PAPER - PRESENTATION

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PROTECTION OF LIFE AND PERSONAL LIBERTY- CAUTIOUS APPROACH BY COURTS OF MAGISTRATES AND SPECIAL JUDGES

"The history of liberty is the history of procedural safeguards."

– Justice Felix Frankfurter

"Ambedkar's philosophy emphasized the interconnectedness of liberty, equality, and fraternity, asserting that these principles are inseparable and essential for a just society". (Dr.B.R.Ambedkar)

Article 21 of the Indian Constitution is the heart of Fundamental Rights: "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*"

INTRODUCTION:

The right to life is enshrined in Article 21 of the Indian Constitution as a fundamental human right highlighting individual dignity and autonomy. It is evident to note that the judiciary safeguards this right; however, it faces numerous hurdles that prevent it from doing so. The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is fundamentally natural right.

In fact, some considered it as the essential framework of existence. No one would like to waive his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The preservation of liberty forms the very foundation of a civilized society. Liberty is a cardinal value forming the foundation of civilisation.

It cannot be curtailed or rendered ineffective, for the deprivation of personal liberty produces grave and irreversible consequences upon both the mental and

physical well-being of an individual. Originally confined to protection from arbitrary deprivation of life or liberty, its scope has been dramatically widened by judicial interpretation to include dignity, privacy, fair trial, and freedom from arbitrary arrest or detention.

Magistrates and Special Judges occupy a critical gate keeping role in ensuring that this constitutional guarantee is not reduced to a hollow promise. They serve as the first judicial checkpoint between the coercive powers of the State and the liberties of individuals. Their cautious approach—especially in authorising arrests, granting remand, or deciding bail—is essential to prevent the misuse of criminal law as a tool of oppression.

In the architecture of criminal justice, Courts of Magistrates and Special Judges serve as the *first line of judicial defence* against potential abuse of State power. Every arrest, remand, and denial of bail has an immediate and profound impact on an individual's liberty. Recognising this, the Supreme Court has repeatedly cautioned that these judicial officers must not act as passive or mechanical approvers of executive actions, but as active guardians of fundamental rights.

A cautious approach in this context entails a rigorous and rights-oriented judicial assessment at every stage where personal liberty is at risk. Magistrates and Special Judges must meticulously examine the necessity and legality of arrests before authorising remand, ensuring that such detention is justified by compelling reasons and not treated as a mere procedural formality. They are duty-bound to avoid the mechanical extension of custody without recording proper and cogent grounds, thereby safeguarding against arbitrary deprivation of liberty.

The well-established principle that ***"bail is the rule, jail is the exception"*** must guide their discretion, save in circumstances where statutory provisions expressly mandate otherwise. Most importantly, this cautious approach requires balancing the State's legitimate interest in carrying out effective investigations with

the imperative to protect individuals from the irreversible harm and social stigma that often accompany unnecessary or prolonged detention.

This judicial responsibility becomes even more critical under special legislations such as the NDPS Act, PMLA, UAPA, and POCSO Act, where stringent bail provisions and reverse burden clauses tilt the balance in favour of the prosecution. In such cases, Special Judges must ensure that the heightened powers conferred on investigative agencies are not misused to compromise constitutional guarantees.

Liberty has appealed to humanity across all ages. In its name, individuals have undertaken acts of the highest heroism and, at times, committed acts of grave infamy. Even today, few ideals inspire human action as powerfully as liberty, for it is the essential quality of human existence and is rightly regarded as *the greatest possession of man*.

The instinct to live freely is not confined to humankind alone. Even in the animal world, a captive creature struggles to break the cage or chains that restrain it, yearning for an environment of its own choosing. Among human beings, this urge to free oneself from artificially imposed restraints has been a defining feature throughout history. The inner drive for freedom is thus a natural and universal phenomenon.

With time, respect for life, liberty, and property has evolved from a moral sentiment into a binding *principle of living law*. Liberty is now recognised as one of the essential requirements of modern life—often described as "*the delicate fruit of a mature civilisation."* Without certain liberties, enabling a person to act according to their free will, human potential cannot fully unfold. Yet, this freedom must not be exercised at the cost of another's liberty.

The liberty of life and personal freedom are the central pillars of civil liberty. They sustain all other freedoms, for without them no other civil liberty can exist. Life and personal freedom are thus the most prized and primary assets of an individual —basic to human dignity and indispensable to a just society.

The Supreme Court, through landmark decisions such as *Maneka Gandhi v. Union of India*, *Arnesh Kumar v. State of Bihar*, and *Satender Kumar Antil v. CBI*, has repeatedly stressed that liberty is the rule and detention is the exception. In this context, the presentation examines how a careful, rights-centric approach by Magistrates and Special Judges safeguards the essence of Article 21, balancing individual freedoms with the legitimate needs of criminal justice.

Statutory Sources

The protection of life and personal liberty in the criminal justice system is underpinned by several statutory provisions, primarily within the Code of Criminal Procedure, 1973 (CrPC), supplemented by the Indian Evidence Act, 1872 and various special legislations.

- Section 41, CrPC/35 (1)/(2) BNSS – Empowers the police to arrest without a warrant in specific circumstances, subject to safeguards introduced to prevent arbitrary deprivation of liberty.
- Section 41A, CrPC/35 (3) to 35 (6) BNSS – Mandates issuance of a notice of appearance in lieu of arrest, reinforcing the principle that arrest is not to be made mechanically.
- Section 167 CrPC/187 BNSS – Prescribes the procedure when an investigation cannot be completed within 24 hours, requiring the arrested person to be produced before a magistrate, thereby ensuring judicial oversight over continued detention.
- Sections 436–439, CrPC/478 – 483 BNSS– Contain provisions relating to bail, balancing the presumption of innocence with the need to ensure the accused’s presence during trial.

Under the Indian Evidence Act, 1872/ The Bharatiya Sakshya Adhiniyam, 2023

- Section 114/119 of BSA – Allows courts to draw presumptions against unlawful acts, strengthening judicial scrutiny in matters affecting personal liberty.
- Section 167/169 of BSA – Declares evidence obtained improperly or in violation of law to be inadmissible, thereby deterring investigative excesses.

Special Legislations – Enactments such as the NDPS Act, Prevention of Money Laundering Act (PMLA), Unlawful Activities (Prevention) Act (UAPA), and Protection of Children from Sexual Offences (POCSO) Act prescribe stringent bail conditions. While aimed at addressing grave offences, these provisions necessitate heightened judicial caution to prevent disproportionate infringement of personal liberty.

Judicial Duty of Caution

Magistrate/Special Judges constitute the first line of judicial defence against arbitrary or excessive curtailment of personal liberty. As the earliest judicial authority before whom an arrested person is produced, their role is not merely procedural but constitutional, requiring vigilance, independence, and adherence to the principles of fairness and proportionality.

A cautious approach by these courts is indispensable in three key areas:

1. **Scrutiny of Police Requests for Arrest or Remand** – Judicial officers must not mechanically authorize arrest or detention. They are duty-bound to examine whether the arrest complies with statutory safeguards under Sections 41 and 41A of the CrPC, whether custodial interrogation is genuinely necessary, and whether the continued detention meets the constitutional standards of fairness under Article 21. Authorising remand without proper justification undermines the very purpose of judicial oversight.

2. **Fair and Prompt Disposal of Bail Applications** – Bail decisions lie at the heart of the liberty–security balance. magistrate/Special Judges must decide bail applications expeditiously, applying the principles laid down in *Maneka Gandhi*, *Arnesh Kumar*, and *Satender Kumar Antil*, and ensuring that pre-trial detention remains an exception rather than the norm.
3. **Preventing Misuse of Criminal Process** – Courts must act as a shield against the abuse of legal provisions for purposes of harassment, personal vendetta, or undue pressure. This includes dismissing frivolous complaints, refusing to endorse unjustified arrests, and imposing conditions that prevent further misuse of process while safeguarding the rights of the accused.

The Supreme Court has repeatedly emphasised that judicial endorsement of liberty deprivation must follow strict scrutiny, not blind acceptance of executive claims. In this sense, magistrate/Special Judges are not passive record-keepers but constitutional sentinels, entrusted with the immediate and active protection of an individual's most cherished rights.

Landmark Judgments

The constitutional guarantee of life and personal liberty under Article 21 has undergone a remarkable transformation in Indian jurisprudence, moving from a narrow, literal interpretation to a robust and rights-oriented framework that demands judicial caution at every stage of criminal proceedings. This evolution has directly shaped the duties of magistrate/Special Judges, requiring them to act as guardians of liberty rather than passive endorsers of executive action.

The journey began with **A.K. Gopalan v. State of Madras,** where the Supreme Court adopted a restrictive view, holding that any procedure "established by law" was sufficient to curtail liberty, without inquiring into its fairness. This formalistic approach provided little room for judicial intervention against arbitrary arrests or detentions, underscoring the later need for a more vigilant judiciary.

That shift occurred in **Maneka Gandhi v. Union of India**, where the Court emphatically held that any law interfering with personal liberty must be "*just, fair and reasonable"*, and must also satisfy the requirements of Articles 14 and 19. This landmark ruling transformed Article 21 into a dynamic safeguard, empowering magistrate/Special Judges to question not merely the legality, but also the fairness and proportionality of state actions affecting liberty.

The operational safeguards were significantly strengthened in **D.K. Basu v. State of West Bengal**, where the Court issued detailed guidelines to prevent custodial abuse. These included mandatory documentation of arrest, immediate information to relatives, and medical examination of the detainee — safeguards that magistrate/Special Judges are duty-bound to verify before authorizing remand.

In **Joginder Kumar v. State of U.P**, the Court clarified that arrest is not to be made as a matter of course, but only when justified by necessity. This principle directly imposes upon magistrate/Special Judges the obligation to scrutinise the factual and legal basis of every arrest presented before them.

The emphasis on liberty was further crystallised in **Arnesh Kumar v. State of Bihar**, where the Court warned against mechanical authorisation of arrests in offences punishable with imprisonment up to seven years. It placed a clear duty on magistrate/Special Judges to apply their mind to the necessity of arrest and to ensure compliance with Section 41A CrPC.

The recent decision in **Satender Kumar Antil v. CBI** reinforced this approach by issuing structured guidelines on bail, aimed at reducing unnecessary arrests and avoiding prolonged pre-trial incarceration. The judgment places magistrate/Special Judges at the frontline of protecting liberty, insisting that detention must be the exception and not the norm.

Finally, in **K.S. Puttaswamy v. Union of India**, the Court recognised the right to privacy as an intrinsic element of life and liberty, extending the scope of judicial caution to protect individuals from unwarranted intrusions by investigative agencies.

Taken together, these rulings signal a decisive shift in judicial philosophy — from deference to executive authority towards active, liberty-oriented scrutiny. They establish that magistrate/Special Judges are not mere procedural functionaries, but constitutional sentinels, entrusted with the responsibility to ensure that no restraint on liberty occurs without compelling justification, procedural fairness, and proportional necessity.

Reports and Guidelines

The cautious exercise of judicial power by magistrate/Special Judges in matters affecting life and personal liberty is further reinforced by authoritative reports and institutional guidelines. These serve as interpretative aids and practical tools for ensuring that constitutional safeguards under Article 21 are not undermined by procedural lapses or executive overreach.

1. Law Commission of India, 41st Report on the Code of Criminal Procedure (1969) – Recommended comprehensive procedural reforms, including safeguards against arbitrary arrest, mandatory judicial scrutiny before authorising detention, and clearer bail provisions, emphasising the magistrate/Special Judge's role as a protector of liberty at the pre-trial stage.
2. Law Commission of India, 268th Report on Bail Reforms (2017) – Stressed that bail is the rule and jail the exception, urging courts to adopt a uniform, liberty-centric approach. It specifically highlighted the need for prompt disposal of bail applications, reduction of unnecessary arrests, and proportionality in imposing bail conditions.
3. National Judicial Academy, *Handbook for magistrate/Special Judges on Criminal Procedure* – Provides a detailed operational guide for magistrate/Special Judges, including best practices in remand hearings, bail adjudication, and safeguarding against misuse of criminal law. It underscores that judicial authorisation of custody must follow strict statutory compliance and reasoned satisfaction.

4. NHRC Guidelines on Arrest and Detention – Lay down mandatory protocols for humane treatment of arrested persons, timely communication to family members, medical examination, and prohibition of unnecessary restraint. These guidelines reinforce the magistrate/Special Judge's duty to verify compliance before granting further detention.

5. Role under Special Legislations

In cases under special statutes like the PMLA, NDPS Act, UAPA, and POCSO Act, Special Judges face a heightened responsibility to ensure that the protection of life and personal liberty under Article 21 is not eroded by the strict procedural and evidentiary requirements of these laws.

The PMLA (Section 45) imposes the "twin test" for bail—requiring that the Public Prosecutor be heard and the judge be satisfied that the accused is not guilty and unlikely to reoffend. It also contains a reverse burden of proof under Section 24. Similarly, the NDPS Act restricts bail in cases involving commercial quantities, while the UAPA bars bail unless there is no prima facie case against the accused, effectively reversing the presumption of innocence. The POCSO Act, though focused on victim protection, demands strict compliance with procedural safeguards such as in-camera trials and protection of the child's identity.

Even under such stringent provisions, the Supreme Court has clarified that the principle of "bail is the rule, jail is the exception" applies, and rigid bail norms cannot be used as tools for prolonged pre-trial detention. In ***Union of India v. K.A. Najeeb*** , the Court held that constitutional courts have the power to grant bail when the right to speedy trial is violated, even under special laws.

Thus, Special Judges must strike a careful balance—faithfully applying statutory requirements while preventing their misuse to compromise due process and personal liberty. Their cautious, reasoned approach remains the key safeguard against executive overreach under special legislations.

Recommendations

To fortify the protection of life and personal liberty, it is imperative that every remand and bail decision passed by magistrate/Special Judges is supported by mandatory, well-reasoned orders. These orders should not merely reproduce the prosecution's submissions but must reflect an independent judicial assessment of the necessity for custody or the justification for denying bail. Such detailed reasoning strengthens judicial accountability, enables effective appellate review, and reinforces public confidence in the fairness of the process.

Regular training and sensitization programmes should be institutionalized for magistrate/Special Judges, focusing on constitutional rights, evolving Supreme Court jurisprudence, and international human rights standards. Workshops and refresher courses conducted through judicial academies can help these officers remain updated on the latest developments, particularly in balancing investigative needs with individual freedoms.

Strict enforcement of Supreme Court guidelines—especially those in ***Arnesh Kumar v. State of Bihar*** (requiring necessity of arrest checks), ***D.K. Basu v. State of West Bengal*** (laying down arrest safeguards), and ***Satender Kumar Antil v. CBI*** (discouraging unnecessary arrests)—is essential. Non-compliance should trigger institutional scrutiny by High Courts through administrative oversight or judicial review, ensuring that such directions do not remain mere formalities.

The integration of technology in judicial processes can be a powerful tool to protect liberty. Digital case tracking systems, automated alerts for statutory deadlines under Section 167 of the CrPC, and online dashboards accessible to both courts and counsel can prevent routine or mechanical extensions of custody. This will also help identify and address systemic delays that contribute to prolonged pre-trial detention.

Furthermore, data-driven monitoring of remand and bail orders at the district level can reveal patterns of excessive custody and guide corrective action. High Courts can periodically review these statistics to ensure lower courts adhere to constitutional standards. A combination of legal reform, judicial training, technological support, and administrative oversight can thus create an ecosystem where the cautious approach mandated under Article 21 becomes an everyday judicial habit rather than an exceptional exercise.

ROLE OF MAGISTRATES/SPECIAL JUDGES WHILE REMANDING AN ARRESTED PERSON

The concept of remand represents the balance between the investigative needs of the State and the fundamental right to personal liberty. While police custody may be essential to facilitate investigation, remand simultaneously curtails the freedom of an individual and therefore demands strict judicial scrutiny. The remand under Sections 57 and 167 of CrPC/58 and 187 of BNSS, examines the judicial interpretation of these provisions, and evaluates the evolving safeguards laid down by the courts to prevent abuse of power.

Information to Police and the FIR

Section 154 of CrPC/173 of BNSS mandates that every information relating to the commission of a cognizable offence be recorded by the officer-in-charge of a police station. Such information may be given orally or in writing, and upon being reduced into writing, it must be signed by the informant. The Supreme Court in ***Ganesha v. Sharanappa*** (AIR 2014 SC 1198) drew a crucial distinction between an **informant** and a **complainant**, clarifying that in FIR cases the State is the complainant and the individual supplying information is merely the informant.

The FIR sets the criminal law in motion and marks the beginning of investigation. It is only after registration of an FIR disclosing a cognizable offence that the police can proceed to arrest and seek remand.

Power of Investigation and Arrest

Investigation, defined under Section 2(h) CrPC/2(1)(l) of BNSS, includes all proceedings for collection of evidence conducted by the police. Section 156/175 of BNSS empowers the police to investigate any cognizable offence without prior orders from a magistrate/Special Judge. However, the power to arrest is regulated particularly after the landmark judgment in ***Arnesh Kumar v. State of Bihar*** (AIR 2014 SC 2736), which mandated recording of reasons for arrest to safeguard personal liberty under Article 21 of the Constitution.

Once a person is arrested, Section 57CrPC/58 BNSS requires that he be produced before a magistrate/Special Judge within 24 hours, excluding travel time. Beyond this period, the police cannot detain without judicial authorization.

Remand under Section 167 CrPC/187 of BNSS

This Section serves as a statutory bridge between police investigation and judicial oversight. If the investigation cannot be completed within 24 hours, the police must forward the accused along with case diary entries to a magistrate/Special Judge. The magistrate/Special Judge may authorize detention for a maximum of 15 days in the whole. Thereafter, only judicial custody may be extended, subject to an overall ceiling of **60 or 90 days**, depending on the gravity of the offence.

The Supreme Court in *CBI v. Anupam J. Kulkarni* (AIR 1992 SC 1768) held that police custody cannot extend beyond the first 15 days, after which only judicial custody is permissible. Similarly, in ***Aslam Babalal Desai v. State of Maharashtra*** (AIR 1993 SC 1), the Court clarified that if investigation is not completed within the statutory period, the accused is entitled to **"default bail"**.

Judicial Nature of Remand

Remand is not an administrative formality but a **judicial function**. The magistrate/Special Judge must apply his mind to the case diary and remand report before authorizing detention. In ***Manubhai Ratilal Patel v. State of Gujarat*** [(2013)

1 SCC 314], the Supreme Court emphasized that remand orders require judicial satisfaction as to the necessity of continued custody. Similarly, the Full Bench of the Andhra Pradesh High Court in ***Kurra Dasaratharamaiah v. State of A.P.*** [1992 (1) ALT 269] held that the magistrate/Special Judge must peruse case diaries before granting remand.

The rationale was explained earlier in *State of Bihar v. Ram Naresh Pandey* (AIR 1957 SC 389), where the Court noted that magistrate/Special Judges act as judicial safeguards to prevent executive abuse in matters of arrest and detention.

Case Law Synthesis

- *State of Haryana v. Bhajan Lal* (AIR 1992 SC 602) → Laid down guidelines on investigation and misuse of FIRs.
- *Anupam J. Kulkarni* (1992) → Police custody limited to first 15 days.
- *Aslam Babalal Desai* (1993) → Introduced the concept of “default bail” upon expiry of 60/90 days.
- *Manubhai Ratilal Patel* (2013) → Reaffirmed remand as a judicial act, not mechanical.
- *Arnesh Kumar* (2014) → Arrests must comply with proportionality under Section 41 and 41A.

<u>Remand & Police Custody</u>

What are the various aspects to be verified before putting up the remand report

1. F.I.R :Sometimes it so happens that , the original F.I.R may not be dispatched from the P. S for the reasons attributable to police people. If crime is registered under sec. 174 .Cr. P.C/194 of BNSS, verify whether the original F.I.R is received from the office of executive magistrate/Special Judge.

2.Nature of offences : 1. Verify the nature of offences mentioned in FIR and with the remand if any new section is added, verify whether section addition or alteration memo is filed, or not.

2. Offences are bailable or non-bailable

3. offences are punishable with below or above 7 yrs imprisonment

4. Jurisdiction report,

3. Compliance of Sec. 50 CrPC/47 of BNSS Grounds for arrest: A person arrested without warrant must be immediately informed the grounds of his arrest (1) and in case of every arrest (in bailable offence) it must be immediately be made known to the arrested person that he/she is entitled to apply for bail (2).

4. Compliance of sec. 50.A CrPC/48 of BNSS : Information of arrest and place of custody to family members, friends : Mode of communication – signature, phone communication- name , mobile number.

5. COPIES OF CASE DIARY : Rule 25 of criminal rules of practice To seek remand, the S.H.O, or I.O, is required under section 167(1) to transmit a copy of case diary along with accused to the magistrate/Special Judge.

The case diary affords to the magistrate/Special Judge information upon which he can decide whether or not the detention should be authorised and also enables him to form an opinion as to whether any further detention is necessary. This provision is mandatory. If the case diary is not transmitted,as required, the magistrate/Special Judge has no option but to release the accused, even with out taking bail. Exceptional cases are surrender petitions, and cases where the name of accused is mentioned in F.I.R.

6. Medical certificate : Section 54 Cr.P.C/53 of BNSS. Every arrested person shall be examined, by a medical officer in the service of state or central government, in case of their non availability, he can be examined by a registered medical practitioner,soon after the arrest. On such examination, the medical officer shall prepare the record of such examination , mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when those injuries might have been caused. Basic components of order

1.Before a magistrate/Special Judge authorizes detention under Section 167 of the Cr.P.C/ 187 of BNSS he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied.

2. His satisfaction as to well founded accusation of alleged charges , be recorded.

3. In case the offence charged is one punishable with below 7 years, there are reasons assigned by I.O, for arrest without issuing notice U/sec 41 (A) Cr.P.C/ 35(3) of BNSS a brief satisfaction as to sufficiency or otherwise of such reasons with respect to facts and circumstance of the case , be recorded.

4. Necessity for arrest must be gathered from the case diary itself.

5. His satisfaction as to absence of ill treatment by police against detainee shall be

recorded.Basic components of order

6. If the accused reported ill treatment in the hands of police, whether there are injuries present or not on his person, a direction shall be given to police to get examine the accused by the medical officer other than who issued the medical certificate u/sec. 54 CrPC/ 53 of BNSS, for fresh examination and produce the accused along with medical certificate.

7. If the medical certificate shows that there are injuries on the person of accused, and there is any material to prima facie to show that those injuries have been caused during course of his custody with the police, magistrate/Special Judge shall record his statement, as well as the statements of other persons who might have witnessed such alleged harassment, and direct him to file a private complaint u/sec. 200 of Cr.P.C/223 of BNSS, in which case the above statements can be make use of as evidence. (Ashok Yadav Rao Chavahan Vs. The State Of Maharashtra Crl.application no. 1494/2013).

8. If there are no injuries even as per second medical certificate also, then record the same and call for explanation from I.O, proceed with remand order.

9. If the accused complained that he was detained much before the time of arrest shown in the RCD, record the same and call for explanation from I.O. (crl.m.p)

10.Financial capacity of accused to engage counsel be inquired and If he has no means, appoint free legal aid counsel.

● Obtain accused's signature on the remand report, in proof of his physical production before the magistrate/Special Judge

● Prepare warrant in duplicate (Form No. 19)

● Obtain acknowledgment from p.c as to receipt of remanded accused and warrant

● Put your initial on each page of RCD.Magisterial power to order remand under

different offences

Q. Whether the penal sections mentioned in the FIR, case diary and the application of the I.O. seeking remand of the accused u/s167 CrPC can be disagreed and magistrate/Special Judge can grant remand or bail under different penal sections than the ones mentioned by the I.O.?

Ans. Yes. magistrate/Special Judge is not bound by the penal sections mentioned by the I.O. in the remand application or in any other police papers. After perusing the case diary or the material collected by the I.O., magistrate/Special Judge can insert a different penal section in the remand order or in any other judicial order than the one mentioned by the I.O. in his application etc.Refusal to entertain remand after office hours - Validity

Q. Whether a magistrate/Special Judge can refuse to pass a remand order , if the accused is produced after office hours, at his residence and whether can he direct the police to produce him on the next working day ?

No. It is not expected of a magistrate/Special Judge to decline to dispose of the matters of remand when the accused is produced at his residence. Rule 5 of criminal rules of practice speaks that urgent bail applications presented out of court hours may be disposed of at the residence of the magistrate/Special Judge. So is

the case of remand applications too. Refusal of a magistrate/Special Judge to pass orders upon the production of an accused before him within the period of 24 hours, is a serious violation of the fundamental rights guaranteed under article 21 r/w 22 of Indian constitution. (Dr. P.C. Kakar Vs. Director general of police, Govt. Of A.P. Hyderabad and others, W.P.No . 10875/ 1985). Remand order passed on the next working day amounts to authorization of illegal detention.Whether the court can refuse to order for judicial custody of accused ?

Yes, If there is no justification for arrest then the magistrate/Special Judge can refuse remand. 2014 Surendra Kumar v. State of Uttar Pradesh,SCC online All 895 . If the arrest is in violation of guidelines issued in Arnesh Kumar's case . Return of remand is a procedure unknown to law, either remand or refuse to remand.Role/duty of magistrate/Special Judge :

On principle, on the specific language of section 167, it is manifest that a magistrate/Special Judge exercising jurisdiction under the above section performs essentially judicial function . The Supreme Court, and high court time and again deprecated the practice of granting remand in a mechanical way or in a routine manner. In Bollineni Rajagopal Naidu, vs The State Of Andhra Pradesh, WRIT PETITION (PIL) No.132 of 2021on 8 March, 2022, the division bench of our Hon'ble High Court has issued a direction that " all the Judicial magistrate/Special Judges shall record their satisfaction before authorizing detention, in exercise of powers under Section 167 Cr.P.C. While doing so, the Judicial magistrate/Special Judges are expected to apply their mind objectively in obtaining facts of the case and pass a reasoned order. Any negligence in this regard shall be viewed seriously and the Judicial magistrate/Special Judge concerned shall be liable for departmental action by the High Court as and when such defective detention authorization orders are brought to the notice of the High Court by or on behalf of the accused.Whether,the court can extend remand without there being any request from the end of I.O or APP ?.

No. In Sharavan Kumar Vs State of A. P 2002 (2) ALT (CRL) 16 (A.P), it was held that for remanding an accused to custody, the police officer has to transmit to the judicial magistrate/Special Judge a copy of the entries in the diary relating to the case. The matter of extension of remand beyond 15 days is not a matter of course or routine exercise, it is only when magistrate/Special Judge is satisfied that adequate grounds exist extension of remand is warranted and not otherwise. He is supposed to apply their mind to the facts of the case and then grant extensions . In any case there is no request by police, remand can not be extended and in such a situation, he is bound to inform the accused that he can be released provided he furnishes bail.Q. Whether a magistrate/Special Judge can extend the remand without the production of accused ?

A. No, magistrate/Special Judge shall not authorize detention in any custody under section 167 cr.p.c ,unless the accused is produced before him. It is not only requirement of when the first remand is given ,but each time when the magistrate/Special Judge remands a person to custody, the person must before him. However, non availability of escort, is a valid ground for non production of the accused before magistrate/Special Judge for extending remand u/sec. 167 cr.p.c, provided there are justifiable causes for such non availability of escort. Whenever, it is not possible to produce accused before magistrate/Special Judge concerned investigating officer or any other responsible police incharge of the case, or jail superintendent shall file a detailed report before magistrate/Special Judge explaining circumstances.Accused has any right to oppose remand application of the I.O ?

A. Yes, presence of accused either physically or virtually is sine qua non at the time of remand of the accused u/s 167 of CrPC. Accused has indefeasible right to oppose prayer for extension of remand. Failure to produce accused before Court while considering application for extension of time to investigate amounts to violation of his fundamental rights. Jigar alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat, AIR 2022 SC 4641CAN THE REMAND OF THE ACCUSED BE RETURNED FOR NOT INVOKING SEC. 41 A.

It is the sole discretion of the Investigating officer, either to follow 41A CrPC or not, basing on the reasons for such decision. The court, may at the most state the I.O. to follow 41 A CrPC, but cannot insist the I.O. to mandatorily issue notice under Sec 41 A CrPC. Once, the I.O. comes to a conclusion to remand the accused, (even prior to the issuance of the 41 A CrPC notice), duly enclosing the check list mentioning the reasons for remand, the Court, cannot return the remand. If the court is not in concurrence with the grounds of remand, then the court can act under sec 59 CrPC, and discharge from remand, by accepting sufficient surety or sureties, as mentioned in Gulab Chand Upadhyaya Vs State Of U.P. And Ors {2002 CrlJ 2907}. This discharge from remand by the Court, does not preclude the I.O. to file a final report.Whether a police can arrest a person after service of 41(A) notice, for non compliance of conditions therein, straight away

A. No. In Kalki Ramu vs The State of Telangana, Criminal Petition No.6872 of 2015, dt,03-08-2015 it is held that in order to arrest the accused once who was served with a notice u/sec. 41(A) Cr.P.C, on the ground that he did not turn up in compliance of conditions of the notice , no doubt, it requires the permission of magistrate/Special Judge for non-appearance to Section 41-A notice to arrest, once reasons assigned not to arrest.

In Sayyad Inayathullah Vs. The State of Telangana, Crl. Petition. No. 824/2022, dt,07.02.2022, it was held that after issuance of notice U/sec. 41(A) Cr.P.c, , if the police feels that the accused has to be arrested , without obtaining permission from the magistrate/Special Judge concerned, they can not arrest the accused.Refusal to receive. 41(1) notice-- arrest

Whether they can arrest the accused on the ground that he refused to receive 41 (A) Notice.

A . Yes, Sub- section(4), section 41 authorises the police, to arrest the accused where such person, is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest

him for the offence mentioned in the notice. But record must show that police had made an attempt to issue the notice with in 15 days from the date of F.I.R.

TRANSIT REMAND

'Transit remand order' means on order passed by a Judicial magistrate/Special Judge remanding an arrested person to police custody for the purpose of his transit to another state. By issuing such a 'transit remand order', the local magistrate/Special Judge certifies that the police personnel from the outside state had the authority to arrest the person, and that such arrest was done legally.

Further, the local magistrate/Special Judge authorizes the other-state police to take the arrestee out of his home state.Transit remand While the term "transit remand order" is not categorically defined in Indian criminal law, it finds its roots in Section 167 of the Code of Criminal Procedure.

Section 167 lays down the procedure when the investigation cannot be completed in 24 hours as fixed by Section 57 and requires the police officer to transmit to the nearest Jurisdictional magistrate/Special Judge a copy of the entries in the diary relating to the case, The magistrate/Special Judge in turn may authorise detention of the accused for a term not exceeding 15 days, and if he has no jurisdiction, then he may order the accused to be forwarded to a magistrate/Special Judge having such jurisdiction.

While the term "transit remand order" is not categorically defined in Indian criminal law, it finds its roots in Section 167 of the Code of Criminal Procedure.

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Guidelines

In Gautam Navalakha Vs. State (NCT) of Delhi , W.P.(Crl) No. 2559 / 2018, dt Hon'ble High Court Of Delhi set aside the CMM's order granting Navlakha's transit remand to the Maharashtra Police while also refusing to extend his house arrest as it noted that neither the CMM took into account material available with the police to necessitate Navlakha's arrest nor was Navlakha informed about grounds of his arrest.

● In Sundeep Kumar Vs. The State (Govt. of NCT DELHI) , W.P.No. 2189/ 2018, dt . 12.12.2019, a division bench of Hon'ble Delhi High Court, has given 30 guidelines that have been proposed by a committee(on the strength of 48, 77,79,80 Cr.P.C) and pertained to protocal that must be followed by police in the event of interstate investigation and arrest.Remand – Spl Acts Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999.

In Dr. K. Narmada Vs. State of Andhra Pradesh , I.A No. 3 of 2023, in W.P. 8965 of 2023, dt 27.04.2023, a division bench of our hon'ble High Court observed thatThis Court has already referred to the provisions of the Act, which clearly state that it is only a designated Court which can deal with cases registered under the said Act. The designated Court/Judge shall be deemed to be a magistrate/Special Judge also.

The learned magistrate/Special Judge has obviously no jurisdiction to entertain the remand report. The accused should have been produced before the Special Court which was admittedly there in the vicinity in the District i.e.Metropolitan Sessions Judge, Vijayawada.

(As per sub section 2 of sec. 6 court including a court constituted under the presidency Towns insolvency Act, 1909, and the provincial insolvency Act, 1920, , other than Spl. Court shall have jurisdiction in respect of any matter to which the provisions of this Act, apply. Sec. 13 of the Act, deals with power's of Spl. Court which speaks that it can take cognizance of offences without the accused being committed to it for trial …. and for the purposes of application of provisions of cr.p.c

to spl court, it shall be deemed to be a magistrate/Special Judge. So,the spl. Court itself can entertain the remand)POCSO & SC and ST (POA) Act.

In The Registrar (Judicial) vs Krishnna Swami Naidu & Anr. on 17 March, 2017,while answering reference, a division bench of Madras High Court clarified that all the provisions contained in Section 167 of the Code are applicable to a Special Courts constituted under the POCSO Act and SC & ST (POA)Act, respectively. These courts can entertain remand in respect of Spl. Act Cases. A nearest magistrate/Special Judge can be approached in these cases only to save 24 hours time.POCSO Act.

In Kum. Shraddha Meghashyam Velhal Vs. State of Maharashtra , Crl. Application NO. 354 OF 2013, 03.07.2013 , it was held by Hon'ble Bombay H.C that except for recording statements u/sec. 25 of the Act, a magistrate/Special Judge court has no jurisdiction to do any other thing under the Act,only the court which can take cognizance of the offence can perform functions even at the pre- cognizance stage as there can not be more than one court exercising jurisdiction in respect of a single criminal prosecution .NDPS Act.

Section 36A Of NDPS Act

● In Anitha Mohan Waghmare Vs. IV Addl. Metropolitan magistrate/Special Judge RR Dist and 3 others, 2016 SCC Online Hyd 335, Hon'ble High Court Of A.P, at para No. 11 held that sections 36(A) (a) (b) and (c) reflect that a Spl. Court under the NDPS Act,is not a court for the first production of accused for obtaining orders of judicial remand and that a court of judicial magistrate/Special Judge is the the court of first production for the purpose of authorizing the detention of the person accused of commission of an offence in such custody as it thinks fit for a period not exceeding 15 days in the whole.

THE PRIZE CHITS AND MONEY CIRCULATION SCHEMES (BANNING) ACT, 1978

Sec. 9. Power to try offences.—No court inferior to that of a Chief Metropolitan magistrate/Special Judge, or as the case may be, Chief Judicial magistrate/Special Judge, shall try any offence punishable under this Act.(There is no provision for committal under this Act, so the

CMM, or CJM has to entertain to remand and shall take cognizance of offences under the Act).Police custody Section 167(2) Cr.P.C, authorises a magistrate/Special Judge to order police custody of an

● accused within the first 15 days of his detention to enable the investigating

● agency to bring the lines of their investigation to a logical end.

Procedure to be followed to grant police custody: Section 167(2) of Cr.P.C, Rule 26

of CR.R.P and Police Standing Order 469 of AP Police Manual laid down the procedure to be followed while granting Remand to police custody.

Generally granting or not granting remand to the police cutody always depends on the facts and circumstances of the case and requirement of the collection of evidence by the investigating agency . The investigating agency has to show that certain evidence has to be collected and without further custodial interrogation no further investigation is possible .Police custody

Grounds:

.Effective interrogation of accused to know about other accomplices;

● For recovery or collection of physical evidence

● Ascertaining the exact place of occurrence,

● Recovery of stolen property

● To Know the details of the offence.

● For ascertaining the truth of the statements of the other accused involved in the case .

● TO obtain additional details of the evidence to be collectedPolice custody

A magistrate/Special Judge shall not grant remand to police custody unless he is satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other police officer to the effect that the accused may be able to give further information.

In all cases, where the magistrate/Special Judge authorizes the detention of the accused in the custody of the police, he shall record his reasons for so doing. (Rule 26 of criminal rules of practice).

● When an accused person is remanded to Police custody, the period of the remand should be as short as possible.

Whenever, an order for police custody is passed, a copy of order shall be send to Court of Sessions. (Sec. 167(4) Cr.P.C)

Insist for medical examination of detainee both before and after interrogation by policeP/C should be with in first 15 days.

In Central Bureau Of Investigation Vs. Anupam j. Kulkarni (1992) 3 SCC 141 , it was held by Hon’ble Apex court that the order for police custody for a period not exceeding 15 days be made with in the spell of first 15 days of arrest , after such period there will be only judicial custody which may extend to 60 days or 90 days as the case may be.Number of custody orders

Whether there can be more than one spell of "police custody" within the first 15 days of remand ?

Yes. Within the first 15 days there can be more than one spell of police custody. But no "police custody" can be given after the first 15 days of remand.

CBI v. Anupam J. Kulkarni (1992) 3 SCC 141 = AIR 1992 SC 1768;

Chaganti Satyanarayana v. State of A.P. (1986) 3 SCC 141 = AIR 1986 SC2130; Kozanapu Ramreddy v. State of A.P. - AIR 1994 SC 1447.Number of custody orders

Whether the bar against granting "police custody" beyond the first 15 days of detention under Clause (a) of the first proviso to Section 167 Cr.P.C. applies if a new or additional offence is subsequently revealed in the very same transaction in which the accused was remanded to judicial custody?

Yes. The bar will still apply. For the said bar to be not applicable, the new offence should have been committed in another occurrence or a different transaction altogether. (Vide paras 11 and 13 of CBI v. Anupam J. Kulkarni (1992) 3 SCC 141. If the investigation into the offence for which the accused was arrested had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167 (2) Cr.P.C. would remain unextendable.Police custody after first 15 days?

1). In Central Bureau of Investigation Vs. Vikas Mishra , Crl.Appeal.No. 957/2023, dt 10.04.2023, a 2 judges bench of Hon’ble Supreme court has held that the view that there can not be police custody beyond 15 days from the date of arrest as held in Anupam J Kulkarni, case requires reconsideration. In that case custody of accused was given to police, after first 15 days stating that no accused can be permitted to frustrate the judicial process by his conduct .After two days , of his police custody, the accused was admitted in hospital and eventually released on interim bail on medical grounds, where by the CBI unable get the custody of remaining 5days. So police custody was granted for 4 days by SC. Police custody after first 15 days?

2). In Senthil Balaji Vs Central Bureau of Investigation Crl.Appeals.No. 2284 and 2285 / 2023 , dt. 07.08.2023, Anupam J Kulkarni case was distinguished on factual aspects and observed that the view expressed in Kulkarni’s case requires reconsideration by a reference to larger bench.

Till such reference is answered which decision is to be followed ?

Ans. CBI Vs. Anupam J. KulkarniPOLICE CUSTODY AFTER C/S

Police custody u/s 167(2) CrPC can be sought even after filing of charge- sheet : Central Bureau of Investigation Vs. Rathin Dandapath, AIR 2015 SC 3285.

In **Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240,** Supreme Court has highlighted the importance of personal liberty of an accused. In the said judgment, the Supreme Court has emphasized on creating a balance between the right and liberty guaranteed under Article 21 of the Constitution of India and the interest of justice as well as the society which is sought to be protected by Section 437 Cr.P.C, wherein it is, inter alia, observed thus:

> 10.The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice--to the individual involved and society affected."

In the Judgment of the Supreme Court in **Maneka Gandhi v. Union of India :**

This Court speaking through Hegde, J. in A.K. Kraipak's case , quoted with approval the above passage from the judgment of Lord Parker, C.J. and proceeded to add: (at p.156 of A.I.R.)

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it...till very recently it was the opinion of the courts that unless the authority concerned was required by

the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of the limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. The University of Kerala"

In Sahara India Real Estate Corpn. Ltd. v. SEBI (2012) 10 SCC 603, the Constitution Bench of this Hon'ble Court approved the minority judgment of Subba Rao, J. in para 24 and relying upon Blackstone's Commentaries on the Laws of England observed in para 26 as follows:

“Personal liberty” includes “the power to locomotion of changing situation, or removing one's person to whatsoever place one's inclination may direct, without imprisonment or restraint, unless by due course of law.” In A.K. Gopalan case 1950 SCR 88, AIR 1950 SC 27, (1950) 1 Cri LJ 1383, it is described to mean liberty relating to or concerning the person or body of the individual; and personal liberty in this sense is the antithesis of physical restraint or coercion. The expression is wide enough to take in a night to be free from restrictions placed on his movements. The expression “coercion” in the modern age cannot be construed in a narrow sense. In an uncivilised society where there are no inhibitions, only physical restraints may detract from personal liberty, but as civilisation advances the psychological restraints are more, effective than physical ones. The scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical fear channelling one's actions through anticipated

and expected groves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, right to personal liberty takes in not only a right be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security.

… If physical restraints on a person's movements affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Article 21 as a right of an to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under, Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution.

… namely, whether the petitioner's fundamental right under Article 19(1)(d) is also infringed. What is the content of the said fundamental right? It is argued for the State that it means only that a person can move physically from one point to another without any restraint.' This argument ignores the adverb “freely” in clause (d). If that adverb is not in the clause, there may be some justification for this contention; but the adverb “freely” gives a larger content to the freedom mere movement unobstructed by physical restrictions cannot itself be the object of a person's travel. A person travels ordinarily in quest of some objective. He goes to a place to enjoy, to do business, to meet friends, to have secret and intimate consultations with others and to do many other such things. If a man is shadowed, his

movements are obviously constricted. He can move physically, but it can only be a movement of an automation. How could a movement under the scrutinising gaze of the policemen be described as a free movement? The whole country is his jail. The freedom of movement in clause (d) therefore must be a movement in a free country i.e. in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control. The petitioner under the shadow of surveillance is certainly deprived of this freedom. He can move physically, but he cannot do so freely, for all his activities are watched and noted. The shroud of surveillance cast upon him perforce engender inhibitions in him and cannot act freely as he would like to do." (see para 26)

The Apex Court in the case of **Mohd. Zubair v. State (NCT of Delhi)** has held as follows:

Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion--an opinion that he is rightfully entitled to hold as an active participating citizen -- would be disproportionate to the purpose of imposing conditions on bail. The imposition of such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation in this age of morphed images, clickbait, and tailored videos. Passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession.

Circulars

1. Multiple Cases registered across different police stations over one social media post/comment for which maximum sentence prescribed is less than seven years-strict adherence to the principles laid down in “Arnesh Kumar v. State of Bihar and another’” by the magistrate/Special Judges remanding the accused with certain instructions in Circular No.8/2025 issued by The Hon’ble High Court of Andhra Pradesh, Amaravathi vide ROC No.99/SO/2023 dated 05.07.2025.

2. The Hon’ble High Court of Andhra Pradesh, Amaravathi issued Circular No.10/2023 vide ROC No.99/SO02023 dated 19.06.2023 informed that the Hon’ble Supreme Court of India in it’s Judgment dated 11.07.2022 passed in Miscellaneous Application No.1849 of 2021 in SLP (Crl.) No.5191 of 2021 (**Satender Kumar Antil v. Central Bureau of Investigation and another**) issued certain direcrtions for strict compliance and that the same have been communicated to all the unit Heads vide High Court’s letter dated 09.02.2023 requesting them to follow the directions.

Conclusion

The constitutional guarantee of life and personal liberty under Article 21 is not merely a legal formality—it is the moral compass of our criminal justice system. magistrate and Special Judges stand as the first and most crucial line of defence against arbitrary State action. Their cautious approach in matters of arrest, remand, and bail is not an act of leniency, but an affirmation of the rule of law and the presumption of innocence.

In an era where special legislation impose stringent bail conditions and prolonged investigations test the limits of due process, the judiciary’s role in safeguarding fundamental rights becomes even more vital. By insisting on reasoned orders, adhering strictly to Supreme Court guidelines, embracing technology for accountability, and remaining sensitized to human rights, courts can strike the delicate balance between the needs of justice and the dignity of the individual.

Finally, a truly just society is measured not by how swiftly it punishes the guilty, but by how steadfastly it protects the innocent. A cautious, rights-conscious judiciary ensures that the State's power remains bound by constitutional limits—and that personal liberty is never sacrificed at the altar of expediency.

With this I conclude.

I thank the Hon'ble Principle District Judge for giving me the opportunity to present this paper.

Yours faithfully,

(Bandela Abraham)
VII Addl.District & Sessions Judge,
Vijayawada.