

Transit remands in respect of Special Acts and Jurisdiction of Judicial Magistrate of First Class in general.

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The word '**transit**' is an undefined expression in Cr.P.C/BNSS. The word 'transit' is derived from the Latin word 'transitus' which means passage from one place to another. The Concise Oxford English dictionary, Revised 10th Edition defines the word 'transit' to mean carrying of people or things from one place to another; the conveyance of passengers on public transport; an act of passing through or across a place.

A combined reading Article 22(2) of the Constitution of India and Secs.57 and 167 of Cr.P.C/Secs.58 and 187 of BNSS would reveal that every person arrested and detained in custody must be produced before the nearest Magistrate within 24 hours. No person can be detained for more than 24 hours without the permission of the Magistrate U/sec.167 Cr.P.C. Sec.57 of Cr.P.C/Sec.58 BNSS interdicts the police officer from keeping in custody a person for a longer period than 24 hours without production before the Magistrate, subject to the exception that the time taken for performing the journey from the place of arrest to the Magistrate's court can be excluded from the prescribed period of 24 hours.

'**Transit remand**' is one of the significant judicial pronouncements, which enables the investigating agency/police to shift the person in custody from the place of arrest to the place where the matter can be investigated. The transit remand is given specifically for the transit of an accused from one place to another in order to produce the accused before the jurisdictional Magistrate. The BNSS, like Code of Criminal Procedure aims to ensure the accused is produced

before the appropriate court without unnecessary delay. In essence, transit remand under Cr.P.C./BNSS is a mechanism to ensure that an accused is promptly brought before the competent court for the continuation of the legal process, even if the arrest occurs far from the court's jurisdiction. For example, if an accused is arrested in the state of Andhra Pradesh for an offence under NDPS Act and the investigation needs to be conducted in Delhi, the investigating agency would need to obtain a transit remand order from a Magistrate in Andhra Pradesh before transporting the accused to Delhi.

Immediately upon affecting the arrest of a person outside the jurisdiction where the offence is registered, the police is obligated to secure a transit remand from the nearest Magistrate. On production of accused before the nearest Magistrate, the police officer has to file an application by submitting necessary case diary material and state the reasons for requesting transit remand. If such a Magistrate finds that he has no jurisdiction to try the case in which the accused has been arrested, he may order the accused to be forwarded to a Magistrate having the jurisdiction to try the case or to commit it for trial. Thus, the police is obligated to secure a transit remand of the accused for taking him from the place where he is arrested to the place where the crime is registered, for production before the competent Magistrate in terms of the requirement of Article 22. The transit remand is usually for the shortest period necessary to bring the accused before the court of competent jurisdiction.

The Hon'ble Apex court in **Harendra vs. State of UP, 2002 (0) Supreme (All) 570** emphasizes that obtaining transit remand is a judicial act that must be placed on material in the case diary, and the Magistrate must be satisfied that the remand is justified. The Magistrate must also ensure that the arrest and remand procedures comply with constitutional safe guards, including informing the accused of grounds of arrest and allowing legal consultation. The

Magistrate's decision must be judicial, based on material, and not mechanical or executive.

*In **Gautam Navlakha v. State (Nct Of Delhi), (Delhi)(DB)**, reported in **2019(1) Cri.CC 283**, it was held that:*

*“15. Therefore, when a person who after arrest is required to be produced before a jurisdictional Judicial Magistrate is detained in a place which is away from that jurisdiction, and therefore cannot be produced before the jurisdictional Magistrate within 24 hours, as mandated both by Article 22 (2) of the Constitution and by Section 57 Cr PC, he will be produced before the '**nearest Judicial Magistrate**' together with 'a copy of the entries in the diary'. Therefore, even before a Magistrate before whom a transit remand application is filed, the mandatory requirement of Section 167 (1) Cr PC is that a copy of the entries in the case diary should also be produced. It is on that basis that under Section 167 (2) such '**nearest Judicial Magistrate**' will pass an order authorising the detention of the person arrested for a term not exceeding 15 days in the whole. Where he has no jurisdiction to try the case and he finds further detention unnecessary, he may order the accused to be forwarded to the jurisdictional Magistrate.*

16. Thus it is clear that even Magistrate before whom a transit application is filed is not required to merely satisfy himself that an offence has been committed and that the police officer seeking a remand is properly authorised. Such Magistrate is required to apply his mind to ensure that there exists material in the form of entries in the case diary that justifies the prayer for transit remand.”

Pre requisites for grant of transit remand and guiding principals:

- Accused needs to be present before the magistrate.
- A copy of the case diary needs to be forwarded to the magistrate.
- Police officer applying for remand must mention the reasons for requesting transit remand.
- The magistrate granting transit remand shall record reasons for doing so.
- The same principles and requirements that apply to grant remand shall also equally apply to transit remands.

Transit remands/transit warrants are especially significant for offences investigated by central agencies (NIA under UAPA, CBI under Prevention of Corruption Act), or for serious offences under NDPS, PMLA, where cross-border investigation and arrests are frequent. It is settled law that the process of producing the arrestee before the nearest Magistrate and grant of transit remand cannot be bypassed even in special act cases. In **Priya Indoria v. State of Karnataka, (2023)**, the Hon'ble Supreme Court clarified that transit remand is a mandatory safeguard. Even for special acts, the arrest must be judicially scrutinized and legal rights protected.

While the NDPS Act, 1985 does not explicitly outline transit remand procedures, Section 36A deals with the offenses being cognizable and non-bailable, implying that transit remands, if necessary, would follow the procedure under Cr.P.C/BNSS. Section 19(1) of the PMLA, 2002, empowers the Special Court to take cognizance of offenses without the accused being committed to it for trial, which may involve transit remand procedures, where First Class Magistrates can facilitate the process based on Cr.P.C/BNSS provisions. While

UAPA, 1967 does not explicitly mention transit remands, the procedure under Cr.P.C/BNSS would be applicable.

Although section 167 Cr.P.C is the most commonly sought transit remand, the term is also used in other contexts. For instance, transit remand may be sought under Sec.80 Cr.P.C/Sec.82 BNSS. The distinction between Sec.80 and section 167 Cr.P.C is that Sec.80 applies only when the accused is arrested under a warrant issued by a court in a district different from that in which he is apprehended. However, in case where the police officer arrests the accused without a warrant, the transit remand sought is the one under section 167 Cr.P.C.

When any person is anticipating of/apprehending his arrest in a case registered beyond jurisdiction of the Court, he may apply to the Court or Court of Sessions for direction that in the event of his arrest he shall be released. Transit anticipatory bail is a legal provision that allows an individual to seek pre-arrest bail when he apprehends arrest while in transit between two states or jurisdictions. The Hon'ble Apex court is recognized the need for transit anticipatory bail in the landmark case of **“Gurbaksh Singh Sibbia v. The State of Punjab”**.

Finally, I conclude that all the Magistrates/Judges who are exercising the power of remand or transit remand shall record about their satisfaction of compliance or otherwise of the requirement, mandated under Article 22 of the Constitution of India and sections 41 and 41(A) of Cr.PC/Secs.35 (1) to (6) BNSS without fail, in addition to the directions given by the Hon'ble Apex court as well as Hon'ble High Court of AP time to time.
