

**a) Duties and powers of Judicial Magistrates to examine *prima facie* case and compliance of section 41-A Cr.P.C/section 35 (3) to 35 (6) of BNSS by Magistrates at the time of remand with reference to Arnesh Kumar's case**

by

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**1. Introduction:**

The law of arrest balances two competing interests—the State's power to investigate crimes and the individual's right to liberty. To prevent unnecessary and arbitrary arrests, Parliament introduced safeguards under Section 41A (inserted by 2009 the Amendment) of the Code of Criminal Procedure, 1973 (herein after called as Cr.P.C). These safeguards are carried forward and strengthened in the Bharatiya Nagarik Suraksha Sanhita, 2023 (herein after called as BNSS), particularly in Section 35(3) to 35(6).

The powers of arrest conferred upon the police under the Code of Criminal Procedure, 1973 (Cr.P.C.) and now under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), are not unfettered. To safeguard the constitutional right to liberty under Article 21, the legislature introduced checks such as Section 41A Cr.P.C and Section 35(3)–(6) BNSS, mandating the issuance of notice of appearance and recording of reasons for arrest. At the remand stage, the Judicial Magistrate plays a crucial role in ensuring that these safeguards are meaningfully enforced.

➤ *Remand of Accused by the Magistrate:*

In criminal law, remand refers to the process by which an accused person, after arrest, is kept in custody under the orders of a Magistrate during the stage of investigation. It is a crucial stage because it directly affects the fundamental right to personal liberty under Article 21 of the Constitution. Therefore, the power of remand is not mechanical but must be exercised with judicial application of mind.

➤ *Legal Basis :*

The provisions relating to remand are found in:

Section 167 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (new law replacing Cr.P.C.)

These provisions govern how long an accused can be kept in custody and the procedure the police and Magistrates must follow.

## 2. Statutory Framework:

**Section 41(1) Cr.P.C** (now **Section 35(1) BNSS**) empowers police officers to arrest without warrant in certain cases. However, **Section 41(4) Cr.P.C/Section 35(3)–(6) BNSS** places a significant check: when the offence is punishable with imprisonment up to seven years and in a non cognizable case, arrest cannot be made mechanically. Police officers must record reasons showing necessity of arrest, and the Magistrate must scrutinize those reasons before authorizing further detention.

➤ Purpose of Section 41A Cr.P.C and section 35(3)–(6) BNSS: To ensure that arrest is not made in a routine manner for offences punishable up to seven years of imprisonment. Section 41A Cr.P.C introduced the concept of "notice of appearance" to curb unnecessary arrests.

### a) Notice of Appearance:

When arrest is not required under Section 41(1) Cr.P.C., the Investigating Officer (IO) shall issue a notice directing the accused to appear before him.

### b) Obligation to Comply:

The person receiving the notice must comply with its terms. If the person complies, he shall not be arrested, unless the IO records specific reasons for arrest. If arrest is made despite compliance, the IO must record reasons in writing. Such reasons must be placed before the Magistrate at the stage of remand.

### c) Consequence of Non-Compliance by Accused:

If the accused fails to comply with the notice, the IO may arrest him, subject to recording reasons.

Impact: Section 41A was a safeguard against casual arrests, ensuring that liberty is curtailed only when necessary.

➤ The BNSS retains the spirit of Section 41A but strengthens procedural accountability. Section 35(3) to (6) BNSS, 2023, consolidates the arrest safeguards more clearly. Section 35(3) to (6) BNSS expands this protection by making it mandatory to record both arrest and non-arrest reasons, and by requiring judicial scrutiny at the remand stage. Together, these provisions

*safeguard personal liberty, prevent misuse of police power, and uphold the principle that arrest is an exception, not the rule.*

- a) Notice of Appearance (similar to 41A):
- b) The police officer must record reasons for arrest or non-arrest in writing.
- c) Where arrest is not required, a notice to appear must be issued to the accused -Sub-section (3) of 35.
- d) The person must comply with the terms of the notice - Sub-section (4) of 35.
- e) Compliance with such notice protects the accused from arrest unless reasons are later recorded- Sub-section (5) of 35
- f) If person fails to comply with the terms of the notice, police may arrest for reasons to be recorded - Sub-section (6) of 35.
- g) The reasons for arrest or non-arrest, and the notice issued, must be forwarded to the Magistrate, who shall examine compliance before authorizing further detention.
- h) The police officer must record in writing reasons for making an arrest and also reasons for not making an arrest. These reasons must be forwarded to the Magistrate for scrutiny at the time of first production/remand.
- i) Magistrate must examine these reasons before authorizing remand.

### **3. Duties and Powers of Judicial Magistrate to Examine Prima Facie Case:**

*"The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court."*

*- Hon'ble Supreme Court in Prabir Purkayastha Case*

(while dealing with arrest and remand under UAPA and PMLA)

- At the time of first production/remand, the Magistrate is not a mere mute spectator. The Honble Supreme court in several cases emphasized proactive judicial scrutiny.
- Examine Prima Facie case
- Magistrate must scrutinize FIR, case diary, and arrest memo to ascertain whether the allegations disclose a prima facie cognizable offence and reasons for arrest.

- He/she must ensure that ingredients of the offence are made out on the face of the record and be satisfied that offence alleged has *prima facie* ingredients
- Arrest is necessary for investigation/preventing tampering/intimidation etc. (grounds under Section 41(1)(b) CrPC / Section 35(1) BNSS).
- Verify that arrest was not mechanical but based on necessity such as preventing further offences, ensuring presence of the accused, or protecting evidence.
- Compliance of Section 41A CrPC / Section 35(3)–(6) BNSS (if applicable)
- Police must produce written reasons for arrest or non-arrest.
- Magistrate must record satisfaction in writing that conditions under Section 41(1)(b) CrPC / 35(1) BNSS were met.
- If the material fails to disclose a *prima facie* case or the grounds of arrest are weak, the Magistrate is duty-bound to refuse remand if the police fail to follow the statutory mandate, may direct release and can take action against Investigating Officer.

➤ The Hon'ble Supreme Court in ***Balveer Singh and Anr. V State of Rajasthan and anr., criminal appeal no. 253 OF 2016***, held that, *"Even if the case is triable by the Court of Session, the function of the Magistrate is not to act merely as a post office and commit the case to the Court of Session, but he is also empowered to take cognizance, issue process and summon the accused and thereafter commit the case to the Court of Session".*

The Hon'ble Supreme Court in ***Manubhai Ratilal Patel v. State of Gujarat (2013)*** held that, *"The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand".*

**This judicial responsibility entails:**

- Scrutinizing the arrest memo and reasons recorded by the police.
- Ensuring that the accused was informed of his rights.
- Considering whether custodial interrogation is genuinely required.

- Refusing remand if arrest appears mechanical, unjustified, or in violation of statutory safeguards.

➤ **Key Directions by Hon'ble SC in Prabir Purkayastha Vs. State, 2024 INSC 414:**

In this Case the Supreme court of India quashed the arrest and remand of Prabir purkayastha under the unlawful Activities (prevention) Act, 1967 holding that the failure to provide the grounds of arrest in writing at the time of arrest and before remand violated Articles 22 (1) and 22 (5) of constitution of India and held Communication of the grounds of arrest is the fundamental rights of accused person under the above Articles.

**Key Holdings:**

- Grounds of Arrest must be supplied in writing to the accused at the earliest – oral intimation is not enough.
- Reasons for arrest and specific facts justifying custody must be mentioned.
- Written grounds to be given before remand otherwise custody will be illegal.
- As per Article 22(1) + Section 43B UAPA (like Section 19 PMLA), written grounds compulsory.
- Non-compliance vitiates both arrest & remand and Fundamental right under Article 22(1) violation makes custody illegal and entitles accused to release on bail.
- Chosen counsel's presence is essential at remand stage.
- Filing charge sheet later does not cure initial illegality.

Therefore, Magistrates are constitutional sentinels against arbitrary arrests, and their judicial scrutiny is the first line of defense in protecting personal liberty and power and discretion should be exercised cautiously.

**4. Arnesh Kumar v. State of Bihar (2014) 8 SCC 273:**

*Landmark judgment protecting personal liberty in matrimonial cruelty cases (Section 498A IPC), but applicable to all offences up to 7 years.*

The Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar (2014) 8 SCC 273 laid down binding guidelines reinforcing the Magistrate's duty to scrutinize police compliance before authorizing detention.

The Petitioner, Arnesh Kumar and Sweta Kiran got married on 1<sup>st</sup> July, 2007. The Respondent Sweta Kiran contended that the parents of the Petitioner

demanded dowry including a Maruti car, television, cash etc. She alleged that the Petitioner supported these demands and threatened to marry another woman if the dowry was not provided and she was also forced to leave the matrimonial home due to the non-fulfillment of the dowry demands of Arnesh Kumar and his parents. The Petitioner Arnesh Kumar declined the allegations. He applied for anticipatory bail to get protection against arrest. The Sessions Court rejected the anticipatory bail application of Arnesh Kumar. Aggrieved by the decision of the Sessions Court, the Petitioner again applied for anticipatory bail in the Patna High Court. However, the High Court also rejected his bail application. The Petitioner Arnesh Kumar filed a Special Leave Petition (SLP) before the Supreme Court following the rejection of his anticipatory bail by the lower courts.

The Hon'ble Supreme Court in order to ensure that police officers do not make unnecessary arrests and Magistrates do not authorize unwarranted detention issued the following directions:

**Key directives:**

- State Governments must direct police officers not to automatically arrest individuals in cases registered under Section 498A of the Indian Penal Code. Instead, they must assess the necessity for arrest based on the parameters mentioned in Section 41 of the Criminal Procedure Code (Cr.P.C.)
- Police officers must be provided with a checklist containing the specified sub- clauses of Section 41(1)(b)(ii) of the Criminal Procedure Code (Cr.P.C.)
- The police must submit the completed checklist along with the reasons and evidence justifying the arrest when producing the accused before the Magistrate for detention.
- Magistrates must review the report submitted by the police and record their satisfaction regarding the necessity for detention, before authorizing detention.
- If the police decide not to arrest the accused, this decision must be communicated to the Magistrate within two weeks of the institution of the case.
- As per Section 41A of the CrPC a notice to appear must be served on the accused within two weeks of the case being instituted with an extension permissible by the Superintendent of Police upon recording reasons in writing.

- Non-compliance with these directions will subject the concerned police officers to departmental action and contempt of court proceedings before the High Court with territorial jurisdiction.
- Judicial Magistrates authorizing detention without recording appropriate reasons will face departmental action initiated by the respective High Court.
- Directed police officers not to arrest mechanically in offences punishable up to seven years.
- Made it mandatory to follow Section 41 and 41A Cr.P.C.
- Held that Magistrates must not authorize remand mechanically; they must examine compliance and record reasons for satisfaction.
- Clarified that non-compliance by police or Magistrate amounts to violation of Article 21 and may attract departmental or contempt proceedings.
- Thus, the Magistrate is the judicial sentinel who prevents arbitrary deprivation of liberty.

The Arnesh Kumar judgment is a milestone in criminal jurisprudence. It curtails the misuse of arrest powers, especially in matrimonial cases, and reinforces judicial responsibility in remand proceedings. By mandating compliance with Sections 41 and 41A Cr.P.C, Section 35(3)–(6) of BNSS, it strikes a balance between effective investigation and protection of individual liberty.

##### **5. Conclusion:**

Remand is a judicially controlled mechanism that balances two interests:

- i) The need of the police to effectively investigate crimes, and
- ii) The constitutional right of the accused to liberty and fair procedure.

Failure of Magistrates to discharge this role can amount to judicial abdication and may attract higher court intervention.

Thus, the Magistrate acts as a guardian of liberty at the remand stage, ensuring that detention is ordered only when strictly necessary and in compliance with statutory and constitutional safeguards.

**b) Transit remands in respect of Special Acts and Jurisdiction of the Judicial Magistrate of First Class in General:**

**1. Introduction:**

A transit remand arises when an accused is arrested in one State or jurisdiction, but the case is registered in another. Since the police of one State do not have territorial jurisdiction to detain and produce the accused directly before a distant court, they must first obtain the authorization of the nearest Magistrate to transfer the accused. This process is called transit remand.

Transit remands are especially significant in cases under special Acts (like NDPS Act, PML Act, UAP Act, TADA Act and Companies Act etc ), where investigations are often carried out by central agencies (CBI, NIA, ED, CB-CID etc.) and accused may be apprehended outside the State where the FIR/ECIR is registered. Transit remand ensures compliance with constitutional safeguards before producing the accused before the Special Courts.

**2. Legal Foundation :**

- While the term "transit remand" is not expressly defined in Cr.P.C. or BNSS, its practice is derived from Section 167 Cr.P.C / Section 187 BNSS – authorizing custody when investigation cannot be completed within 24 hours.
- Sections 56 and 57 Cr.P.C. – mandate that every person arrested without a warrant shall be produced before a Magistrate within 24 hours.
- Judicial precedents recognizing the necessity of transit remand to protect the liberty of the accused and to regulate inter-State arrests.
- The Bharatiya Nagarik Suraksha Sanhita, 2023, which is intended to replace the CrPC, contains similar provisions regarding transit remand. Section 187 of the BNSS corresponds to section 167 of the CrPC and authorizes a Magistrate to order the detention of an accused for investigation purposes, even if the Magistrate does not have jurisdiction to try the case. Similarly, Section 91 of the BNSS corresponds to Section 80 of the Cr.P.C and provides for the production of an arrested person before the nearest Magistrate for the purpose of granting transit remand to the jurisdictional court. These provisions ensure continuity in the judicial approach to transit remands under the new code.

### **3. Purpose of Transit Remand:**

- To enable lawful transfer of the accused to the jurisdiction where the case is registered.
- To ensure judicial oversight over the arrest and detention.
- Ensure accused rights (legal aid, medical check-up, intimation to family).
- To safeguard the fundamental right to liberty by preventing illegal detention or abduction across State lines.
- To allow the accused to raise objections (e.g., ill-treatment, lack of grounds of arrest) before a judicial authority.
- Thus, the order of the Magistrate granting transit remand not only sets the time for the purpose of default bail but also determines the nature and permissible extent of police custody during the transit period, ensuring compliance with constitutional and statutory safeguards.

### **4. Transit Remand under Special Acts:**

(A) Narcotic Drugs and Psychotropics Substances Act, (NDPS Act) 1985  
 Since drug trafficking often involves inter-State or international operations, transit remand is frequently sought to move the accused across jurisdictions.

(B) Unlawful Activities (Prevention) Act, 1967 (UAP Act)  
 National Investigation Agency (NIA) often arrests accused outside the State where the offence is registered.

(C) Prevention of Money Laundering Act, 2002 (PML Act)  
 Enforcement Directorate (ED) officers arrest accused across States.

(D) Terrorist and Disruptive Activities (Prevention) Act (TADA Act ), 1987

(E) Other Special Acts (Customs Act, 1962 and Companies Act, etc.)  
 Central agencies, investigating inter-State offences must obtain transit remand to avoid illegality in custody.

### **5. Jurisdiction of Magistrate in Granting Transit Remand in General :**

- The accused, when arrested outside the territorial jurisdiction of the case, must be produced before the nearest Judicial Magistrate.
- The Magistrate is not expected to examine the merits of the case.
- Jurisdiction is limited to ensuring that the arrest is lawful and that custody is necessary for the purpose of production before the competent court.

- Verify the legality of arrest (arrest memo, grounds of arrest, compliance with Sec. 41/41A Cr.P.C or Section 35 BNSS).
- Ensure the accused is informed of his right to legal aid.
- Authorize only such custody as is necessary to enable production before the proper court.
- Safeguard against excessive or unnecessary custody during transit.  
*(Failure to observe these safeguards renders the remand orders vulnerable to being set aside).*

➤ ***Hon'ble Delhi High Court recently in the case of Sundeep kumar v state Govt NCT of Delhi WP No. 2189/2018 (2019 SCC online Del 11901)*** laid down guidelines regarding production of the accused in case of transit remand especially interstate Remand :

The Committee appointed by the Hon'ble High Court for enquiry in this case, gave detailed suggestions as to the protocol to be followed by the police in the event of inter-state arrest. These read as under:

1. *The Police Officer after assignment of the case to him, must seek prior permission/sanction of the higher/superior officers in writing or on phone (in case of urgency) to go out of State/UT to carry out investigation.*
2. *In a case when the police officer decides to effect an arrest, he must set out the facts and record reasons in writing disclosing the satisfaction that arrest is necessary for the purpose of investigation. At first instance, he should move the Jurisdictional Magistrate to seek arrest/search warrants under Section 78 and 79 Cr PC except in emergent cases when the time taken is likely to result in escape of the accused or disappearance of incriminating evidence or the procurement of arrest/search warrant would defeat the purpose. The Police Officer must record reasons as to what were the compelling reasons to visit other State without getting arrest/search warrants.*
3. *Before proceeding outside the State, the police officer must make a comprehensive departure entry in the Daily Diary of his Police Station. It should contain names of the police officials and private individuals accompanying him; vehicle number; purpose of visit; specific place(s) to be visited; time and date of departure.*
4. *If the possible arrestee is a female, a lady police officer be made part of the team. The Police Officers should take their identity cards with*

them. All police officers in the team should be in uniform; bear accurate, visible and clear identification and name tags with their designations.

5. Before visiting the other State, the Police Officer must endeavour to establish contact with the local Police Station in whose jurisdiction he is to conduct the investigation. He must carry with him the translated copies of the Complaint/FIR and other documents in the language of the State which he intends to visit.
6. After reaching the destination, first of all, he should inform the concerned police station of the purpose of his visit to seek assistance and co-operation. The concerned SHO should provide/render all legal assistance to him. Entry to this effect must be made at the said police station.
7. After reaching the spot of investigation, search, if any should be strictly conducted in compliance of the procedure laid down under section 100 Cr.P.C. All endeavour should be made to join independent public witnesses from the neighbourhood. In case of arrest, the police officer must follow the procedure u/s 41A and 41B and Section 50 and 51 Cr PC. The process of arrest carried out by the police must be in compliance with the guidelines given in **DK Basu case** (Supra) and the provisions of Cr.P.C.
8. The arrested person must be given an opportunity to consult his lawyer before he is taken out of State.
9. While returning, the police officer must visit the local police station and cause an entry made in the Daily Diary specifying the name and address of the person(s) being taken out of the State; articles if any, recovered. The victim's name be also indicated.
10. Endeavor should be made to obtain transit remand after producing the arrestee before the nearest Magistrate unless exigencies of the situation warrant otherwise and the person can be produced before the Magistrate having jurisdiction of the case without infringing the mandate of S. 56 and 57 of Cr.P.C. within 24 hours.
11. The magistrate before whom the arrestee is produced, must apply his mind to the facts of the case and should not grant transit remand mechanically. He must satisfy himself that there exists material in the form of entries in the case diary that justifies the prayer for transit remand. The act of directing remand of an accused is fundamentally a

*judicial decision. The magistrate does not act in executive capacity while ordering detention of the accused. He must ensure that requirements of S. 41 (1) (b) are satisfied. The police officer must send the case diary along with the remand report so that the magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. The magistrate should briefly set out reasons for his decision. (**Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314**)*

- 12.** *Another mandatory procedural requirement for the Magistrate considering a transit remand application is spelt out in Article 22 (1) of Constitution of India. This entitles the person arrested to be informed as soon as may be the grounds of such arrest. The Magistrate has to ensure that the arrested person is not denied the right to consult and to be defended by a legal practitioner of his choice. The Magistrate should ask the person arrested brought before him whether in fact he has been informed of the grounds of arrest and whether he requires to consult and be defended by any legal practitioner of his choice. After the pronouncement of this judgment by the Hon'ble Supreme Court, new Sections 41A to 41D have been added to prevent unnecessary arrest and misuse of powers. Denying a person of his liberty is a serious matter.*
- 13.** *In terms of section 41C, control rooms be established in every district. Names and addresses of the persons arrested and designation of the Police Officers who made the arrest be displayed. Control Room at State level must collect details of the persons so arrested.*
- 14.** *The police officer must record all the proceedings conducted by him at the spot and prepare an 'arrest memo' indicating time, date of arrest and name of the relation/friend to whom intimation of arrest has been given. It must reveal the reasons for arrest.*
- 15.** *Since the arrestee is to be taken out of his State to a place away where he may not have any acquaintance, he may be permitted to take along with him (if possible), his family member/acquaintance to remain with him till he is produced before the jurisdictional Magistrate. Such family member would be able to arrange legal assistance for him.*
- 16.** *The arrested person must be produced before the jurisdictional Magistrate at the earliest, in any case, not beyond 24 hours from the*

*date of arrest excluding the journey time so that arrest of such person and his detention, if necessary, may be justified by a judicial order. The 24 hours period prescribed u/s 57 Cr PC is the outermost limit beyond which a person cannot be detained in police custody. It does not empower a police officer to keep a person in police station a minute longer than is necessary for the purpose of investigation and it does not give him an absolute right to keep a person till 24 hours.*

- 17.** *On arrival at the police station, the police officer must make an arrival entry in the record and indicate the investigation carried out by him, the person arrested and the articles recovered. He should also inform his senior police officers/SHO concerned about it immediately. The superior Police Officer shall personally supervise such investigation.*
- 18.** *The police officer should effect arrest under section 41(l)(b) Cr.P.C. only when he has reasonable suspicion and credible information. He must satisfy himself about the existence of the material to effect arrest. There must be definite facts or averments as distinguished from vague surmises or personal feelings. The materials before him must be sufficient to cause a bona-fide belief. He cannot take shelter under another person's belief or judgment. He must effect arrest at his own risk and responsibility as the effect of illegal arrest could be commission of offence of wrongful confinement punishable under section 342 IPC. Burden lies on the IO to satisfy the Court about his bona-fide. No arrest can be made because it is lawful for the police officer to do so. Denying a person of his liberty is a serious matter.*
- 19.** *Medical examination soon after arrest to avoid possibility of physical torture during custody should be conducted.*
- 20.** *The IO must maintain a complete and comprehensive case diary indicating the investigation carried out by him.*
- 21.** *The log book of the vehicle used for transportation must be maintained and signed. The IO must indicate whether the vehicle was official or a private one; name of its driver and how and by whom it was arranged. Only official vehicle should be used for transportation to the extent possible.*
- 22.** *At the time of recovery of the prosecutrix, the police officer, if he is satisfied that she is adult, should ascertain from her at the spot, whether she was present there with her free will. If the victim/prosecutrix is not willing to accompany the police officer or her*

*relatives, the police officer must not exert force on the prosecutrix to take her away against her wishes. However, if the prosecutrix/victim of her own accord expresses willingness to accompany the police officer/relatives, her consent in writing should be obtained at the spot.*

- 23.** *In case where the police officer finds the victim/prosecutrix to be a 'minor', soon after recovery, she should be produced before the local Child Welfare Committee for further decision regarding her custody. She must not be made to stay in the Police Station during night hours.*
- 24.** *Statement of the prosecutrix u/s 164 Cr.P.C. must be recorded at the earliest.*
- 25.** *MHA/Central Govt/Commissioner of Police must frame suitable guidelines for police officers to render all suitable assistance. The failure to adhere to the rules/guidelines should render the police officer liable for departmental action as well as contempt of the Court.*
- 26.** *The public prosecutor should provide required assistance to the police officer visiting his State at the time of seeking transit remand.*
- 27.** *The MHA/State Government should circulate the Rules/ Guidelines/ Notifications etc from time to time to the Police officers in the State to create awareness. Periodically training should be provided to the Police Officers to sensitize them.*
- 28.** *Instructions/Guidelines of similar nature should exist in all the States/UTs for speedy, smooth and effective inter-State investigation.*
- 29.** *The delinquent Police Officer can be directed to pay compensation under the public law and by way of strict liability."*

## **6. Judicial Precedents :**

- Immediately upon effecting the arrest of a person outside the jurisdiction where the offence is registered, the police are obligated to secure a transit remand by producing the arrested person before the nearest Magistrate. 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. This process ensures compliance with Article 22 of the Constitution, safeguarding the rights of the arrested person by mandating that the police secure a transit remand for taking the accused from the place of arrest to the place where the crime is registered, for production before the competent Magistrate. This principle was clearly articulated by Hon'ble Supreme Court

in *Priya Indoria v. State of Karnataka, (2024) 4 SCC 749* – where it was held (para 89) that the procedure is mandatory and rooted in constitutional protection.

- A pertinent question arises regarding the nature of custody when an accused is remanded pursuant to a transit remand—whether such custody is to be considered police custody or judicial custody. As clarified by the Hon'ble Supreme Court in *Gautam Navlakha v. NIA, (2022) 13 SCC 542 : 2021 SCC OnLine SC 382*, it cannot be judicial custody because the police are exclusively entrusted with the accused for the purpose of producing him before the Magistrate having jurisdiction over the case. Therefore, the custody during transit remand is police custody. This raises further issues: whether the police can interrogate or investigate the accused on the basis of the transit order, either before starting the journey, during the journey, or after the journey but before producing him before the competent Magistrate. The Court observed that if interrogation during the journey is impermissible without an order under Section 167 CrPC, then such interrogation would also be impermissible at any time during the transit period unless specifically authorized. Moreover, if the accused, while in transit, volunteers a statement that would otherwise fall under Section 27 of the Evidence Act, it would be considered as one made while in police custody.
- Importantly, since transit remand is police custody, the order of the Magistrate granting transit remand sets the time for the computation of the period relevant for default bail under Section 167. This position was followed from *Chaganti Satyanarayana v. State of A.P., (1986) 3 SCC 141, and also referred to in Gautam Navlakha v. State (NCT of Delhi), 2018 SCC OnLine Del 11635 ( para 93)*.
- In *Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676: (2014) 3 SCC (Cri) 673; and Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640: 2001 SCC (Cri) 215*, reinforce the necessity of following due process in inter-jurisdictional arrests.
- *State through CBI v. Dawood Ibrahim Kaskar & others (1997 Supreme Court of India dated: 07/05/1997)* – reiterated that production before a Magistrate is mandatory even in inter-State arrests.

**Facts:**

Dawood Ibrahim Kaskar and others were accused in serious criminal cases including under TADA and IPC.

A key question arose on production of accused after arrest, particularly when arrested without warrant. The issue was about the scope of Section 57 and Section 167 Cr.P.C., i.e., how long the police can keep an accused without Magistrate's order and the procedure of seeking remand. Whether a person arrested without a warrant must always be produced before a Magistrate within 24 hours, and what powers the Magistrate has in such circumstances.

**Held / Judgment:**

Production before Magistrate Mandatory:

Any person arrested without a warrant must be produced before the nearest Magistrate within 24 hours, as per Sections 56, 57 and 167 Cr.P.C. and Article 22(2) of the Constitution.

**Scope of Magistrate's Power:**

The Magistrate before whom the accused is produced need not be the Magistrate having territorial jurisdiction over the case.

Even a Magistrate outside jurisdiction can authorize detention (police or judicial) for the limited purpose of enabling production before the competent court.

- ***Sandeep Kumar Dey v. State of West Bengal (Cal HC, 2016)*** – held that a Magistrate granting transit remand exercises limited jurisdiction: only to authorize custody for production before the appropriate court.

This case clarified the judicial responsibility of Magistrates in cases of inter-State arrests and transit remands. It reinforced that Magistrates act as protectors of liberty, ensuring legality of arrest and safeguarding rights, but cannot examine the substantive merits of the investigation.

The Magistrate does not have jurisdiction to inquire into the merits of the case or the sufficiency of evidence, since the case is registered outside his territorial jurisdiction. The Magistrate's role in transit remand is limited and supervisory, confined to:

- a) Verifying the legality of the arrest.
- b) Ensuring compliance with statutory safeguards (like informing grounds of arrest, Section 41/41A Cr.P.C. compliance, medical examination, etc.).

- c) Authorizing custody only for the limited purpose of enabling production before the competent court.
- d) The Magistrate must also ensure that the accused fundamental rights are protected, including access to legal counsel and medical aid.
- e) Transit remand jurisdiction is limited.
- f) The Magistrate cannot go into the merits of the case but must ensure that the arrest and detention are lawful and that the accused is produced before the competent court without unnecessary delay.

- **Gautam Navlakha v. State (NCT of Delhi) (2018, Delhi High Court)**  

The Court held 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."*

Transit remand granted by a Magistrate was quashed because:

  - No case diary entries were presented.
  - Grounds of arrest were not produced.
  - Legal aid was ineffective.

## **7. Conclusion :**

Transit remand is a procedural safeguard ensuring that inter-State arrests by police or central agencies remain within the framework of law. It protects the accused from illegal detention. It preserves the jurisdictional boundaries of investigating agencies. It ensures judicial oversight before transferring custody. Thus, whether under the Cr.P.C., BNSS, or Special Acts, the Magistrate's jurisdiction in transit remand is supervisory and protective, aimed at balancing effective investigation with personal liberty.

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