

MHSI030000382026



R.C.C. No.01/2026

State through
Police Station Sawantwadi
Vs.
Vishnu Bandekar & Anr.

Order below Exh. 36

Perused the application, say of Ld. APP thereon, entire record before me, heard both parties at length.

02. Present application has been filed by the accused No.2 Samsheer Shabbir Khan under Section 480(6) of BNSS, 2023 and on the ground of violation of Article 22(2) of Constitution of India. According to him, charge was framed against him on 07/03/2026 and two witnesses were examined on 09/03/2026, but, thereafter, no further witness was produced by the prosecution and the trial has not concluded till today. Therefore, as this trial has not concluded within period of 60 days from first date of taking evidence, in view of Section 480(6) of BNSS, 2023, he is entitled to be released on bail.

03. Further, though he is shown to have been arrested on 04/12/2025 at 08.15 p.m., police had issued him notice under Section 35(3) of BNSS, 2023 on 03/12/2025 and he was directed to remain present before I.O. on 09/12/2025. As he did not return home in Mumbai at relevant time, his wife had lodged missing complaint No. 350/2025 at Malvani Police Station stating that he is missing since 03/12/2025 at 06.00 p.m. The investigating team had been to Mumbai on 02/12/2025 after obtaining permission for inquiry. This

sequence of event clearly shows that he was in physical custody of police since 02/12/2025 to 03/12/2025 and is falsely shown to have appeared voluntarily on 04/12/2025. Though, he was directed to remain present on 09/12/2025, he was abruptly arrested on 04/12/2025. Even if it is assumed that he voluntarily appeared before police on 04/12/2025, why he would have carried with him incriminating articles like cheque book, rubber stamp, debit card, etc. That means, he was in actual custody of police since 02/12/2025. Even if the period is reckoned from 03/12/2025 at 06.00 p.m. (as reflecting in missing complaint), he was produced before concerned Magistrate on 05/12/2025 after 41 hours from his actual arrest. As he was detained beyond 24 hrs without production before magistrate, it is violation of Article 22 of Constitution of India.

04. Further, no amount of this offence has been credited in his account, he is not having any criminal antecedents, will remain present before the Court and will be abide by conditions imposed by the Court. On these grounds, he has prayed that he be released on bail and he be provisionally released on minimum cash bail.

05. Ld. APP opposed the application by filing say at Exh. 40. According to him, panch Ashwini Patkar has been examined, examination-in-chief of second witness Deshpande has been recorded and muddemal has been deposited on 16/03/2026. On that day, accused No. 1 filed pursis for filing vakalatnama of other advocate, matter was adjourned till 18/03/2026. On that day, accused No. 1 filed an application for appointing advocate Gavhankar through District Legal Service Authority, said application was sent to DLSA and

matter was adjourned on 26/03/2026. DLSA informed the accused that LADC can be appointed for defending him. The accused No. 2 orally requested for time on the ground that he wants to change the advocate. Both accused were directed to engage advocate till next date and matter was adjourned till 31/03/2026. On that day, advocate Umesh Sawant filed vakalatnama for the accused No. 1 and matter was kept on 10/04/2026. On that day, the accused No. 2 orally told that he wants to change the advocate and matter was posted on 18/04/2026. On that day and also on 28/04/2026, 05/05/2026 the accused No. 2 orally requested to grant time for engaging other advocate, it was allowed and matter was posted on 11/05/2026 and on that day, this application has been filed. All these facts shows that the accused No. 2 has taken 4 to 5 dates for engaging advocate and because of this, trial could not be completed in 60 days. Therefore, he cannot be released on the ground of non completion of trial within 60 days. Further, till filing of this application, he has not made any allegation before this or superior Court regarding his illegal detention for more than 24 hrs. He has taken said contention in this application only for misleading the Court. The amount of Rs.97,00,000/- is involved in this offence. His previous bail applications have been rejected and if he is released on bail, he may abscond and may pressurize the witnesses. On these grounds, Ld. APP prayed for rejection of the application.

06. Accused has been charge sheeted for the offences punishable under Section 318(4) of BNS and 66(c) and (d) of Information Technology Act. It is the case of the prosecution that this accused and accused no.1 by making video call/telephone threatened

him with implication in a money laundering case and induced him to transfer Rs.97,00,000/- in the account of the accused no.1. Admittedly, before filing of the charge sheet, the accused had filed bail applications in the court of JMFC Sawantwadi, Sessions Court and before this court also and they were rejected. But, now, this bail application is filed mainly on two grounds-a) trial has not completed within 60 days from the evidence of first witness and b) he was not produced before the Magistrate within 24 hrs after his actual arrest and hence, he was illegally detained.

07. Ld advocate submitted that as trial has not completed within 60 days from first evidence, the accused is entitled to bail as per Section 480(6) of BNSS. In support of this contention he relied upon judgment of Hon'ble Madhya Pradesh Court in case of **Ramashankar Shah v/s State Of MP, dated 23/02/2026**, wherein court was pleased to release the accused for non completing the trial within 60 days. No doubt, Section 480(6) of BNSS says that, if, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

08. As per above provision, accused in case trial by Magistrate has to be released on bail, if the trial is not concluded within 60 days from the first date of evidence, however, accused can be denied bail even after non conclusion of trial within 60 days by recording reasons

for the same.

09. In this case, charge was framed against accused on 07/03/2026, part examination-in-chief of P.W.1, Gopalkrushna Deshpande was recorded on 09/03/2026 and as the printouts which the prosecution wanted to prove in his evidence are not accompanied by certificate under Section 63 of BSA, 2023, his further chief was deferred and on same day, evidence of P.W. 2, Ashwini Patkar, seizure panch, was recorded. Since then, no further witness has been examined. That means, period of 60 days reckoned from recording of first evidence has expired on 08/05/2026. But, as I rightly submitted by learned APP, record shows that since 09/03/2026 trial was adjourned only because firstly accused No.1 and thereafter, from 24/03/2026 this accused sought time for engaging the advocate. In such circumstances, it is crystal clear that the trial has been delayed and could not be completed within 60 days only because the accused himself sought time for engaging advocate. Therefore, in my considered opinion, he himself cannot claim bail on the ground of non completion of trial within 60 days. Importantly, new Advocate for the accused appeared and this application is filed soon after completion of 60 days. Therefore, there is reason to believe that the accused deliberately prolonged the trial for engaging advocate with the intention that 60 days should complete and he will get bail on that count.

10. Further, the accused is seeking bail on the ground of illegal detention for more than 24 hrs/non-production before magistrate within 24 hrs from his actual arrest. According to him,

i) though he is shown to have been arrested on 04/12/2025 at 08.15 p.m., police had issued him notice under Section 35(3) of BNSS, 2023 on 03/12/2025 and he was directed to remain present before I.O. on 09/12/2025.

ii) As he did not return home in Mumbai at relevant time, his wife had lodged missing complaint No. 350/2025 at Malvani Police Station stating that he is missing since 03/12/2025 at 06.00 p.m.

iii) the investigating team had been to Mumbai on 02/12/2025 after obtaining permission for inquiry. All this sequence of events clearly shows that he was in physical custody of police since 02/12/2025 to 03/12/2025 and is falsely shown to have appeared voluntarily on 04/12/2025. Even if the period is reckoned from 03/12/2025 at 06.00 p.m. (as reflecting in missing complaint) he was produced before concerned Court on 05/12/2025 after 41 hours from his actual arrest. Therefore, as he was detained beyond 24 hrs without production before magistrate, it is violation of Article 22(2) of Constitution of India.

11. It is pertinent to mention here that, this accused was firstly produced before JMFC, Sawantwadi on 05/12/2025, thereafter, he was remanded to P.C., thereafter, he was taken in M.C., he moved bail application before that Court, before this Court and also before Hon'ble Sessions Court. But, he did not make any complaint regarding his illegal detention before filing of this application saying that he was actually arrested on 02-03/12/2025. Therefore, I am not inclined to accept and believe the contention of the accused that he was in custody of police since 03/12/2025 and was produced before the Magistrate after 24 hrs.

12. No doubt, record shows that, notice under Section 35(3) of BNSS, 2023, was given to the accused on 03/12/2025 and he was directed to remain present before I.O. on 09/12/2025. But, despite it, he was arrested on 04/12/2025. Ld advocate for the accused submitted that as the accused had not violated the notice given under Section 35(3) his arrest is illegal. In support of this submission, he has relied upon judgment of Hon'ble Bombay High Court in case of **Vicky @ Vikky Kamble Vs. State of Maharashtra, Criminal Writ Petition No. 4283 of 2025, dated 25/09/2025**. In my view, even though notice under Section 35(3) is given to the accused, as per subsection (5), police officer can arrest the accused if he is of the opinion that he ought to be arrested. In this case, though notice under Section 35(3) was given to the accused, record shows that police arrested him, reasons for arrest were given and importantly, the Magistrate found reasons to be satisfactory and authorized his detention. Therefore, in my considered opinion, arrest of the accused even after notice under Section 35(3) of BNSS cannot be questioned at this stage. Hence, in my humble view, judgment of Hon'ble Bombay High Court in case of Vicky (supra) is not applicable in this case. So also, the arrest of the accused cannot be said to be against the dictum of Hon'ble Supreme Court in case of **Satender Kumar Antil v/s CBI, MANU/SC/0119/2026**.

13. So far as, other grounds, namely no amount has been credited in his account etc are concerned, those grounds have been considered by this court while deciding previous bail application of the accused filed at Exh.14. Therefore, I do not feel it necessary to consider and discuss them again.

14. In the light of above discussion and for reasons given while rejecting bail application of this accused at Exh.14, I have come to the conclusion that the accused is not entitled to bail. Hence, I hold that present application for bail is liable to be rejected. In the result following order.

ORDER

The application stands rejected.

Oros.
Dated : 12/05/2026.

(**A.G.Deshingkar**)
Addl. Chief Judicial Magistrate,
Sindhudurg-Oros.