HIGH COURT OF UTTARAKHAND
सत्यमेव जयते
NAINITAL

E-Mail

From,

Registrar General,
High Court of Uttarakhand,
Nainital.

To,

All the District Judges,
State Judiciary of Uttarakhad.

No.7324/UHC/Admin.B/V-a-11/2026 Dated: 27 Nov., 2026

Sub: Circulation of Hon'ble Supreme Court Judgment.

Sir/Madam,

Apropos to above, I am directed to enclose herewith a copy of Judgment dated 05.11.2026 passed by Hon'ble Supreme Court in Criminal Appeal Nos. 5283-5285 of 2026 *'Sri Sujit Das & Ors. Etc. Vs. Union of India'*, with a request to circulate the same among all the Judicial Officers in your judgeship for their information and compliance.

Encl: *As above*

Yours sincerely,

(Kaushal Kishore Shukla)
Registrar General

Seen & circulate among all the Judicial officers & Judgeship Pauri for information & compliance.

28/11/26

D.J.
District & Sessions Judge
Pauri Garhwal

2026 INSC 1195

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2026
(Arising out of Special Leave Petition (Criminal) Nos. 12451-12453 of 2026)

SRI SUJIT DAS AND ORS. ETC. **APPELLANT(S)**

VERSUS

UNION OF INDIA **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted.

2. This batch of appeals take exception to the common judgment and order dated 29.04.2026 passed by the High Court of Tripura at Agartala (briefly, 'the High Court' hereinafter), dismissing the regular bail applications of the appellants.

3. Sri Sujit Das, Sri Suman Das and Sri Rupak Sarkar are the three appellants before us. Smt. Ratna Das had filed Bail Application No. 72/2026 before the High Court on behalf of the accused Sri Sujit Das. Sri Sanjit Das filed Bail Application No. 74/2026 before the High Court on behalf of accused Suman Das. Likewise, Sri Dipak Sarkar had filed Bail Application No. 75/2026 before the High Court on behalf of accused Rupak Sarkar. All the three Bail Applications were heard together and disposed of by the High Court *vide* the common judgment and order dated 29.04.2026 ('impugned judgment' hereinafter) rejecting the prayer made on behalf of the accused, who are the appellants before this Court.

4. Be it stated that the appellants are accused in Case No.04/CL/NDPS/DPF/AGT/2025-26, registered under Sections 21(C)/22(C)/23(C)/25/25A/28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (briefly 'the NDPS Act' hereinafter).

5. Prosecution case, in brief, is that on the basis of a secret information, Sri Rahul Sharma, Inspector, Divisional

Preventive Force (DPF), Customs Division, Agartala, constituted a team to carry out an ambush on 29.09.2025, at around 08:00 am at a place which is 6 kilometers away from Khowai Chowmuhani. The secret information was that three persons were travelling in a truck and proceeding towards Agartala carrying narcotic/psychotropic substances. At around 09:05 am, the suspected vehicle bearing registration No. TR-06-1767 arrived at the place where the ambush was set up. The Inspector found that there were three occupants in the said truck including the driver. Inspector Rahul Sharma followed the said truck along with his team and, at around 01:00 pm, another person came on a motorcycle and met the occupants of the truck at a place called Shanitala Noabadi. They handed over one white coloured plastic sack to the person who came on a motorcycle after taking it out from the truck. At that point of time, all the four of them were detained by the search team and a total 11.03 Kg. of methamphetamine (Yaba) tablets were recovered. After re-checking of the vehicle, two trolly bags were further recovered, which were hidden deep under the sacks containing ginger on the cargo bed of the truck. Upon opening

of each of the trolly bags, the officer recovered brown packets. When those brown packets were opened, blue and black plastic sachets containing small pink tablets with a pungent smell, believed to be Yaba, were found. Inspector Rahul Sharma then completed all the seizure related procedural formalities and arrested the four persons i.e. the three occupants of the truck and the person who arrived at the scene on a motorcycle. These four persons include the three appellants and one Sri Raju Das. The accused persons were arrested on 30.09.2025 and since then they have been in custody.

6. Before the High Court it was argued on behalf of the accused persons that there was violation of the mandatory provision of Section 36 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (briefly, "BNSS" hereinafter), which would override the embargo of Section 37 of the NDPS Act. Section 36 is only a statutory exposition of the Constitutional norm provided under Article 21 of the Constitution of India. Article 21 would override Section 37 of the NDPS Act. Learned counsel for the respondent admitted that the signature of the near relative

of the arrested accused persons, or of any respectable person from the locality, was not obtained in the arrest memo; *prima facie,* there was violation of Section 36 of BNSS by the arresting officer. However, given the embargo of Section 37 of the NDPS Act, the accused persons would still not be entitled to bail even if there is violation of Section 36 of BNSS.

7. Referring to the decision of this Court in the case of *State of Punjab versus Sukhwinder Singh @ Gora*[1], the High Court observed that the provisions of Section 37 of the NDPS Act are mandatory. An order granting bail without recording satisfaction in terms of Section 37 would stand vitiated and cannot be sustained. The rights of an accused under Article 21 of the Constitution of India must be exercised within the framework of Section 37 of the NDPS Act. Referring to the facts of the present case, the High Court observed that there are *prima facie* materials against the accused persons. Therefore, the rigor of Section 37 of the NDPS Act are not satisfied.

[1] 2026 SCC Online SC 671

Consequently, the bail applications moved on behalf of the accused persons were rejected.

8. On 24.07.2026, this Court had issued notice, pursuant to which the respondent has filed counter affidavit.

9. In the counter affidavit, the respondent has narrated the facts in a chronological order. It is stated that on 29.09.2025, at about 06:00 am, the complainant-cum-seizing and arresting officer received credible secret information that substantial quantity of methamphetamine tablets, a psychotropic substance under the NDPS Act, was being illicitly transported from Kumighat to Agartala in a vehicle (truck) bearing registration No. TR-06-1767, concealed in a consignment of ginger. The information indicated that the vehicle was expected to reach Agartala before 04:00 pm and that the contraband was likely to be handed over to another person at Rastarmath, Bishalgarh. The information was reduced into writing and intimated to the Superintendent, DPF unit, who issued requisite search authorization. Pursuant thereto, a search team was constituted. The search team was equipped with the search and seizure

articles, including digital weighing machine, field drug testing kit, stationery, torch and lathis.

9.1. On the same day i.e. on 29.09.2025, at about 08:00 am, the search team reached Khowai Bazar, where two bystanders were apprised of the secret information regarding illicit transportation of psychotropic substances, commonly known as 'Yaba tablets' from Kumighat towards Agartala, kept concealed in a consignment of ginger. The two bystanders accepted the request to act as independent witnesses to the proposed interception and the search and seizure operation.

9.2. The search team proceeded 6 Kilometers from Khowai Chowmuhani towards Agartala and laid an ambush. At about 9:05 am, the vehicle was sighted, whereafter the search team discretely followed the same. At about 01:00 pm, in the Shanitala Noabadi area, a person, who was subsequently identified as Sri Sujit Das, arrived on a Bajaj Pulser motorcycle bearing registration No. TR-01-AR-7045 and approached the said vehicle (truck). The driver of the truck, Raju Das, with the assistance of the other two occupants i.e. Suman Das and

Rupak Sarkar, opened the cargo bed, climbed into it and came out with a white muddy coloured plastic sack and handed over the same to Sujit Das. The search team thereupon intercepted the vehicle (truck) and the persons present. Upon opening the said sack and subsequently the ginger consignment, small packets wrapped in brown paper and containing black and blue plastic sachets filled with pink-coloured tablets suspected to be Yaba tablets, were recovered.

9.3. The three occupants of the truck were identified as Raju Das, Suman Das and Rupak Sarkar, while the bike rider was identified as Sujit Das.

9.4. In the presence of independent witnesses, a preliminary field test of the recovered substances was conducted by using the field narcotic test kit, which yielded a positive result for methamphetamine. The recovered material was thereafter weighed on an electronic weighing scale and was found to have gross weight of 11.03 Kg. Upon forming a reasonable belief that the recovered substance was a psychotropic substance viz. methamphetamine (Yaba) tablets,

the white muddy coloured sack containing the packets of contraband was seized along with the Bajaj Pulser motorcycle. Seizure memo was duly prepared and NDPS Case No. 04/CL/NDPS/DPF/AGT/2025-26 was registered on 29.09.2025; the truck bearing registration No. TR-06-1767 and the ginger consignment were also seized.

9.5. Owing to the large quantity of goods that required to be unloaded and the gathering of a crowd at the spot, the accused persons, independent witnesses and the seized articles were brought to the office of the Customs Division for further proceedings. Upon examination of the ginger consignment at the Customs Divisional office, additional trolly bags containing Yaba tablets, deeply hidden below the sacks of ginger on the cargo bed of the truck were recovered. In the presence of the independent witnesses and the accused persons, separate preliminary field tests were conducted, followed by seizure of the additional contraband i.e. the second seizure, for which a separate seizure memo was prepared in the presence of the same witnesses. The total quantity of Yaba tablets recovered

and seized was found to be 60.79 Kg. The tablets were concealed in one white muddy coloured plastic sack (11.03 Kg.), one purple coloured Flyking bag (32.37 Kg.) and one red coloured trolly bag (17.39 Kg.).

9.6. On 30.09.2025, the accused persons were arrested under Section 42(1)(d) of the NDPS Act for offences under Sections 8(C) and 9A, punishable under Sections 21(C), 22(C), 23(C), 25, 25A, 28 and 29 thereof. The grounds of arrest were duly communicated to the accused persons and their family members. On 27.03.2026, charge-sheet was filed.

9.7. All the four accused persons preferred bail applications before the learned Special Judge, West Tripura, Agartala. However, vide order dated 30.03.2026, their bail applications were rejected by the learned Special Judge whereafter they moved the High Court.

9.8. The High Court also rightly rejected the bail prayer of the accused persons by placing reliance on the decision of this Court in *Sukhwinder Singh @ Gora*.

10. In the course of hearing on 21.09.2026, an important issue cropped up, which, it appeared, had not been argued before the High Court. Mr. Rouf Rahim, learned senior counsel for the appellants pointed out that the FIR is dated 29.09.2025 and that around 02:30 pm of that day all the four accused persons were intercepted and seizure was carried out in the presence of the witnesses, but the accused persons were shown arrested on 30.09.2025 at 11:15 am. The contention of Mr. Rouf Rahim is that this was done to circumvent the time-frame of 24 hours, as mandated in terms of clause (2) of Article 22 of the Constitution of India as the accused were produced before the Magistrate at around 05:00 pm of 30.09.2025. In the aforesaid backdrop, we directed the Investigating Officer to file a specific affidavit on this point.

11. Pursuant to the aforesaid order of this Court dated 21.09.2026, the Investigating Officer has filed a compliance affidavit. The dates mentioned in this affidavit are important. Therefore, we would like to record the averments made by the Investigating Officer in this compliance affidavit in detail.

11.1. As per the compliance affidavit, detention of the accused persons took place only upon them being formally arrested at 11:00 am and 11:15 am, respectively on 30.09.2025. This was because the period preceding the formal arrest was required to complete the statutory formalities.

11.2. The process of search and seizure was completed at 05:00 pm on 29.09.2025. The accused persons were thereafter taken into judicial custody on 30.09.2025 at 04:45 pm Therefore, reckoning the commencement of detention either from 05:00 pm on 29.09.2025, or 11:00 am/11:15 am on 30.09.2025 would not violate the mandate of 24 hours as prescribed under Article 22(2) of the Constitution of India.

11.3. The preliminary seizure of the contraband took place at the place of interception in the presence of the accused persons and the independent witnesses on 29.09.2025, which led to recovery of 11.03 Kg. of methamphetamine (Yaba) tablets.

11.4. Second seizure took place thereafter upon reaching the office of the Customs Division, Agartala, which led to the recovery of additional quantity of 49.76 Kg. of methamphe-

tamine (Yaba) tablets. The second seizure procedure was completed at 05:00 pm on 29.09.2025. The total recovery of both the seizure was 60.79 Kg, which is thousand times more than the prescribed commercial quantity (50 grams) of methamphetamine (Yaba) tablets.

11.5. The Investigating Officer has explained that the accused persons were merely intercepted at 02:00 pm on 29.09.2025 and not formally detained. The intervening hours were required to complete the mandatory statutory formalities under the NDPS Act, such as,:

(a) conducting search and seizure, which required serving of notice under Section 50 of the NDPS Act, arranging a gazetted officer and conducting the actual search;

(b) weighing, which included weighing of the seized contraband, preparing the detail seizure memo in the presence of the independent witnesses and the accused persons, making samples for testing in the testing kits;

(c) interrogation to trace the supply chain, which included the questioning of the four accused persons to ascertain the source of the contraband, their forward/backward linkages and their identities before formally arresting them; and,

(d) administrative and travelling delays.

11.6. It is stated that the place of interception is remote and far away from the office of the respondent. Therefore, the time taken to travel from the place of interception to the office, the time taken to lodge the formal report and to complete the initial entries contributed to the delay in formal arrest. The formal arrest memos could only be prepared on 30.09.2025 at 11:00 am/11:15 am after the preliminary paper work establishing a *prima facie* case against each of the accused persons was completed.

11.7. Elaborating further, it is stated that as per the complaint, on 29.09.2025 at 02:30 pm, all the accused persons were formally questioned for additional contraband. Following

their confession, further search was conducted, which led to discovery of more psychotropic substances.

11.8. The first seizure memo records the time of seizure as 02:00 pm at Shanitala Noabadi. The second seizure memo specifically records the place of seizure as Customs Division, Agartala, and the time of seizure as 05:00 pm on 29.09.2025.

11.9. All the accused persons, who were offered the choice to be searched before a Judicial Magistrate or a gazetted officer, opted for a gazetted officer, whereupon the Investigating Officer found reasonable grounds to believe that all the accused persons were in conscious possession of the contraband with an intent to traffic in violation of the NDPS Act.

11.10. Accordingly, Sujit Das was formally arrested on 30.09.2025 at 11:00 am in the office of the Deputy Commissioner, Customs Division, Agartala, under Section 42(1)(d) of the NDPS Act. Similarly, Raju Das, Suman Das and Rupak Sarkar were arrested on 30.09.2025 at 11:15 am. The grounds of arrest were explained to them in Bengali language

and they were also informed of their rights, including counselling of lawyer and informing their relative(s).

12. Mr. Rouf Rahim, learned senior counsel for the appellants has referred to the compliance affidavit of the respondent pursuant to the order of this Court dated 21.09.2026 and submits that the endeavour of the respondent to create an artificial distinction between detention and arrest is impermissible. Neither the Constitution nor the statute support such distinction. Adverting to paragraph 9 of the compliance affidavit, he submits that when the accused persons were intercepted at 02:00 pm on 29.09.2025, they were effectively under the control of the respondent with their liberty completely curtailed. The period of 24 hours, as per Article 22(2) of the Constitution of India, would commence from the said point of time i.e. 02:00 pm on 29.09.2025. Therefore, the act of the respondent to formally arrest the accused persons at 11:00 am and 11:15 am of 30.09.2025 is only to circumvent the aforesaid mandatory timeline of 24 hours. The accused persons were produced before the Judicial Magistrate at 04:45 PM of

30.09.2025, who remanded them to judicial custody. He submits that if the arrest of the accused persons is stated to have taken place at 02:00 pm of 29.09.2025, their production before the Judicial Magistrate at 04:45 pm on the next day is clearly in breach of the 24 hours mandate, as prescribed under Article 22(2) of the Constitution of India.

12.1. Further submission of the learned senior counsel for the appellants is that when an accused is under the physical hold of an officer with coercive powers, he would be deemed to be in the custody of such an officer. There is no distinction between detention and arrest. If the endeavour of the respondent to create an artificial distinction between detention and arrest is accepted, it would amount to a distortion of the true meaning of the constitutional guarantee against detention without the sanction of a judicial authority.

12.2. He submits that the complaint was lodged on 29.09.2025 on 'reasonable belief' that the accused persons had committed an offence under the NDPS Act whereafter, the NDPS case being case No.04/CL/NDPS/DPF/AGT/2025-26

was registered on the spot. The aforesaid case was registered before 02:30 pm as the accused persons reached the Customs Office around 02:30 pm after the registration of the NDPS case.

12.3. He further submits that the recovered contraband was tested with the testing kit being carried by the search team, whereafter on 'reasonable belief' the related NDPS case was registered pursuant to which the accused persons were detained.

12.4. Mr. Rouf Rahim has made elaborate submissions on the basis of a convenience compilation. He has particularly relied upon the following decisions:

(i) *Niranjan Singh Vs. Prabhakar Rajaram Kharote*[2];

(ii) *Ashak Hussain Allah Detha @ Siddique Vs. Assistant Collector of Customs (P.), Bombay*[3];

(iii) *T. Ramadevi Vs. State of Telangana, rep. by its Principal Secretary*[4];

[2] 1980 2 SCC 559
[3] 1990 SCC OnLine Bom 3
[4] 2024 SCC OnLine TS 4288

(iv) *Hanumant Jagganath Nazirkar Vs. State of Maharashtra*[5]; and

(v) *Biswajit Mandal Vs. Inspector, Narcotics Control Bureau*[6].

12.5. Learned senior counsel has also urged other grounds, such as, non-compliance with the mandatory provisions of Section 36 BNSS which is nothing but a statutory expression of the procedural safeguards provided under the Constitution, thus, violating Article 21 of the Constitution of India. When there is violation of Article 21 of the Constitution of India, Section 37 of the NDPS Act will have to give way. On this ground also, appellants are liable to be enlarged on bail.

12.6. He therefore submits that the stand taken by the respondent is completely unconstitutional and cannot be accepted. The decision of the High Court rejecting the bail prayer of the appellants cannot be sustained and should be set aside.

[5] 2025 SCC OnLine Bom 2508
[6] 2025 SCC OnLine Ker 6017

13. Mr. Raghavendra P. Shankar, Additional Solicitor General of India, appearing for the respondent, at the outset submits that the contentions advanced on behalf of the appellants are thoroughly misplaced and are liable to be rejected.

13.1. He has extensively referred to the compliance affidavit filed by the respondent pursuant to the order of this Court dated 21.09.2026 to contend that there was no breach of Article 22(2) of the Constitution of India after the formal arrest of the appellants inasmuch as the appellants were produced before the Judicial Magistrate within the time-frame of 24 hours after arrest.

13.2. Learned Additional Solicitor General submits that the appellants were intercepted at 02:00 pm on 29.09.2025 following confidential information that the truck in which they were travelling, was carrying psychotropic substances. Therefore, at 02:00 pm on 29.09.2025, the appellants were not formally arrested.

13.3. The preliminary search of the contraband took place at the interception place in front of the accused persons and in presence of independent witnesses at 02:00 pm on 29.09.2025, which led to recovery and seizure of 11.03 kg. (gross weight) of methamphetamine (Yaba) tablets.

13.4. The second seizure took place upon the accused persons being taken to and reaching the office premises of the Customs Division, Agartala, which led to recovery of additional quantity of 49.760 kg. (gross weight) of methamphetamine (Yaba) tablets. The second seizure procedure was completed at 05:00 pm on 29.09.2025.

13.5. The detention of the accused persons took place only upon their formal arrest at 11:00 am and 11:15 am, respectively, on 30.09.2025. This was because the period preceding the formal arrest was required to complete the statutory formalities under the NDPS Act, such as, conducting the search and seizure, weighing, interrogation to trace the supply chain, besides administrative and travelling delays.

13.6. Even if the detention of the accused persons is treated as having taken place at 05:00 pm of 29.09.2025 following conclusion of the second search and seizure procedure, there would not be any violation of the 24 hours period, as provided for under Article 22(2) of the Constitution of India inasmuch as the accused persons were produced before the Judicial Magistrate on 30.09.2025 at 04:30 pm, who remanded them to judicial custody thereafter. He therefore submits that reckoning the commencement of detention either from 5:00 pm of 29.09.2025, or 11:00 am/11:15 am of 30.09.2025 does not violate the mandate of 24 hours, as prescribed under Article 22(2) of the Constitution of India.

13.7. Explaining further, learned Additional Solicitor General submits that the intervening period from interception to formal arrest cannot be included within the time-frame of 24 hours, as the same was required to carry out and complete the mandatory and time-consuming statutory formalities under the NDPS Act.

13.8. He submits that Sections 42(1)(d) and 43(b) of the NDPS Act provide for detention for the purpose of search. Such temporary restraint and securing the presence of the accused under Rule 3 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 to maintain the integrity of the seizure, do not trigger the 24-hours period under Article 22(2). A temporary restraint to secure compliance with a statutory safeguard in the course of investigation is not arrest or detention in custody.

13.9. Rule 3(4) of the aforesaid Rules requires the classification, weighing and packaging of the seized drugs to be done in the presence of 'the person from whose possession the drugs and substances were recovered' and this has to be mentioned in the panchnama. Therefore, the time taken to comply with Rule 3 is outside the 24 hours period.

13.10. Even assuming but not admitting that the formal arrest of the appellants were delayed, the 24 hours period commences at the earliest from the conclusion of the search and seizure at 05:00 pm on 29.09.2025. The accused were produced

before the Magistrate at 04:30 pm on 30.09.2025 which is within 24 hours. Thus, even if, on a demurrer, the conclusion of the process of search and seizure i.e. 05:00 pm on 29.09.2025 is taken as the starting point when the accused were considered to be 'arrested and detained in custody', the accused were produced before the Magistrate within 24 hours as required under Article 22(2) of the Constitution of India.

13.11. In support of his submissions, Mr. Raghavendra P. Shankar has placed heavy reliance on the decision of a Single Bench of the Kerala High Court in the case of *Arun K. Thomas Vs. Narcotics Control Bureau*[7] and submits that the reasoning of the Kerala High Court may be treated as the submission of the respondent. Referring to *Arun K. Thomas*, he submits that the expression 'arrest' and 'detention in custody' are not synonymous. Detention in custody is not intrinsically linked to the act of arrest. Referring to the various provisions of the NDPS Act, he submits that the statutory design of the NDPS Act distinguishes between 'detention' and

[7] 2026 SCC Online Ker 13043

'arrest'. The enquiry under Section 67 of the NDPS Act creates a buffer-zone, wherein the individual is under the authority of the enforcement agency for investigative purpose. During this period, the constitutional safeguard of Article 22(2) remains in abeyance until formal custodial arrest is effected.

13.12. Learned Additional Solicitor General has also referred to the decision of the Madras High Court in the case of *Kannan Vs. State of Tamil Nadu*[8], wherein also a similar view has been taken. The time taken by the authorities to fulfil the statutory mandate under the NDPS Act, prior to arrest, cannot be included for calculation of 24 hours in custody under Section 58 of the BNSS.

13.13. Finally, learned Additional Solicitor General has referred to a decision of the Orissa High Court in *Aryaman Pattnayak Vs. Union of India*[9], wherein also the Orissa High Court has opined that a person may be detained or his liberty is temporarily disrupted in the course of search and seizure but it cannot be treated as a detention alike arrest. He submits that

[8] 2026 SCC OnLine Mad 6652
[9] MANU/OR/1830/2025

against this decision of the Orissa High Court, the petitioner Aryaman Pattnayak had approached this Court in SLP (Crl.) Diary No. 33904/2026; however, this Court *vide* the order dated 18.08.2026 declined to interfere.

13.14. Summing up his arguments, learned Additional Solicitor General submits that while he acknowledges that detention preceding arrest cannot be for an unduly long period, in which event courts are bound to intervene, the distinction between detention and arrest needs to be borne in mind, particularly in the context of NDPS cases, to give a more meaningful interpretation to clause (2) of Article 22 of the Constitution of India. He, therefore, submits that there is no merit in the criminal appeal, which should accordingly be dismissed.

14. Submissions made by the learned counsel for the parties have received the due consideration of the Court.

15. At the outset it would be appropriate to refer to the relevant constitutional and statutory provisions.

16. Since the entire case revolves around interpretation of clause (2) of Article 22 of the Constitution of India, the said provision may be adverted to at the outset. Article 22 provides for protection against arrest and detention in certain cases. While clauses (4) to (7) of Article 22 of the Constitution of India deal with preventive detention, clause (3) thereof clarifies that clauses (1) and (2) of Article 22 shall not apply to any person who, for the time being is an enemy alien or to any person who is arrested or detained under any preventive detention law. Thus, clauses (1) and (2) of Article 22 apply to cases of arrest other than preventive detention. Clause (1) of Article 22 deals with furnishing of grounds of arrest etc. to the arrestee, with which we are presently not concerned. We are concerned with clause (2) of Article 22, which reads as follows:

> **22. Protection against arrest and detention in certain cases.** – * * * * *
>
> (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be

detained in custody beyond the said period without the authority of a magistrate.

16.1. What is discernible from the above is that there is a positive mandate in clause (2) of Article 22. It says, every person (without any exception) who is arrested and detained in custody has to be produced before the nearest magistrate within a period of 24 hours of such arrest without fail. However, the time necessary for the journey from the place of arrest to the court of the magistrate is required to be excluded while computing the period of 24 hours. This provision ends with a clear declaration that no such person shall be detained in custody beyond the said period without the authority of a magistrate. Therefore, this provision makes it abundantly clear that the 24-hours deadline is sacrosanct. The only period which is permitted to be deducted from the 24 hours mandate is the time necessary for the journey from the place of arrest to the court of the magistrate. The Constitution does not permit any other time period to be excluded from the 24 hours period.

17. Section 57 CrPC contains the constitutional mandate of Article 22(2). It says that no police officer shall detain in

custody a person without warrant for a longer period than, under all the circumstances of the case, is reasonable and such period shall not, in absence of a special order of a magistrate under Section 167 CrPC, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the court of the magistrate.

18. Section 57 CrPC is a little bit more elaborative. It not only speaks of the 24 hours mandate but says that detention in custody of a person without warrant shall not be for a longer period than what is reasonable considering all the circumstances of the case which in any case should not exceed 24 hours unless there is a special order of a magistrate. So, the statutory limitation is not only that of 24 hours; detention in custody should not be for a longer period than what is reasonable in the circumstances of the case. This aspect has to be borne in mind not only by the police or detaining authority but by the magistrate as well and has to be taken into account while considering remand. Therefore, remand is never a mechanical exercise.

19. Since there is a reference in Section 57 CrPC to Section 167 CrPC, we may also advert to the same. Section 167 CrPC lays down the procedure where investigation cannot be completed within 24 hours. In such a case, the investigating officer or the officer-in-charge of the police station is required to transmit to the nearest Judicial Magistrate a copy of the entries in the diary relating to the case and shall also forward the accused to such magistrate. The magistrate may authorize detention of the accused for a term not exceeding 15 days in the whole. As per the proviso, the magistrate may authorize detention of the accused person otherwise than in police custody beyond the period of 15 days if he is satisfied that adequate grounds exist for doing so. However, the total period of such detention shall not exceed 90 days, where the investigation relates to an offence punishable with death or imprisonment for life, or imprisonment for a term not less than 10 years and 60 days where the investigation relates to any other offence.

20. The mandate of Section 57 CrPC is carried forward in Section 58 of BNSS.

21. Section 41 to Section 60A are included in Chapter V CrPC, which deals with arrest of persons. Section 41 deals with a situation when police may arrest without warrant, whereas Section 41A provides for notice of appearance before a police officer. As per sub-section (1) of Section 41A, the police officer shall, in all cases where the arrest of a person is not required under Section 41(1), issue a notice directing the person against whom a reasonable complaint has been made or credible information has been received, or reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. Sub-section (2) says that it shall be the duty of that person to comply with the terms of the notice. In the event there is compliance, the noticee shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested (sub-section (3)). However, in terms of sub-section (4),

if such a person fails to comply with the terms of the notice, the police officer may arrest him for the offence mentioned in the notice.

22. How arrest has to be made has been dealt with in Section 46 CrPC.

23. Section 35 of BNSS has combined erstwhile Sections 41 and 41A of the CrPC. On the other hand, Section 43 of BNSS contains the provisions of Section 46 CrPC.

24. Since this is a case arising out of the NDPS Act, it would be useful to also refer to the relevant provisions of the NDPS Act.

24.1. Section 41 of the NDPS Act deals with the power to issue warrant and authorization. Sub-section (1) says that a metropolitan magistrate or a magistrate of the first class or any magistrate of the second-class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under the NDPS Act, or for the search, whether by day or by night, of any building, conveyance or place

in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under the NDPS Act has been committed. Sub-section (2) says that any such officer of gazetted rank of the departments of central excise, narcotics, customs, etc. of the Central Government including the paramilitary forces if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under the NDPS Act, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place or himself arrest such person or search a building, conveyance or place.

24.2. The power of entry, search, seizure and arrest without warrant or authorization is provided in Section 42 of the NDPS Act. As per sub-section (1), such a power is conferred upon an officer who is superior in rank to a peon, sepoy or constable, if he has reason to believe from his personal knowledge or information given by any person and taken down

in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under the NDPS Act has been committed, may, between sunrise and sunset enter into and search any such building and conveyance or place etc. What is of relevance is clause(d) of sub-section (1) of Section 42. It provides that such an officer may detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under the NDPS Act.

24.3. The conditions under which search of persons shall be conducted is dealt with in Section 50 of the NDPS Act. As per sub-section (1), when any officer duly authorized under Section 42 is about to search any person in terms of Sections 41, 42 or 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest magistrate. Sub-section (2) says that if such requisition is made, the officer may detain the person until he can bring him

before the gazetted officer or the magistrate referred to in sub-section (1).

24.4. Section 51 of the NDPS Act clarifies that provisions of the CrPC shall apply to warrants, arrests, searches and seizures.

24.5. That brings us to Section 67 of the NDPS Act, which empowers an officer referred to in Section 42 of the NDPS Act to call for information etc. It says that any officer referred to in Section 42 and who is authorized in this behalf by the Central Government or by a State Government may, during the course of any enquiry in connection with the contravention of any provisions of the NDPS Act, call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of the NDPS Act or any rule made thereunder; require any person to produce or deliver any document or thing useful or relevant to the enquiry; and examine any person acquainted with the facts and circumstances of the case.

25. In exercise of the powers conferred by Section 76 read with Section 52A of the NDPS Act, the Central Government has made a set of rules called the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (briefly, 'the Rules of 2022' hereinafter). Chapter II of the Rules of 2022 deals with seizure and search of the seized material. Classification of seized material is provided for in Rule 3. Sub-rules (1), (2) and (3) lay down the manner and procedure for classification of the seized material. Sub-rule (4) is relevant. It says that classification, weighing, packaging and numbering, as referred to in Rule 3, shall be done in the presence of the search witnesses and the person from whose possession the drugs and substances were recovered, and shall have to be mentioned in the panchnama drawn on the spot of seizure.

26. In case after case the Supreme Court has declared that the 24 hours period provided in Article 22(2) of the Constitution of India is a constitutional mandate which has to be followed mandatorily. Any infringement or breach of clause (2) of Article 22 would render the arrest illegal and

unconstitutional. It is a constitutional safeguard intended to act as a safety barrier to check executive excess.

27. In the case of *Khatri vs State of Bihar*[10], this Court declared that the requirement of producing an arrested person before a magistrate is a binding constitutional command. It must be strictly and scrupulously observed. This decision came in the backdrop of the horrific Bhagalpur blindings of prisoners. In that context this Court noted that in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of their arrest as required by Article 22 of the Constitution. The Bench strongly urged the State and its police authorities to ensure that the constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. This Court observed that the provision inhibiting detention without remand is a very healthy provision which enables the magistrates to keep check over the police investigation. In the facts of that case, this Court opined that

[10] (1981) 1 SCC 627

either the blinded prisoners were not physically produced before the Judicial Magistrates and the Judicial Magistrates mechanically signed the orders of remand or they did not bother to enquire even if they found that the prisoners before them had received injuries in the eyes.

28. This Court in *D.K. Basu Vs. State of West Bengal*[11], declared that the 24 hours rule mandated under clause (2) of Article 22 is intended to prevent unlawful detention and custodial abuse. This Court acknowledged the prevalence of custodial violence and abuse of police power in the country and observed that notwithstanding constitutional and statutory safeguards, growing incidents of torture and deaths in police custody was a disturbing factor. This Court recorded that experience shows that worst violations of human rights take place during the course of investigation when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing

[11] (1997) 1 SCC 416

the deprivation of liberty merely as a prolonged interrogation. It has been held thus:

> **24.** Instances have come to our notice where the police has arrested a person without warrant in connection with the investigation of an offence, without recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc.
> * * * * * * *

28.1. This compelled the Court to issue a slew of guidelines, including permitting the presence of the counsel of the arrestee at some point of time during the interrogation to deter the police from using third degree methods during interrogation.

29. Again, in the case of *Directorate of Enforcement Vs. Subhash Sharma*[12], this Court has held that violation of clause (2) of Article 22 vitiates the arrest being in contravention of Articles 21 and 22(2) of the Constitution of India. In such an event, it becomes the duty of the court dealing with the bail application to release the accused on bail.

[12] 2025 SCC Online SC 240

30. This provision was also examined in great detail by this Bench, of course in a slightly different context, in the case of *Jaskaran Jeet Singh Deol Vs. State of Punjab*[13]. The issue before this Court in *Jaskaran Jeet Singh Deol* was whether an accused, who has suffered breach of both clauses (1) and (2) of Article 22 of the Constitution of India, be re-arrested for the same offence? If so, under what circumstances, in what manner and the procedure that is required to be followed in such a case?

30.1. While answering the above, the Bench issued detailed guidelines and observed that the constitutional mandate of Article 22(2), beautifully explained in the celebrated case of *Khatri*, continues to remain firm and unshaken, as if engraved in stone.

31. In *Niranjan Singh,* this Court, speaking through Justice V.R. Krishna Iyer, examined the question as to when is a person in custody within the meaning of Section 439 CrPC? Answering this question, this Court held that a person would be in custody when he is in duress either because he is held by

[13] 2026 SCC OnLine SC 1939

the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. In that context, this Court declared that no lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439 CrPC. This Court held that the word 'custody' is of elastic semantics but its core meaning is that the law has taken control of the person. Proceeding further, this Court held that explanations and submissions to the effect that police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody would amount to unfair evasions of the straightforwardness of the law. The declaration is so profound that it merits its extraction which we hereunder do:

> 7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because

> he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

32. In *Ashak Hussain Allah Detha @ Siddique*, a Single Bench of the Bombay High Court was considering the bail prayer of the accused persons who were charged with committing offences under the NDPS Act read with Section 135 of the Customs Act, 1962. In the facts of that case, it was noticed that the accused persons were actually detained from

the midnight of 19.07.1989. The statements of all the accused persons were recorded by the same officers between the midnight of 19.07.1989 and the midnight of 20.07.1989. During this period of 24 hours they were not allowed to leave the place of their detention. They were also not produced before the magistrate. They were produced before the magistrate only on 21.07.1989 at 05:20 pm. Their arrest was recorded in such a manner that their production before the magistrate fell within 24 hours stipulated by Article 22(2) of the Constitution of India and Section 57 of the CrPC. It was the stand of the prosecution that after their arrest, the accused were not detained beyond 24 hours.

32.1. The High Court rejected this submission of the prosecution as a distortion of the true meaning of the constitutional guarantee against detention without the sanction of the judicial tribunal. In that context, the High Court examined the meaning of the word 'arrest' and noted that it has neither been defined in the CrPC nor in any other law. After referring to English decisions as quoted in Law Lexicons, the

High Court observed that the word 'arrest' is a term of art. It starts with the arrester taking a person into his custody by action or words restraining him from moving anywhere beyond the arrester's control and it continues until the person so restrained is either released from custody or having been brought before a magistrate is remanded in custody by the magistrate. The High Court opined that in substance, arrest is the restraint on a man's personal liberty by the power or colour of lawful authority. In its natural sense, 'arrest' means the restraint on or deprivation of one's personal liberty. Following the same, the High Court held as follows:

> **10.** It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences. Whether a person is arrested or not does not depend on the legality of the act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases. It stands to reason, therefore, that what label the Investigating Officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest. The

arrest commences with the restraint placed on the liberty of the accused and not with the time of 'arrest' recorded by the Arresting Officers.

32.2. The High Court rejected the arguments advanced on behalf of the prosecution that the accused were not arrested at the midnight of 19.07.1989 but were detained for interrogation as being untenable. It has been explained that since the offences under the NDPS Act are cognizable, the investigating officer possesses the authority to arrest without warrant. 'Detention in custody for interrogation' is unknown to law. It has been explained in the following manner:

> **11.** The argument that the applicants were not arrested at the mid night of 19th July 1989 but were detained for interrogation is untenable. Since the offences under the NDPS Act are cognizable, the Investigating Officers possess the authority to arrest without warrant. They arrest a suspect or do not arrest at all. The 'detention in custody for interrogation' is unknown to law. Interrogation is known. A person may be lawfully interrogated. But during such interrogation he is a freeman. If he is detained, not allowed to leave the office of the Respondent No. 1 and compelled to eat and sleep there, he is under detention. This restraint is in reality

an arrest. In this case, the applicants were not allowed to leave the office of the Respondent No. 1 after the midnight of 19th July 1989. In the circumstances of this case, the applicants were arrested at the midnight of 19th July 1989.

32.3. The High Court explained further that an investigating officer may lawfully detain a suspect for an offence. Detention in custody for interrogation is not authorized by law. The investigating officer may detain for an offence only. Any restraint on a person's liberty except for an offence is illegal. There is no authority in the investigating officer to detain a person for the purpose of interrogation or helping them in the enquiry.

32.4. The High Court referred to several such instances of illegal detention and remarked that the tendency to detain suspects for questioning and manipulating the record to show a later time of arrest is a reprehensible practice of recent origin followed by the officers of the Customs Department and the Narcotics Control Bureau (NCB). What the investigating officers do, in such cases, is to procure statements by assault, illegal

detention and fear of continued detention. Then, they present these documents as 'statements'. That is not what the law permits them to do. This manipulation and abuse of the legislative sanction for the use of statements of the accused requires to be censured in the strongest terms.

33. A Division Bench of the High Court of Telangana in *T. Ramadevi* was hearing a habeas corpus petition where two questions of law were involved. We are concerned with the first question which is as under:

> Whether the period of apprehension by the police authorities before the official arrest being showin is also to be considered for the purpose of fulfilling the requirement of producing the so-called apprehended person before the Judicial Magistrate within 24 hours?

33.1. After referring to Sections 57 and 167(1) of CrPC, the High Court examined the decision of the Bombay High Court in *Ashak Hussain Allah Detha @ Siddique* and other similar judgments observed that Section 57 CrPC refers to the expression 'detention'; it does not use the expression 'from the time of arrest'. Therefore, the period of detention starts the moment an accused is apprehended by the police, as from that

moment itself, there is a restraint so far as personal liberty of the concerned person is concerned as he remains under the confines of police personnel. Thus, it would amount to a detention of a person right from the time he is apprehended by the police personnel. Therefore, the arrest of a person commences from the time restraint is placed on his liberty and not from the time of the arrest officially recorded by the arresting officer.

33.2. The High Court declared that the period of apprehension is also to be taken into consideration for the purpose of calculating the 24 hours period as envisaged under Section 57 CrPC. This is further clarified by the High Court by declaring that 24 hours is not to be calculated from the time of the official arrest being shown by the police personnel in the arrest memo but from the time he was initially apprehended or taken into custody.

34. A Division Bench of the Bombay High Court in *Hanumant Jagganath Nazirkar* endorsed the view taken in *Ashak Hussain Allah Detha @ Siddique*. After noting that the

term ‘arrest’ is not a defined expression, the Division Bench examined as to how the word ‘arrest’ is derived from the French word ‘arreter’ and held that arrest commences with the restraint placed on the liberty of the person and not from the time of ‘arrest’ recorded by the arresting officer. It commences when one is taken into custody and restrained from liberty. The Division Bench held thus:

> **18.** The word ‘arrest’ is derived from the French word ‘arreter’ which means ‘to stop or stay’. It signifies a restraint of a person. Therefore, ‘arrest’ would mean a restraint of a man's person, obliging him to be obedient to law thereby amounting to the execution of the command of a duly authorised officer. The word ‘arrest’ would mean a restraint or the deprivation of one's personal liberty.
>
> **19.** The question of whether a person is under arrest or not must be decided based on whether they have been deprived of their personal liberty to go where they please. In the legal sense, an ‘arrest’ would consist of taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. It starts with the arrester taking a person into his custody by action or words, ‘restraining him’ from moving anywhere beyond the arrester's control,

and it continues until the person so restrained is either released from custody or brought before a Magistrate. The 'arrest' is complete when such restraint by an authority commences. The arrest commences with the restraint placed on the liberty of the person and not with the time of 'arrest' recorded by the Arresting Officer.

20. 'Arrest' consists in the actual touching of a person's body with a view to his restraint. The words may, however, amount to an 'arrest' if they are calculated to bring to a person's notice that he is under compulsion and he, thereafter, submits to such compulsion. An authority is said to arrest another person if it prevents the latter from freely making their movements and moving according to their will. To constitute an arrest, it is necessary that the officers should assume custody and control over the person, either by force or with his consent. 'Arrest' is when one is taken and restrained from their liberty. Even if a person is touched with a view to detaining, it would amount to an arrest.

34.1. On behalf of the prosecution, it was contended that the time taken for the pre-arrest medical examination should be excluded in computing the 24 hours period. High Court rejected the said contention and held that under Article 22(2) of the Constitution of India, only the time taken for the journey from the place of arrest to the court of the magistrate is excluded.

There is no provision in the Constitution or in the CrPC that requires to exclude the pre-arrest medical examination time from the 24 hours mandate.

35. Let us now deal with the decision of the Kerala High Court in *Biswajit Mandal.* The learned Judge posed the question as to when does the 24 hours period to produce an accused before the magistrate commence? Does it start from the time of arrest as recorded by the police or from the time when the accused was detained?

35.1. The above question came up for consideration in the context of a bail application filed by the accused who was charged with committing offences under the NDPS Act. The Court noted that the technique of not recording the arrest under one pretext or the other is often resorted to under the guise of investigation and observed that brutalities of police generally occur during these periods of uncontrolled authority. Unless there is a check, such unrecorded periods of custody can be the source of human rights violations.

35.2. Adverting to Article 22(2) of the Constitution, the High Court observed that the expression 'arrested and detained' appearing therein is often misused by the police authorities to assert that the time starts only from the actual time of arrest. After referring to various decisions, the High Court declared that the period of 24 hours to produce an accused before the magistrate commences not when the actual time of arrest is recorded by the police but runs from the time when the accused was effectively detained or his liberty was curtailed. The failure, refusal or omission to record an arrest or continuation of an interrogation for prolonged periods without recording arrest, shall not preclude those periods of curtailed liberty as constituting arrest.

36. Let us now turn to the contra-decisions cited at the Bar by the learned Additional Solicitor General.

37. Orissa High Court was considering an order passed by the learned District and Sessions Judge-cum-Special Judge, Bhubaneswar in an NDPS case granting further extension of custody of the accused in *Aryaman Pattnayak*, notwithstanding

the contention of the accused that he was not produced before the magistrate within 24 hours of arrest. As per the facts of the case, a team of officials from the NCB reached the flat in question at 01:15 pm and remained there till 04:50 pm. In between, search and seizure operation was carried out. Accused was stated to have been picked up by the NCB officials at 04:50 pm from the flat after the search and seizure operation was over. He was formally arrested at 11:30 pm. It was contended on behalf of the accused that his confinement started from 01:15 pm and the 24 hours period would start from the said time. He was produced before the magistrate the next day between 05:00 pm to 05:30 pm, which was beyond the 24 hours mandate.

37.1. After referring to Section 42 of the NDPS Act as well as Sections 46 and 57 of the CrPC and relying upon the decision of this Court in *Directorate of Enforcement Vs. Deepak Mahajan*[14], a learned Single Judge of the Orissa High Court posed the question as to from when the 24 hours time is to be computed? Referring to the facts of that case, Orissa High Court was of the

[14] (1994) 3 SCC 440

view that only after the search and seizure operation was carried out with compliance to the procedural formalities and only upon a confirmation that there is a case made out revealing *prima facie* involvement of a person in the commission of a crime and as a result he is detained, it may be said that from the time of such detention, the 24 hours timeline commenced. The High Court reasoned that further inquiry and interrogation of an accused may be necessary to confirm his complicity or to confirm his nexus with the crime committed. For that, a formal arrest is recorded at the end. Based on such reasoning, the High Court took the view that a person may be detained or his liberty is temporarily disrupted in the course of search and seizure but such detention cannot be treated as an arrest. A detention is always temporary but a formal arrest is recorded only upon a satisfaction reached on the culpability of the accused. The High Court distinguished detention from arrest by taking the view that a detentions is based on reasonable suspicion whereas arrest requires a reasonable belief of one's involvement in a crime. In a sense, detention is temporary restraint whereas arrest is when one is found to be *prima facie* involved in the

commission of an offence. While detention is investigatory, arrest is accusatory and prosecutorial. Responding to the possibility of prolonged detention, the High Court opined that such extended detention may become an arrest; anyone detained beyond a short investigated period may result in an arrest. The opinion of the Orissa High Court is summed up in paragraph No. 11 of the judgment which is extracted here under:

> **11.** In the case of the petitioner, as per the facts narrated hereinbefore the NCB officials reached at his residence at 1.15 P.M. and to claim that on and from then, he was arrested for being detained is an argument entirely misconceived. A search and seizure is held with other procedural compliances carried out and only upon a confirmation that there is a case made out revealing prima facie involvement of a person in the commission of a crime and as a result, he is detained, it may be said that from the time of such detention that 24 hours timeline commenced even if there is a formal arrest shown sometime later. It may also happen that further inquiry and interrogation of an accused to be necessary to confirm his complicity or with some nexus with the crime committed and for that, a formal arrest is recorded at the end. A person may be detained or his liberty is temporarily

disrupted in course of search and seizure but it cannot be treated a detention alike arrest. At the time of any such search, the presence of the suspect is very much necessary and obviously, he cannot be allowed to leave the place of search but to claim that such detention is a confinement and is an arrest in the eye of law is an incorrect argument. If, in each and every case, mere detention for the purpose of inquiry, investigation and during the time of search and seizure is to be treated as an arrest, it would mean that even before anyone's involvement is prima facie proved, he is shown as arrested. A formal arrest is, therefore, recorded only upon a satisfaction reached at and not otherwise. A detention is always temporary and it may lead to arrest, or no arrest and a person is arrested only when incriminating materials reveal his involvement. According to the Court, a detention becomes an arrest when one is deprived of the freedom to leave holding one to answer for a crime, not just for brief questioning, especially, if it goes beyond a short investigatory hold and involves a formal custody. A detention is based on reasonable suspicion less than a probable cause, whereas, arrest requires a reasonable belief of one's involvement in a crime. In case, one is taken to police custody and not released, any such extended detention may become an arrest. Anyone detained beyond a short investigative period may result in an arrest. In a sense, the detention is a temporary restraint, whereas, arrest is when one is found to be prima facie involved in

the commission of an offence. There is a fundamental distinction between detention and arrest as the former is investigatory and the latter is accusatory and prosecutorial. If someone is detained is not necessarily even a suspect but in case arrested, he is being treated as an accused and there is a serious consequence to the same as arrest affects liberty, dignity and potentially his future prospects. A detention while still a restraint does not carry the same legal and social implications unless it escalates to an arrest. An arrest refers to an act of formally taking a person into custody based on a reasonable belief or evidence that he has committed a crime. It is not just a restraint on liberty but a beginning of a formal crime proceeding. A detention is, in normal parlance understood, as an act of keeping a person in official custody temporarily for the purposes of questioning or investigation. Importantly, detention does not always imply suspicion of a crime, it is generally used as a preventive or precautionary tool by the authorities to maintain public order or investigate a matter before taking further steps. The enforcement of law can result in either a detention or an arrest and as earlier discussed, detention is a temporary decision based on reasonable suspicion which means one might be believed being involved in illegal activities without enough evidence for the charges and during such detention, one is not free to leave though not formally arrested.

37.2. While we will deal with the aforesaid analysis of the Orissa High Court in detail at a slightly later stage, for the moment all that we can say is that the endeavor of the High Court to create an artificial distinction between detention and arrest is totally unwarranted and highly problematic. If we venture into such semantics, question will naturally arise as to who will determine as to what is a short instigative period or when a detention extends beyond a short investigative period?

38. Be that as it may, this decision of the Orissa High Court was assailed by the accused *Aryaman Pattnayak* before this Court in Special Leave Petition (Criminal) Diary No. 33904 of 2026. By order dated 18.08.2026, this Court declined to entertain the special leave petition and accordingly dismissed the same.

39. The next case is that of the Madras High Court. In *Kannan,* the accused was also arrested under the NDPS Act. The order of remand of the accused was challenged before the Madras High Court on various grounds including on the ground that he was produced before the magistrate after 24 hours. The

primary contention made on behalf of the accused was that he was detained by the police on 09.10.2024 at 05:00 pm from which time the 24 hours period should be reckoned but he was produced before the magistrate only at 05:30 pm on 10.10.2024, showing his arrest at 06:30 pm on 09.10.2024.

39.1. After referring to the provisions contained in Sections 42, 43 and 50 of the NDPS Act, a learned Single Judge of the Madras High Court held that the procedure contemplated thereunder are imperative in nature and non-compliance of the same would render any conviction recorded unsustainable. While Section 42(1)(d) empowers the law enforcing agency to detain and search and if it thinks proper, arrest any person whom it has reason to believe to have committed an offence under the NDPS Act, Section 50 lays down an elaborate procedure for conducting personal search. The High Court took the view that the procedures contemplated under the aforesaid provisions have to be strictly complied with by the authorities. Without complying with such procedure, any arrest made would not be of any help to the prosecution. In this regard, the Madras

High Court tried to distinguish between arrest and detention. In the facts of that case, it has been held that the time taken by the authorities under the NDPS Act to fulfil the statutory mandate prior to arrest, cannot be included for calculation of the 24 hours period. The Madras High Court held as follows:

> **33.** The word arrest has not been defined either in BNSS or in any other statute. Section 43(1) of BNSS only explains how an arrest can be made. Though detention and arrest involve placing restriction on the movement of any person, they are conceptually distinct. While detention is investigatory in nature based on reasonable suspicion, arrest is accusatory in nature after confirmation of commission of offence. Since the provisions under NDPS Act are imperative in nature, the officers of Law Enforcing Agency are expected to strictly follow the same before effecting search, seizure or recovery. Otherwise that may result in vitiating the conviction and sentence. Therefore, the said procedure as contemplated under Sections 42, 43 and 50 have to be strictly complied with by the authorities concerned. Without complying the same, any arrest made by them, would not be of any help to the prosecution and the same is likely to result in acquittal.
>
> **34.** These precautionary procedures have been mandated under the Act only to safeguard the accused persons from any false cases being foisted as against them. Therefore, the time taken by the authorities concerned, to fulfil the statutory

mandate, prior to arrest, cannot be included for calculation of 24 hours custody as contemplated under Section 58 of BNSS. When the other statutes do not provide for a distinction between the detention and the arrest, the judgment cited by the learned counsel for the petitioner would not be applicable for detention and arrest under NDPS Act cases.

40. Pausing here for a moment, learned Single Judge of the Madras High Court has also sought to distinguish between detention and arrest which, according to us, is wholly unwarranted. Learned Judge has held that the procedures contemplated under Sections 42, 43 and 50 of the NDPS Act have to be mandatorily complied with failing which the prosecution case may not stand scrutiny in court and may result in acquittal. Question is, do these procedures in any manner inhibit the arresting authority from producing the detainee before the magistrate within 24 hours of such detention and subject to further remand by the magistrate can continue with the procedural compliance? The answer to the above question, in our opinion, has to be an emphatic no.

41. In *Arun K. Thomas,* a learned Single Judge of the Kerala High Court was examining bail applications of persons

accused of committing offences under the NDPS Act as well as other provisions of the Indian Penal Code, 1860 (IPC). Primary contention of the accused persons was that there was infraction of Article 22(2) of the Constitution of India and Section 58 of the BNSS (Section 57 of CrPC) in as much as they were subjected to detention well before the formal recording of their arrest; consequently they were produced before the magistrate beyond 24 hours from the time of such detention though within 24 hours of the recorded time of arrest. Reliance was placed on *Biswajit Mandal* which was also a decision of a coordinate Bench of the High Court i.e. Single Bench decision.

41.1. After reiterating the constitutional mandate of Article 22(2), the High Court posed the question as at what point does the 24 hours period for producing an accused before the magistrate begin to run?

41.2. After referring to the relevant facts as well as to the constitutional and statutory framework, learned Judge distinguished between arrest and detention in the following manner:

15. Article 22(2) of the Constitution, read with Sections 58 and 187 of BNSS (57 and 167 of CrPC), employs the expressions 'arrest' and 'detain in custody'. For Article 22(2) to be invoked, two conditions must co-exist : (i) the person must have been arrested, and (ii) he must have been detained in custody. The constitutional text deliberately uses the conjunction 'and' in Article 22(2), in contrast to Article 22(3), which employs the disjunctive 'or'. This deliberate choice signifies that Article 22(2) contemplates detention only when preceded by arrest, and that such detention must conform to the statutory framework under Sections 58 and 187 of BNSS (57 and 167 of CrPC).

16. Arrest is the formal act of taking a person into police custody, though custody may arise in other ways as well. The expressions 'arrest' and 'detention in custody' are not synonymous. Ordinarily, arrest is a prerequisite for detention in connection with an offence, for detention under the criminal process is not an independent action but must be preceded by arrest. Yet, detention in custody is not intrinsically linked to the act of arrest. In every arrest, there is custody, but custody does not invariably amount to arrest. Custody may, in certain circumstances, ripen into arrest, but not in all cases. The law recognises situations where a person may be detained without the procedural formality of arrest. Thus, detention in custody can occur independently of arrest, expressly authorising law enforcement to hold a person without first completing the formal act of arrest.

41.3. After acknowledging that detention after arrest satisfies the requirements of Article 21 i.e. procedure established by law, the learned Judge however observed that there are various statutes which recognize exceptional circumstances where detention may be authorized without a formal arrest. Thereafter, the High Court referred to various provisions of the BNSS and the procedural requirements of Section 67 of the NDPS Act. According to the learned Judge, the statutory design distinguishes between 'detention' and 'arrest'. When a person is examined under sub-section(c) of Section 67, he is under a legal obligation to cooperate with the inquiry. While his liberty may be incidentally regulated during such examination, he does not *ipso facto* become an accused under arrest. According to the learned Judge, the enquiry under Section 67 of the NDPS Act creates a buffer zone wherein the individual is under the authority of the enforcement agency for investigating purposes but the constitutional safeguard of Article 22(2) and Section 58 of BNSS (57 CrPC) i.e. the 24 hours countdown, remains in abeyance until a formal custodian

arrest is effected. The aforesaid views have been expressed in the following manner:

> **19.** * * * * * * *
> The statutory design thus distinguishes between 'detention' and 'arrest'. When a person is examined under sub-section (c), he is under a legal obligation to cooperate with the enquiry. While his liberty may be incidentally regulated during such examination, he does not *ipso facto* become an 'accused' under arrest. The enquiry creates a buffer-zone wherein the individual is under the authority of the enforcement agency for investigative purposes, but the constitutional safeguard of Article 22(2) and Section 58 of BNSS (57 CrPC)-the twenty-four hour countdown-remains in abeyance until a formal custodial arrest is effected. Hence, Section 67 of the NDPS Act operates as a statutory bridge between mere suspicion and formal accusation. The element of arrest ripens only upon the completion of enquiry and the discovery of incriminating material. Until then, the officer's authority is confined to fact-gathering, and the deprivation of liberty through arrest must await the crystallisation of reasonable belief founded upon such enquiry.

41.4. The learned Judge elaborates further and opines that Sections 42 and 43 of the NDPS Act preserve a doctrinal distinction between investigative detention and custodial arrest. Under the scheme of the NDPS Act, 'detain and search' is only

a temporary restraint and does not involve infraction of personal liberty. Relevant portion of the aforesaid reasoning is extracted hereunder:

> **20.** * * * * * * *
> Thus, both Sections 42 and 43 preserve a doctrinal distinction between investigative detention and custodial arrest. It is significant to note that 'detention for the purpose of search' is distinct and different from the 'arrest and detention in custody' that forms the underpinning of Art. 22(2) of the Constitution. Under the scheme of the NDPS Act, 'detain and search' is only temporary restraint and does not involve infraction of personal liberty.

41.5. Placing reliance on the decision of this Court in *Najmunisha Vs. State of Gujarat*[15], it has been held that statutory provisions conferring authorities with the power of search and seizure are a mere temporary interference with the right of the accused as they stand when regulated by reasonable restrictions emanating from the statutory provisions; such a power cannot be considered as a violation of any fundamental right of the person concerned.

[15] 2024 SCC OnLine SC 520

41.6. Learned Judge explained that detention for the purpose of search following the statutory procedure does not amount to detention in custody following an arrest or 'effective detention'.

41.7. Thereafter, the learned Judge declared that as a general proposition, arrest and consequently the 24 hours rule for the purpose of Article 22(2) commences only from the completion of the search and seizure that may lead to the arrest and detention of the person in custody. The constitutional reckoning of time begins only from the arrest and not from the antecedent detention during search or enquiry. Relevant portion of the aforesaid declaration is extracted hereunder:

> **20(c).** Whether the search and seizure procedure has been deliberately or unduly delayed and whether such delay would have consequences is another matter. However, as a general proposition, the arrest and consequently the twenty-four hour rule for the purpose of Art. 22(2) commences only from the completion of the 'search and seizure' that may lead to the arrest and detention in custody of the person. This is so because there is no element of detention in custody in the context of Art. 22(2) amid a search and seizure and it is only when the arrest and detention in custody occurs that the

twenty-four hour rule gets attracted. The constitutional reckoning of time begins only from arrest, not from antecedent detention during search or enquiry.

41.8. Learned Judge also referred to Rule 3(4) of the Rules of 2022 highlighting that the process as contemplated thereunder has to be carried out in the presence of the search witnesses and the person from whose possession the contraband was recovered; therefore, the period taken for compliance with Rule 3 being incidental to the seizure and essential for evidentiary integrity stands outside the ambit of the 24 hours mandate under Article 22 of the Constitution. Relevant findings of the learned Judge reads thus:

> **21(a)** * * * * * * *
> Accordingly, the period taken for compliance with Rule 3— being incidental to seizure and essential for evidentiary integrity— stands outside the ambit of the twenty-four hour mandate under Article 22 of the Constitution. The constitutional reckoning of time commences only upon formal arrest, not during antecedent detention necessitated by statutory procedures of seizure and inventory.

41.9. Referring to the decision of the coordinate Bench of the same High Court in *Biswajit Mandal,* the learned Judge held

that the 24 hours period cannot be said to invariably begin from the moment a person is detained in all cases. A clear procedural framework exists for enquiry or limited restraint of liberty. In such cases, the reckoning of the 24 hours period begins only upon formal arrest.

42. First and foremost, *Biswajit Mandal* was decided by a co-ordinate Bench i.e. by a Single Judge of the same High Court. It is evident that learned Single Judge in *Arun K. Thomas* has taken a contra-position to the views expressed in *Biswajit Mandal.* Being a co-ordinate Bench, learned Single Judge should have avoided such a course of action. Instead, the matter should have been referred to the Chief Justice for placing the matter before a Bench having a higher strength.

43. That apart, as we have indicated in the cases of *Aryaman Pattnayak* and *Kannan,* here also the focus and thrust of the learned Judge in trying to distinguish between detention and arrest is not only misplaced but unwarranted as well. As already noted supra, compliance with the procedural formalities of the NDPS Act and the Rules of 2022 does not in any manner

prevent the arresting authority from producing the detainee before the magistrate within the constitutionally prescribed time limit of 24 hours. The only exception the Constitution itself provides is the time necessary for the journey from the place of arrest to the court of the magistrate. Article 22(2) does not sanction exclusion of the time taken for enquiry and investigation before the arresting authority could effect arrest of the detainee. This is beyond the mandate of Article 22(2) of the Constitution. Article 22(2) does not sanction creation of any buffer zone where the liberty of an individual is curtailed for investigating purposes but not formally shown as arrested. Creation or contemplation of such buffer zone is unconstitutional. There cannot be any suspension or keeping in abeyance of the constitutional safeguards provided under clause (2) of Article 22 save and except what is provided thereunder. Therefore, the declaration that the period of 24 hours for the purposes of Article 22(2) commences from the completion of such search and seizure and only from the time of arrest recorded by the arresting authority is not only unsustainable in law but is entirely unconstitutional. At the

cost of repetition, we assert that whether it is Section 67 of the NDPS Act or Rule 3 of the Rules of 2022, there is no statutory injunction preventing the detaining authority from producing the detainee before the magistrate within 24 hours of such detention. Therefore, the view taken by the learned Judge that the 24 hours period commences upon only formal arrest and not during antecedent detention necessitated by statutory procedure of seizure and inventory is contrary to the constitutional mandate of clause (2) of Article 22 read with Section 58 BNSS (Section 57 CrPC) and does not lay down the correct law on this point.

44. At this stage, it would be apposite to refer to the decisions of this Court relied upon in *Aryaman Pattnayak, Kannan* and in *Arun K. Thomas* as well as by the High Court in the impugned decision.

45. This Court in *Deepak Mahajan* was considering the question as to whether a magistrate before whom a person arrested under sub-section (1) of Section 35 of the Foreign Exchange Regulation Act, 1973 is produced under sub-section

(2) of Section 35 of the aforesaid Act, has jurisdiction to authorize detention of that person under Section 167 (2) CrPC?

45.1. In the course of its analysis, the Bench also delved into the meaning of the word 'arrest' and noted that it is derived from the French word 'arreter' meaning 'to stop or stay'; it, thus, signifies a restraint of the person. The Bench also quoted with approval a decision of the Madras High Court which was authored by Justice Pandian, who incidentally also happened to author the judgment in *Deepak Mahajan*. Relevant portion of the judgment is extracted hereunder:

> **46.** * * * * *
>
> The word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence.

> The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested.

45.2. Thus, arrest would mean the restraint or the deprivation of one's personal liberty. The question whether a person is under arrest or not would depend on whether he has been deprived of his personal liberty to go where he pleases. In the context of a criminal offence, an arrest consists in the taking into custody of another person under authority empowered by law for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence.

45.3. After delving into the interpretation of Section 167 CrPC, the Bench held that sub-sections (1) and (2) of Section 167 CrPC are squarely applicable with regard to the production and detention of a person arrested under the provisions of Section 35 of the Foreign Exchange Regulation Act, 1973 and that the magistrate has the jurisdiction under Section 167(2) to authorize detention of a person arrested by any authorized

officer under the aforesaid Act and taken to the magistrate in compliance of Section 35(2) thereof.

46. Therefore, this Court in *Deepak Mahajan* has held that a person would be deemed to be arrested if he is taken into custody and detained to answer a criminal charge or to prevent him from committing a criminal offence. In other words, a person would be deemed to be under arrest if he has been deprived of his personal liberty to go where he pleases. This decision thus supports the proposition which is being advanced on behalf of the appellants.

47. *Najmunisha* is a two-Judge Bench decision of this Court wherein the conviction of the appellant under Section 29 read with Sections 20 (b) (ii) (c) and 25 of the NDPS Act was assailed. The Bench was examining primarily the evidentiary value of a confessional statement recorded under Section 67 of the NDPS Act on which the conviction was based. In the course of its analysis, the Bench also examined the provisions of Section 41, more particularly sub-section (2) thereof, of the NDPS Act. The Bench opined that the power of search and

seizure is conferred by the State upon its executive or administrative arms for the protection of social security. In that context it has been observed that statutory provisions conferring authorities with the power to search and seize are a near temporary interference with the right of the accused as they stand well regulated by reasonable restrictions emanating from the statutory provisions itself. Such a power cannot be considered as a violation of any fundamental right of the person concerned.

47.1. The aforesaid observations of the Bench was in the context of its examination of the evidentiary value of a confessional statement recorded under Section 67 of the NDPS Act. Nothing more should be read into those observations. In any case, the Bench was not considering the provisions of Article 22(2) of the Constiution of India, more specifically, as to when the twenty-four hours mandate would commence.

47.2. In ultimate analysis, this Court in *Najmunisha* held that a statement recorded under Section 67 of the NDPS Act would be inadmissible in evidence and cannot be considered to

convict an accused person under the NDPS Act. Consequently, the appellants in *Najmunisha* were acquitted of the charges framed against them by giving them the benefit of doubt.

48. We also find that the High Court in its impugned judgment has placed reliance on the decision of this Court in *Sukhwinder Singh @ Gora.* By way of the aforesaid decision this Court had set aside the bail granted by the Punjab and Haryana High Court to the accused for an offence punishable under Sections 21(c) and 29 of the NDPS Act. While doing so, this Court found that the High Court did not record any satisfaction that the twin conditions under Section 37 of the NDPS Act were satisfied and held that without recording such satisfaction, bail could not have been granted.

48.1. In the course of the deliberation, this Court observed that the right to speedy trial rooted in Article 21 of the Constitution is undoubtedly a precious constitutional right. However, the Bench proceeded to further observe that in matters governed by special enactments such as the NDPS Act, particularly where the recovery is of commercial quantity, the

said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override Section 37. The constitutional right under Article 21 and the special provisions of law under Section 37 of the NDPS Act are to be read harmoniously and not placed in opposition to each other.

49. We have our reservation on the aforesaid observations made by the Bench. First and foremost, the rights conferred by Article 21 of the Constitution of India are not only constitutional rights. These are fundamental rights. Right to life and liberty as enshrined in Article 21 are at the core of our constitutional jurisprudence. These fundamental rights cannot be tinkered with so lightly, not even under the special statutes. Such observations run counter to numerous judgments of this Court which reiterate the proposition that when there is a violation of Article 21 of the Constitution, the rigor of Section 37 of the NDPS Act or similar such provisions under the special statutes would have to give way. [Please see *Union of India Vs. K.A. Najeeb*[16]*, Satender Kumar*

[16] (2021) 3 SCC 713

Antil Vs. CBI[17]*, Mohd. Muslim Vs. State (NCT of Delhi)*[18]*, Ankur Chadha Vs. State of Madya Pradesh*[19]*, Vijay Singh Vs. Union of India*[20] wherein this Court clearly held that Article 21 of the Constitution of India over-rides Section 37 of the NDPS Act, *Syed Iftikhar Andrabi Vs. National Investigation Agency*[21] and *Jaskaran Jeet Singh Deol Vs. State of Punjab*[22]]. In fact, it could be urged that such an observation by the two-Judge Bench in *Sukhwinder Singh @ Gola* may be hit by the *principle of per incuriam* as *K.A. Najeeb* is a judgment by a three-Judge Bench. However, we would not comment beyond this point since *Sukhwinder Singh @ Gora* is also by a coordinate Bench. That apart, from the facts of that case, it appears that the accused was in custody from 10.01.2024 and bail was granted to him by the High Court on 18.02.2026. At that stage, 2 out of the 24 prosecution witnesses were examined. It is a debatable issue as to whether a view could have been taken by the High Court that right to speedy trial of the accused was being jeopardized. Moreover, clause (2)

[17] (2022) 10 SCC 51
[18] (2023) 18 SCC 166
[19] (2024) SCC Online SC 2730
[20] SLP(Crl.) D. No. 43071/2024
[21] 2026 SCC OnLine SC 881
[22] 2026 SCC OnLine SC 1939

of Article 22 was not an issue before the Bench in *Sukhwinder Singh @ Gora.* Therefore, this decision also cannot come to the aid of the respondent.

50. We are dealing with one of the most important provisions of our Constitution viz. clause (2) of Article 22. Before we endeavour to interpret clause (2) of Article 22, it would be advisable to advert to various decision of this Court telling us how to go about interpreting a constitutional provision, more particularly a provision which is included in Part III of our Constitution as a fundamental right?

51. In *Sakal Papers (P) Ltd. Vs. Union of India*[23], a Constitution Bench of this Court was examining the constitutionality of the Newspaper (Price and Page) Act, 1956 and the Daily Newspaper (Price and Page) Order, 1960. In that context, the Constitution Bench declared that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering

[23] 1961 SCC Online SC 124

the nature and content of those rights, the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure.

52. In the case of *M. Nagraj Vs. Union of India*[24], a Constitution Bench of this Court while examining the challenge to reservation in promotion held that a constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner. This principle of interpretation is particularly apposite to the interpretation of fundamental rights. Part III of the Constitution does not confer fundamental rights; rather, it confirms their existence and gives them protection. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. These are basic human rights available to individuals by virtue of the fact that they are members of the human race. These fundamental rights are

[24] (2006) 8 SCC 212

important as they possess intrinsic value. Every foundational value is placed in Part III as a fundamental right as it has intrinsic value. A right becomes a fundamental right because it has foundational value. Fundamental right is a limitation on the power of the State. A Constitution, and in particular that of it which protects and which entrenches fundamental rights and freedoms, is to be given a generous and purposive construction.

53. A nine-Judge Bench of this Court in *IR Coelho Vs. State of Tamil Nadu*[25] developed and applied the basic structure doctrine while examining judicial review of laws placed in Schedule IX to the Constitution of India. In that context, this Court held that fundamental rights enshrined in Part III were added to the Constitution as the check on the power of the State. The framers of the Constitution have built a wall around certain fundamental rights, which have to remain forever, limiting the ability of the majority to intrude upon them.

[25] (2007) 2 SCC 1

54. A Constitution Bench of this Court in the case of *Dr. Jaishri Laxmanrao Patil Vs. Chief Minister*[26] considered the constitutionality of the Maharashtra Socially and Educationally Backward Classes Act, 2018. While doing so, this Court observed that the language of the Constitution is not clay in the hands of the interpreter to be moulded as he or she sees fit. The language of the Constitution is a source for its purpose. The fact that we may learn the purpose of the Constitution from sources external to it does not mean that we can give the Constitution a meaning that is inconsistent with its explicit or implicit language. Importantly, this Court held that interpretation cannot create a new constitutional text.

55. We have only extracted a few of the numerous judgments of this Court highlighting the importance or necessity of interpreting a constitutional provision, more particularly a fundamental right enshrined in Part III of the Constitution, in a manner which aligns with the constitutional objective and which does not whittle down the constitutional

[26] (2021) 8 SCC 1

safeguards. A statute, special or otherwise, cannot be a guide to interpret the Constitution; rather, it should be the other way around. To reiterate, a fundamental right must be interpreted in such a manner that it upholds and furthers the objective of such a fundamental right.

56. In *Jaskaran Jeet Singh Deol*, we reminded ourselves that the Constitution or a constitutional provision cannot be interpreted in a vacuum. Interpretation of the Constitution cannot also be left to imponderables in the form of ifs and buts.

57. Applying the above interpretative standards, we have no hesitation in our mind that the exercise undertaken by the Orissa High Court in *Aryaman Pattnayak* while taking the view that detention of a person leading to temporary disruption of his liberty in the course of a search and seizure process cannot be treated as a detention alike arrest runs contrary to the very grain of our constitutional jurisprudence. There is no such thing called temporary disruption of liberty. The further view of the Orissa High Court that a detention is not arrest if it is for brief questioning but if it goes beyond a short investigatory hold, then

it becomes an arrest is constitutionally unsustainable, delving into a realm of uncertainty. We are afraid, a constitutional provision, that too, a fundamental right, cannot be interpreted in such a manner. Similar is the position in respect to the interpretation of the Madras High Court in *Kannan* and of the Kerala High Court in *Arun K. Thomas.*

58. Having sieved through the judgments of the High Courts in *Aryaman Pattnayak, Kannan* and *Arun K. Thomas*, which we have disapproved, let us once again revert back to Article 22. As noticed supra, the heading of this fundamental right is protection against arrest and detention in certain cases. We are concerned with clause (2) thereof which we have already extracted above and analyzed extensively. Clause (2) says that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall not be detained in custody beyond the said period without the authority of the magistrate. The key expression appearing in clause (2) of Article 22 is 'arrested and

detained in custody'. What is the meaning of this expression? Does it mean that the two crucial words appearing in this expression, 'arrest' and 'detain', should be assigned separate meanings or they mean one and the same thing. It is important to note that the expression is conjunctive and not disjunctive. Had it been disjunctive, two separate meanings could have been assigned to the two words. But the expression being joint and conjunctive, the two words appearing therein would mean one and the same thing. This is because the Constitution does not recognize any detention *dehors* arrest. Thus, the prescription of 24 hours time period would commence the moment a person is detained by the arresting authority suspecting him to have committed an offence, when his liberty is effectively curtailed. To that extent, the words appearing in clause (2) of Article 22 i.e. 'arrested' and 'detained' are synonymous. Any attempt to draw an artificial distinction between 'arrest' and 'detention' would dilute or negate the fundamental protection guaranteed by the Constitution under clause (2) of Article 22. Such an endeavour should be avoided. We must adopt that

interpretation which enhances and furthers the constitutional objective.

59. Our above interpretation resonates with the powerful exhortations of Justice Krishna Iyer in *Niranjan Singh* which he made more than four decades ago. This Court speaking through Justice Krishna Iyer held that explanations and submissions to the effect that police have taken a man into informal custody but not arrested him; have detained him for interrogation but not taken him into formal custody are terminological dubieties and are unfair evasions of the straightforwardness of the law. He called such explanations as equivocatory quibblings and hide and seek niceties, describing those as a shady facet.

60. We have already referred to Section 57 CrPC (equivalent provision in BNSS is Section 58) which contains the constitutional mandate of clause (2) of Article 22. Here the statute not only speaks of the 24 hours limitation but also clarifies that detention in custody of a person without a warrant shall not be for a period which is longer than what is reasonable considering all the circumstances of the case, which in any

case, should not exceed 24 hours unless there is a special order of a magistrate. Therefore, Section 57 CrPC (58 BNSS) mandates two limitations: firstly, the constitutional limitation of 24 hours; and secondly, within that 24 hours, the detention should not exceed what is considered to be a reasonable period in the facts of that case. This additional but salutary limitation should be borne in mind not only by the detaining authorities but also by the magistrates considering remand. In a given case, even though technically there may not be any breach of the 24 hours timeline, yet if the magistrate is satisfied that detention was for a period longer than what was reasonable, he or she may decline remand.

61. There is a reason for insistence on the 24 hours mandate under clause (2) of Article 22, which is mandatory and as we have interpreted, would commence from the time of detention when the person detained is deprived of his liberty. The endeavour of this Court has always been to eliminate custodial violence which unfortunately takes place during the time when a person is under detention and not shown as

formally arrested, in the process delaying production before the magistrate. Custodial violence is an unfortunate reality of our country and is judicially acknowledged. In *Khatri,* this Court was confronted with the horrific Bhagalpur blindings of prisoners where this Court observed that the provisions inhibiting detention without remand is a very healthy provision enabling the magistrate to keep a check over police investigation. Likewise, in *D.K. Basu,* this Court acknowledged the prevalence of custodial violence and abuse of police power in the country and observed with concern that notwithstanding the constitutional and statutory safeguards, growing instances of torture and death in police custody was a disturbing factor. Significantly, this Court recorded that worst violation of human rights take place during the course of investigation when the police with a view to extract information or confession resorts to third degree methods by adopting techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. The above aspect has also been elaborated in detail by the Bombay High Court in *Ashak Hussain Allah Detha @ Siddique.*

62. This Court continues to remain concerned with the issue of human rights abuse in police custody. In *Shafhi Mohammad Vs. State of Himachal Pradesh*[27], a two-Judge Bench of this Court emphasized the necessity for videographing the crime scene during investigation for which it directed the Ministry of Home Affairs to the Government of India to constitute a central oversight body to monitor implementation and ensure compliance. In this connection, the Bench also referred to the guidelines issued in *D.K. Basu* and observed that this Court with a view to check human rights abuse had directed installation of CCTV cameras in all police stations as well as in prisons and highlighted the need to study the CCTV camera footages by an independent committee.

63. A three-Judge Bench of this Court in *Paramvir Singh Saini Vs. Baljeet Singh*[28] following *Shafhi Mohammad*, considered the question of audio video recording of statements made under Section 161 CrPC as well as the larger question as to the installation of the CCTV cameras in police stations generally. The

[27] (2018) 5 SCC 311
[28] (2020) 7 SCC 397

larger Bench directed that the State and the Union Territory Governments should ensure that CCTV cameras are installed in each and every police station. In order to ensure that no part of a police station is left uncovered, CCTV cameras should be installed at all entry and exit points; main gate of the police station; all lockups; all corridors; the lobby and the reception area; all verandahs and outhouses; Inspector's room; Sub-Inspector's room; areas outside the lockup room, station hall, in front of the police station compound; outside (not inside) washrooms and toilets; duty officers room; back part of the police station etc. Such CCTV systems must be equipped with night vision and must necessarily consist of audio as well as video footage. The data should be preserved for a period of 18 months; and more in the event of a complaint being made of custodial violence. Additionally, the Bench directed the Union of India to install CCTV cameras and recording equipments in the offices of:

(i) Central Bureau of Investigation (CBI)

(ii) National Investigation Agency (NIA)

(iii) Enforcement Directorate (ED)

(iv) NCB etc.

63.1. The Bench clarified that as most of the above agencies carry out interrogation in their offices, CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

64. Therefore, it is evident that the endeavour of this Court has always been to ensure that no custodial violence takes place during interrogation, which is one of the worst forms of human rights violations. Therefore, the 24 hours deadline mandated under clause (2) of Article 22 would mean and commence from the time when a person is intercepted and detained by the investigating agency, in this case officials of the NCB, when his liberty is curtailed.

65. Reverting back to the facts of the present case, it is evident from the stand of the respondent that appellants were intercepted at 02:00 pm on 29.09.2025. From this time onwards, the liberty of the appellants was curtailed in as much as they

were under the control of the search team constituted by the respondent. The recovered material were subjected to weighing and testing on the spot by using electronic weighing scale and the field narcotic test kit. On being satisfied that the recovered substance was methamphetamine (Yaba) tablets, the related NDPS case was registered then and there. Respondent has stated that the search procedure which started at the place of interception continued in the office premises of the Customs Division, Agartala and completed at 05:00 pm on 29.09.2025. Appellants were shown formally arrested on 30.09.2025 at 11:00 am and 11:15 am respectively whereafter they were produced before the Judicial Magistrate on 30.09.2025 at 04:45 pm who thereafter remanded them to judicial custody.

66. In view of our discussions and analysis recorded supra, the arrest of the appellants for the purpose of Article 22(2) of the Constitution of India would be construed to have taken place at 02:00 pm on 29.09.2025 when they were under the control and custody of the search team. Therefore, they were required to be produced before the Judicial Magistrate before

02:00 pm on 30.09.2025. But the appellants were produced before the Judicial Magistrate at 04:45 pm on 30.09.2025. There is, thus, a clear breach of clause (2) of Article 22 of Constitution of India vitiating the arrest of the appellants and rendering their continued detention beyond 02:00 pm on 30.09.2025 illegal and unconstitutional.

67. That apart, in terms of Section 58 BNSS (Section 57 CrPC), not only the person detained without a warrant should be produced before the magistrate within 24 hours, but there is also a requirement that such detention within 24 hours should not be for a period which is longer than what is reasonable considering all the circumstances of the case. As per the stand of the respondent itself, it is evident that the search and seizure procedure against the appellants was concluded in the office premises of the Customs Division, Agartala at 05:00 pm on 29.09.2025. However, the appellants were shown arrested at 11:00 am and 11:15 am respectively on 30.09.2025. Thus, there is a gap of 18 hours from the conclusion of the search and seizure procedure and the formal arrest of the appellants. No

explanation has been given for this delay of 18 hours. 18 hours in custody without judicial oversight is a long period with misuse and abuse of authority a clear possibility. Such a period certainly cannot be construed to be a reasonable period within the meaning of Section 58 BNSS (Section 57 CrPC).

68. That being the position, appellants are entitled to be released from custody forthwith.

69. In the circumstances, we would like to summarize our conclusions as under:

(i) the 24 hours timeline as mandated under clause (2) of Article 22 of the Constitution of India would commence from the date and time of detention of the person detained when his liberty stands curtailed and not from the time of his formal arrest;

(ii) in the event, such detention continues beyond 24 hours before the person is produced before a magistrate, he shall be forthwith released from custody;

(iii) while computing the 24 hours deadline, no other time period is permitted to be excluded therefrom except the time necessary for the journey from the place of arrest to the court of the magistrate;

(iv) the decisions of the Orissa High Court in *Aryaman Pattnayak,* Madras High Court in *Kannan* and Kerala High Court in *Arun K. Thomas* do not lay down the correct law *qua* interpretation of clause (2) of Article 22 of the Constitution of India;

(v) the detaining authority should keep in mind not only the 24 hours deadline mandated by clause (2) of Article 22 of the Constitution but also ensure that such detention should not extend beyond a reasonable period within the 24 hours period considering the circumstances of the case in terms of Section 58 BNSS (Section 57 CrPC);

(vi) at the time of production, the magistrate is duty bound to record the actual date and time of detention of the person produced before him when

his liberty stood curtailed and examine whether the 24 hours deadline has been complied with or not from the time of such detention. If there is breach of the 24 hours deadline, the concerned person shall be released forthwith from detention;

(vii) the magistrate shall also examine at the time of production whether the detention of the person produced, though is within the time frame of 24 hours, has exceeded the period which can be construed to be reasonable in the circumstances of the case. If he is satisfied that detention in custody has been for a longer period than what is reasonable, he may decline remand;

(viii) in so far the present case is concerned, for the reasons cited in paragraphs 65, 66 and 67 above, the detention of the appellants was not only in breach of clause (2) of Article 22 of the Constitution of India but was for a period beyond what can be construed to be a reasonable period considering all

the circumstances of the case which was in contravention of Section 58 BNSS (Section 57 CrPC);

(ix) consequently, we set aside the impugned judgment and order of the High Court dated 29.04.2026 and direct that the appellants shall be produced before the jurisdictional Special Court within a maximum period of 7 days from today whereafter they shall be released on bail on such terms and conditions as may be deemed appropriate.

70. A copy of this judgment and order may be circulated to all Director Generals of Police of the States and Union Territories as well as to the Registrar Generals of the High Courts and Directors of State Judicial Academies.

71. Criminal appeals are accordingly allowed. All pending applications are disposed of.

.....J.
[UJJAL BHUYAN]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI;
NOVEMBER 05, 2026.