R

Reserved on : 23.03.2026
Pronounced on : 10.04.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3020 OF 2026

BETWEEN:

SRI EMAN ABBAS TOPIWALA
AGED ABOUT 28 YEARS
S/O MOHAMMED ABBAS HUSEIN AKI TOPIWALA
R/A: 207, 2ND FLOOR
GITANJALI LAKE VIEW APARTMENT
BENIGANAHALLI, KRISHNARAJAPURAM R S
BENGALURU – 560 016.

... PETITIONER

(BY SRI ABHIMANYU DEVAIAH, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY DEVANAHALLI POLICE STATION
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA.

... RESPONDENT

(BY SRI B.N.JAGADEESHA, ADDL.SPP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C.,/ SECTION 528 OF THE BNSS, 2023 PRAYING TO QUASH THE FIR, COMPLIANT, CHARGE SHEET AND ENTIRETY OF

PROCEEDINGS IN SPL.C.NO.1182/2025 FOR OFFENCES P/U/S 20(b), 22(a), 27(B), 25 OF NDPS ACT, 1985 AND SEC.292, 296, 3(5), 111(2) OF BNS, 2023 PENDING BEFORE THE COURT OF THE VIII ADDL. DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE FOR NDPS CASES AT BENGALURU RURAL DISTRICT, BENGLAURU IN SO FAR AS THE PETITIONER IS CONCERNED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.03.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.12 in Special Case No.1182 of 2025 is before the Court seeking the following prayer:

> "a. Call for the records in the Special Case No.1182 of 2025 for offences punishable under Section 20(b), 22(a), 27(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and 292, 296 3(5) and 111(2) of the Bharatiya Nyaya Sanhita, 2023 pending before the Court of the VIII Additional District and Sessions Judge and Special Judge for NDPS Cases at Bengaluru Rural District, Bengaluru.
>
> b. Quash the FIR, complaint, charge sheet and entirety of proceedings in Special Case No.1182/2025 for offences punishable under Section 20(b), 22(a), 27(B) 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and 292, 296, 3(5) and 111(2) of the Bharatiya Nyaya Sanhita, 2023 pending before the Court of the VIII Additional District and Sessions Judge and Special Judge for NDPS Cases at Bengaluru Rural District, Bengaluru insofar as the petitioners are concerned.

c. Grant such other relief/s as this Hon'ble Court deems fit to grant in facts and circumstances of the case."

2. Heard Sri Abhimanyu Devaiah, learned counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for the respondent.

3. Facts, in brief, germane are as follows: -

3.1. A *suo motu* complaint is registered before the Devanahalli Police Station upon receipt and verification of credible information that accused No.1 has organized a birthday celebration without obtaining permission from the jurisdictional authority. The event is said to have been conducted at a mansion known as "Ellavoma House" situated near MVM School of Kannamangala Road, which comes within the jurisdiction of Devanahalli Police Station. The gathering is said to have taken place between 9.30 p.m. on 24-04-2025 and lasted up to 7.15 a.m. on 25-05-2025. Approximately, 30 to 35 persons are said to have gathered at the venue and were allegedly consuming intoxicating substance and alcohol. They were also engaged in loud dancing to music, thereby

disturbing peace and tranquility of the locality. The said gathering was neither sanctioned nor supported with any lawful permission and, therefore, did constitute act of illegality and unauthorized assembly. Upon receipt of the said information, witness No.48 and another Sub-Inspector of Devanahalli Police Station submitted a report to the Assistant Commissioner of Police, Devanahalli Police Station. On perusal of the said report, the Assistant Commissioner of Police authorized the Police to conduct a raid, search and take appropriate action.

3.2. On 25-05-2025, based upon the said report/authorization, a crime comes to be registered in Crime No.68 of 2025 for offences punishable under Sections 20(b), 22(a) and 27(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act' for short) and Sections 292, 296 and 3(5) of the BNS, alleging that the rave party organizers had gathered in the said place and have breached the law. No person was named in the FIR, as it was against unknown persons. The Police conduct a search, the people gathering there were alleged to be consuming illicit substance and playing loud music. Upon

checking the place, the informant Police found 25 to 30 people gathered at the party and were selling and consuming cocaine, ganja and other narcotic substances.

3.3. The aforesaid complaint which had become a FIR is transmitted to the jurisdictional Magistrate at 7.15 a.m. on 25-05-2025. The jurisdictional Magistrate permits conduct of search and seizure of narcotic substances. Upon authorization, a team comprising of a police personnel, two independent witnesses and 5 panch witnesses proceeded to raid the venue in the early morning hours. The raid was conducted under the supervision of Assistant Commissioner of Police. At about 2.30 p.m. on 25-05-2025, the respondent Police along with the medical officer collected blood samples from all including the petitioner and marked it as Article Nos. 59 and 60 for forwarding it to the Forensic Science Laboratory.

3.4. On 25-05-2025 the Police arrest the petitioner/accused No.12 along with others and released her on the same day, as she was alleged of consumption of illicit liquor. A Police notice under Section 67 of the BNSS was issued to the petitioner for questioning

and the petitioner was directed to be present before the Police Station on 27-05-2025 at 10.30 a.m. The blood and urine samples of all the accused persons were collected, sealed and forwarded to the State Forensic Science Laboratory, Madiwala, Bangalore. Investigation continued. Few of other accused were also taken into custody. The Forensic Science Laboratory report is submitted on 24-06-2025 which depict that Articles 59 and 60, blood and urine samples of the petitioner tested positive for consumption of cocaine.

3.5. A coordinate Bench of this Court in Criminal Petition No.8538 of 2025 granted stay of further investigation in Crime No.68 of 2025 insofar as accused No.6 was concerned who was also charged of consumption of banned substance. The Police continued the investigation and file their final report before the jurisdictional Court for the afore-quoted offences. The petitioner has been charge sheeted for the offences under Section 27(b) of the NDPS Act and Sections 292, 296 and 3(5) of the BNS. The concerned Court takes cognizance of the offence on 31-12-2025 again for the afore-quoted offences particularly against the petitioner/accused

No.12 and registers Special Case No.1182 of 2025. The petitioner after taking of cognizance and issuance of summons is before the Court in the subject petition, seeking quashment of the charge sheet and entire proceedings against her.

SUBMISSIONS:

PETITIONER:

4.1. The learned counsel appearing for the petitioner would submit that the petitioner was present in the gathering. Mere presence at a social event, in the absence of any participation in the alleged unlawful activity, would not attract liability under the Act. The charge sheet does not attribute any specific overt act against the petitioner. There is no recovery of contraband substance from her possession. The charge sheet is bereft of material, direct or proximate or having any nexus with the alleged offences. The petitioner was merely an attendee and had no conscious possession nor constructive possession. He would contend that the arrest was in violation of guidelines laid down in **D.K. BASU V. STATE OF WEST BENGAL** which mandates that arrest must be accompanied by documentation including arrest memo, attestation of witnesses

and other mandatory factors. Arrest, according to the learned counsel, is *non est* in the eye of law.

4.2. The learned counsel would submit that Section 51 of the BNSS/53 of the earlier regime Cr.P.C. permits medical examination, including collection of blood and urine samples only after lawful arrest, subject to the prescribed procedural safeguards. In the case at hand, no material is placed to indicate lawful arrest. In the absence of arrest, the extraction of biological sample constitutes an unlawful and invasive act rendering the procedure illegal, unconstitutional and inadmissible in evidence. He would contend that this grave procedural and constitutional infirmity strikes at the root of the prosecution and renders continuation of proceedings against the petitioner, a manifest abuse of the process of law.

STATE:

5. Per contra, the learned Additional State Public Prosecutor Sri B.N. Jagadeesha would refute the submissions to contend that the petitioner has been tested positive for cocaine. Hence, it is proof of consumption of the said narcotic drug. The petitioner was

arrested and then her blood and urine samples were taken. Therefore, there is no violation of Section 51 of the BNSS. The Forensic Science Laboratory report showing her sample testing positive to cocaine are valid. He would submit that all the submissions made by the learned counsel for the petitioner cannot become a ground for quashment of proceedings, as the petitioner is already enlarged on bail. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the following issues would arise for my consideration:

(i) Whether the arrest of the petitioner was lawful?

(ii) Whether the report pursuant to conduct of medical examination under Section 51 of the BNSS in the absence of such lawful arrest can be relied upon to continue the prosecution against the petitioner?

(iii) Whether the report of such medical examination can be relied upon as proof of consumption?

I proceed to consider the issues on their seriatim.

ISSUE NO.1:

Whether the arrest of the petitioner was lawful?

7. The power to arrest is not an unbridled prerogative, but a solemn trust reposed in the hands of the State, one that must be exercised with restrained responsibility and scrupulous adherence to statutory safeguards. Where the offences alleged are punishable with imprisonment of less than 7 years, the law does not countenance a cavalier deprivation of liberty. Instead, it mandates a calibrated approach, one that privileges notice over custody, and reason over impulse. With the said prelude the issue needs consideration.

8. The petitioner is charged for offences under Sections 292, 296, 3(5) of the BNS and 27(b) of the Act, all of which are punishable with maximum punishment upto 7 years. The provisions read as follows:

Sections 292, 296 of the BNS:

> **"292. Punishment for public nuisance in cases not otherwise provided for**.—Whoever commits a public nuisance in any case not otherwise punishable by this Sanhita shall be punished with fine which may extend to one thousand rupees.
>
> …. …. ….
>
> **296. Obscene acts and songs**.—Whoever, to the annoyance of others,—
>
> (*a*) does any obscene act in any public place; or
>
> (*b*) sings, recites or utters any obscene song, ballad or words, in or near any public place,
>
> shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both."

Section 3(5) of the BNS:

> **"3. General explanations**. – (1) ….
>
> …. …. ….
>
> (5) When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

Section 27(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985:

> (*b*) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (*a*), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.]

9. **What is to be noticed here is, whether the arrest was lawful considering all the offences against the petitioner are the ones punishable with less than 7 years of imprisonment. In cases where offences punishable with imprisonment is less than 7 years, the accused cannot be arrested strictly. Instead, a notice under Section 35 of the BNSS must be served upon the accused. In the case against the petitioner, before arresting her, she could be taken into custody only if the conditions under Section 35(1)(b) of the BNSS are met.** Therefore, it becomes necessary to notice Section 35 of the BNSS. It reads as follows:

> "**35. When police may arrest without warrant**.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—
>
> (*a*) who commits, in the presence of a police officer, a cognizable offence; or
>
> (*b*) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(*i*) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(*ii*) the police officer is satisfied that such arrest is necessary—

(*a*) to prevent such person from committing any further offence; or

(*b*) for proper investigation of the offence; or

(*c*) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(*d*) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(*e*) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(*c*) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(*d*) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(*e*) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(*f*) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(*g*) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(*h*) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(*i*) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or

(*j*) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a

reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age."

10. The interpretation of Section 35(1)(b) need not detain this Court for long or delve deep into the matter. The Apex Court in **SATENDER KUMAR ANTIL v. CENTRAL BUREAU OF INVESTIGATION**[1] considers every aspect of Section 35. The Apex Court holds as follows:

"…. …. ….

DISCUSSION

[1] **2026 SCC Online SC 162**

16. An investigation by a police officer generally begins with the recording of information regarding an offence. It is a process which is primarily aimed at the ascertainment of facts and circumstances surrounding an alleged crime and involves the police officer proceeding to the spot of occurrence to collect evidence and ends with the formation of an opinion as to whether, on the basis of the material collected, there is a case to place the accused before a Magistrate for trial and, if so, taking the necessary steps for the same by filing a charge-sheet. This has been succinctly dealt with by this Court in the case of *State of Uttar Pradesh* v. *Bhagwant Kishore Joshi*, (1964) 3 SCR 71 in the following manner:

> **"17. What is investigation is not defined in the Code of Criminal Procedure; but in** H.N. Rishbud and Inder Singh *v.* State of Delhi **[(1954) 2 SCC 934 : (1955) 1 SCR 1150, 1157-58] this Court has described, the procedure, for investigation as follows:**
>
> > "Thus, under the Code **investigation consists generally of the following steps, (*1*) Proceeding to the spot, (*2*) Ascertainment of the facts and circumstances of the case, (*3*) Discovery and arrest of the suspected offender, (*4*) Collection of evidence relating to the commission of the offence which may consist of (*a*) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (*b*) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (*5*) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."**
>
> This Court, however, has not said that if a police officer takes merely one or two of the steps indicated by it, what he has done must necessarily be regarded as investigation. **Investigation, in substance, means collection of evidence relating to the commission of the offence. The Investigating Officer is, for this purpose, entitled to question persons who, in his opinion, are able to throw light on the offence which has been committed and is likewise entitled to question the suspect and is entitled to reduce the statements of persons questioned by him to writing. He is also entitled**

to search the place of the offence and to search other places with the object of seizing articles connected with the offence. No doubt, for this purpose he has to proceed to the spot where the offence was committed and do various other things. But the main object of investigation being to bring home the offence to the offender the essential part of the duties of an Investigating Officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the accusation against the offender. Merely making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it…"

(emphasis supplied)

17. An arrest, being an act done by a police officer in furtherance of an investigation, is discretionary and optional to be applied on the facts of a particular case. Section 35 of the BNSS, 2023 provides for situations where a person may be arrested by a police officer, without a warrant.

Section 35 of the BNSS, 2023

"35. When police may arrest without warrant.— (1) **Any police officer may without an order from a Magistrate and without a warrant, arrest any person—**

(*a*) who commits, in the presence of a police officer, a cognizable offence; or

(*b*) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years

whether with or without fine, if the following conditions are satisfied, namely:—

(*i*) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(*ii*) the police officer is satisfied that such arrest is necessary—

(*a*) to prevent such person from committing any further offence; or

(*b*) for proper investigation of the offence; or

(*c*) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(*d*) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(*e*) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(*c*) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or

with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(*d*) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(*e*) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(*f*) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(*g*) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(*h*) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(*i*) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or

(*j*) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so

concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) <u>The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.</u>

(4) <u>Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.</u>

(5) <u>Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.</u>

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age."

(emphasis supplied)

18. Section 35(1) of the BNSS, 2023, through the use of the word "may," makes the position of law rather clear that the power of arrest is discretionary and optional. The power of arrest under Section 35(1)(a) to Section 35(1)(j) of the BNSS, 2023 are distinct and different from each other, with the commonality being an offence which is cognizable in nature.

19. To attract the power of arrest under Section 35(1)(b) of the BNSS, 2023, the conditions mentioned thereunder ought to be complied with scrupulously. Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS, 2023 must be read together, meaning thereby that compliance with Section 35(1)(b)(i) of the BNSS, 2023 is a *sine qua non* in all cases of arrest.

20. Section 35(1)(b)(i) of the BNSS, 2023 speaks about the "reason to believe" on the part of the police officer. Such a reason to believe should be formed on the basis of a complaint, information, or suspicion that the person concerned has committed the offence. However, this alone would not suffice. Additionally, any one of the conditions mentioned under Section 35(1)(b)(ii) of the BNSS, 2023 must also be satisfied. In other words, it is not required that all the conditions mentioned under Section 35(1)(b)(ii) of the BNSS, 2023 should be available, but only the existence of one of them that is required.

21. After being satisfied that there is a necessity of arrest, a police officer is bound to record his reasons either for arrest, as provided for under Section 35(1)(b) of the BNSS, 2023, or for merely issuing a notice under Section 35(3) of the BNSS, 2023. Section 35(1)(b) of the BNSS, 2023, thus, carves out an exception, with its inbuilt safeguards.

22. Suffice it is to state that an investigation can go on even without an arrest. While undertaking the exercise of collecting the evidence for the purpose of forming his opinion over the commission of a cognizable offence, a police officer shall pose a question, to himself, on the necessity of an arrest. This safeguard is provided as, in any case, the power to arrest an accused person is always available with a police officer even after he records his reasons, in writing, for not doing so at an earlier stage.

Joginder Kumar v. *State of UP*, (1994) 4 SCC 260

> **"20...<u>No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.</u>** The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. **<u>There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the station without permission would do."</u>**
>
> (emphasis supplied)

23. Section 35(3) of the BNSS, 2023, once again, reiterates the object of the enactment that an arrest by a police officer is not mandatory in all cases. This provision applies to all cognizable offences. However, insofar as the offences punishable with imprisonment up to a period of 7 years are concerned, this provision will have to be read along with Section 35(1)(b) of the BNSS, 2023, and its proviso which mandates the furnishing of reasons, in writing, for both, making an arrest and when there is no requirement to do so. As stated above, the requirement of not arresting an accused is *qua* the stage of issuing notice under Section 35(3) of the BNSS, 2023. Hence, it is amply clear that a harmonious construction of Section 35(1)(b) and Section 35(3) of the BNSS, 2023 needs to be made.

Satender Kumar Antil v. *Central Bureau of Investigation*, 2025 SCC OnLine SC 1578

> **"22. Section 35(4) of the BNSS, 2023 imposes a duty on the recipient of the notice to the effect that once the notice is served, the person must comply with every term of the notice. Section 35(5) of the BNSS, 2023 provides that as long as the person to whom the notice is issued, appears as is required and continues to comply with the notice, they cannot be arrested in relation to the alleged offence. Arrest may be made only if the Investigating Agency records specific reasons as to why the arrest is necessary."**
>
> (emphasis supplied)
>
> **24. Section 35(5) of the BNSS, 2023 facilitates the liberty of a person by imposing an implied prohibition of arrest when a person complies with a notice issued under Section 35(3) of the BNSS, 2023. This provision reiterates the fact that any subsequent arrest, being an exception, is warranted only when a police officer forms an opinion for such an arrest, which he is duty bound to record, in writing, by furnishing adequate reasons."**

The Apex Court holds that to attract the power of arrest under Section 35(1)(b) of the BNSS, the conditions mentioned therein had to be complied with scrupulously. Section 35(1)(b)(i) of the BNSS is *sine qua non* in all cases of arrest which speaks of reasons to believe on the part of the police officer and such reasons to believe against the accused should be formed on the basis of a complaint, information or suspicion that the person concerned has

committed the offence. Additionally, any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS also must be satisfied. After being satisfied that there is necessity of arrest, the Police Officer is bound to record reasons, either for arrest as provided under Section 35(1)(b) of the BNSS or for merely issuing a notice under Section 35(3) of the BNSS. What is clearly mandated is that the reasons for arrest must be recorded and the reason for issuing a notice instead of arrest also must be recorded.

11. **In the case at hand, the narrative of arrest is conspicuously barren of the essential legal attributes that can give legitimacy to such an act. There is neither record of reasons to believe nor articulation of necessity, nor communication of grounds of arrest to the petitioner. Arrest, in such circumstances, degenerates into empty ritual, away from the discipline of law and bereft of Constitutional propriety. Arrest is not a fleeting administrative act; it is a profound intrusion upon personal liberty. It must be preceded by reason, accompanied by transparency and**

justified by necessity. The absence of these fundamental elements renders the so called arrest a legal nullity. The Apex Court considers who is an accused person and which act of a person can be considered to have been arrested. The Apex Court in **BALKISHAN A. DEVIDAYAL v. STATE OF MAHARASHTRA**[2] holds as follows:

"..... ....

> **70. To sum up, only a person against whom a formal accusation of the commission of an offence has been made can be a person "accused of an offence" within the meaning of Article 20(3). Such formal accusation may be specifically made against him in an FIR or a formal complaint or any other formal document or notice served on that person, which ordinarily results in his prosecution in court.** In the instant case no such formal accusation had been made against the appellant when his statement(s) in question were recorded by the RPF officer."

The Apex Court has expounded upon who may be regarded as an 'accused' and when a person can be said to have been arrested, it is only when a formal acquisition-embroidered in an FIR, complaint or other formal proceeding capable of culminating in prosecution is made, that person assumes the character of an accused within the meaning of Article 20(3) of the Constitution.

---

[2] (1980) 4 SCC 600

12. The aforesaid judgment is followed in **DIRECTORATE OF ENFORCEMENT v. DEEPAK MAHAJAN**[3]. The Apex Court holds as follows:

"……. ……. …….

> **81. The essence of the above decisions is that to bring a person within the meaning of 'accused of any offence', that person must assimilate the character of an 'accused person' in the sense that he must be accused of any offence.**
>
> ……. ……. …….
>
> **92.** A thorough and careful study of all the provisions of the Code manifestly discloses that **the word 'accused' in the Code denotes different meanings according to the context in which it is deployed; in that sometimes the said word is employed to denote a person arrested, sometimes a person against whom there is an accusation, but who is yet not put on trial and sometimes to denote a person on trial and so on.**
>
> ……. ……. …….
>
> **94.** It may not be out of place to mention here that an officer-in-charge of a police station who is empowered under Section 156 to investigate on an information received under Section 154 or otherwise takes up the investigation by proceeding to the spot "for the discovery and arrest of the *offender* when he has reason to suspect the commission of an offence" as contemplated under Section 157 of the Code. At that stage, the investigating officer does not suddenly jump to a conclusion that the person against whom the investigation has commenced has committed an offence. But he can arrive at such a conclusion only when the investigation consummates to a finality on the collection of evidence eliminating all suspicion and establishing the commission of the offence. In case the

---

[3] (1994) 3 SCC 440

investigating officer arrives at a conclusion that no offence is made out he forwards his final report to that effect.

……. …… ……

98. Thirdly, **in the Code different expressions are used under various provisions to denote a person involving in a criminal proceeding such as 'offender', 'person', 'accused', 'accused person', "accused of an offence" depending on the nature of the proceeding.**"

This principle finds reaffirmation in **DEEPAK MAHAJAN**, where the Apex Court has elucidated, **that while expressions 'person', 'offender', 'accused' may be employed across statutory provisions, the essence remains constant. There must exist an accusation, in a legally cognizable form, one that carries the potential of prosecution. Mere suspicion, uncrystallized into formal accusation, would not suffice.** This again bears lucid interpretation by the Apex Court in **DEEPAK MAHAJAN**'s case *supra* in the following paragraphs:

"……. …… ……

46. The word 'arrest' is derived from the French word 'Arreter' meaning "to stop or stay" and signifies a restraint of the person. Lexicologically, the meaning of the word 'arrest' is given in various dictionaries depending upon the circumstances in which the said expression is used. One of us, (S. Ratnavel Pandian, J. as he then was being the Judge of the High Court of Madras) in *Roshan Beevi* v. *Joint Secretary, Government of T.N.* [1984 Cri LJ 134 :

(1984) 15 ELT 289 : 1983 MLW (Cri) 289 (Mad)] had an occasion to go into the gamut of the meaning of the word 'arrest' with reference to various textbooks and dictionaries**,** the *New Encyclopaedia Britannica, Halsbury's Laws of England, A Dictionary of Law* by L.B. Curzon, *Black's Law Dictionary* and *Words and Phrases*. On the basis of the meaning given in those textbooks and lexicons, it has been held that:

> **"[T]he word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested."**

47. There are various sections in Chapter V of the Code titled "Arrest of persons" of which Sections 41, 42, 43 and 44 empower different authorities and even private persons to arrest a person in given situation. Section 41 deals with the power of a police officer to arrest any person without an order from a Magistrate and without a warrant. Section 42 deals with the power of a police officer to arrest any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence and who refuses on demand "to give his name and residence or gives a name or residence which such officer has reason to believe to be false". Section 43 empowers any private person to arrest any person who in his presence commits a non-cognizable offence, or any proclaimed offender. Section 44 states that when any offence is committed in the presence of a Magistrate whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon subject to the provisions contained in the Code as to bail commit the offender to custody."

In the present case, the FIR was initially registered against unknown persons, with individuals gradually brought within its fold. **The assertion that the petitioner was arrested and released on the same day, necessitates a closer examination of what constitutes arrest, as the Apex Court has clarified arrest involves the act of taking a person lawful custody under lawful authority, with an intent to detain them, to answer a criminal charge, or to prevent the commission of an offence. The presence of lawful authority and intent, are thus indispensable. Measured against these principles, the petitioner's alleged arrest, appears to falter on fundamental grounds.**

13. Jurisprudence has now evolved to firmly establish that arrest cannot be effectuated without furnishing the grounds thereof. The communication of reasons is not a mere procedural formality. Its absence vitiates the very legality of arrest, and once vitiated, the custody cannot be sustained even for a moment. This position has been reiterated in **KASIREDDY UPENDER REDDY v. STATE**

OF ANDHRA PRADESH[4] as well as in the Seminal Guidelines laid down in **D.K. BASU v. STATE OF WEST BENGAL.** The Apex Court in **KASIREDDY UPENDER REDDY** *supra* holds as follows:

> "……. …… ……
>
> 18. Thus, the following principles of law could be said to have been laid down, rather very well explained, in *Vihaan Kumar* (supra):
>
> a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.
>
> b) Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested.
>
> c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Article 22(1).
>
> d) **If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1).**
>
> **e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.**
>
> **f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is**

---

[4] 2025 SCC OnLine SC 1228

necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.

g) **When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities.**

h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1) meaningful and effective, failing which, such arrest may be rendered illegal.

……. …… ……

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

14. Long before the aforementioned judgment/s of the Apex Court, the Apex Court in **D.K. BASU v. STATE OF WEST BENGAL**[5] has laid down certain guidelines. The guidelines are as follows:

"……. …… ……

[5] (1997) 1 SCC 416

35. We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

38. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

39. The *requirements* mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the *requirements* on All India Radio besides being shown on the National Network of Doordarshan any by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

Applying the said principles to the case at hand, it becomes manifest that the so-called arrest of the petitioner is, on the face of it, unsustainable in law. There is no material to demonstrate that the arresting officer, recorded any reasonable suspicion or credible information linking the

petitioner to a cognizable offence. There is a conspicuous absence of any recorded reasons, justifying the arrest and equally no evidence that the ground of arrest were even communicated to the petitioner. A reasonable suspicion is not mere conjecture or a fleeting possibility. It demands foundation rooted in due diligence, an exercise of mind by an officer entrusted with statutory authority. Such foundational requirements are entirely absent in the case at hand. None, of the procedural or substantive safeguards, that lend legitimacy to an arrest have been observed. In the circumstances, the conclusion is inescapable; the arrest of the petitioner is patently illegal. The first issue, therefore, stands answered unequivocally in favour of the petitioner.

ISSUE NO.2:

Whether the report pursuant to conduct of medical examination under Section 51 of the BNSS in the absence of such lawful arrest can be relied upon to continue the prosecution against the petitioner?

15. The extraction of petitioner's blood sample is sought to be justified on the tenuous and specious premise of the aforesaid arrest. However, the legality of such an act must be tested against the statutory framework governing medical and biological examination of an accused. This domain is now regulated by Section 51 of the BNSS, corresponding to Section 53 of the erstwhile CrPC. It is, therefore, apposite to juxtapose the two provisions. They read as follows:

SECTION 51 OF BNSS	**SECTION 53 OF CRPC**
51. Examination of accused by medical practitioner at request of police officer.—(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of any police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably	**53. Examination of accused by medical practitioner at the request of police officer**.—(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of Sub-Inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to

necessary for that purpose. (2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner. (3) The registered medical practitioner shall, without any delay, forward the examination report to the investigating officer. *Explanation*.—In this section and Sections 52 and 53,— (*a*) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case; (*b*) "registered medical practitioner" means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 (30 of 2019) and whose name has been entered in the National Medical Register or a State Medical	use such force as is reasonably necessary for that purpose. (2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner. *Explanation*.—In this section and in Sections 53-A and 54,— (*a*) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case; (*b*) "registered medical practitioner" means a medical practitioner who possesses any medical qualification as defined in clause (*h*) of Section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register.

Register under that Act.	

A careful reading of Section 51 of the BNSS and Section 53 of the CrPC reveals that the power to conduct medical or biological examination is inextricably linked to a lawful arrest. The statute is explicit, such examination can be undertaken only when the person is under arrest and that too upon a request made by a police officer for such examination. **The foundational requirement, therefore, is the existence of a valid arrest. The contours of what constitutes an 'accused' and the circumstances under which an arrest may be deemed to lawful, have already been exhaustively examined under issue No. 1. It stands admitted that the petitioner's blood sample was obtained, in the absence of a lawful arrest, as the essential procedural safeguards and legal prerequisites governing arrest were neither observed nor complied with, rendering the purported arrest invalid in the eye of law.**

16. The interpretation of Section 53 of the CrPC, now Section 51 of the BNSS, has been subject to the elucidation of law by the Apex Court and different High Courts. It becomes opposite to refer to those elucidations of law.

16.1. The Apex Court in **RITESH SINHA v. STATE OF UTTAR PRADESH**[6] holds as follows:

"..... ....

> **50.** It was argued that Section 53 of the Code only contemplates medical examination and taking of voice sample is not a medical examination. **Section 53 talks of examination by registered medical practitioner of the person of the accused but, does not use the words "medical examination".** Similarly, Explanation (*a*) to Section 53 does not use the words "medical examination". In my opinion, Section 53 need not be confined to medical examination. It is pertinent to note that in *Selvi* [(2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1] , this Court was considering whether narco-analysis, polygraph examination and the BEAP tests violate Article 20(3) of the Constitution. While examining this question, this Court analysed Section 53 and stated that because those tests are testimonial in nature, they do not fall within the ambit of Section 53 of the Code but this Court did not restrict examination of person contemplated in Section 53 to medical examination by a medical practitioner even though the tests impugned therein were tests that were clearly not to be conducted by the medical practitioner. It must be remembered that Section 53 is primarily meant to serve as aid in the investigation. T**he examination of the accused is to be conducted by a medical practitioner at the instance of the police officer, who is in charge of the investigation. On a fair reading of Section 53 of the Code, I am of the opinion that under that section, the**

[6] **(2013) 2 SCC 357**

medical practitioner can conduct the examination or suggest the method of examination."

16.2. In **CHOTKAU v. STATE OF UTTAR PRADESH**[7] the Apex Court holds as follows:

"…… …… ……

74. Section 53(1) of the Code enables a police officer not below the rank of Sub-Inspector to request a registered medical practitioner, to make such an examination of the person arrested, as is reasonably necessary to ascertain the facts which may afford such evidence, whenever a person is arrested on a charge of committing an offence of such a nature that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence. Section 53(1) reads as follows:

> "**53.** ***Examination of accused by medical practitioner at the request of police officer***.—(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of Sub-Inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.""

16.3. In **MUNNA PANDEY v. STATE OF BIHAR**[8]**,** the Apex Court holds as follows:

---

[7] (2023) 6 SCC 742

"..... ....

28. Section 53(1)CrPC enables a police officer not below the rank of Sub-Inspector to request a registered medical practitioner, to make such an examination of the person arrested, as is reasonably necessary to ascertain the facts which may afford such evidence, whenever a person is arrested on a charge of committing an offence of such a nature that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence."

16.4. The High Court of Telangana at Hyderabad in **KOKKIRIGADDA DEVARAJ v. STATE OF ANDHRA PRADESH**[9] holds as follows:

"..... ....

11. So, by virtue of the amendment, the term '*examination*' imbibes in itself DNA profiling also among other tests. **Since Section 53 appears in the Chapter-V of Cr. P.C. under the heading "Arrest of Persons" and since phraseology such as "*when a person is arrested on a charge of committing an offence examination of his person will afford evidence as the commission of an offence etc.*, is employed, one can understand that the examination of such arrested person takes place during the course of investigation.**

12. Then, we have judicial pronouncements to the effect that though a person is not in custody and he is on bail, still concerned Court on the request of the Investigating Officer can direct the accused to undergo the test mentioned in Section 53 to facilitate the investigation."

---

[8] (2024) 18 SCC 728
[9] 2018 SCC OnLine Hyd.2261

16.5. The High Court of Madras in **THANIEL VICTOR v. STATE**[10] has held as follows:

> "..... ....
>
> **27.** The Andhra Pradesh High Court in *Ananth Kumar* v. *State of Andhra Pradesh*, 1977 Crl LJ 1797 had occasion to consider the scope of S. 53 Cr. P.C. **The Court held that under the new Code, provision had been made for the medical examination of the arrested person at the instance of a police officer of a proper rank and also at the instance of the arrested person himself, and such examination necessarily formed part of investigation as defined in S. 2(4) of the Code.** The Court also took the view that examination of a person by a Medical Paractitioner must logically take in examination, by testing his blood, sputum, semen, urine, etc. which cannot be held to be outside the scope of S. 53 of the Code. As the section itself contemplated, even reasonable force can be used to subject the arrested to medical examination, though it may discomfort him. The opinion expressed by me earlier is echoed in this ruling of the Andhra Pradesh High Court. Where it has been held that **release of an arrested person on bail cannot take away the reality of the situation and the arrested person does not cease to be an arrested person or an accused person for the purpose of Ss. 53 and 54 of the Code.** On the question of imposition of conditions, while directing release on bail of the accused, the learned Judge held that the condition "otherwise in the interests of Justice" contemplated in Section 437(3)(c) Cr. P.C. can be imposed. The Court further held that direction could be given by a Court, subjecting a person released on bail, for medical examination, since it was a condition necessary for investigation."

In **RITESH SINHA**, the Apex Court in paragraph 50 delineates the scope on limitations of such powers. Similarly in **CHOTKAU** and

---

[10] 1990 SCC OnLine Mad 126

MUNNA PANDEY, the Apex Court reiterates the necessity of strict adherence to statutory safeguards before subjecting an individual to medical examination. The High Court of Telangana and the High Court of Madras have echoed these principles, underscoring that such examinations cannot be conducted as a matter of routine or convenience, but only upon the satisfaction of legally mandated conditions.

17. A harmonious reading, a blend of these judicial pronouncements yields a singular unmistakable principle, even a medical or biological examination cannot be undertaken unless the Investigating Officer, records reasonable grounds demonstrating that such examination is imperative, for the purposes of investigation. Upon such satisfaction, a formal request must be made to the registered medical practitioner, who may then proceed with the examination, but crucially, only of a person who has been lawfully arrested.

18. **In the case at hand, the very substratum of this process - a lawful arrest, is conspicuously absent. The petitioner was never arrested in accordance with law.**

Consequently, the subsequent act of subjecting her to medical/biological examination lacks legal foundation. Thus, the collection of petitioner's blood sample far from being a lawful investigative step, stands vitiated as an act, in clear transgression of statutory mandate. The medical examination, having been concluded in the absence of valid arrest and without adherence to prescribed safeguards, inevitably collapses under the weight of legal scrutiny, rendering it unsustainable in law.

ISSUE NO.3:

Whether the report of such medical examination can be relied upon as proof of consumption?

19. The gravamen of the charge against the petitioner is the alleged consumption of cocaine. This allegation rests entirely upon a medical report. However, the medical report itself is not an independent or unimpeachable piece of evidence. It is a direct product of procedurally tainted process. The procedural aberration, in turn finds its genesis in an arrest that has already been held to

be illegal. Apart from this infirm medical report, there exists no other material, either by way of allegation or evidence or any corroboration linking the petitioner to consumption of any narcotic substance. There is no recovery of contraband from her possession. There is no independent corroboration. In such circumstances, the very foundation required to invoke Section 27(b) of the Act stands conspicuously absent. Section 27(b) as noticed *supra*, contemplates punishment for consumption of a narcotic substance. **The jurisprudence, surrounding the provision, is both consistent and instructive. Courts across the country have repeatedly held that the *sine qua non* for establishing consumption is credible and legally obtained evidence, most commonly in the form of a valid medical or forensic report based on a biological sample.**

19.1. It now becomes apposite to refer to the judgments of the courts of the country. This Court in **HANUMANTHA v. STATE OF KARNATAKA**[11] has held as follows:

"..... ....

[11] **2024 SCC OnLine Kar 10634**

10. Section 27 of the Act reads as follows:

> *"**27. Punishment for consumption of any narcotic drug or psychotropic substance**.—Whoever consumes any narcotic drug or psychotropic substance shall be punishable,—*
>
> *(a) **where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both; and***
>
> *(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both."*
>
> *(Emphasis supplied)*

Section 27 makes it an offence of any person consuming any narcotic drugs or psychotropic substance. The punishment that is imposable is one year with or without fine. But, nonetheless, it is an offence under the Act. If consumption has to be proved, the primary evidence would be the presence of contraband substance in the blood sample. The blood sample is drawn and sent to FSL and the report of FSL indicates no contraband substance of any kind in the blood samples of the petitioners. The charge sheet, therefore, with *mala fide* intention, is deliberately filed by the Station House Officer and the Police Sub-Inspector of Varthur Police Station."

19.2. The High Court of Kerala in **DEON JOSEY v. STATE OF KERALA**[12] has held as follows:

---

[12] Crl.M.C.No.3609 of 2023 decided on 27-06-2023

"..... ....

8. **Section 27 would apply only when the person is found consuming any narcotic drug or psychotropic substance. No material has been collected by the investigating officer to substantiate that the petitioner was consuming a narcotic drug or a psychotropic substance. In that view of the matter, the continuance of proceedings against the petitioner is a clear abuse of process.**

9. For the aforesaid reasons, the petitioner is entitled to succeed. All further proceedings as against him in C.C.No.786 of 2022 on the file of the Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam, is quashed."

19.3. Again, the High Court of Kerala in **ANURAG SHAJI v. STATE OF KERALA**[13] has held as follows:

"..... ....

4. **The short point raised by the petitioner is that without a chemical analysis report, there is no chance for a successful prosecution and hence the continuation of the prosecution case against the petitioner is an abuse of process of court. This Court directed the public Prosecutor to get instructions whether any expert opinion is obtained to show that the beedi used by the petitioner is a narcotic substance. The Public Prosecutor after getting instructions submitted that no analysis report is obtained in this case.**

5. **In the light of the above submission of the Public Prosecutor that there is no analysis report, the continuation of the prosecution against the petitioner is an abuse of process of court. No materials has been collected by the Investigating Officer to substantiate that the petitioner was consuming a narcotic drug or**

[13] Crl.M.C.No.9931 of 2023 decided on 5-12-2023

psychotropic substance. The same view was taken by this Court in the order dated 27.06.2023 in Crl. M.C No. 3609/2023. In the light of the same this Criminal Miscellaneous Case can be allowed."

19.4. The State of Telangana in **CHALLAPALLY BHARGAV SAI v. STATE OF TELANGANA**[14] has held as follows:

"..... ....

17 . As extracted supra, **to make out an offence under Section 27 of NDPS Act, consumption of narcotic drug or psychotropic substance is to be made out. It is settled law that to bring home the contents of Section 27 of NDPS Act against petitioner, the individual must be tested positive for arty of the banned substance uncler NDpS Act. It is the responsibility of the State to establish that petitioner/accused is under the influence of any oi the banned substance.In the absence of any, documentary evidence/test, an adverse inference can be drawn**."

(Emphasis supplied at each instance)

This Court in **HANUMANTHA** *supra* has recognized this principle and the High Court of Kerala in **DEON JOSEY** and again in the case of **ANURAG SHAJI** has emphatically held that in the absence of material demonstrating consumption, the prosecution cannot be sustained under Section 27. Similarly, the High Court of Telangana in **CHALLAPALLY** *supra* has held that the consumption of a

[14] Crl.P.No.15414 of 2024 decided on 16-04-2025

narcotic or psychotropic substance can be established, only where the individual tests positive for such substance.

20. **Thus, the legal position is unambiguous. The fulcrum of Section 27(b) is consumption. The fulcrum of providing such consumption is the blood sample. The legitimacy of such blood sample is contingent upon a lawful medical examination. The medical examination in turn, is governed by Section 51 of the BNSS, which can be set into motion, only upon the lawful arrest.** In the present case, this chain stands irreparably broken at its very inception. **The arrest itself has been found to be unlawful. Consequently, the medical examination conducted pursuant thereto is vitiated. The blood sample being a derivative of that illegality stands tainted and the medical report founded upon the tainted sample, cannot be accorded any evidentiary value. In the absence of a legally obtained forensic report, it is wholly inconceivable as to how the petitioner can be compelled to undergo the rigors and ordeal of a criminal trial.** To permit such prosecution to continue would be to sanction a process built

entirely upon illegality. Accordingly, the proceedings initiated against the petitioner, solely predicated on the alleged consumption of cocaine, under Section 27(b) of the Act, cannot be sustained and would merit obliteration.

SUMMARY OF FINDINGS:

(1) Section 51 of the BNSS, which governs medical examination can be invoked only upon the existence of a lawful arrest. In the absence of such arrest, the collection of a blood sample is impermissible in law.

(2) A lawful arrest necessitates strict compliance with statutory safeguards including communication of the grounds of arrest, recording of reasons and adherence to all mandatory procedural requirements. Where a blood sample is produced pursuant to an illegal arrest, the resulting medical and forensic report stands vitiated and cannot be relied upon by the prosecution.

(3) The charge is solely founded upon the alleged consumption of a narcotic substance, as inferred from the blood sample. Once the blood sample itself is held to be illegally obtained, the very substratum of the prosecution case collapses, consequently, the

continuation of proceedings against the petitioner would amount to an abuse of the process of the law and cannot be permitted.

21. For aforesaid reasons, the following:

O R D E R

(i) Criminal Petition is **allowed.**

(ii) Proceedings in Special Case No.1182 of 2025 pending before VIII Additional District and Sessions Judge and Special Judge for NDPS cases at Bangalore Rural District and all actions leading to the said special case stand quashed qua the petitioner/accused No.12.

(iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against other accused.

Consequently, I.A.No.2 of 2026 also stands disposed.

SD/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:MJ