

MHRG170004052026



IN THE COURT OF ADDITIONAL SESSIONS JUDGE ,
PANVEL-RAIGAD
ORDER BELOW EXH.01 IN CRI. BAIL APPLN. NO.198/2026

Dattatray Subhash Sonawane

Age – 39 years, Occu. Business,
R/at- Room No.1302, RS Exotica,
Flat No.3, Sector-34B, Kharghar,
Panvel.

Permanent R/at-Chalakwadi,
Pimpalwadi, Tal-Junnar, Pune.

...APPLICANT

Verses.

The State of Maharashtra,

Through Uran Police Station.

...RESPONDENT

The learned advocate for applicant : Mr. Yogesh Gangan
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The learned A.P.P. for State : Mr. A. S. Thakur

(DICTATED AND PRONOUNCED IN OPEN COURT)

ORDER BELOW EXH.1

1. This is an application, by the applicant, who is arrested in Crime No.25/2026 registered with Uran Police Station, Navi Mumbai for the offenses punishable under Section 305, 61, 54, 56, 336(2), 336(4), 338, 340(2), 3(6)(8) of

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the Bharatiya Nyaya Sanhita, 2023, for grant of bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Ld. Advocate Mr. Yogesh Gangan for the applicant has mainly harped on the point of non-compliance of Section 35 of the BNSS. According to him, it is mandatory on the part of the Investigation Officer to issue notice under Section 35 of the BNSS, if the offence is punishable with imprisonment which may extend to 7 years and that the Investigation Officer is no way authorized to arrest the accused. He would further submit that since the applicant was not named in FIR it cannot be said that there were reasonable grounds for the Investigation Officer to arrest the applicant and therefore solely on the ground of non-compliance of Section 35 of the BNSS present application has been submitted.
3. An attempt has been also made by him to state that there is non-compliance of Section 48 of the BNSS as the grounds of arrest have not been supplied to the relatives of the accused. Thus, it is prayed for grant of pre-arrest bail.
4. In support of the submission learned advocate Mr. Gangan has placed reliance on following judgments;

(i) Venugopal Nandlal Dhoot lodged at Arthur Road Jail

Vs. Central Bureau of Investigation, 2023 DGLS (Bom) 170

(ii) Satender Kumar Antil Vs. Central Bureau of Investigation, Special Leave Petition (CRL.) No.5191/2021, decided on 15/01/2026

(iii) Prabhakar Tewari Vs. State of U.P., 2020 1 ACR 1095

5. Per contra, Ld. A.P.P. Mr. A. S. Thakur has submitted that considering the material collected by the Investigation Officer during investigation, the arrest of the applicant was necessary and accordingly the Investigation Officer had recorded grounds of arrest and reasons of arrest and accordingly applicant was arrested. According to Mr. Thakur, in all cases wherein punishment less than 7 years is prescribed it is not necessary to issue notice and discretion lies with the Investigation Officer to record the reasons and affect the arrest. Thus it is prayed for rejection of the application.
6. No doubt, it is true that the report was lodged against the unknown persons and involvement of the applicant was surfaced during the course of investigation. Upon perusal of the reply filed by the Investigation Officer it is revealed that during investigation it is found that the applicant and

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co-accused have committed theft of melon seeds worth Rs.21,67,200/- and CPU worth Rs.80,35,200/-. According to the Investigation Officer it is revealed during investigation that the applicant was present at the spot of incident when the theft had taken place from the containers and that he had actively participated in the commission of the crime. According to the Investigation Officer the applicant had appeared before the Custom Officer, Pune being the authorized representative of the firms namely M/s. World Decor and M/s. Niyati Delights. However, those companies did not authorize him and that the applicant had produced forged authorization certificate before the Custom Officer.

7. So far as, the contention raised by advocate Mr. Gangan in respect of non-compliance of Section 35 of the BNSS is fatal and therefore arrest of the applicant is required to be declared illegal is concerned, it would be just to make reference to the judgment of Hon'ble Supreme Court in the case of **Satender Kumar Antil (cited supra)**.
8. Upon perusal of the entire judgment it would not reveal that there is complete bar on the Investigation Officer to arrest the accused against whom allegations in respect of commission of the offence for the punishment less than 7 years is provided. In this regard, if para 31 of the judgment

is looked into, in that case it would reveal that the Hon'ble Supreme Court has concluded that notice under Section 35(3) of the BNSS to an accused or an individual is concerned, qua an offence punishable with imprisonment up to 7 years is the rule, while an arrest under Section 35(6) read with 35(1)(b) of the BNSS is clear exception.

9. Further upon perusal of the concluding part of the judgment i.e. para 33 (c) of the judgment it would reveal that the Hon'ble Supreme Court had concluded that for effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.
10. If entire judgment of Hon'ble Supreme Court is taken into consideration in that case it would reveal that the Hon'ble Supreme Court had kept window open to the Investigation Officer to record the reasons and then arrest the accused against whom the allegations in respect of commission of the offence punishable less than 7 years is prescribed. In this background, I do not find merit in the submission advanced by learned advocate for the applicant that the Investigation Officer was not justified in arresting the applicant.

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11. Be that as it may, it appears from the record that the similar issue was raised by the applicant before the learned JMFC and the learned JMFC, while turning down the contention raised by the applicant, has concluded that there were justifiable grounds for arrest of the applicant and that the investigation officer had recorded reasons to arrest and therefore arrest of the applicant was held to be justifiable.
12. In this background I do not find merit in the submission advanced by learned advocate Mr. Gangan that arrest of the applicant is illegal.
13. It is to be noted here that so far as offence of theft is concerned normally it takes place in absence of owner and therefore owner or the informant is not expected to quote names of culprit. In such circumstances duty is cast upon the shoulder of the Investigation Officer to collect the material, to trace out the culprit and find out the stolen articles. In such circumstances merely on the basis that the offence is punishable with less than 7 years imprisonment, if it is concluded that notice is mandatory to be issued, in such cases no Investigation Officer would be in a position to recover the stolen property trace out the culprits. Therefore, in my view in such type of offences, issuance of notice under Section 35 of the BNSS, would not serve the

purpose, on the contrary it would give scope to the culprit to dispose of the property by taking disadvantage.

14. So far as the other ground urged by advocate Mr. Gangan that there is non-compliance of the Section 48 of the BNSS is concerned, it is settled law that mere fact that Section 48 of the BNSS is not complied with, cannot be said to be a ground of arrest illegal. In such case the applicant is required to show that due to non compliance prejudice is caused to him. In this regard upon perusal of the application it does not reveal that the applicant has shown any prejudice has caused to him. Therefore, I conclude that non-compliance of Section 48 of the BNSS as claimed by learned advocate for the applicant, would not go in his favour.
15. In the light of the fact that investigation is in progress and that main culprit co-accused Nilesh is in police custody, in my view at this crucial stage of investigation, if discretion is exercised, in favour of the applicant and he is released on bail, certainly that would hamper the investigation. Therefore, I am of the view that at least till the report under Section 193 of the BNSS is submitted, the applicant cannot be said to be entitled for grant of bail. Hence, I pass following order;

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:: ORDER ::

- 1) The application is hereby rejected.
- 2) Inform to concern Police Station and the accused through the Superintendent, Taloja Central Prison.

(Dictated and Pronounced in open Court.)

Place : Panvel.

Date : 12/03/2026

(Dinesh E. Kothalikar)

**Additional Sessions Judge, Court No.2,
Panvel Dist. Raigad.**

Dinesh E. Kothalikar,
District Judge-2 and ASJ,
Panvel-Raigad.