IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 448 OF 2026

Ms. Sheetal Kisanchand Tejwani
Age: 44 years, Occ.: Business
Having its office at : 305, 3rd Floor, Tulsiani Chamber, Nariman Point, Mumbai – 400021
(presently in judicial custody) ...Petitioner

Versus

The State of Maharashtra through
Investigating Officer, Economic Offences Wing, Criminal Investigation Department
Pune, Maharashtra ...Respondent

Mr. Ajay Bhise, a/w Ms. Deepali Kedar, for the Petitioner.
Mr. S. V. Gawand, APP, for the State – Respondent.
Mr. D. M. Waghmare, I.O., API, EOW, Pune City, present.
Mr. Sarang Thakare, PSI, Bavdhan Police Station, Pimpri-Chinchwad, present

CORAM: N. J. JAMADAR, J.
RESERVED ON: 23rd FEBRUARY, 2026
PRONOUNCED ON: 17th APRIL, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS 2023"), the petitioner takes exception to an order dated 3rd January, 2026 passed by the learned Special Judge in CR No.806/2019, whereby repelling the objections to

the arrest of the petitioner, and the prayer for remand, the learned Special Judge remanded the petitioner to police custody till 6th January, 2026, and the subsequent detention of the petitioner pursuant to the remand order.

3. The background facts leading to this petition can be summarized as under:

3.1 Dhanraj Asawani, the first informant, lodged a report on the basis of an audit conducted by the Joint Registrar, Co-operative Societies in the affairs of Seva Vikas Co-operative Bank Limited ("the Bank"), during the period 2010 to 2019. The first informant alleged that, *inter alia,* there was a large-scale falsification of accounts; the then Chairman and Directors of the Bank had advanced loans to numerous persons, who were not creditworthy; those loans were advanced without adhering to the mandate of financial prudence, the loan amounts were utilized for the purposes for which those loans were not sanctioned; the loan accounts had turned into non-performing assets and there was failure on the part of the office bearers and officials of the Bank to recover the loan and, resultanly, on account of the connivance between the office bearers and officials of the Bank and the borrowers, there was a huge wrongful loss to the Bank to the tune of Rs.238 Crores.

3.2 The said audit report, *inter alia,* revealed that the petitioner, who had availed loans/financial facilities under six distinct accounts, did not utilize the amounts for the purpose for which the loans were sanctioned, and the petitioner had submitted false and forged documents to avail the loan and thereby defrauded the Bank.

3.3 On the basis of the said audit report, a number of crimes were registered and multiple proceedings ensued. By an order dated 16th November, 2021 in Writ Petition No.4134/2019, this Court had quashed the FIR in CR No.806/2019. In SLP (Cri.) No. 2246/2022, by a judgment and order dated 25th July, 2023, the Supreme Court set aside the order passed by this Court in WP/7563/2023 and the FIR and the consequent investigation came to be restored.

3.4 Eventually, by an order dated 31st May, 2023, the said audit report was quashed and set aside by the State Government in Revision Application No.330 of 2022. Being aggrieved, the first informant had filed Writ Petition No.7563/2023. By an order dated 29th November, 2024, with the consent of the parties, the said petition was partly allowed by setting aside the said order dated 31st May, 2023 passed by the State Government with a direction to hear and decide the said

revision afresh on merits. In the meanwhile, this Court directed that, no further coercive action be taken pursuant to the said test audit report.

3.5 Post restoration of FIR by the order of the Supreme Court, the investigating agency appointed an auditor to audit the accounts of the Bank. The auditor submitted his report on 25th May, 2025. On the basis of the said audit report, the Investigating Officer has carried out further investigation and arrested the petitioner in CR No.806 of 2019 on 3rd January, 2026 at 1.39 p.m. The gravamen of indictment against the petitioner appears to be that, apart from the three loan accounts, which are the subject matter of other FIRs, in the instant FIR the petitioner had defrauded the Bank to the tune of Rs.20,49,62,261/-.

3.6 Initially, the crime was registered for offences punishable under Sections 120B, 420, 406, 409, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"). Subsequently, the offence punishable under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("the MPID Act, 1999") has been added.

3.7 The petitioner was thus produced before the Special

Judge, MPID Court, on 3rd January, 2026. The petitioner resisted her arrest and the prayer for remand on the ground that there was non-compliance of the constitutional and statutory provisions in the matter of the arrest of the petitioner. In any event, in the backdrop of the multiplicity of FIRs and the proceedings that had ensued since the date of registration of the FIR, the arrest of the petitioner was not at all warranted, much less her detention in custody.

3.8 The learned Special Judge was not persuaded to accede to the submissions on behalf of the petitioner. The learned Special Judge, *inter alia,* observed that no prejudice was caused to the petitioner on account of the alleged failure to furnish the grounds of arrest to the petitioner mandated by the Supreme Court in the decision in the case of ***Mihir Rajesh Shah vs. State of Maharashtra and another***[1]. Having regard to the magnitude of the alleged fraud, the Special Judge found the custodial interrogation of the petitioner necessary for an effective investigation and, thus, remanded the petitioner to police custody.

4. Being aggrieved, the petitioner has invoked the supervisory and inherent jurisdiction of this Court.

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1 (2026) 1 SCC 500.

5. I have heard Mr. Bhise, the learned Counsel for the petitioner, and Mr. Gawand, the learned APP for the State, at some length.

6. Mr. Bhise took a slew of exceptions to the arrest and detention of the petitioner. First and foremost, according to Mr. Bhise, the arrest of the petitioner was in teeth of the order passed by this Court in WP/7593/2023 and the connected matters dated 29th November, 2024, whereby while setting aside the order passed by the State Government in revision, this Court had specifically directed that no coercive action be taken pursuant to the test audit report which was set aside by the State Government.

7. Secondly, Mr. Bhise would urge, the petitioner was produced before the learned Special Judge after 24 hours of her arrest and thereby the constitutional guarantee of no detention beyond 24 hours without the order of the jurisdictional Magistrate was breached. It was submitted that the petitioner was arrested on 3rd January, 2026 at 11:30 a.m. and, yet, she was shown to be arrested at 1:39 p.m.

8. Thirdly, Mr. Bhise would urge, there was failure on the part of the investigating officer to furnish the grounds of arrest to the petitioner two hours before the production of the accused

before the jurisdictional Court. The grounds of arrest were purportedly furnished to the petitioner at 3.30 p.m. on 3rd January, 2026, on which day the petitioner was produced before the Special Judge at 4.40 p.m. Thus, there was a flagrant violation of the law declared by the Supreme Court in the case of ***Mihir Shah*** (supra).

9. The learned APP resisted the submissions on behalf of the the petitioner. It was urged that the order passed in WP/7593/ 2023 dated 29th November 2024 had no bearing on the investigation in the instant crime as the Supreme Court had made it clear in its order dated 25th July, 2023, that notwithstanding the setting aside of the test audit report by the State Government, the investigation in the alleged offences could lawfully continue.

10. The learned APP further urged that it is not open for an accused who willfully refuses to accept the grounds of arrest to turn around and assert that the arrest was vitiated for failure to furnish the grounds of arrest. To countenance such submission, according to the learned APP, would amount to putting a premium on one's own wrong.

11. Inviting the attention of the Court to the impugned order, Mr. Gawand, the learned APP, would urge that, the learned

Special Judge has recorded that the petitioner had an efficacious opportunity of hearing and suffered no prejudice on account of the alleged failure to furnish the grounds of arrest two hours prior to the production of the petitioner before the learned Special Judge. In fact, Mr. Gawand would urge, the petitioner was already aware of the entire facts of the case and had opposed the prayer for remand by raising objections and placing material, which the petitioner considered would bolster up her defence. In such circumstances, according to APP, neither the arrest nor the order of remand suffers from any legal infirmity.

12. Having considered the material on record and heard the learned Counsel for the parties, the legality and correctness of the impugned order is required to be examined on two principal counts. First, the arrest of the petitioner purportedly in teeth of the orders passed by this Court directing that no coercive action be taken in relation to the test audit report.

13. Indeed, while remanding the revision application to the State Government for determination afresh, this Court had directed that no further coercive action be taken pursuant to the test audit report which was set aside by the State Government by the order dated 31st May, 2023, which was

impugned in the said petition. However, whether the order precluded the investigation agency from carrying out further investigation and arrest in connection with CR No.806/2019, is the moot question.

14. It is pertinent to note that in the judgment in SLP (Cri.) No.2246/2022, the Supreme Court had expressly dealt with the submission canvassed on behalf of the parties that the test audit report was set aside by the State Government, and a challenge thereto was sub-judice before this Court, in WP/7593/2023. The Supreme Court after noting the aforesaid developments, observed that the proceedings which had been instituted to challenge the order of Minister would have no bearing on whether the investigation by the police on the FIR which has been filed by the first informant should be allowed to proceed. The police have an independent power and even duty under the Code of Criminal Procedure to investigate into an offence once information has been drawn to their attention indicating the commission of an offence. The observations of the Supreme Court in paragraphs 27 and 31 of the said judgment read as under:

> "27. From the narration of submissions before this Court, it appears that on 31 May 2021, the Minister in-charge of the Co-operative department has set aside the audit report while directing a fresh audit report for 2016-2017 and 2017-2018.

> The order of the Minister has been called into question in independent proceedings before the High Court. This Court has been apprised of the fact that the proceedings are being heard before a Single Judge of the High Court. The proceedings which have been instituted to challenge the order of the Minister will have no bearing on whether the investigation by the police on the FIR which has been filed by the appellant should be allowed to proceed. The police have an independent power and even duty under the CrPC to investigate into an offence once information has been drawn to their attention indicating the commission of an offence. This power is not curtailed by the provisions of 1960 Act. There is no express bar and the provisions of Section 81(5B) do not by necessary implication exclude the investigative role of the police under the CrPC.
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> .....
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> 31. We, however, clarify that the proceedings which have been instituted before the Bombay High Court to challenge the order of the Minister shall not be affected by the present order."
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> (emphasis supplied)

15. The aforesaid observations thus constitute a complete answer to the submissions sought to be canvassed by Mr. Bhise that in the face of the order passed by this Court on 29th April, 2024 in WP/7593/2023 that no further coercive action be taken pursuant to the test audit report, the petitioner could not have been arrested. In fact, the judgment of this Court in WP/4134/2019 dated 16th November, 2021 was set aside by the Supreme Court observing that the police have independent power to conduct the investigation and the provisions of the Maharashtra Co-operative Societies Act, 1960 neither incorporate an express bar nor by implication exclude the power of the police to register FIR and conduct investigation under the

Code. That being the rationale of the decision of the Supreme Court this Court declines the invitation by Mr. Bhise to again indulge in the very exercise based on the orders in relation to the test audit report.

16. Suffice to note that, notwithstanding the orders in relation to the test audit report, the investigating officer could proceed to investigate the matter further. Therefore, the challenge to the impugned order mounted on the basis of the orders passed by this Court in WP/7593/2023 proscribing further coercive action does not merit any countenance.

17. This propels me to the more formidable challenge to the impugned order on the basis of infringement of the constitutional right of being furnished with the grounds of arrest. Before appreciating the jurisprudential development on the constitutional right to be served with the grounds of arrest, it may be necessary to have clarity on facts.

18. On the own showing of the investigating agency, the petitioner was arrested on 3rd January, 2026 at 1.39 p.m. The impugned order reveals that the petitioner was produced before the learned Special Judge at 4.40 p.m. It is a common ground that the grounds of arrest were furnished to the petitioner at 3.30 p.m.; less than two hours before the production of the

accused before the jurisdictional Court. Whether the failure to furnish the grounds of arrest to the petitioner at least two hours before the production of the accused before the learned Special Judge amounted to violation of the constitutional guarantee, is at the core of the controversy.

19. The guarantee of right to life and personal liberty enshrined under Article 21 has received a wide and encompassing connotation. One of the facets of the personal liberty is procedural safeguards from the abuse of the power by the instrumentality of the State, and judicial scrutiny of the State action, where the personal liberty is sought to be deprived under the mandate of law. The right to be informed of the grounds of arrest, thus, flows from the overarching guarantee of right to life and personal liberty.

20. Under Article 22(1), no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. Article 22 further fortifies the guarantee of personal liberty by casting positive obligations to furnish the grounds of arrest.

21. The aforesaid constitutional safeguards find resonance in the legislative prescription. Section 47 of the BNSS, 2023

(Section 50 of CrPC, 1973), thus, casts duty on the police officer or other person arresting any person without warrant to forthwith communicate the arrestee the grounds of arrest. Section 48 of BNSS 2023 (Section 50-A of CrPC, 1973) enlarges the scope of the right by enjoining the person who effects the arrest to give the information about the arrest to the relative, friend, or such other person, as may be disclosed or nominated by the arrestee.

22. The obligation to communicate the grounds of arrest has a salutary purpose. It is not conceived as a mere formality of communicating some grounds of arrest howsoever irrelevant, flimsy or unsustainable those grounds may be. Those grounds ought to reflect sufficient material or information to equip the accused to effectively defend himself.

23. The purpose of informing to the arrested person the grounds of his arrest is salutary and sacrosanct, in as much as this information would be only effective means for the arrested person to consult his advocate, oppose the police custody remand and to seek bail ***(Prabir Purkayastha v/s. State (NCT of Delhi)***[2]*.*

24. In the case of ***Mihir Rajesh Shah*** (supra), the Supreme

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2 (2024) 8 SCC 254

Court, after adverting to the previous pronouncements, exposited in clear and explicit terms that the legal position which emerges is that, the constitutional mandate provided in Article 22(1) of the Constitution, is not a mere procedural formality, but the constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard.

25. With regard to the time at which, the grounds of arrest ought to be furnished to the arrestee, the Supreme Court, noted the interests which compete, namely, the compliance of the constitutional and statutory mandate, (the rights of the accused) and the effective discharge of law enforcement duties and responsibilities (the public interest). It was enunciated that a balance was, thus, required to be struck between compliance with the constitutional as well as statutory mandated

safeguards, on the one hand, and the effective discharge of lawful statutory law enforcement duties and responsibilities cast upon the State agencies, on the other hand. The observations of the Supreme Court in paragraphs 50 to 55 are instructive and hence extracted below:

> "50. 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. The constitutional safeguards, valuable as they are, cannot be interpreted in a manner so as to allow it to metamorphose into a procedural impediment that handicaps the law enforcing agencies in due lawful discharge of their duties. Therefore, a balance between compliance of the constitutional as also the statutorily mandated safeguards on the one hand vis-a-vis the effective discharge of lawful statutory law enforcement duties and responsibilities cast upon the State agencies must be struck.
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> 51. Supplanting the above situation, there may be a case wherein the Investigating Officer has sent a notice for appearance of the accused to join the investigation under Section 41A of CrPC 1973 (now Section 35(3) to 35(6) of BNSS 2023) pursuant to which the accused has joined the investigation. The Investigating Officer, after perusal of material available before him and/or on interrogating the accused, makes up his mind that the arrest of the accused person is required for further investigation or has other reason(s) for arrest, in such cases, since the accused is under the supervision of the Investigating Agency and there exists no apprehension of him absconding, it becomes incumbent upon the Police Officer to supply the grounds of arrest in writing on arresting the accused person. This can also be followed, for instance, in cases involving offences which are primarily based on documentary evidence/records, economic offences such as under PMLA where the grounds of arrest in writing be furnished to the arrested person on arrest simultaneously.

52. 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.

53. 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.

54. 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 50 of the CrPC 1973 (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the magistrate for remand proceedings.

55. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the explanation for non-supply thereof within 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."

(emphasis supplied)

26. The Supreme Court has, thus, mandated in peremptory terms that the written copy of grounds of arrest must be supplied to the arrestee in no event later than two hours prior to the production of the arrestee before the Magistrate for remand proceedings. The scrupulous compliance with the aforesaid time schedule was insisted by enunciating that a failure to adhere to the said schedule would render the arrest illegal entitling the release of the arrestee.

27. As noted above, the interval between the time of furnishing the grounds of arrest to the petitioner and her production before the Special Judge was barely one hour and 10 minutes, and below the minimum interval of two hours mandated by the Supreme Court. The failure to comply with the aforesaid mandate was sought to be accounted for by canvassing a submission that, the petitioner had declined to accept the grounds of arrest till her advocate appeared, and accepted the same at 3.30 p.m. only in the presence of her advocate.

28. At the outset, it is necessary to note that though the learned Special Judge has noted the aforesaid submissions in paragraph 3 of the impugned order, yet, refrained from expressing any view on the justifiability of the submission.

Instead, after noting the import of the observations of the Supreme Court in the judgment in the case of ***Mihir Shah*** (supra) especially paragraph 53 (extracted above), the learned Special Judge concluded that the petitioner did not suffer any prejudice on account of the shorter than mandated interval of time, ascribing the following reasons:

> "5. The learned advocate for the accused has ably represented the accused before the court and has produced the entire compilation of the previous FIRs, copies of the orders passed by different courts and has availed more than a hours time to defend the accused in remand. Thus, according to me the constitutional right of the accused is safeguarded and the constitutional mandate has been achieved. Therefore, it is difficult to find merit in the submission that the accused is entitled to be released for non compliance of the directions issued in the case of Mihir Shah."

29. Whether the aforesaid approach of the learned Special Judge is legally sustainable?

30. On facts, this Court finds that the explanation sough to be offered on behalf of the prosecution was not borne out by the remand report. Nowhere the remand (Exhibit-13 to the petition) records that the grounds of detention were tried to be served on the petitioner and the petitioner declined to accept the service thereof on the ground that her Advocate was not present. Nor there is any other contemporaneous material which records the fact that the grounds of arrest were sought to be served on the petitioner and she declined to accept the same.

31. In the absence of such contemporaneous material, the explanation sought to be canvassed before the learned Special Judge, could not have been readily accepted. It was for the investigating agency to demonstrate that the grounds of detention were indeed sought to be served on the petitioner and there was a deliberate and conscious refusal by the petitioner to accept the service. It is imperative to note, to address such contentious situation, in the case of ***Mihir Shah*** (supra), the Supreme Court directed that, in case there was delay in the supply of grounds of arrest, a note indicating a cause for it be included for the information of the Magistrate. (Paragraph 52, extracted above). No such record is forthcoming in the instant case.

32. In law, this Court finds it rather difficult to give imprimatur to the reasoning of the learned Special Judge that the petitioner did not suffer any prejudice notwithstanding failure on the part of the investigating agency to comply with the directions in the case of ***Mihir Shah*** (supra). The reasons which weighed with the learned Special Judge, namely, the effective and able representation of the petitioner at the time of remand by her Advocate, can never be a substitute for the scrupulous compliance of the law declared by the Supreme Court. If such

reasons are entertained, that would introduce subjective elements in the matter of compliance of the constitutional mandate and thereby defeat the constitutional guarantee as myriad subterfuges and excuses could be offered.

33. A reference can be made to the decision of the Supreme Court in the case of ***State of Karnataka vs. Sri Darshan etc.***[3], on the basis of which it could be urged that in the absence of demonstrable prejudice, the irregularity in the matter of furnishing the grounds of arrest is a curable defect and cannot by itself entitle release on bail.

34. In a subsequent decision, in the case of ***Ahmed Mansoor and ors. vs. The State rep. By Assistant Commissioner of Police and Anr.***[4], the Supreme Court has clarified that the facts in the case of ***Sri Darshan*** (supra), were materially distinct. In that case, the Supreme Court was dealing with the aspect of cancellation of bail where charge-sheet had been filed and grounds of detention were served immediately.

35. In view of the aforesaid position in law, this Court is of the considered view that in the light of the indisputable position that the grounds of arrest were not served on the petitioner at

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3 2025 SCC OnLine SC 1702.

4 Cri.Appeal/4505/2025 (SLP (Cri.)/198/2025), dtd.14/10/2025.

least two hours before her production before the jurisdictional Court, there was clear non-compliance of the constitutional and statutory mandate and that rendered the constitutional safeguard illusory.

36. The learned Special Judge was, thus, not justified in downplaying the failure on the part of the investigating officer to comply with the mandate on the ground that the petitioner did not suffer any prejudice. Resultantly, the arrest was rendered illegal, and, consequently, the detention of the petitioner also stood vitiated. The petitioner is, thus, entitled to be released.

37. Hence, the following order :

: O R D E R :

(i) The Writ Petition stands allowed.

(ii) The arrest of the petitioner, and the order of remand dated 3rd January, 2026, in CR No.806/2019 registered with Pimpri Police Station, are declared illegal.

(iii) Consequently, all the subsequent orders of remand and detention are also declared illegal.

(iv) The petitioner be set at liberty, if not required to be detained in any other case, upon furnishing a PR bond in

the sum of Rs.50,000/- with one or more sureties in the like amount to the satisfaction of the learned Judge.

(v) The petitioner shall not tamper with the prosecution evidence. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(vi) The petitioner shall appear before the Investigating Officer as and when directed till the filing of the charge-sheet.

(vii) The petitioner shall regularly attend the proceedings before the jurisdictional Court.

(viii) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]