



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

[3525]

**TUESDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 5444/2025

Between:

Motakatla Jhansi Vani Reddy,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PAPUDIPPU SASHIDAR REDDY

Counsel for the Respondent(S):

1.THE ADVOCATE GENERAL

The Court made the following order: *(per Hon'ble Sri Justice R Raghunandan Rao)*

The 4th respondent, who is also the 5th respondent, arrested the detenue on 24.02.2025 at 9.00 P.M. and produced the detenue before the Learned III Additional Judicial Magistrate of First Class FAC, Vijayawada, at 5.45 P.M. on 25.02.2025. The Magistrate, after going through the remand report, returned the remand report with the endorsement that the intimation of arrest was not given to the accused and that the remand report did not contain all the Sections which are added to the alteration memo.

2. The subsequent remand order of the Magistrate shows that the remand application was returned for compliance and that the Police had re-submitted the record at 11.10 P.M. The Police Authority is said to have given another notice under Section 47 (1) of BNSS to the detainee, who refused to receive the same. The Magistrate recorded that, the case record shows that the accused was informed of the reasons for arrest but refused to receive the arrest intimation. On enquiry by this Court, he has stated that he refused to receive the notice. The Magistrate further recorded that the arrest intimation, filed under Section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023 (here-in-after referred to as "BNSS"), and oral enquiry of this Court the accused refused to receive arrest intimation as such, the detainee is said to have received the notice.

3. The remand order also recorded the statement of the counsel, appearing for the detainee, that arrest intimation of the detainee was given to his relatives through whatsapp, which is not proper intimation. The further statement, recorded in the remand order, was that the detainee was produced at 5.45 P.M. and arrest intimation was received by the cousin of the accused. Thereafter, a second whatsapp message was sent to the cousin of the detainee.

4. The petitioner, who is the wife of the detainee, moved this Court, by way of the present Writ Petition, contending that the remand of the detainee by the Magistrate is in clear violation of Section 47 (1) of BNSS.

5. The learned Government Pleader appearing for the State contends that the notice under Section 47 (1) of BNSS was sought to be served on the detainee at the time of his arrest and he had refused to receive the same. Due to this fact, notice of intimation of arrest, required under Section 47 (1) of BNSS, could not be placed before the Magistrate. The learned Government Pleader would contend that the detainee remained in the Court of the Magistrate till the remand report got resubmitted along with the statement that notice could not be served on the detainee on account of his refusal to receive the intimation of arrest.

6. The learned Government Pleader would submit that the detainee was produced before the Magistrate within 24 hours of arrest and that the return of the remand report and resubmission of the remand report is in accordance with law and that there is no violation of Section 47 (1) of BNSS.

7. Section 47 (1) of BNSS reads as follows:

“47. Person arrested to be informed of grounds of arrest and of right to bail.

(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.”

The plain language, of Section 47 (1) of BNSS, is that any person, who is arrested, has to be “forthwith” communicated with all the particulars for which he is being arrested or any other ground for such arrest.

8. The detenue was produced before the Magistrate along with the remand report. The remand report only stated that the detenue was arrested at Kaza Toll Plaza at 9.00 P.M. on 24.02.2025 and that the detenue was informed about the offence. There is no statement in the remand report that the detenue had refused to receive the intimation under Section 47 (1).

9. In the circumstances, keeping in view the endorsement of the Magistrate on the remand report that intimation under Section 47 (1) of BNSS has not been served on the detenue, this Court has no hesitation in holding that intimation under Section 47 (1) of BNSS was not served on the detenue nor was any step taken to serve such intimation on the detenue.

10. Non-intimation, required under Section 47 (1) of BNSS, would render any further detention of the person illegal. The word “forthwith” makes it amply clear that intimation under Section 47 (1) of BNSS has to be served at the time of arrest or immediately thereafter. The Hon’ble Supreme Court in the case of ***Prabhir Purkayastha Vs. State (NCT of Delhi)***¹ had held that violation of such provision would render the arrest illegal. The Judgment in ***Prabhir Purkayastha (1-supra)*** came to be delivered under the provisions of the Prevention of Money Laundering Act, 2002. A Division Bench of this Court

¹ (2024) 8 SCC 254

in the case of **Pappula Chalama Reddy vs. State of Andhra Pradesh and Others**², had held that the principles laid down in the case of **Prabhir Purkayastha (1-supra)** would be applicable to even cases under BNSS. The principle laid down by the Hon'ble Supreme Court in **Prabhir Purkayastha (1-supra)** is extracted below:

“28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the ‘grounds’ of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Noncompliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.”

11. The further question of the maintainability of the Writ Petition, in view of the fact that there is an order of remand by the appropriate Magistrate, would also arise. A Division Bench of this Court, in the case of **Pappula Chalama Reddy (2-supra)**, had held, following the Judgments of the Hon'ble Supreme Court, that in the normal course, a Writ of Habeas Corpus would not

² 2024 SCC OnLine AP 5532

be maintainable where an order of remand has already been passed by the appropriate Magistrate. However, the Division Bench had also held that the said bar would not operate where the Magistrate has passed an order without application of mind.

12. In the present case, the Magistrate after finding that intimation of arrest, under Section 47 (1) of BNSS had not been given, should have immediately set the detinue at liberty. Instead of taking this step, the Magistrate returned the remand report for subsequent compliance.

13. The action of the Magistrate, in returning the remand report, for subsequent compliance, is an act of clear non-application of mind. The provisions of Section 47 (1) of BNSS are mandatory and peremptory. Violation of this provision can only result in a declaration that the arrest and subsequent detention is invalid.

14. The learned Government Pleader would further contend that even if the initial arrest is invalid, the Investigating Officer can always re-arrest the detinue and relied upon a Judgment of the Hon'ble High Court of Allahabad in the case of ***Rama Kant vs. State***³. He would contend that there was a rearrest of the detinue.

15. A perusal of the remand report does not show that there was a rearrest. Infact, the remand report continues to show only the arrest at 9.00

³ 1988 SCC OnLine All 259

P.M. on 24.02.2025. In the circumstances, the order of remand passed by the Learned III Additional Judicial Magistrate of First Class FAC, Vijayawada, dated 25.02.2025, is set aside and the detenue is to be set at liberty.

16. It is informed that the detenue is presently lodged in the District Jail, Nellore. The Jail Superintendent, District Jail, Nellore, shall set the detenue at liberty, upon receipt of this order.

17. However, this order does not preclude the respondents from continuing the investigation or to take any other step that they deem fit, in accordance with law.

18. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

Dr. K MANMADHA RAO, J

Date: 11.03.2025
MJA

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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HONOURABLE SRI JUSTICE Dr. K MANMADHA RAO

WRIT PETITION No: 5444 of 2025

(per Hon'ble Sri Justice R Raghunandan Rao)

11.03.2025

MJA