



2026:AHC:129758-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 518 of 2026

(Along with Criminal Misc. Writ Petition No. 27881 of 2025)

Achal Kumar Gupta

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Petitioner(s)	: Mr. Anil Kumar Tiwari, Senior Advocate along with Mr. Kabeer Tiwari, Advocate
Counsel for Respondent(s)	: Mr. Manish Goyal, Additional Advocate General along with Mr. Arvind Kumar, Additional Government Advocate for the State-respondents

RESERVED

Court No. - 2

**HON'BLE J.J. MUNIR, J.
HON'BLE TARUN SAXENA, J.**

(DELIVERED BY : J.J. MUNIR, J.)

This habeas corpus writ petition has been filed by the petitioner, seeking a *rule nisi* to produce the petitioner, and upon production, direct

passed in Case Crime No. 4 of 2026 under Sections 420, 467, 468, 471, 102 of the Indian Penal Code, 1860¹, Police Station Ganga Nagar, District Meerut. The petitioner has challenged B-warrant dated 04.02.2026 as well as remand order dated 10.02.2026 as a process and order made in violation of the interim order of this Court dated 10.02.2026 passed in Criminal Misc. Writ Petition No. 27881 of 2025, ordering the petitioner to be released forthwith in Case Crime No. 453 of 2025, under Section 318(4), 338 and 336(3) of the Bharatiya Nyaya Sanhita, 2023², Police Station Beta 2, Gautam Buddha Nagar. The order of release from custody in Case Crime No. 453 of 2025 was passed by this Court on ground that the grounds of arrest mentioned in the arrest memo were not specific, rendering the arrest illegal.

2. The nutshell of the petitioner's case is that before he could be physically released from custody, in compliance with the order dated 04.02.2026 passed by this Court in Criminal Misc. Writ Petition No. 27881 of 2025, he was got summoned by the Court of the Additional Chief Judicial Magistrate, Court No. 7, Meerut on a B-warrant dated 06.02.2026, and upon production, remanded to judicial custody by the order dated 10.02.2026. The petitioner says that since he was not in lawful

the aforesaid B-warrant and the subsequent remand are both illegal, rendering his detention in Crime No. 4 of 2026 (*supra*) illegal from the inception of it. The petitioner, therefore, says that he is entitled to a habeas corpus, ordering him to be released from illegal custody.

3. We must remark that if pursuant to processes, that are so illegal that they are void, the petitioner is in custody, which is illegal as well, the reliefs for quashing the B-warrant and the remand order initially sought, and subsequently added through amendment, would not at all be necessary. The Office of a Habeas Corpus Petition is confined to determining the legality of the detention, and, if the detention is *per se* illegal, any order authorising it contrary to law would not stand in the way of a writ of habeas corpus being issued.

4. It is further clarified at this stage that the petitioner has also said that he was illegally produced through B warrant in the present case and unlawfully remanded, because his arrest in the earlier case was illegal and *non est*. This subsequent ground, we must remark here, cannot be the subject matter of challenge in this petition, because, that is already *sub judice* in Criminal Misc. Petition No. 27881 of 2025, where an interim order, directing the petitioner's immediate release, has been passed.

6. Crime No. 453 of 2025 (*supra*) was registered at Police Station Beta 2, Gautam Buddha Nagar on 30.09.2025 against the petitioner, carrying allegations, which primarily disclose dispute of a civil nature. The petitioner challenged the remand order dated 12.10.2025 and 13.10.2025 as well as the consequential proceedings arising out of his illegal arrest made on 11.10.2025 in connection with Crime No. 453 of 2025 by means of Criminal Misc. Writ Petition No. 27881 of 2025 before this Court. This Court, after considering the petitioner's case regarding the validity of his arrest and the consequential order of remand, held that the arrest was illegal on account of non-furnishing of specific grounds, and *vide* interim order dated 04.02.2026, while issuing notice to the respondents, ordered as follows :

24. Considering the facts and circumstances of the case and also the submissions urged by the learned Senior Counsel for petitioner as noted hereinabove, as an interim measure, it is provided that petitioner shall be released forthwith in Case Crime No. 453 of 2025 under Sections 318(4), 338, 336(3) of B.N.S., Police Station Beta-2, District Gautam Budh Nagar (Greater Noida, Commissionerate Gautam Buddh Nagar) arising out of FIR dated 30.09.2025.

7. In compliance of the order dated 04.02.2026 passed by this Court, the learned Chief Judicial Magistrate, Gautam Buddha Nagar passed an order, directing the jail authorities to release the petitioner on 07.02.2026. The learned Chief Judicial Magistrate directed the Jail Superintendent,

दिनांक 04.02.2026 को आदेश पारित किया गया है। जिस आदेश का अनुपालन किये जाने का निवेदन किया गया। समर्थन में माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांकित 04.02.2026 की प्रमाणित प्रतिलिपि भी प्रस्तुत की गयी है।

सुना तथा अवलोकन किया गया।

प्रस्तुत प्रकरण में प्रार्थी / अभियुक्त अचल कुमार गुप्ता की ओर से माननीय उच्च न्यायालय, इलाहाबाद में प्रस्तुत क्रिमिनल मिसलेनियस रिट पिटिशन संख्या-27881/2025 अचल कुमार गुप्ता बनाम उत्तर प्रदेश राज्य एवं चार अन्य में दिनांक 04.02.2026 को माननीय उच्च न्यायालय ने आदेश पारित किया है कि Considering the facts and circumstances of the case and also the submissions urged by the learned Senior Counsel for petitioner as noted hereinabove, as an interim measure, it is pro-vided that petitioner shall be released forthwith in Case Crime No. 453 of 2025 under Sections 318(4), 338, 336(3) of B.N.S., Police Station Beta-2, District Gautam Budh Nagar (Greater Noida, Commissionerate Gautam Buddh Nagar) arising out of FIR dated 30.09.2025. अतः माननीय उच्च न्यायालय के आदेश के अनुपालन में उक्त अभियुक्त अचल कुमार को प्रस्तुत प्रकरण में अविलम्ब रिहा किया जाये। आदेश की एक प्रति आदेश के अनुपालनार्थ जेल अधीक्षक, जिला कारागार को प्रेषित हो। लिपिक आदेश का अनुपालन किया जाना सुनिश्चित करें।

8. It is asserted by the petitioner that the said order was communicated to the jail authorities via e-mail by the learned Counsel for the petitioner on 07.02.2026 at 12:22 *post meridiem*. A copy of that communication is annexed to the record of the petition. It is the petitioner's case that despite the order of release, the petitioner was kept in custody on account of addition of Sections 340(2) and 61(1) BNS. The petitioner approached the learned Magistrate and was granted an order of release in respect of the added sections on 09.02.2026. The subsequent order of the learned Magistrate dated 09.02.2026, post addition of the sections directing release, reads :

प्रार्थी/अभियुक्त अचल कुमार गुप्ता के द्वारा प्रार्थना पत्र प्रस्तुत कर कथन किया गया कि माननीय उच्च न्यायालय द्वारा दाण्डिक प्रकीर्ण रिट संख्या-2788/2025 में पारित आदेश दिनांक 04.02.2026 के द्वारा प्रार्थी/अभियुक्त को रिहा किये जाने हेतु आदेशित किया गया। उपरोक्त आदेश में धारा 340(2) एवं 61(1) बीएनएस का समावेश न होने के कारण अभियुक्त को रिहा नहीं किया गया।

अतः उपरोक्त तथ्यों एवं परिस्थिति में प्रार्थी/अभियुक्त की रिहाई अंतर्गत धारा 340 (2), 61 (1) बी०एन०एस० में भी रिहा किये जाने का आधार पर्याप्त है।

अभियुक्त का रिहाई परवाना तदनुसार संशोधित होकर पुनः जिला कारागार प्रेषित है।

9. The petitioner asserts that notwithstanding the order dated 09.02.2026, directing release under the added sections granted by the learned Magistrate, he was illegally kept in custody, deliberately ignoring the orders directing immediate release made by this Court as well as the orders of the learned Magistrate dated 07.02.2026 and 09.02.2026, directing release in compliance with the orders of this Court dated 04.02.2026. It is pleaded that the aforesaid illegal detention, despite all these judicial orders, was on account of collusion between the jail authorities, the Police and the complainant, all acting in concert, knowing well that they would not be able to hold the petitioner in jail illegally for long.

10. An application was moved by the Police before the Court of the Additional Chief Judicial Magistrate, Court No. 7, Meerut, praying that grant of a B-warrant in Case Crime No. 4 of 2026, directing the petitioner's production from District Jail, Gautam Buddha Nagar before the learned Magistrate at Meerut, treating him to be in lawful custody in Case Crime No. 453 of 2025 in Gautam Buddha Nagar jail. The production, pursuant to the B-warrant dated 06.02.2026 issued by the

C.D. No. 13 dated 09.02.2026, pertaining to Crime No. 4 of 2026, the Investigating Officer³ failed to disclose any justifiable reason for the petitioner's non-production on the date fixed in the B-warrant and has merely stated that the B-warrant had been obtained and the petitioner was to be produced on the terms of the warrant on 09.02.2026, but, could not be produced before the learned Magistrate. There is absolutely no explanation for the delayed production, pursuant to the warrant on the date other than that mentioned in the said warrant.

11. A *rule nisi* was issued in this petition on 06.05.2026, ordering the detinue to be produced before this Court on 12.05.2026 at 02:00 *post meridiem*. He was produced before us on 12.05.2026, and the matter directed to be taken up again on 13.05.2026. The personal presence of Rajendra Kumar, Inspector, Special Crime Branch, Ganga Nagar, Meerut was exempted on 13.05.2026. It may be noted that on 12.05.2026, four affidavits were filed on behalf of the State, and on 13.05.2026, the petitioner filed rejoinders. The parties having exchanged affidavits by 13.05.2026, the matter was heard on that date, and the petitioner was directed to be sent back to custody wherefrom he was brought forth, pending delivery of judgment.

Goyal, learned Additional Advocate General assisted by Mr. Arvind Kumar, learned Additional Government Advocate on behalf of the State.

13. It must be noticed that the facts giving rise to the cause of action in the petition did not come to an end with what was said in the petition. The petitioner has been remanded in a further crime, pending the present habeas corpus petition, again through a B-warrant dated 02.05.2026 issued by the Additional Chief Judicial Magistrate at Ghaziabad *vide* remand order dated 04.05.2026. The petitioner, therefore, filed a supplementary affidavit dated 05.05.2026 to bring the aforesaid facts on record. The relevant part of these facts are stated in paragraph no. 3 of the supplementary affidavit last mentioned, which must be quoted for every word of it :

3. That certain developments have taken place during the pendency of the present writ petition, and are necessary to be brought on record before this Hon'ble Court in the interest of justice for proper and effective adjudication of the controversy involved in the present matter, which are as follows: -

a. That one FIR bearing Case Crime No. 59 of 2026 U/s 318(4), 336(3), 340(2), 351(3) and 51(2) of the BNS 2023 registered at PS Crossing Republic District Nagar (Commissionerate Ghaziabad) on 22.03.2026.

The copy of FIR dated 22.03.2026, is being filed herewith and marked as **Annexure No.SA1** to this affidavit.

b. That the instant Habeas Corpus Writ Petition No. 518 of 2026 was filed on 27.04.2026.

The photo copy of status report of aforesaid writ petition, is being filed herewith and marked as

The copy of Letter dated 24.04.2026, is being filed herewith and marked as **Annexure No.SA3** to this affidavit.

d. That it is imperative to note here that the Petitioner is shown to be arrested in Case Crime No. 04 of 2026, in judicial custody of District Jail Meerut.

e. That the learned Court of Additional Chief Judicial Magistrate Court No. 2 issued the production order u/s 302 BNSS 2023 vide order dated 02.05.2026.

The photocopy of the order dated 02.05.2026 is being filed herewith and marked as **Annexure No.SA 4** to this affidavit.

f. That in pursuance of the aforesaid production order, the form 'B-warrant' dated 02.05.2026 was issued to the District Jail Superintendent, Meerut seeking production of the Petitioner on 04.05.2026 before the court of learned CJM, Ghaziabad.

A photocopy of the B Warrant dated 02.05.2026 is being filed herewith and marked as **Annexure No.SA5** to this affidavit.

g. That in pursuance of the aforesaid, the Petitioner was subsequently produced and remand order dated 04.05.2026 was passed by the Court of Additional Chief Judicial Magistrate, Court No. 2, Ghaziabad whereby a remand of 14 days under Section 187 of BNSS was allowed up to 18.05.2026.

A photocopy of the remand order dated 04.05.2026 is being filed herewith and marked as **Annexure No.SA6** to this affidavit.

14. Therefore, the further case of the petitioner, that is pleaded, is that the subsequent developments are part of the cause of action involved in the petition and bear directly on the issue involved here, inasmuch as the facts above pleaded show that during pendency of the writ petition, another production warrant was obtained by the Police against the petitioner, while he was in custody at Meerut, pursuant to the B-warrant issued by the learned Magistrate at Ghaziabad. It is the petitioner's case

The said provision does not, by itself, create an independent source of authority to detain a man already at liberty or continue illegal incarceration for one who has been restored to his liberty by a judicial order. It is urged that lawful custody on the date of issue of a production warrant is the *sine qua non* for acting upon such a production warrant or order, and the production cannot be acted upon without subsisting lawful custody. It is also said that a production warrant cannot substitute, create or authorise continued detention in the absence of a legal and subsisting authority for lawful custody.

15. In this case, the custody in Crime No. 453 of 2025 was declared illegal and the petitioner ordered to be released forthwith by a Division Bench of this Court *vide* order dated 04.02.2026 passed in Criminal Misc. Writ Petition No. 27881 of 2025. The subsequent orders of release, numbering two, made by the learned Magistrate in compliance with the said order clarified that the custody in the said crime was illegal because of the this Court's order, as the learned Counsel for the petitioner would submit. His production, therefore, through a B-warrant dated 06.02.2026, secured in Crime No. 4 of 2026 issued by the learned Magistrate at Meerut was without authority of law. A subsequent B-warrant was again

Gautam Buddha Nagar in Crime No. 453 of 2025. It is submitted that once the custody became illegal, it cannot be legalised through successive issue of B-warrants in different cases, unless on the date of issue of the initial B warrant, the petitioner was in lawful custody, pursuant to a valid order of remand. Here, the custody at Gautam Buddha Nagar became illegal because of the order of the Division Bench dated 04.02.2026, and thereafter, all B-warrants issued authorise unlawful detention of the petitioner for the obvious reason that a B-warrant could not authorise detention of a person on production by another Court in another crime, unless he was already in lawful custody. Here, the petitioner was not in lawful custody in Crime No. 453 of 2025 at Gautam Buddha Nagar. The submission, therefore, is that the B-warrant issued from Meerut and his remand there as well as the B-warrant, again issued by the Court at Ghaziabad and his remand at Ghaziabad are both vitiated for reasons that initial defect in the petitioner's custody at Ghaziabad that had become unauthorised and illegal, pursuant to the order of the Division Bench of this Court dated 04.02.2026. It is emphasized that the custody having become illegal on the basis of a cause of action initially involved in the writ petition, the subsequent illegal remand is a part of the same cause of action, that is initially involved in this petition. It is on the foot of the said

16. Four personal affidavits have been filed, all dated 11.05.2026. Affidavit No. 7 of 2026 has been filed by the Jail Superintendent, District Gautam Buddha Nagar, Affidavit No. 4 of 2026 filed by the Jail Superintendent, District Ghaziabad, Affidavit No. 5 of 2026 filed on behalf of the Jail Superintendent, District Meerut and the affidavit bearing No. 6 of 2026 filed by the Station House, Police Station, Ganga Nagar, District Meerut.

17. A second supplementary affidavit, bearing No. 8 of 2026 was filed on 12.05.2026, bringing on record the fact that after the issue of a B-warrant/production order dated 06.02.2026, on the foot of which the present writ petition was filed, Inspector Rajendra Kumar Nagar, Crime Branch, Sector Gautam Budh Nagar, Meerut, who is the IO of Crime No. 4 of 2026, resorted to harassing the petitioner's daughter, who is the deponent on his behalf in the present habeas corpus petition. He threatened the petitioner's daughter with false implication in cases involving the petitioner's company. The stand in the affidavit is that the petitioner's daughter is a blood relative of the petitioner's and has nothing to do with the affairs of the company. She made a complaint regarding all these facts on the Integrated Grievance Redressal System (IGRS) Portal

details of these calls, which are four in number, are furnished in paragraph no. 8 of the second supplementary affidavit dated 12.05.2026 as follows :

8. That from a bare perusal of the call record screenshot, it is evident that the said inspector crime branch has called the deponent from +91 7017974535 on the following dates, which are as follows :-

1. 17.03.2026 at 3:12 PM.
2. 11.04.2026 at 10:13 PM.
3. 21.04.2026 at 10:48 AM.
4. 07.05.2026 at 5:42 PM.

18. There is a specific averment further made in paragraphs nos. 8 and 9 of the second supplementary affidavit dated 12.05.2026 to the following effect :

8. That it is relevant to point out here that the last call by the said inspector is after the orders dated 04.06.2026 and 06.05.2026 passed by this Hon'ble Court.

9. That it is also respectfully submitted that the said Inspector has also visited the detinue for purpose of investigation during which threats were issued against the family of the detinue.

19. It was in view of the said affidavit that Inspector Rajendra Kumar Nagar was summoned to the Bar by this Court, as already indicated.

20. The petitioner has filed four replies to the four affidavits filed by the three Jail Superintendents and the Station House Officer, Police Station Ganga Nagar, Meerut, all dated 13.05.2026. The personal affidavit filed by the Jail Superintendent, District Gautam Buddha Nagar, is the most detailed return on behalf of the State and brings on record most of

connection with Crime No. 453 of 2025 up to 12.10.2025 under an order of remand passed by the Judicial Magistrate/Civil Judge (Junior Division), Fast Track Court, Gautam Buddha Nagar. This remand was made under a custody warrant dated 12.10.2025, authorising the petitioner's detention in the District Jail, Gautam Buddha Nagar issued by the Court of the Magistrate last mentioned.

21. On 07.02.2026, a B-warrant was issued against the petitioner *vide* order dated 06.02.2026 by the Additional Chief Judicial Magistrate, Court No. 7, Meerut in Crime No. 4 of 2026. This B-warrant was received apparently on the same date through Head Constable 1039 Kapil Singh from District Meerut at 14:10 hours. The date of production for the petitioner fixed before the Additional Chief Judicial Magistrate, Court No. 7, Meerut was indicated as 09.02.2026 in the B-warrant. On 07.02.2026, a release order was received at the Gautam Budh Nagar prison in Crime No. 453 of 2025 issued by the learned Chief Judicial Magistrate, Gautam Buddha Nagar, apparently, pursuant to orders of this Court directing release from custody forthwith. It is averred that after comparing the release order and the custody warrant, it was found that Sections 340(2) and 61(2) BNS were not mentioned in the release order. Due to receipt of

22. It is next said that as per the district jail records of Gautam Buddha Nagar, summons dated 07.02.2026 were issued by the learned Chief Judicial Magistrate Gautam Budh Nagar in Crime No. 453 of 2025, summoning him to the Court on 09.02.2026. On 09.02.2026, the petitioner was produced before the Chief Judicial Magistrate, Gautam Budh Nagar, in compliance with his summons dated 07.02.2026 in Crime No. 453 of 2025. Here, the amendment of the release order with regard to the added sections was sought and the amended release order was received in Crime No. 453 of 2025. It is next said that it was not possible to send the prisoner pursuant to the B-warrant issued in Crime No. 4 of 2026 issued by the Additional Chief Judicial Magistrate, Court No. 7, Meerut on the scheduled date in the warrant *id est* 09.02.2026, because of the proceedings before the learned Chief Judicial Magistrate, Gautam Buddha Nagar for correction of the release order *et cetera*.

23. On 09.02.2026 in the evening, after the Jail Superintendent, District Jail, Gautam Buddha Nagar received the corrected release order in Crime No. 453 of 2025 the petitioner, Achal Kumar Gupta was released in the said case, but detained under B-warrant in the other accumulated cases, as averred in the Jail Superintendent's affidavit *vide* paragraph no. 11. On the

for production issued in Crime No. 4 of 2026. He was then remanded to judicial custody at Meerut and lodged in the Meerut District Jail.

24. So far as the personal affidavit filed by the District Jail Superintendent, Ghaziabad is concerned, it is averred in paragraph no. 3 that after receiving the order dated 06.05.2026 passed by this Court, he inquired about the petitioner and found that there was no such man in custody in his jail. The Jail Superintendent visited the e-prison official website and collected information about the petitioner, who was in jail custody at District Gautam Buddha Nagar and then transferred to District Jail, Meerut. It is clearly averred that the petitioner is not in custody at the Ghaziabad Jail.

25. In reply to the Jail Superintendent, Ghaziabad's affidavit filed by the petitioner, it is averred in paragraph no. 5 that the fact is admitted to the limited extent that the petitioner is not in physical custody at the District Jail, Ghaziabad. It is next averred that the Jail Superintendent, Ghaziabad has been impleaded as a party respondent not merely on account of the petitioner being in custody at the Ghaziabad Jail, but because, subsequent coercive proceedings were taken in Crime No. 59 of 2026 (*supra*), including the issue of a production order dated 02.05.2026,

26. Upon hearing learned counsel for parties and perusing the material on record, we are of opinion that the moot question is if the petitioner, who was in judicial custody in Crime No. 453 of 2025 at District Jail, Gautam Buddha Nagar, when ordered to be released forthwith by this Court *vide* order dated 04.02.2026 passed in Criminal Misc. Petition No. 27881 of 2025, could be validly produced before the learned Magistrate at Meerut, pursuant to the warrant or custody order dated 06.02.2026 issued by the learned Magistrate at Meerut?

27. For a first, we are of clear opinion that the order dated 04.02.2026 passed by the Division Bench of this Court in Criminal Misc. Writ Petition No. 27881 of 2025 rendered the petitioner's custody in Crime No. 453 of 2025 in the District Jail, Gautam Buddha Nagar absolutely illegal on and from 04.02.2026 when the said order was made. The order directed immediate release of the petitioner in Crime No. 453 of 2025, and the petitioner could not, thereafter, be detained for a minute in the District Jail, Gautam Buddha Nagar. His confinement in District Jail, Gautam Buddha Nagar was nothing more than a physical custody or restraint, and not any kind of lawful detention, preventive, punitive or one pending trial. It is the respondents' case that when the order dated

this Court. The release orders dated 04.02.2026 passed by the learned Chief Judicial Magistrate, Gautam Buddha Nagar, directing the jail authorities at Gautam Buddha Nagar to release the petitioner on 07.02.2026, pursuant to this Court's order, is superfluous. Likewise is the amended order dated 09.02.2026, directing release in added Sections 340(2) and 61(1) BNS, quite apart from the fact that for an added section, a release order cannot be flouted by the jail authorities, once release is directed in a crime, whether pursuant to a bail order or any other kind of a judicial order. We will allude to this aspect of the matter a little later in this judgment.

28. What we emphasise, for the present, is that a writ of this Court issued under Article 226 of the Constitution does not require the crutches of a Magistrate's release order to secure the release of a prisoner from jail. Once we direct the release of a prisoner from jail, our writ proceeds from this Court to the jail authorities without any further process or proceedings required to be taken by a Subordinate Court like that of a Magistrate. The release order is required to be made when we exercise our jurisdiction to grant bail, where a personal bond has to be furnished by the detainee, besides sureties, on the foot of which, a release order is made by

Nagar were required and obliged to forthwith comply and release the prisoner from custody. If they did not, awaiting some kind of a release order from the Magistrate, and then, finding faults with it, because, some sections had been added to the crime by the Police, the detenue's custody, like the petitioner here, is not only rendered illegal, but *non est*. It is well-settled that anything done in violation of a judicial order of this Court by any administration or executive authority is a nullity. Since the petitioner was detained in jail by the district jail authorities, including the Jail Superintendent, Gautam Buddha Nagar in violation of our order dated 04.02.2026 passed in Criminal Misc. Writ Petition No. 27881 of 2025, his custody, after 04.02.2026, was nothing more than illegal confinement or detention, not referable to any lawful detention, preventive, punitive or one pending trial or investigation.

29. This would bring us to the issue if the petitioner was in custody, that was *non est* on account of our order dated 04.02.2026 aforesaid, could he be sent in custody to the learned Magistrate at Meerut, pursuant to the B-warrant dated 06.02.2026 passed by the Additional Chief Judicial Magistrate, Court No. 7, Meerut in Crime No. 4 of 2026 and produced there in compliance with the B-warrant. For the purpose, we think that it

(b) "prison" includes,—

(i) any place which has been declared by the State Government, by general

or special order, to be a subsidiary jail;

(ii) any reformatory, Borstal institution or other institution of a like nature.

302. (1) Whenever, in the course of an inquiry, trial or proceeding under this Sanhita, it appears to a Criminal Court,—

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him; or

(b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceeding or for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

304. Where the person in respect of whom an order is made under section 302—

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government or the Central Government under section 303 applies,

the officer in charge of the prison shall abstain from

30. A conjoint perusal of Sections 301, 302 and 304 BNSS clearly shows that in order that a Court may exercise the power to summon a person from prison in connection with an inquiry, trial or proceedings pending before it, the person may be confined or detained in prison, as provided under Section 302(1)(a) BNSS, and the word “detained” is defined under Section 301(1)(a) BNSS inconclusively to mean detention under any law providing for preventive detention. It would, of course, include punitive detention or one pending trial, or on committal for trial, or pending preliminary investigation. Apparently, the detention, that would authorise the Court to exercise powers under Section 302 BNSS, would mean some kind of a custody in prison, referable to some lawful authority, authorising the detention. It would *ex facie* not apply to a case where a man is illegally held in custody, may be, by the Jailer of a prison, which does not have the authority of law.

31. One of the grounds on which the Officer in charge of a prison may refuse to carry out the order of the Court to produce a prisoner, envisaged under Section 304(c) BNSS, is if the period of his custody authorised would expire during the period of time required for complying with the order of the Court to produce him and taking him back to the prison where

his detention, though lawful at some point of time, becomes unauthorised later was on account of period of remand expiring or an order directing release being made.

32. There are *pari materia* provisions carried in The Prisoners (Attendance in Courts) Act, 1955⁵, and in particular, reference may be made to Sections 2, 3, and 6 of the Act last mentioned. Reference in this connection may be made to a Bench decision of this court in **Dharampal and another v. State of U.P. and another**⁶, where, H.N. Seth, J., speaking for the Division Bench, held :

9. A consideration of the aforementioned provisions indicate that the requisition under S. 3(2), Prisoners (Attendance in Courts) Act, 1955, and S. 267(1), Cr. P.C. can be addressed to Supdt., of a District jail who is already holding a prisoner under an authority of law. The requisition by itself does not authorise the detention of any person. It merely requires the officer in charge of the prison (1) to produce the detenu before the requisitioning Court on the date fixed by it and (2) after the purpose of requisition is over, to take him back and to keep him in custody in accordance with the writ or direction issued by the Court which had authorised his detention in jail. As laid down in S. 55, Prisons Act, 1894, during the period the prisoner is away from the prison in pursuance of the requisition, he would throughout be deemed to be in the custody of the prison and would be subject to all the same incidents as if he were actually in prison.

10. The requisitions issued by the criminal Courts in Haryana, therefore, did not authorise the Supdt., District Jail, Meerut, to keep the two petitioners in his custody. They merely required the Supdt., to produce the two petitioners before the concerned courts only if the Supdt., was entitled to keep them in his custody under some valid authority. Since the various requisition orders did not authorise the Supdt., District Jail, Meerut to keep the two petitioners in custody and the moment the petitioners had been admitted to bail in all the criminal cases in connection with which their detention in District Jail,

under detention and render his custody in District Jail, Meerut valid.

11. Moreover, S. 3, Prisoners (Attendance in Courts) Act, 1955 and S. 267, Cr. P.C. merely enable a criminal Court to require the attendance of a prisoner before it on the date specified in the requisition. If for the reasons contained in S. 6, Prisoners (Attendance in Courts) Act, 1955, and S. 269, Cr. P.C., an officer in charge of the prison is not able to comply with the requisition, he has to submit a report to the Court concerned whereupon the said requisition comes to an end, if the presence of the prisoner is still required by the said Court the requisitioning Court will have to issue a fresh requisition under S. 3, Prisoners (Attendance in Courts) Act, 1955 and S. 267 Cr. P.C. requiring the officer in charge of the prison to produce the prisoner before it on some other date to be nominated by it. It therefore, follows that after the date mentioned in the requisition issued by the criminal court to produce a prisoner before it expires, no further obligation remains upon the officer in charge of the prison to produce the prisoner before that court on any other date till such time as a fresh requisition for the purpose is not received by him. In the circumstances in no case can a requisition issued by a Criminal Court under S. 3, Prisoners (Attendance in Courts) Act, 1955, and S. 267 Cr. P.C., ever be construed as authorising the officer in charge of the prison to keep a person under detention after the date mentioned in the requisition has expired and he has made a report to the concerned Court stating the reason for his omission to comply with the requisition. In the instant case, we find that the Supdt., District Jail, Meerut, had been required by a Criminal Court at Haryana to produce both the petitioners before it on 2nd June, 1981 and thereafter on 4th June, 1981. Those dates have passed long time back and no further requisition has been received for the production of the two petitioners from that Court. Another requisition was received from another Court in Haryana requiring production of one of the petitioners (Dharam Pal) before that Court on 16th September, 1981. That date has also passed. At present there is no direction by any criminal Court requiring production of the two petitioners either under S. 3, Prisoners (Attendance in Courts) Act, 1955, or under S. 267 Cr. P.C. In the circumstances, it is not open to the Supdt., District Jail, Meerut, to transfer the two petitioners to Haryana on the basis of the requisitions which had been received by him. Further, as the petitioners have been directed to be released on bail in all the criminal cases in connection with which they had been committed to the custody in District Jail, Meerut, and release orders had been received by the Jailor, no authority remains in him to keep the petitioners in custody.

33. As would appear from a perusal of Section 304(c) and Section 6(d)

petitioner's custody expired on 04.02.2026, that is to say, the date on which this Court directed his immediate release from prison by an order of the said date passed in Criminal Misc. Writ Petition No. 27881 of 2025. The Jail Superintendent, District Jail, Gautam Buddha Nagar ought have declined to carry out the B-warrant and sent to the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut statement of reasons for so doing.

34. The question fell for consideration before a Division Bench of the Madras High Court in **K.S. Muthuramalingam v. State, rep. by the Inspector of Police, District Crime Branch, Commissioner Office, Coimbatore and another**⁷. The facts in **K.S. Muthuramanlingam** (*supra*) are very striking and can best be recapitulated by reference to the relevant part of the report, where these are set forth by their Lordships in the following words :

2. As per the Petition allegations, the detenu Sundar *alias* Raja was arrested and remanded to judicial custody 111 Crime No.16/2009, registered on the file of District Crime Branch, Coimbatore, for offences punishable under Sections 406 and 420. I.P.C. on 29.5.2009 and he was granted bail by the learned Judicial Magistrate, Palladam. imposing conditions to produce documents showing assets worth Rupees One Crore and two sureties, having property worth Rs.50,00,000/- and to jointly execute a bond for a sum of Rs. 10,000/-. However, the said order was subsequently modified by removing the other conditions and imposing a condition to execute a bond for a sum of Rs.1,00,000/- with two sureties each for a like sum and the said order of modification was passed on 10.6.2010. It has also been

continued detention of the detenu in the Central Prison is not authorised by law and his right guaranteed under Article 21 of the Constitution of India has been violated. necessitating this Court to exercise the power under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus for production of the detenu and set him at liberty

3. The Second Respondent has filed a counter affidavit stating that even before the bail bond was received by the Jail Authorities in the case in which the detenu had been remanded to judicial custody, a P.T. Warrant was received from the III Additional Civil Judge and Judicial Magistrate of First Class, Porbandar, Gujarat in connection with Crime No.2576/2009, a case registered for an offence punishable under Section 138 of Negotiable Instruments Act; that due to non-availability of the escort police, the detenu could not be taken to Porbandar to be produced before the said Court and that subsequently on intimation to the said Court, successive P.T. Warrants came to be issued till date and a P.T. Warrant is pending at present, directing the production of the detenu on 23.7.2010. It has also been stated in the Counter Affidavit that two more P.T. Warrants, one from III Additional Civil Judge (Junior Division) and III Judicial Magistrate of First Class, Bijapur and another from I Additional Civil Judge (Junior Division) and Judicial Magistrate of First Class, I Court GADAG, in connection with C.C. Nos. 04/10 [P.C. No. 123/2009] and C.C. No.05/2010 [P.C. No. 124/2009] respectively with requests to produce the above said detenu before the said Courts on 23.7.2010, are pending execution and that the same was the reason why the detenu was not released pursuant to the execution of bail bond.

35. Upon Muthuramalingam filing a petition for habeas corpus, P.R.

Shivakumar, J., speaking for the Division Bench, held :

11. A conjoint reading of Sections 267 and 269, Cr.P.C. will make it clear that the purpose of P.T. warrant is to direct the production of a person who is confined or detained in prison by a lawful order. It cannot be interpreted to mean that the P.T. warrant shall be an authorisation to curtail the liberty of the person and keep him in custody till the date on which his production is sought for. The mere pendency of a P.T. warrant shall not be enough to keep a prisoner in the prison beyond the date of expiry of the sentence, if he is a convict or beyond the date on which the remand expires unless the remand is extended by a competent Court. The pendency of a P.T. warrant cannot be equated with a remand and the same cannot be construed to be an authorisation for detaining a person

Warrant, the same should be recalled. The judgment went further to state that the recalling of the P.T. Warrant will not bar the subsequent arrest of the person in execution of an NBW.

13. From the above, it is quite obvious that the scope of the P.T. Warrant cannot be enlarged by assuming the same to be an authorisation for detaining the prisoner beyond the period of detention. It will be effective only if his detention is otherwise authorised as on the date on which he is supposed to be produced before the Court issuing P.T. Warrant.

14. The decision of the Apex Court in *Ram Dass Ram v. State of Bihar and another*, AIR 1987 SC 1333 will make it abundantly clear that the issuance of P.T. Warrant cannot be construed to be an order of remand. A person, who has been acquitted or granted bail in the cases in which he was remanded to judicial custody, cannot be detained further on the sole ground that a P.T. Warrant has been issued by another Court. In the said case decided by the Supreme Court, the Accused was acquitted in two Sessions cases in which he had been remanded and even after the acquittal in those cases he was continued to be detained in the prison on the basis of a P.T. warrant issued for his trial in another case. Such a detention was held to be unjustified. The facts of the case before the Supreme Court reveal that there was no warrant (remand order) for detaining the detenu in jail in the third case in which P.T. Warrant was issued or in any other case after the detenu had been acquitted in the two cases in which he had been remanded.

15. P.T. Warrants can be classified into two categories:

(1) directing production of the person confined in the prison on the date of hearing specified in the order, and

(2) directing production without specifying a date for production.

In either case, the P.T. Warrant cannot be construed to be an authorisation to detain the person in jail beyond the period of remand or beyond the date of expiry of the sentence of imprisonment, as the case may be. Legal custody on the date on which he is directed to be produced in the *sine qua non* for such production. Therefore, the first category of P.T. Warrant, namely specifying a particular date on which production is to be made, shall be issued in cases when production is sought for for being examined as a witness or for answering a charge or facing other proceedings in which he has already been granted bail. In such cases, the prisoner shall be released if, before the date fixed for his production, his period of sentence expires or the period of remand comes to an end. Second type of P.T. Warrants viz. without specifying the date for production can be issued, in cases wherein the prisoner has

which the bail bond was received by the Superintendent of Prisons, Central Prison, Coimbatore, is illegal and this Court has to issue a direction for his release, especially when it is not the case of the Respondents that he has been remanded in any other case or his continued custody is authorised in connection with any other case.

36. In the present case, we find that the petitioner's custody was absolutely illegal after 04.02.2026, when this Court ordered his immediate release from prison. There was a positive obligation upon the Jail Superintendent, District Jail, Gautam Buddha Nagar to refuse production of the petitioner before the Additional Chief Judicial Magistrate, Court No. 7, Meerut, in compliance with the B-warrant dated 06.02.2026. We have already spoken about it.

37. We must add, as already held by good authority, that a B-warrant is not a fresh authorisation to detain a free man. If the petitioner's detention was unauthorised with the Jail Superintendent, District Jail, Gautam Buddha Nagar after 04.02.2026, in consequence of our order passed in Criminal Misc. Writ Petition No. 27881 of 2025, he had no business to detain the petitioner further and then produce him before the learned Magistrate at Meerut, in compliance with the B-warrant. The petitioner's production before the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut being absolutely illegal, his remand by the learned Additional Chief Judicial Magistrate aforesaid in Crime No. 4 of 2026

the evening, after receipt of the revised order of the learned Magistrate in Crime No. 453 of 2025, but was detained under a B-warrant in the other accumulated cases. It is said in paragraph no. 12, also already noticed, that he was granted bail in all cases pending against him in District Gautam Buddha Nagar and was, therefore, sent in police custody to the Additional Chief Judicial Magistrate, Court No. 7, Meerut in compliance with the B-warrant issued in Crime No. 4 of 2026. It has been noticed that a B-warrant is not an arrest warrant to detain a free man. The petitioner could, therefore, never have been arrested, pursuant to the B-warrant issued by the Additional Chief Judicial Magistrate, Court No. 7, Meerut, after he was released in Crime No. 453 of 2025 by the Jail Superintendent, District Jail, Gautam Buddha Nagar. The petitioner's detention, therefore, at Gautam Buddha Nagar and the act of the Jail Superintendent, District Jail, Gautam Buddha Nagar in forwarding him in custody to the learned Magistrate at Meerut constitutes illegal custody.

39. As already remarked that once the petitioner had not lawfully been arrested, the learned Magistrate at Meerut had no jurisdiction to remand him to judicial custody at Meerut, because the arrest, pursuant to the B-warrant, was itself illegal. Assuming that the B-warrant was an authority

Buddha Nagar says, in connection with the B-warrant. In any case, the petitioner had to be furnished the grounds of his arrest by the learned Additional Chief Judicial Magistrate, Court No. 7, Meerut on 10.02.2026. In the absence of furnishing the grounds of arrest, the arrest itself would be rendered illegal and the arrested person entitled to be set at liberty, for the failure constitutes invasion of his fundamental right guaranteed under Article 22(1) of the Constitution. In this regard, reference may be made to the decision of the Supreme Court in **Mihir Rajesh Shah v. State of Maharashtra and another**⁸, where it has been held :

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in Part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

...

55. This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.

...

58. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode,

59. It may so happen that in the presence of a police officer a cognizable offence is being committed and the factual matrix presents a tangible and imminent risk of the suspect absconding or committing further offence(s). For instance, in a case involving a murder being committed in front of a police officer, it may not be possible for the officer to provide the grounds of arrest in writing before the arrest or forthwith on the arrest to the accused. A rigid insistence upon informing of written ground(s) of arrest before or at the time of effecting the arrest or immediately thereafter may result into police officer not being able to discharge their duty and responsibility efficiently and effectively.

...

62. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in *flagrante delicto*, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.

63. The above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively. This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. Any shorter interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations.

64. In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) provided the said grounds are

the above stipulated schedule. On receipt of such an application, the Magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

40. The position of law with regard to the necessity of furnishing reasons of arrest, when the arrest is made of a person already in jail and produced before another Court on its B-warrant in connection with the crime before that Court, has been subject matter of consideration in **Bharat Pukhraj Chaudhary v. State of Maharashtra and another**⁹. The short facts in **Bharat Pukhraj Chaudhary** may be noticed from the report of the judgment, which reads :

2. The petitioner has sought a declaration that his arrest in Crime No. 221 of 2023 registered with Bhoiwada Police Station, Thane on October 21, 2023 under Section 8(K), 22(K) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 18(K), 18(A) punishable under Section 27(B) and 28(A) of the Drugs and Cosmetics Act, 1940 is illegal and is in gross violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India so also Section 50 of the Criminal Procedure Code, 1973. The petitioner has also sought quashing of the remand order dated February 11, 2024 and subsequent remand orders in the aforesaid case.

3. The facts necessary for deciding the writ petition are as under:—

4000 bottles of various cough syrups were found in possession of co-accused Shiraj. The possession was with an intention to illegally market the same, which falls within the definition of psychotropic substance. As a sequel of above, the offence being Crime No. 221 of 2023 referred above came to be registered. The present petitioner is implicated as accused no. 5 and his address is shown as resident of Pali District, Rajasthan.

4. The petitioner was already detained in Haridwar prison located in the State of Uttarakhand. During the investigation, direct involvement of the petitioner was noticed in the above crime. Based on the production remand, the petitioner was produced and shown to have been arrested on February 11, 2024, as the transit warrant was honoured by

10. The petitioner who is shown to be accused no. 5 was in the custody of Uttarakhand Police. He was arrested on February 11, 2024, before which the production warrant was prayed by the Court of Judicial Magistrate First Class, 11th Court, Bhiwandi on January 30, 2024. Said production warrant was consequentially endorsed by the Court of Additional Sessions Judge, Haridwar vide order dated February 07, 2024.

11. The General Diary Entry dated February 11, 2024, i.e. after the petitioner's custody was obtained from Haridwar jail on February 11, 2024 mentions about the communication of the reasons of arrest and his right to claim bail. However such unilateral entry does not confirm acknowledgment in writing from the accused to that effect. The remand application dated February 11, 2024 further speaks of similar mention of the communication of reasons of arrest. However, we fail to understand as to what prompted the respondents not to produce on record the written communication served on the petitioner thereby informing him about the grounds of arrest. Failure of the respondents to above effect prompts this Court to draw adverse inference against the respondents.

12. Though the learned Additional Public Prosecutor has tried to justified the claim of communication of grounds of arrest to the accused so also the reasons based on the contents of the production warrant which are issued by the Court of Judicial Magistrate First Class, 11th Court, Bhiwandi and also the production warrant granted by the Additional Sessions Court, Haridwar, there is no iota of material to infer that the petitioner at any point of time was communicated in writing about the grounds of his likely arrest or post arrest the grounds for which he was arrested. Merely because the respondents have mentioned in its record that the grounds of arrest or reasons of arrest were communicated to the petitioner or any of his blood relations, that by itself cannot be said to be in conformity with the mandate provided under Article 22(1) of the Constitution of India. In support of the aforesaid observations, reliance can be placed on the findings recorded by the Apex Court in *Pankaj Biswas* (supra), which are already discussed hereinabove.

42. A similar view was expressed in another Bombay decision, that is

to say, **Lalit Shyam Tekchandani v. State of Maharashtra and another**¹⁰. In

Lalit Shyam Tekchandani (supra), it was observed :

20. When we specifically asked Mr. Venegavkar about whether grounds of arrest were communicated to him, when he was arrested in C.R. No. 18 of 2024, he has submitted before us that the Transfer Warrant had indicated the reasons, but

to be arrested and produced before the Magistrate, who remanded him to police custody on the first date and subsequently remanded him to judicial custody.

21. On perusal of the papers produced before us, we have perused the Arrest/Court Surrender Form of the Petitioner in C.R. No. 18 of 2024 and C.R. No. 20 of 2024 with respective police stations and we find that it is as good as arrest in the said offence and if it is so, then definitely when he is required to be produced before the Magistrate within 24 hours of his arrest, pursuant to which remand is sought for the purpose of investigation by the Investigating Officer, he is entitled to know the grounds of his arrest and the law down by the Apex Court in *Pankaj Bansal* and *Prabir Purkayastha* (supra) with all force comes into play.

It is trite position of law that where an accused is arrested in relation to an offence registered against him, but when he is released on bail, upon the subsequent addition of offences of serious nature against him, the investigating agency cannot straightway arrest such person and it is required to obtain order of arrest and custody with respect to such accused from the Court, which had earlier released him on bail.

Upon such serious offence subsequently added against the accused after grant of bail, it is also open for him to move an application for bail in respect of newly added offences in the Court concerned and if this bail application for newly added offences is rejected, then the accused can very well be arrested. It is not, however, necessary that earlier bail should be cancelled by the Court in every case, before granting permission to the arrest of the accused on the basis of the newly added offence, as the Court in exercise of power under Section 437(5) as well as Section 439(2) of Cr. P.C. can direct the person who is already released on bail to be arrested and committed to custody on addition of graver offences.

43. Here, the case of the State, as expressed in the affidavit of the Jail Superintendent, District Jail, Gautam Buddha Nagar, is that on 09.02.2026, at 16:42 hours, after receiving the revised release from the learned Magistrate in Crime No. 453 of 2025, the petitioner was released in the said case, but detained under B-warrant in the other accumulated cases. In paragraph no. 12 of the said affidavit, it is said that on the next

44. Thus, on this statement of facts, it is evident that the petitioner was released from custody by the Jail Superintendent, District Jail, Gautam Buddha Nagar on 09.02.2026 at 16:42 hours and then arrested in terms of the B-warrant. issued by the Additional Chief Judicial Magistrate, Court No. 7, Meerut, in relation to Crime No. 4 of 2026. He was detained at Gautam Buddha Nagar for the whole night on 10.02.2026, and on the following day, sent to the learned Magistrate at 9:15 a.m. in police custody. If this position of facts were accepted, it was a fresh arrest for the petitioner, nevertheless. He had, therefore, to be communicated with the grounds of arrest, which, apparently in this case, he was not. Nothing has been produced to show before us that grounds of arrest in writing, after the petitioner's arrest in connection with the B-warrant issued by the learned Magistrate in Crime No. 4 of 2026, were furnished him, as required by Article 22(1) of the Constitution and Section 47 BNSS. The principles, therefore, laid down by the Supreme Court in **Mihir Rajesh Shah** and the Bombay High Court in **Bharat Pukhraj Chaudhary** and **Lalit Shyam Tekchandani** would squarely apply to vitiate the petitioner's arrest in the present crime. When the petitioner was produced before the learned Magistrate at Meerut, he was remanded to judicial custody in Crime No. 4 of 2026. The arrest itself was illegal for more than one reason. The

other principle that once the petitioner was no longer in custody authorised by law at the District Jail, Gautam Buddha Nagar, he could not be taken in custody pursuant to a B-warrant issued by the learned Magistrate at Meerut, produced before that learned Magistrate and remand to judicial custody for the case pending at Meerut. We have already dealt with this matter in moreful detail earlier in this judgment. This mention is just a matter of elucidating the distinction between the two different reasons that vitiate the petitioner's custody.

46. While the petitioner was in judicial custody at the District Jail Meerut, which, apparently, was unauthorised, a letter to the Additional Chief Judicial Magistrate, Court No. 2, Ghaziabad for the issue of a production warrant or a B-warrant under Section 302 BNSS was addressed by a Sub-Inspector of Police posted at Police Station Crossing Republic, Ghaziabad. The Additional Chief Judicial Magistrate, Court No. 2, Ghaziabad issued a production or B-warrant dated 02.05.2026 to the Jail Superintendent, District Jail, Meerut, seeking production of the petitioner before him on 04.05.2026. The petitioner was produced on the aforesaid B-warrant on 04.05.2026 before the Additional Chief Judicial Magistrate, Court No. 2, Ghaziabad, who remanded him to 14 days'

was not in lawful custody before the Additional Chief Judicial Magistrate at Ghaziabad. Again, there is nothing to show that if there was a fresh arrest, he was informed of the grounds of arrest in writing, as required by law. In fact, since the petitioner's production before the learned Magistrate at Meerut, pursuant to the B-warrant was illegal, his ensuing detention in judicial custody at Meerut and the subsequent production, pursuant to the other B-warrant issued by the learned Magistrate at Ghaziabad and remand in Case Crime No. 59 of 2026 are all rendered illegal, in our clear opinion. This is a habeas corpus petition, and all we have to see is the legality of the petitioner's custody, in which he is detained for the time being. For determining the validity of that custody, the validity of the detinue's arrest or successive arrest has to be looked into, which we have done.

47. Though there are strong pleas of *mala fides* raised against the respondents by the petitioner, and we may dare say, not without facts and materials, but, it is not our province, in a habeas corpus petition, to go into those questions. This is, after all, not a criminal writ petition, seeking to quash the First Information Report or investigation or some proceedings in a crime, which can be examined also on ground of *mala fides*. Though

against him, which permit arrest without warrant or on the basis of a valid warrant of arrest issued by a Court of competent jurisdiction; but certainly, not an arrest on the basis of a B-warrant issued against the petitioner, while he is in no lawful custody.

48. In the circumstances, this habeas corpus writ petition **succeeds** and stands **allowed**. The continued detention of the petitioner in Case Crime No. 4 of 2026 at District Jail, Meerut and Case Crime No. 453 of 2025 at District Jail, Ghaziabad are declared illegal. He shall be set at liberty forthwith.

49. The Registrar (Compliance) is directed to communicate this order to the Director General of Police, Uttar Pradesh, Lucknow, the Station House Officer, Police Station Ganganagar, District Meerut, the Jail Superintendent, District Jail, Gautam Buddha Nagar, the Jail Superintendent, District Jail, Meerut, the Jail Superintendent, District Jail, Ghaziabad, the Commissioner of Police, Ghaziabad and the Senior Superintendent of Police, Meerut, all through the learned Chief Judicial Magistrates concerned.

(TARUN SAXENA, J.) (J.J. MUNIR, J.)