest outside a particular jurisdiction, the police is obligated to secure the transit remand i.e. the remand of the accused, for taking him from one place to another in their own custody, usually for the purpose of producing him before the concerned magistrate who has jurisdiction to try/commit the case. The primary purpose of such a remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated and tried.

24. In **Priya Indoria** (supra), the Hon’ble Apex Court was mainly considering, ‘transit anticipatory bail’, it was observed that the expression ‘anticipatory bail’ is not defined in the Cr PC then it is quite but natural that the larger expression ‘transit anticipatory bail’ would not find any exposition in the Cr.P.C. It was observed that the need and necessity for transit anticipatory

bail occasioned because the police has been conferred power under the Cr PC to pursue an accused in other jurisdictions. Immediately upon affecting the arrest of a person outside the jurisdiction where the offence is registered, the police is obligated to secure a transit remand. The arrested person has to be produced before the nearest magistrate. If such a magistrate finds that he has no jurisdiction to try the case in which the accused has been arrested, he may order the accused to be forwarded to a magistrate having the jurisdiction to try the case or to commit it for trial. Thus, the police is obligated to secure a transit remand of the accused for taking him from the place where he is arrested to the place where the crime is registered, for production before the competent magistrate in terms of the requirement of Article 22.

25. On a careful reading of the judgment in **Priya Indoria** (supra) as quoted above, we are of the view that the question of effect of non production of the arrested person before the nearest Magistrate (non jurisdictional), where such arrested person is produced before the Jurisdictional Magistrate within 24 hours of his arrest, excluding the time necessary for journey from the place of arrest to the Court of the Magistrate, was neither involved nor was considered. Para 89 makes it evident that the Apex Court in **Priya Indoria** (supra) was concerned with, 'transit anticipatory bail'.

26. In the present case, the detenu was not produced before the non Jurisdictional Magistrate. There was no transit remand taken but the detenu was produced before the jurisdictional Magistrate within 24 hours of his arrest.

In **Priya Indoria** (supra) such was not the issue and in the present case 'transit anticipatory bail' is not the issue.

27. **Priya Indoria** (supra) is helpful for it explains what the word transit 'means and it also explains, that immediately upon effecting the arrest of a person outside the jurisdiction where the offence is registered, the police is obligated to secure the transit remand. The arrestee person has to be produced before the nearest Magistrate. If such a Magistrate finds that he has no jurisdiction to try the case (non jurisdictional Magistrate), he may order the accused to be forwarded to a Magistrate having the jurisdiction to try the case or to commit it for trial. The same has been explained and laid down in terms of the requirement of Article 22 of the Constitution of India.

28. In **Gautam Navlakha vs. Natinal Investigation Agency**[9]**,** the Hon'ble Apex Court held that the remand order be it a transit remand order, is one which is passed under Section 167 Cr.P.C. and though it may be for the production of the arrested person, it involved authorising continued detention within the meaning of Section 167 Cr.P.C. A person may be arrested by a police officer in any part of India. Under Section 56 the person arrested without warrant is to be sent before the Magistrate having jurisdiction or before the officer in charge of a police station. It is thereafter, that Section 57 forbids the person so arrested: **i.** from being detained for a period more than what is reasonable. **ii.** from being detained beyond 24 hours from the time of arrest, excluding the time necessary for the journey from the place of arrest to the Magistrate Court.

[9] (2022)13 SCC 542

29. The Hon'ble Apex Court in **Gautam Navlakha** (supra) further held that a transit remand cannot be 'judicial custody' as the police is exclusively entrusted with the man, no doubt to produce him before the Magistrate having jurisdiction. It is therefore, police custody. The Hon'ble Apex Court referred to **Chaganti Satyanarayan & Ors. v. State of Andhra Pradesh**[10], (upon which learned Government Pleader also placed reliance), in which it was held that keeping in view the provisions of Section 167(2), the Magistrate before whom the accused is produced for the purpose of remand, whether he has jurisdiction or not to try the case, to order the detention of the accused either in police custody or in judicial custody for a term not exceeding 15 days in the whole.

30. Paras 86 to 95 of **Gautam Navlakha** (supra) read as under:

> "86. The Respondent contends that the transit remand order is not a remand for detention under Section 167 of the Cr.P.C. but only one for production. Reliance is placed on Section 57. It is in other words, pointed out that Section 57 contemplates that in the absence of 'special order' under Section 167, a person arrested without warrant must be produced within 24 hours excluding the time taken for journey from the place of arrest to the place where the Magistrate is located. Therefore, if a 'special order' under Section 167 is obtained, it is for the purpose of extending the time in Section 57 for production of the arrestee.
>
> 87. Per contra, Appellant contends that Section 167 specially covers cases where a judicial Magistrate who has no jurisdiction to try a case, can order a remand. There is no other provision for ordering transit remand.
>
> 88. In this case the transit remand was ordered on 28.08.2018. The Appellant was to be produced under the same on 30.08.2018 before

[10] (1986) 3 SCC 141

the Magistrate in Pune. A person may be arrested by a police officer in any part of India (Section 48 of Cr.P.C.). Under Section 56 the person arrested without warrant is to be sent before the Magistrate having jurisdiction or before the officer in charge of a police station. It is thereafter, that Section 57 forbids the person so arrested:

i. from being detained for a period more than what is reasonable.

ii. from being detained beyond 24 hours from the time of arrest, excluding the time necessary for the journey from the place of arrest to the Magistrate Court.

89. Now, the 'Magistrate Court' referred to in Section 57 is the Magistrate competent to try the case. Section 57 contains the peremptory limit of 24 hours exclusive of the period for journey, in the absence of 'special order' under Section 167.

90. The words 'special order' is not found in Section 167 of the Cr.P.C. Therefore, could it not be said that but for Section 57 permitting the Magistrate to allowing time by passing an order under Section 167, detention in violation of Section 57 would be rendered illegal? What is the nature of the custody on the basis of the special order under Section 167 referred to in Section 57? Is it police custody or is it judicial custody? Is it any other custody? Will the period of remand for statutory bail begin from the date of this 'special order'? Will it begin only when the competent Magistrate orders remand?

91. Now as far as this case is concerned, we notice findings of the High Court of Delhi as follows: (para 11 and para 15)

"(11) Mr. Navare next tried to draw a distinction between the scope of the function of a Magistrate before whom an application for transit remand is moved and the jurisdictional Magistrate who should be approached for an order of remand in terms of Section 56 of the Cr.P.C. According to Mr. Navare, at the stage of transit remand the concerned Magistrate would not be required to satisfy himself anything more than whether an offence is made out and whether the Police Officer seeking the remand is in fact the one authorized to do so."

"(15) Therefore, when a person who after arrest is required to be produced before a jurisdiction Judicial Magistrate is detained in a place which is away from that jurisdiction, and therefore cannot be produced before the jurisdictional Magistrate within 24 hours, as mandated both by Article 22(2) of the Constitution and by Section 57 Cr.P.C., he will be produced before the 'nearest Judicial Magistrate' together with 'a copy of the entries in the diary'. Therefore, even before a Magistrate before whom a transit remand application is filed, the mandatory requirement of Section 167 (1) Cr.P.C. is that a copy of the entries in the case diary should also be produced. It is on that basis that under Section 167 (2) such 'nearest Judicial Magistrate' will pass an order authorising the detention of the person arrested for a term not exceeding 15 days in the whole. Where he has no

jurisdiction to try the case and he finds further detention unnecessary, he may order the accused to be forwarded to the jurisdictional Magistrate."

92. In fact, as already noticed the submission of the State of Maharashtra was also that once a person was in judicial custody a writ of habeas corpus would not lie which also was rejected.

93. Now, the question may persist as to whether the remand pursuant to a transit remand is to police custody or judicial custody. It cannot be judicial custody as the police is exclusively entrusted with the man no doubt to produce him before the Magistrate having jurisdiction. It is therefore, police custody. Could the police be engaged in questioning/ investigating the case by interrogating the accused on the basis of the transit order either before, embarking on the journey or during the course of the journey and after the journey before producing him? If it is thought that during the journey it is impermissible, then such interrogation would equally be impermissible during the time of journey permitted without obtaining an order under Section 167. If also during such journey the accused volunteers with a statement otherwise falling under Section 27 of Evidence Act, it would be one when the accused is in the custody of the police. If it is police custody then, the order of the Magistrate granting transit remand would set the clock ticking in terms of (1986) 3 SCC 141 to complete the period for the purpose of default bail.

94. We may also notice that the interplay of Section 57 and 167 was considered in the judgment of this Court in Chaganti Satyanarayana (supra). It was held as follows:

"(12) On a reading of the sub- sections (1) and (2) it may be seen that sub-section (1) is a mandatory provision governing what a police officer should do when a person is arrested and detained in custody and it appears that the investigation cannot be completed withing the period of 24 hours fixed by Section 57. Sub-section (2) on the other hand pertains to the powers of remand available to a Magistrate and the manner in which such powers should be exercised. The terms of sub-section (1) of Section 167 have to be read in conjunction with Section 57. Section 57 interdicts a police officer from keeping in custody a person without warrant for a longer period than 24 hours without production before a Magistrate, subject to the exception that the time taken for performing the journey from the place of arrest to the magistrate's court can be excluded from the prescribed period of 24 hours. Since sub-section (1) provides that if the investigation cannot be completed within the period of 24 hours fixed by Section 57 the accused has to be forwarded to the magistrate along with the entries in the diary, it follows that a police officer is entitled to keep an arrested person in custody for a maximum period of 24 hours for purposes of investigation. The resultant position is that the initial period of custody of an arrested person till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed by a magistrate. In fact the powers of remand given to a magistrate become exercisable only after an accused is produced before him in terms of sub-section (1) of Section 167." "(13) Keeping proviso (a) out of mind for some time let us look at

> the wording of sub-section (2) of Section 167. This sub-section empowers the magistrate before whom an accused is produced for purpose of remand, whether he has jurisdiction or not to try the case, to order the detention of the accused, either in police custody or in judicial custody, for a term not exceeding 15 days in the whole."
>
> **95. We would hold that the remand order be it a transit remand order is one which is passed under Section 167 of the Cr.P.C. and though it may be for the production of the Appellant, it involved authorising continued detention within the meaning of Section 167."**

31. Article 22(2) of the Constitution of India requires that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. When the person is arrested by the police outside the jurisdiction where the offence is registered, the police has to comply with the mandatory provisions of Article 22 of the Constitution of India including Article 22(2), to ensure the production of the person arrested within 24 hours of such arrest before the 'nearest Magistrate'.

32. The non jurisdictional Magistrate, may be the nearest Magistrate, than the jurisdictional Magistrate. There may also be a situation where the arrested person can be produced before the jurisdictional Magistrate, within 24 hours of the arrest, though he is not the 'nearest Magistrate' in terms of distance from the place of arrest. In such a case, whether the police is necessarily to produce the detenu before the nearest non jurisdictional Magistrate, to take the transit remand first, before producing before the Jurisdictional Magistrate, and in case of no such compliance would there be violation of the provisions

of Article 22(2)? There may be the cases, in which the person arrested is outside the jurisdiction where the offence is registered and the nearest Magistrate (non-jurisdictional) can be approached for transit remand only after spending more time, than the time taken if directly produced before the Jurisdictional Magistrate though the Jurisdictional Magistrate is at a far distance, may be for various prevailing circumstances, eg., geographical, transportation, road condition, other infrastructural factors; the location of the non jurisdictional Magistrate in opposite direction to the place of Jurisdictional Magistrate etc.

33. When the police is able to produce the arrested person before the jurisdictional Magistrate within the specified time, and in such a case, the police even if it does not produce the arrested person before the non jurisdictional Magistrate to take the transit remand but produces the arrested person before the jurisdictional Magistrate within the specified time of 24 hours, there shall in our view, be no violation of the fundamental rights of the arrested person under Article 22(2) of the Constitution of India.

34. We are of the view that the expression ‘nearest Magistrate’ in Article 22(2) of the Constitution of India is not necessarily related to the ‘distance’ from the place of arrest to the place of jurisdictional Magistrate or non jurisdictional Magistrate but the expression ‘nearest’ refers to, in terms of the time taken for production of the person arrested before the jurisdictional Magistrate i.e 24 hours of arrest. The ‘nearest Magistrate’ is referable to ‘time’ and not the ‘distance’. In our view even if in respect of the ‘distance’ there is

the nearest Magistrate (non jurisdictional) compared to the jurisdictional Magistrate, which is at far distance, but if the person arrested, the police is able to produce within 24 hours before the jurisdictional Magistrate and so produces such person before the jurisdictional Magistrate, there shall be no violation of the fundamental rights of the arrested person neither under Article 22(2) of the Constitution of India nor under the provisions of the BNSS.

35. The Bombay High Court in **Vachhalabai vs. State of Maharashtra**[11]**,** held that in view of Article 22(2) of the Constitution of India, there being no scope left to the police to keep arrested person in their custody for the purpose of investigation for more than 24 hours excluding the time required for taking the accused from the place of arrest to the court of Magistrate and only to ensure such observation, the term 'nearest Magistrate' is used and the period of 24 hours is given in relation to the term 'nearest Magistrate'. It cannot be read separately from this term. Para 26 of **Vachhalabai** (supra) reads as under:

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

[11] 2019 SCC OnLine Bom 2937

36. If the person arrested can be produced within 24 hours of arrest before the jurisdictional Magistrate, it would not be necessary for the police to first produce the person arrested before the non-jurisdictional nearest Magistrate to take the transit remand and then to produce before the jurisdictional Magistrate for remand. Though the police may be obligated to take the transit remand for the purpose of ensuring that, there may not result violation of Article 22(2) of the Constitution of India, in case there is delay in production before the Jurisdictional Magistrate and that may be on the safer side for the police to go for transit remand, but, if the transit remand is not taken and the arrested person is produced before the jurisdictional Magistrate within 24 hours of arrest then there shall be no violation of Article 22(2) of the Constitution of India. The fundamental right of the person arrested to be produced before the nearest Magistrate shall not be violated. When such compliance can be made without the violation of the period specified before the jurisdictional Magistrate the person arrested can be directly produced before the jurisdictional Magistrate, without any transit remand, from the Magistrate from the place of arrest falling outside the territorial jurisdiction of the Jurisdictional Magistrate.

37. In **Sat Prakash Yadav** (supra), the Delhi High Court held that the purpose of transit remand is to get sufficient time to produce the accused before the concerned court within the stipulated period of 24 hours as provided under Article 22(2) of the Constitution of India. In the said case, the appellant (accused) could be brought to Delhi within one hour of the arrest,

the Delhi High Court held that it was not essential to obtain transit remand from the court of the Magistrate at Noida (the place of arrest). In **Sat Prakash Yadav** (supra)**,** the Delhi High Court held **as under in paras 38 & 39:**

> "38. The learned counsel for the appellant draws out attention to certain irregularities committed by the police. He urged that although the appellant was arrested from Noida, U.P. but he was not produced before the Ilaqa Magistrate for transit remand. He urges that the permission from the local court of Metropolitan Magistrate, Delhi was also not taken to take the appellant to Farukhabad which was in violation of the police rules.
>
> 39. Normally, any person who is arrested outside the District or outside the State is produced before the Chief Judicial Magistrate/Chief Metropolitan Magistrate for obtaining the transit remand. **The purpose of transit remand is to get sufficient time to produce the accused before the concerned Court within the stipulated period of 24 hours as provided under Article 22 (2) of the Constitution of India. Since the appellant could be brought to Delhi just within one hour, it was not essential to obtain transit remand from the Court of the concerned Magistrate at Noida, Gautam Budh Nagar.** Similarly, no specific permission was required to make any particular recovery from Farukhabad when the appellant was in police custody."

38. In **Uttam Daga @ Uttam Kumar Daga** (supra), the Patna High Court held that it is only if the journey is likely to take more than 24 hours that the person arrested has to be produced before a local Magistrate and a transit remand is obtained. In Article 22(2) of the Constitution of India, in computing the period of 24 hours, the travel time for the arrested persons to be produced before the jurisdictional Court is to be excluded. If the arrested person cannot be produced before 24 hours, then the arrested person has to be produced before the nearest Magistrate. In the said case, the accused was produced within 24 hours of his arrest before the jurisdictional Magistrate. The Patna High Court held that the requirement of production before the nearest Magistrate of the place of arrest was not mandatory.

39. **In Uttam Daga @ Uttam Kumar Daga** (supra)**, the High Court of Judicature at Patna held as under** in Paras 91 to 94**:**

> "90. Final conclusion of this writ petition, therefore, depends upon the interpretation of the term "nearest Magistrate". Does it mean "nearest Magistrate" having his seat within the territorial jurisdiction of the place of arrest or the term encompasses the authority of the Magistrate having jurisdiction to try the case. Requirement of production of the accused before the nearest Magistrate in the locality where his arrest comes into play when a person who after arrest is required to be produced before the jurisdictional Judicial Magistrate is detained in a place which is far away from that jurisdiction and therefore cannot be produced before the jurisdictional Magistrate within 24 hours as mandated both by Article 22(2) of the Constitution and by Section 57 of the Code of Criminal Procedure, now Section 58 of the BNSS. In such circumstances, he will be produced before the nearest Judicial Magistrate together with a copy of the entries in the diary. Therefore, even before a Magistrate before whom a transit remand application is filed, the mandatory requirement of Section 167 (1) Cr.P.C., now Section 187 of BNSS, is that a copy of the entries in the case diary should also be produced. It is on the basis of the entries in the case diary, under Section 167 (2), such "nearest Judicial Magistrate" while passing an order authorizing detention of person arrested for a term not exceeding 15 days in a whole. Where he has no jurisdiction to try the case and he finds further detention unnecessary, he may order the accused to be produced before the Jurisdictional Magistrate. This principle is elaborately dealt with in Gautam Navlakha (supra). The issue was decided by the Hon'ble Supreme Court and this Court has already referred to paragraph 102 of the Supreme Court's judgment in Gautam Navlakha (supra) that the nearest Magistrate may or may not have the jurisdiction to try the case. Conversely, this Court shall not commit any wrong to held that if the arresting officer has the scope to produce the arrested person before the jurisdictional Magistrate within 24 hours for an order of remand, requirement of Article 22 (2) cannot be said to be violated.
>
> 91. In Sat Parkash Yadav (supra), it is held by the Division Bench of the Delhi High Court that any person who is arrested outside the district or outside the State is produced before the Chief Judicial Magistrate/Chief Metropolitan Magistrate for obtaining the transit remand. The purpose of transit remand is to get sufficient time to produce the accused before the concerned Court within the stipulated period of 24 hours as provided under Article 22(2) of the Constitution of India. Since the appellant could be brought to Delhi just within one hour, it was not essential to obtain transit remand from the Court of the concerned Magistrate at Noida, Gautam Budha Nagar.

92. The case in hand is absolutely similar on factual circumstances. The DOE found that the accused could be brought to Patna immediately after his arrest within one hour and ten minutes by air. The DOE took recourse of the said path and produced the accused before the learned Chief Judicial Magistrate, Patna along with an application for remand in the custody of ED. The learned Chief Judicial Magistrate passed an order of custodial remand with the DOE on perusal of the application for remand. The application contained elaborate statement regarding reasons to believe and grounds of arrest. I have no hesitation to rely on the Division Bench's decision of the Hon'ble Delhi High Court in Sat Parkash Yadav (supra) because no contrary view has been taken on this issue till date by the Hon'ble Supreme Court.

93. The learned Sr. Advocate appearing on behalf of the petitioner lays great stress on the provisions contained in Section 58 of the BNSS and submits that Article 22(2) of the Constitution read with Section 58 of the BNSS was violated by the DOE in the instant case.

94. A conjoint reading of both the above provisions show that in terms of Article 22 of the Constitution itself, after excluding the time taken in the journey, a person arrested in Raipur by the CBI, pursuant to a case registered in Delhi, has to be produced before a Magistrate within 24 hours. It is only if the journey is likely to take more than 24 hours that the person arrested has to be produced before a local Magistrate and a transit remand is obtained. In Article 22(2) of the Constitution, in computing the period of 24 hours, the travel time for the arrested persons to be produced before the jurisdictional Court is to be excluded. **If the arrested person cannot be produced before 24 hours, then he has to be produced before the nearest Magistrate.**

95. **In the instant case, the accused was produced within 24 hours of his arrest. Therefore, the requirement of his production before the nearest Magistrate of the place of arrest was not mandatory."**

40. The learned counsel for the petitioner placed reliance in **Muhammed Ashfaq C** (supra) of the High Court of Kerala at Ernakulam, which considered "transit remand" and constitutional safeguards". Paragraphs 14 to 17 of **Muhammed Ashfaq C** (supra) read as under:

"14. Section 45 of the BNSS (48 of the Cr.P.C.) empowers the police to pursue an accused beyond their territorial jurisdiction. A police officer authorised to arrest without warrant may, for that purpose, pursue the individual anywhere in India. However, before effecting arrest outside the local jurisdiction, the police are obliged to secure a transit remand, thereby enabling them to lawfully convey the accused from the place of arrest to the jurisdiction where the

offence is registered and where investigation and trial may proceed. The primary object of such remand is to facilitate the lawful transfer of custody from one jurisdiction to another. In Priya Indoria v. State of Karnataka [(2024) 4 SCC 749], while considering the scope of anticipatory bail under Section 438 Cr.P.C. in relation to FIRs registered outside territorial jurisdiction, the Supreme Court held that immediately upon arrest outside the jurisdiction where the crime is registered, the police are duty-bound to obtain a transit remand for production of the accused before the competent Magistrate, in conformity with Article 22. Thus, obtaining a transit warrant is mandatory for the police to claim protection under Article 22(2); failure to do so, and producing the accused before the jurisdictional Magistrate beyond twenty-four hours without such warrant, constitutes a violation of Article 22(2). (See Vishal Manohar Mandrekar v. State of Telangana, 2024 SCC OnLine TS 69).

15. A reading of Section 58 read with Section 187 of BNSS shows that the production before the Magistrate is to the nearest Magistrate and is not with respect to the jurisdictional Magistrate. Read in the same light, Sections 47 and 48 of BNSS, which deal with Article 22(1) have to be construed consistent with the mandate of Article 22(2). For Article 22(1), it cannot be a jurisdictional Magistrate, whereas for the purpose of Article 22(2), it has to be the nearest Magistrate. This is so because the fundamental aspect that has to be ascertained on production in the event of an arrest and detention is the very 'legality' of the arrest and not the question whether the accused is liable to be granted bail or not. The contextual milieu arising from a construct of the above provisions is that the checks and balances as provided for in Article 22(1) will have to be met when the arrested person is produced before the Magistrate for the first time, i.e. the nearest Magistrate (who may or may not be a jurisdictional Magistrate) upon arrest and detention.

16. A transit remand is nevertheless a remand and is handing over to police custody. That transit remand amounts to police custody is established by the judgment of the Supreme Court in Gautam Navlakha v. National Investigating Agency [(2022) 13 SCC 542]. In that decision, the Supreme Court characterized the transit remand as police custody under Section 167 of Cr.P.C Without legitimizing the arrest of the person, one cannot be handed over to police custody. Essentially therefore, the Magistrate to whom the person is produced after the arrest-the mandatory requirement of ascertaining whether the very arrest is illegal cannot be shifted to the jurisdictional Magistrate. Any such construct would render the very appreciation of Article 22(2) at two different points of time by two different Magistrates. If the import of "transit remand" is "police custody", not to read into Section 48 of BNSS would be a dilution of Article 22 itself.

17. In Vihaan Kumar (supra), it was specially held that 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 the mandatory safeguards has been made and when a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. The above findings consciously do not make any reference to a jurisdictional Magistrate. Instead, and which is also consistent with the

> constitutional guarantees, the emphasis is on the arrested person being brought before a judicial Magistrate. This is so because the moment it is established that there is non- compliance with Article 22(1), no further orders can be issued. When it may be true that the main objective of 'transit remand" is to facilitate the production of the arrested person before the competent Magistrate, the facilitative mechanism cannot trammel Article 22(1) of the Constitution. Thus, when a person who is arrested is brought before a non-jurisdictional Magistrate even if only for the purpose of ordering a transit or transit remand, it is imperative that the grounds of arrest be communicated both to the arrestee and to his relative or friend, as mandated under Article 22(1) of the Constitution and Sections 47 and 48 of the BNSS, prior to such production."

41. In **Muhammed Ashfaq C** (supra), it is evident, from para 14 as reproduced above that on consideration of **Priya Indoria** (supra), the High Court of Kerala itself held that "obtaining a transit warrant is mandatory for the police to claim production under Article 22(2); failure to do so and to produce the accused before the jurisdictional Magistrate beyond 24 hours without such warrant constitutes a violation of Article 22 of the Constitution of India. So, what the Kerala High Court has held that also does not support the arguments of the learned counsel for the petitioner. As per the said judgment, the mere fact that the transit remand was not taken, of its own, would not render the arrest illegal or the remand by Jurisdictional Magistrate as, illegal. It would be so, if there is failure to take the transit remand **and also** to produce the arrestee before the jurisdictional Magistrate within 24 hours of the arrest. The Kerala High Court held that the "failure to do so and producing the accused beyond 24 hours, constitutes a violation of Article 22(2) of the Constitution of India". In the present case, the detenu was produced before the jurisdictional Magistrate within 24

hours. There is no dispute raised on that aspect. It is an admitted case of the petitioner that the detenu was produced before the jurisdictional Magistrate within 24 hours of the arrest. So, even applying **Muhammed Ashfaq C** (supra), the failure to obtain the transit remand would not constitute the violation of Article 22(2) of the Constitution of India, as the accused was produced before the jurisdictional Magistrate within and not beyond 24 hours of the arrest. In the present case remand is within 24 hours.

42. The contention of the learned counsel for the petitioner that the transit remand is mandatory to produce the detenu before the jurisdictional Magistrate, based on **Muhammed Ashfaq C** (supra) is not correct. It has not been so held that the transit remand is must or mandatory.

43. Based on **Muhammed Ashfaq C** (supra), learned counsel for the petitioner contended that when a person who is arrested is brought before the non jurisdictional Magistrate even if only for the purpose of ordering a transit or transit remand, it is imperative that the grounds of arrest be communicated both to the arrestee and to his relative or friend, as mandated under Article 22(1) of the Constitution and Sections 47 and 48 of the BNSS, prior to such production. So far as the compliance with the mandatory requirements under Article 22(1) of the Constitution of India are concerned, regarding the communication

of the grounds of arrest to the arrestee and to his relatives or friends or family, there cannot be any dispute on that settled legal proposition. It is also not in dispute that if the arrestee is produced before the nearest Magistrate (non jurisdictional), the said compliance is to be seen by such Magistrate considering transit remand. The compliance with the constitutional requirements under Article 22(1), is mandatory irrespective of the production of the arrestee, before the jurisdictional Magistrate for remand or before the non jurisdictional Magistrate for transit remand. Such Magistrate before whom the arrestee is produced for remand, has to satisfy that there is no violation of the fundamental right under Article 22(1) of the Constitution of India.

44. However, the said principle is not violated, in the facts of the present case for two reasons **(1)** the detenu was never produced before the Magistrate for transit remand (non-jurisdictional Magistrate) and **(2)** the learned counsel for the petitioner emphasized upon the only ground of challenge that because of the non-production of the detenu for transit remand before the nearest Magistrate, the remand by the jurisdictional Magistrate, without first obtaining the transit remand, is invalid. He did not argue that there was any non-compliance with the requirement under Article 22(1) of the Constitution of India. On the contrary, he submitted that, there was such a compliance. The remand report containing the grounds of arrest was served to the detenu and family, before remand by the jurisdictional Magistrate. He submitted

that in view of the Hon'ble Apex Court judgment(s) in **D.K. Bosu** (supra) and **Mihir Rajesh Shah** (supra), when the remand report containing the ground is served to the detenu in not less than two hours before the remand, there is sufficient compliance and in view thereof he submitted that on that aspect he was not raising any submissions.

45. Learned counsel for the petitioner next submitted that in **Sandeep Kumar** (supra), the Delhi High Court accepted the suggestions of the Committee constituted by the Delhi High Court and directed that those be adopted for implementation by the Commissioner of Police, Delhi, as well as the Director General of Police, Uttar Pradesh in their respective jurisdiction. He submitted that **Sandeep Kumar** (supra) is of Persuasive value but even a judgment of the other High Court, having persuasive value, when it is cited before a different High Court, such High Court must record its agreement or dissent, following the judicial decorum and propriety and it is required of such High Court, to specify, in the event of its contra view, the reasons on discussion of the judgment of persuasive value. He placed reliance in para 24 of **Pradip J Mehta** (supra) to support that contention. Para 24 is as follows:

> "24. Although the judgments referred to above, were cited at the bar in the High Court, which were taken note of by the learned Judges of the Bench of the High Court, but without either recording its agreement or

> dissent answered the two questions referred to it in favour of the Revenue. Judicial decorum, propriety and discipline required that the High Court should, especially in the event of its contra view or dissent, have discussed the aforesaid judgments of the different High Courts and recorded its own reasons for its contra view. We quite see the fact that the judgments given by a High Court are not binding on the other High Court(s), but all the same, they have persuasive value. Another High Court would be within its right to differ with the view taken by the other High Courts but, in all fairness, the High Court should record its dissent with reasons therefor. The judgment of the other High Court, though not binding, have persuasive value which should be taken note of and dissented from by recording its own reasons."

46. The constitution of the Committee by one High Court, for the specified purpose and the recommendations, accepted by that High Court, as also the directions issued by that High Court, in our view, would not be the proposition of law laid down, even for a persuasive value for the other High Court. It is the principle of law or the interpretation given, that may only have persuasive value. The recommendations of a Committee constituted by a High Court, may even not be accepted by that very High Court. The recommendations of a Committee in the State may be taking into account various factors as prevailing in that State of the particular High Court and without detailed examination of various factors in the other State of the different High Court, it may not be safe to act upon.

47. However, on a careful consideration of the judgment in **Sat Prakash Yadav** (supra), we find that one of the recommendations made by the

Committee, and accepted by the Delhi High Court, in the case of interstate arrest, vide para 15 (10) of the judgment is as under:

> "Endeavour should be made to obtain transit remand after producing the arrestee before the nearest Magistrate unless exigencies of the situation warrant otherwise and the person can be produced before the Magistrate having jurisdiction of the case without (2) infringing the mandate of Section 56 and 57 of Cr.P.C within 24 hours".

The recommendation of the Committee as such is that, the endevour should be made by the police to obtain transit remand unless the police is in a position to produce the arrestee before the jurisdictional Magistrate within 24 hours. So, conversely, we may say that if the police is in a position to produce the arrestee within 24 hours before the jurisdictional Magistrate, and produces within 24 hours of arrest excluding the journey time, no endevour should be made to obtain the transit remand. The aforesaid recommendation as accepted by the Delhi High Court infact negatives the argument of the learned counsel for the petitioner.

48. In **D.K. Basu vs. State of West Bengal**[12], the safeguards and the preventive measures have been laid down in the cases of arrest or detention, but, the said principles are not attracted since the challenge to the order of remand is not on the ground of violation of any of those preventive measures. Similarly, **Mihir Rajesh Shah** (supra), does not deal with the issue involved i.e production of the detenu within 24 hours of arrest before the jurisdictional

[12] 1997 KHC 245

Magistrate, without taking the transit remand. These judgments are therefore not on the point.

49. Thus, considered, we conclude that the order of remand by the jurisdictional Magistrate is valid. It is not invalid on the ground of challenge that the transit remand was not taken from the nearest non-jurisdictional Magistrate, after arrest, for production before the jurisdictional Magistrate. The detenu was produced within 24 hours of his arrest before the Jurisdictional Magistrate and was granted remand. It is not mandatory to obtain transit remand to produce the arrested person before the Jurisdictional Magistrate for remand. If the transit remand is not taken but still the arrested person is produced before the Jurisdictional Magistrate within 24 hours of his arrest, excluding the journey time, there would be no violation of Article 22(2) of the Constitution of India. The detenu is, in detention pursuant to the remand order, which is valid and his detention is not an illegal detention.

50. We answer point No.**A** in as per Para 49 (supra).

51. In **Manubhai Railal Patel TR. Ushaben vs. State of Gujarat and others**[13]**,** referring to **Ummu Sabeena v. Stae of Kerala** (2011) 10 SCC 781) and various other judgments it was held 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

[13] 2013 1 SCC 314

wholly illegal. Para 32 of **Manubhai Railal Patel TR. Ushaben** (supra) is as follows:

> "32. Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order of the High Court regarding stay of investigation could only have bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order of remand cannot be regarded as untenable in law. 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 the cases of B.R. Rao (supra) and Kanu Sanyal (supra), the court is required to scrutinize 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**. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law."

52. We answer Point-B that the order of remand is valid. The writ of Habeas Corpus cannot be issued. The writ petition deserves dismissal.

V. Conclusions:

53. Our conclusions on Point-A is as per Paras 49, 50 and on Point-B as per Paras 51 to 52 (supra) respectively.

VI. Result:

54. In the result, the writ petition for Habeas Corpus is dismissed. No order as to costs.

RAVI NATH TILHARI,J

ALAPATI GIRIDHAR,J

Date:13.10.2026.

Issue CC by today.

Note:
L.R. copy to be marked.
B/o.**Gk.**

Whether the order is :
Speaking Yes/No / Reasoned Yes/No
Reportable Yes/No / Non-Reportable Yes/No

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

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WRIT PETITION No.26235 OF 2026

Date:13.10.2026

Gk