

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.13953 OF 2024

ORDER:

Heard Sri Gandra Mohan Rao, learned Senior Counsel representing Mr. T.V. Ramana Rao, learned counsel for the petitioner and Sri Palles Nageswar Rao, learned Public Prosecutor.

2. The present Criminal Petition is filed under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2024 (for short, 'BNSS'), to quash the docket order dated 13.11.2024 passed by the learned Judicial Magistrate of First Class at Kodangal, Vikarabad (for short, 'the Magistrate') in Cr.No.153 of 2024 of Bomraspet Police Station.

3. The petitioner is an Ex-MLA. He is an accused No.1 in the aforesaid crime. The offences alleged against the petitioner herein are under Sections 61 (2), 49, 191(2), 191(3), 132, 109, 121(1), 126(2), 336(4), 324(4) read with 49 and 190 of Bharatiya Nyaya Sanhita, 2023 (for short, 'BNS') and Section 3 of the Prevention of Damage to Public Property Act, 1984 (for short, 'PDPPA') and Section 128 of BNSS.

4. On the complaint lodged by the Sub Divisional Police Officer, Vikarabad Sib-division (respondent No.2), the Police Bomraspet Police Station registered the aforesaid crime against the petitioner herein for the aforesaid offences. The Investigating Officer arrested the petitioner on 13.11.2024 and produced before the Magistrate on 13.11.2024 at 4.10 P.M. Vide docket order dated 13.11.2024, the Magistrate remanded the petitioner/A.1 and other accused to judicial custody till 27.11.2024. Challenging the said order, the petitioner/A.1 filed the present petition to quash the same.

5. The allegations leveled against the petitioner in the complaint dated 11.11.2024 are as follows:-

On 11.11.2024, the District Collector, Special Officer, Kodangal Urban Development Authority, hereinafter referred to as 'KADA' and other officials went to the outskirts of Lagcherla Village for the purpose of conducting public hearing with regard to establishment of Pharma Company. Villagers and other stakeholders were not found there to participate in the public hearing. A.2 informed the District Collector and other officials

stating that nobody will come to the said place of meeting and they have to conduct public hearing at Lagcherla village. They can hold gramsabha in the village. Thereafter, the District Collector and other officials believed his version bonafidely and went to Lagcherla village in his car bearing No.TS 07 EV 2929. Other officials including defacto-complainant followed them to the village.

6. It is further alleged that in Lagcherla village, the people of Lagchrela, Rotibanda Thanda, Pulicherlakunta Thanda formed themselves into an unlawful assembly with stones, sticks and Chilli powder. At about 12.20 hours, when all the officials including the Collector reached Lagcherla village, accused and others raised slogans against the District Collector saying that 'go back Pharma'. They have also obstructed the Collector's vehicle and also Special Officer, KADA. They have attacked the Collector. They have also attacked the defacto-complainant with stones, sticks and chilli powder. They have also damaged Collector's vehicle. When Special Officer, KADA tried to convince the accused and other people, they have attacked him. In the said attack, he received

injuries on the left hand, back side of his neck and right leg etc. He has saved himself, otherwise they would have killed him. Thus, all the accused formed into unlawful assembly, tried to kill the Collector, Special Officer, KADA and other officials for conducting public hearing.

7. It is relevant to note that the name of the petitioner is not there in the said complaint. During the course of investigation, his name was shown as A.1 and he was arrested on 13.11.2024, remanded to judicial custody till 27.11.2024 vide impugned docket order dated 13.11.2024.

8. The allegation leveled against the petitioner herein is that he is the prime conspirator who played vital role in preparation and provoking the farmers of Hakimpet, Polepally, Rotibanda Thanda, Pulicherlakunta and Lagcherla of Dudyal Mandal, by directing the accused B.Suresh to the affected villages for brain washing indoctrinate the minds of farmers against the government policy. He has also provided all amenities including financial and moral assistance to the accused and diverted the attention of the accused in order to create hurdles to the government officials by

attacking them with an intention to kill them while conducting survey or public hearing at the time of land acquisition, otherwise, it will be difficult to them. They have also abetted the accused B.Suresh, saying that their prominent party leader will look after them by supporting from all angles in that regard. Thus, the acts of the petitioner/A.1 constitutes the aforesaid offences.

9. CONTENTIONS OF THE PETITIONER:

- i) Investigating Officer did not follow the principles of arrest as laid down by the Apex Court in **D.K.Basu vs. State of West Bengal**¹. The said aspect was not considered by the learned Magistrate in the impugned order.
- ii) There are no reasons to believe and grounds to arrest the petitioner and to send him to judicial remand.
- iii) The grounds of arrest were not served on the family members of the petitioner/A.1 as per the procedure laid down under BNSS.
- iv) There were no injuries to the victim. Even medical certificate of the injured shows that all the injuries are simple injuries,

¹ (1997) 1 SCC 416

there is a question mark in the certificate before grievous injury.

- v) The arrest of the petitioner is in violation of the procedure laid down under BNSS and Article 22 of the Constitution of India.
- vi) The Magistrate without considering the said aspect without even conducting enquiry, remanded the petitioner to judicial custody till 27.11.2024, therefore, the impugned docket order dated 13.11.2024 is illegal.
- vii) The petitioner was arrested at KBR park while he was walking.
- viii) Thus, the impugned docket order is illegal.
- ix) Without considering the said aspects, learned Magistrate remanded the petitioner. Therefore, impugned docket order dated 13.11.2024 is liable to be quashed.

10. **CONTENTIONS OF THE PUBLIC PROSECUTOR:**

Whereas, learned Additional Advocate General contended as follows:-

- i) There are serious allegations against the petitioner herein.

- ii) He is the prime conspirator.
- iii) Though the petitioner's name is not mentioned in the complaint, during the course of investigation, the Investigating Officer found that the petitioner is the prime conspirator, he has rendered assistance to other accused in all respects including financial and moral. He has conducted meetings before 11.11.2024 and provoked the villagers of Lagcherla, Rotibanda Thanda and Pulicherlakunta.
- iv) He has provoked them saying that they have to resist the public hearing seriously by taking all necessary steps and send away the Collector and other officials including the Chief Minister etc., from the said village.
- v) The petitioner was arrested at his residence and not at KBR park.
- vi) The role played by the petitioner, both pre-incident and post-incident were specifically mentioned in the remand report.

- vii) There is no violation of any provision of BNSS and Constitution of India while effecting arrest of the petitioner.
- viii) The petitioner has already filed an application seeking bail.
- ix) The petitioner and his wife are filing one petition or the other to get over from the offences committed by him.
- x) The petitioner along with other accused tried to kill the District Collector and other officials who attended public hearing.
- xi) On consideration of the said aspects only, vide impugned order dated 13.11.2024, learned Magistrate remanded the petitioner to judicial custody.
- xii) There is no error in it.

11. Both Sri Gandra Mohan Rao, learned Senior Counsel and Sri Palle Nageshwar Rao, learned Public Prosecutor made their submissions, referring to provisions of BNSS, Constitution of India, placing reliance on the principle laid down by the Apex Court and various High Courts.

FINDINGS OF THE COURT:

12. As discussed supra, this application is filed under Section 528 of BNSS to quash the impugned docket order dated 13.11.2024 in Cr.No.153 of 2024. The petitioner is A.1 in the said crime. The petitioner is not seeking to quash the proceedings in Cr.No.153 of 2024 and stay of investigation in the said crime. He has challenged the impugned docket order dated 13.11.2024 passed by the learned Magistrate remanding him to judicial custody. According to the learned Senior Counsel appearing for the petitioner, the Police did not follow the principle laid down by the Apex Court while effecting his arrest and also the procedure laid down under BNSS and Constitution of India. Therefore, his arrest is in violation of the procedure laid down under BNSS and Constitution of India and the same is in violation of the principles laid down by the Apex Court.

13. Whereas, according to the learned Public Prosecutor, there is no violation of any of the provisions of BNSS or Constitution of India while effecting the arrest of the petitioner.

There is no violation of principle laid down by the Apex Court or various High Courts including this Court.

14. In the light of the aforesaid submissions, it is relevant to note that Chapter V of the BNSS deals with the arrest proceedings and the circumstances under which the police may arrest a person without warrant.

15. Section 35 deals with when police may arrest without warrant, which is relevant and it is extracted below:-

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.

16. Section 36 of the BNSS deals with the procedure of arrest and duties of officer making arrest which is relevant and extracted below:-

36. Procedure of arrest and duties of officer making arrest.

Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest.

17. Section 37 of BNSS deals with the designated Police Officer who can effect arrest which is also relevant and extracted below:-

37. The State Government shall—

(a) establish a Police control room in every district and at State level;

(b) designate a police officer in every district and in every police station, not below the rank of Assistant Sub-Inspector of Police who shall be responsible for maintaining the information about the names and addresses of the persons arrested, nature of

the offence with which charged, which shall be prominently displayed in any manner including in digital mode in every police station and at the district headquarters.

18. Section 38 of BNSS deals with the right of arrested person to meet advocate of his choice during interrogation and the same is also extracted below:-

38. When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

19. Section 47 of BNSS deals with the person arrested to be informed of reasons/grounds of arrest and his/her right to bail which is relevant and extracted below:-

47. (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf

20. Section 48 deals with the information to be given to friend or relative or the person nominated by him to inform about arrest and the place where he is going to be held etc., which is relevant and extracted below:-

48. (1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

21. Section 53 deals with the examination of the arrested person by medical officer which is relevant and extracted below:-.

53. (1) When any person is arrested, he shall be examined by a medical officer in the service of the Central Government or a State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner:

Provided further that if the registered medical practitioner is of the opinion that one more examination of such person is necessary, she may do so.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

22. Section 62 deals with arrest to be made strictly in accordance with the provisions of BNSS.

62. No arrest shall be made except in accordance with the provisions of this Sanhita or any other law for the time being in force providing for arrest.

23. Article 21 of Constitution of India says as follows:-

21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

24. Article 22(1) and (2) of Constitution of India says as follows:-

22. Protection against arrest and detention in certain cases

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

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the

magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

25. In **D.K.Basu** (supra) the Apex Court laid down certain 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 Organization 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 tahsils 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.

26. The Apex Court also held that failure to comply with the aforesaid requirements shall apart from rendering the official concerned liable for departmental action and 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.

27. The aforesaid requirements flow from Article 21 and 22(1) of the Constitution of India and need to be strictly followed. The said requirements are in addition to the constitutional and the statutory safeguards and do not distract from various other directions given by the Courts from time to time in connection with safeguarding of the rights and dignity of the arrestee.

28. In **Pankaj Bansal vs. Union of India**², the Apex Court held that passing of an order of remand would not be sufficient in itself to validate the arrest of the appellants' therein, if such arrest is not in conformity with the requirements of Section 19 of the Prevention of Money Laundering Act (hereinafter referred to as 'PMLA').

29. Since the very validity of the remand orders being under challenge, issue as to whether the arrest of the appellant was lawful inception, has to be considered by the Court. In the said case, the Enforcement Directorate (ED) arrested the petitioners' father and

² (2024) 7 SCC 576

produced before the vacation Judge. In the said case, two ECIRs were registered against them. The petitioners were arrested by ED in connection with first ECIR in exercise of power under Section 19(1) of the PMLA. Arrested persons were produced before the learned Vacation Judge/learned Additional Sessions Judge, Panchkula. They were served with remand application filed by ED. Vide order dated 15.06.2023, learned Vacation Judge/Additional Sessions Judge, Panchkula, held that custodial interrogation of the arrested persons was required and granted their custody for 5 days.

30. Therefore, on the basis of the material in possession of the official arresting a person is sufficient to believe, the reason for such belief to be recorded in writing that the person guilty of an offence punishable under the said Act.

31. It was further held that Article 21 of the Constitution of India provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying

information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose.

32. Relying on the principle laid down by the Apex Court in **Pankaj Bansal** (supra), in **Prabir Purkayastha vs. State (NCT of Delhi)**³, the Apex Court held that there is a significant difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest’. The ‘reasons for arrest’ as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making 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 Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of

³ (2024) 8 SCC 254

the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

33. On examination of the facts of the case therein and by holding that the ED did not follow the procedure laid down holding that the procedure laid down under law was not followed while arresting the accused therein, the Apex Court directed the appellants therein to be released.

34. In the aforesaid two judgments, the offences alleged against the accused therein are under the provisions of Prevention of Money Laundering Act. Section 19 of the PMLA deals with power of arrest and it says that if the Director, Deputy Director, Assistant Director or any other Officer authorized in this behalf by the Central Government by General or Special Order, has on the basis of material in his possession reason to believe, the reason for

such belief to be recorded in writing, that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

35. Learned Public Prosecutor in support of his case relied upon the decisions of the Apex Court and other High Courts in **Sunil Kundu vs. State of Jharkhand**⁴, **Ashok Chandrej Singh vs. CBI-EOW**⁵, **Pragyna Singh Thakur vs. State of Maharashtra**⁶, **P.Chidambaram vs. Directorate of Enforcement**⁷, **Hema vs. State through Inspector of Police, Madras**⁸, to contend that the Investigating Officer followed the procedure laid down under BNSS and there is no irregularity.

36. In the light of the aforesaid provisions of the Act and Constitution of India, the law laid down by the Apex Court and various High Courts, coming to the facts of the case on hand, as discussed supra, the petitioner is A.1 in Cr.No.153 of 2024 and he

⁴ (2013) 4 SCC 422

⁵ (2018) SCC Online Bom 1327

⁶ (2011) 10 SCC 445

⁷ (2019) 9 SCC 24

⁸ (2013) 10 SCC 192

was arrested on 13.11.2024. Vide impugned order dated 13.11.2024, he was remanded to judicial custody till 27.11.2024.

37. In the impugned remand order itself, learned Magistrate specifically recorded the following aspects.

- a. A.1 along with other accused were produced before him on 13.11.2024 at 4.10 P.M. through SIP, Bonraspet Police Station. through the Circle Inspector of Police Kodangal, Escort PC No.7881, 10411, 10579 and HC No.566.
- b. On enquiry by the Magistrate, the petitioner and other accused informed the Magistrate that copies of the Remand Case Diary and documents along with it are supplied to them.
- c. Learned counsel for A.1 i.e. Sri Madhusudhan Reddy, submitted that A.1 arrest intimation was not given to his family members.
- d. On enquiry, the Investigating Officer informed the Magistrate that at request of the petitioner, his arrest

intimation was given to his follower by name Mr. Saleem.

- e. On enquiry with the petitioner and others, they have stated that they have means to engage an Advocate of their choice.
- f. The petitioner and other accused reported no ill-treatment in the hands of the Police.
- g. Medical Certificate attached to the Remand Case Diary was also perused by the Magistrate.
- h. Provisions of Sections 47, 48 and 53 of BNSS were also complied with.
- i. Learned Magistrate considered the judgment relied upon by the defence counsel in **Prabir Purkayastha** (supra) and held that he has satisfied with the reasons mentioned by the Investigating Officer in check list and Remand Case Diary in effecting the arrest of the petitioner.
- j. Learned Magistrate also referred the principle laid down by the Apex Court in **Manubai Ratilal Patel Ushaben**

vs. State of Gujarat⁹ wherein it was held that act of directing the remand of an accused is fundamentally a judicial function. The learned Magistrate does not act in executive capacity while ordering the detention of accused. While exercising this judicial act, it is obligatory on part of the Magistrate to satisfy himself whether materials placed before him, justify such a remand or to put it differently. Whether their reasonable ground to commit accused to custody and extend the remand. The purpose of the remand as postulated under Section 187 of BNSS is that the investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is reality, necessary. This requires the investigation agency to send the case diary along with the remand report so that Magistrate to appreciate the factual scenario, whether there is warrant of police remand or justification for judicial remand or there is no need for remand at all. It is obligatory on part of the Magistrate to pass appropriate order.

⁹ 2023 CrI.L.J. 160

k. On perusal of the material including Remand Case Diary and its enclosures, learned Magistrate came to a *prima facie* conclusion that the allegation leveled against A.1 and others for the offences under Sections 61 (2), 49, 191(2), 191(3), 132, 109, 121(1), 126(2), 324(4) read with 109 BNS and Section 3 of PDPPA are well founded.

l. There is *prima facie* material available against A.1 and others for the aforesaid offences and therefore, they were remanded to judicial custody till 27.11.2024.

Learned Magistrate considering the above aspects including the submissions made by learned counsel for the petitioner that the petitioner is suffering from high B.P, SOB, kidney problem etc. directed the Superintendent of Cherlapally Central Jail, to provide necessary medical assistance to A.1 to continue medical assistance and to provide home food to all the accused persons. Therefore, he was justified in remanding the petitioner herein including the other accused.

38. In the Remand Case Diary, the Investigating Officer mentioned the following reasons for effecting arrest of the petitioner/A.1:-

- 1) The quantum of punishment for the offence U/sec. 109 BNS committed by the accused persons is more than seven years.
- 2) Arrest of accused persons are necessary in order to prevent the accused persons from committing any further offence.
- 3) In order to prevent the accused from making any inducement, threat or promise to any person acquainted with the facts of the case, so as to disused him/them from disclosing such facts to the court of the police officer,
- 4) As unless the accused is arrested his/her/their presence in the court whenever required cannot be ensured,
- 5) To maintain public order and peace in the area.
- 6) The act of the accused persons regarding attacking on Govt. officials with an intention to kill with criminal conspiracy is harmful to the individual, harmful to the society, an impediment to the progress of science or humanity, a source of humanity, a source of immoral acts or customs.
- 7) The acts of the accused persons regarding attacking on Govt. officials with an intention to kill with criminal conspiracy which may leading to maintenance of harmony or feelings of enmity, hatred or ill-will between public and Govt. Officials
- 8) The acts of the accused persons, which disturbs or is likely to disturb the public tranquility and peace and also likely to cause fear or alarm or a feeling of insecurity amongst of Govt. employees as well as Govt. officials.
- 9) Moreover this is case of attack on Govt. officials with an intention to kill by causing obstruction to the Govt. officials while discharging their duties by causing damage to their vehicles in order to destabilize/deteriorate the Govt. as such the accused persons is/are being sent to judicial remand.

10) The Issue and the criminal acts of the accused persons were got circulated and published through social media and also telecasted in electronic mode in which clearly shows the criminal intension of the accused persons with well preparedness to kill the officers.

The Investigating Officer also referred the call data of A.1 with other accused and also basing on the evidence collected during investigation, came to *prima facie* conclusion that the petitioner herein is a prime conspirator. He has rendered assistance to other accused including financial, moral etc. Therefore, according to the Investigating Officer effecting the arrest of the petitioner is compulsory.

39. Perusal of the impugned order dated 13.11.2024 would also reveal that the petitioner/A.1 has already engaged counsel. His counsel has also placed reliance on the principle laid down by the Apex Court in **Prabir Purkayastha** (supra). Therefore, learned Magistrate heard learned counsel for the petitoenr/A.1 on various aspects. In the docket order dated 13.11.2024, learned Magistrate specifically mentioned that at request of A.1, his arrest intimation was given to his follower by name Mr.Saleem.

40. Section 48 of BNSS obligates the Investigating Officer to inform about the arrest of the petitioner to his relative or friend. Section 48(1) of BNSS also says that the Investigating Officer shall forthwith give information regarding arrest of the petitioner and place where the arrested person is being held to any of his relative, friend or such other person as may be disclosed or nominated by arrested person for the purpose of giving such information and also to the designated Police Officer in the District. Thus, it is not mandatory for the Investigating Officer to inform arrest of the petitioner only to his wife or relative. Information can be given to friend or any person disclosed or nominated by the petitioner/A-1.

41. In the present case, according to the Investigating Officer, the information was given to Mr.Saleem, the follower of the petitoenr/A.1 as requested by the petitioner/A.1. Learned Magistrate enquired the said fact with the Investigating Officer. Thus, there is no error in it.

42. It is further contended by the learned Senior Counsel appearing for the petitioner that the Investigating Officer, arrested the petitioner at KBR park, while he was walking. According to the

learned Public Prosecutor, the petitioner was arrested at his residence. As discussed supra, it is not mandatory that the police have to arrest the petitioner only at his residence. Even in the affidavit filed by the petitioner attested by Deputy Superintendent, Central Prison, Cherlapally, the petitioner has specifically mentioned that on 11.11.2024 at 7.00 A.M., while he was moving at KBR Park, Hyderabad, the Police people came in civil dress and forcibly took him into custody, thrown into their vehicle. Therefore, the petitioner cannot contend that he was arrested at KBR Park while walking. The petitioner filed photographs along with memo dated 20.11.2024 to contend that the Police have forcibly arrested the petitioner by throwing him into vehicle. This Court cannot take cognizance of photographs filed by the petitioner to come to a conclusion that the petitioner was illegally arrested. The Apex Court in **Samant N.Balakrishna Etc. vs. George Fernandez**¹⁰, categorically held that this Court cannot take cognizance of article published in newspapers etc.

43. Learned Public Prosecutor filed pen drive to show that the petitioner is the main conspirator and as part of the said

¹⁰ 1969 AIR 1201

conspiracy, the petitioner visited Lagcherla village prior to the incident and post-incident. This Court viewed the said pen drive and basing on the same, this Court is not in position to come to a conclusion, however, it is for the trial Court to consider the same. The aforesaid facts would reveal that there is no violation of the provisions of BNSS and the principle/directives of the Apex Court while arresting the petitioner/A.1. There is no violation of any of the provisions of the Constitution of India.

44. Learned Magistrate made enquiries and observed that the police have followed the entire procedure laid down under law while effecting the arrest of the petitioner. He has also made enquiry with the petitioner with regard to furnishing of copies etc. Investigating Officer categorically mentioned the aforesaid reasons for effecting the arrest of the petitioner. Learned Magistrate considered the grounds of arrest and reasons for arrest of the petitioner. The information was given to the petitioner's follower by name Mr. Saleem on the request made by the petitioner. The petitioner has also engaged an advocate who resisted the order dated 13.11.2024 by placing reliance on principle laid down by the

Apex Court and provisions of BNSS. Learned Magistrate considered the said aspects. The petitioner/A.1 has also filed an application seeking bail and the same is pending. The police have also filed an application seeking custody of the petitioner and the same is also pending. On the submission made by the learned counsel for the petitioner, learned Magistrate directed the Superintendent, Central Jail, Chenchalguda to provide necessary medical assistance to the petitioner to continue the same and also to provide home food. In the affidavit filed by the petitioner, he has specifically stated that he was taken to Government Hospital, Pargi, after his medical checkup produced before the Magistrate. During the course of hearing, it is brought to the notice of this Court that the petitioner's wife filed a writ petition and this Court permitted the petitioner to have home food.

45. The aforesaid facts would reveal that the Investigating Officer has mentioned the reasons for arrest of the petitioner and also the grounds of arrest.

i) He has mentioned the time and place of arrest of the petitioner.

ii) The petitioner engaged a lawyer, who appeared before the learned Magistrate and resisted the remand. He has also requested the learned Magistrate to provide medication for the diseases he is suffering.

iii) The Investigating Officer also served information of arrest on Mr. Saleem, follower of the petitioner as requested by the petitioner.

iv) the petitioner was subjected to medical examination. The said fact was also mentioned in the impugned order and the affidavit filed by the petitioner.

v) On enquiry, the petitioner informed the learned Magistrate that there was no ill-treatment.

vi) Learned Magistrate made all the enquiries and considered the procedure laid down under BNSS and also the principle laid down by the Apex Court. Thus, there is no violation of provisions of BNSS, more particularly Sections - 36, 37, 38, 47, 53 and 62, Articles 21 and 22 of the Constitution of India and directives of the Apex Court in **D.K.Basu** (supra).

46. In the light of the aforesaid discussion, the contentions of Sri Gandra Mohan Rao, learned Senior Counsel appearing for the petitioner that police did not follow the procedure laid down under BNSS and also principles laid down by the Apex Court and various High Courts including this Court while effecting arrest of the petitioner are untenable. The learned Magistrate is perfectly right in remanding the petitioner/A.1 to judicial custody on satisfying himself that all the facts, material, perusal of remand case diary, its enclosures, the allegations levelled against the petitioner herein and others for the aforesaid offences are well-founded and that *prima facie* material is available against the petitioner/A-1 and other accused. The impugned order is reasoned and well founded. It does not require any interference by this Court. Therefore, the same is liable to be dismissed.

47. In the result, this Criminal Petition is dismissed. However, it is made clear that the learned Special Judge at Hyderabad for Speedy Trial and Disposal of Cases on Fraudulent Drawls and Misappropriation of Scholarship Amounts in Social Welfare, Tribal Welfare and Backward Classes Departments

(Embezzlement of Funds in Social Welfare Department) - cum - II
Additional Special Judge for trial of SPE & ACB Cases,
Hyderabad, shall decide the bail application filed by the petitioner
on merits without being influenced by any of the observations
made by this Court in this order.

As a sequel, miscellaneous petitions, if any, pending in the
criminal petition shall stand closed.

Date: 04.12.2024
vvr

K. LAKSHMAN, J