



2026:AHC:126145-DB

**Order Reserved On:-26.05.2026.**

**Order Delivered On:-08.06.2026.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**HABEAS CORPUS WRIT PETITION No. - 658 of 2026**

Shantanu Bhartiya

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

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|---------------------------|---|--------------------------------------------------|
| Counsel for Petitioner(s) | : | Mansi Singh, Ram M. Kaushik,<br>Samiksha Chauhan |
| Counsel for Respondent(s) | : | G.A.                                             |

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**In Chamber:**

**HON'BLE SIDDHARTH, J.**

**HON'BLE VINAI KUMAR DWIVEDI, J.**

***(Per Hon'ble Siddharth,J.)***

1. Heard Sri Ram M. Kaushik learned counsel for petitioner, learned AGA for State-respondent and perused the material on record.

2. The present petition has been filed praying for following reliefs:-

*"a) Issue a writ order or direction in the nature of HABEAS CORPUS commanding/directing the respondents herein to produce and release the corpus / petitioner from their illegal custody, while declaring the arrest, detention and remand of the petitioner as illegal, arbitrary, null and void;*

*b) Issue a writ, order or direction in the nature of CERTIORARI calling for the records and quashing the remand order dated 27.04.2026 passed by the Ld. CJM, Prayagraj as well as subsequent remand order/s, if any, as being illegal, void-ab-initio;*

*c) Issue a writ, order or direction in the nature of MANDAMUS to initiate departmental enquiry upon the actions of errant police officials of respondent no. 1.*

*d) Issue any other writ, order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case.*

*e) To award the cost of the petition."*

3. The brief facts of the the case the corpus was arrested from his own residence at Sadar Bazar, Anand Bagh, Police Station Cantt., District Prayagraj at about 1:30 PM on 25.04.2026 in the presence of his mother. The arrest was conducted by unknown individuals dressed in civilian uniform and the vehicle used for such apprehension did not bear any registration number. The mother or other family members of corpus were neither informed of the ground of arrest, reasons of arrest and nor any arrest memo was prepared or served. The FIR No. 0133 of 2026 at P.S. Civil Lines, Commissionerate, Prayagraj under Section 326(g) of BNS, 2023 and Section 4 of Explosive Substances Act, 1908 was lodged at 19:55 PM on 25.04.2026 i.e., evidently after the arrest of the petitioner (corpus). The mother of the corpus searched for her son, however, no information regarding his whereabouts were provided by the jurisdictional Police and as such a missing person's complaint was sought to be filed before the jurisdictional Police Station i.e., Police Station Cantt. Prayagraj on 25.04.2026. However, no action was taken on such complaint and it was not being registered. Thereafter, an e-FIR was lodged by the elder brother of the Corpus bearing E-FIR No. 202600041610. The corpus has been shown to be arrested on 27.04.2026 from the place of incident in relation to FIR No. 0133 of 2026 lodged at P.S. Civil Lines, Commissionerate, Prayagraj under Section 326(g) of BNS, 2023 and Section 4 of Explosive Substances Act, 1908 as evident from the arrest memo itself.

4. Learned counsel for the petitioner submits that it is evident that the petitioner-corpus was arrested without following any statutory or constitutional mandate and furthermore, was not produced before the jurisdictional Magistrate within 24 hours of his arrest/detention in grave violation of Section 58 BNSS, 2023 as well as Article 21 and 22 of the Constitution of India. The arrest of the Petitioner (corpus) is in violation of the guidelines laid down by the Hon'ble Supreme Court in the case of **D.K. Basu v. State of West Bengal (1997) 1 SCC 416**. Since the arrest of the petitioner-corpus itself is illegal and unconstitutional, therefore, the same cannot be validated by virtue of any subsequent remand order having been passed. The Arrest Memo depicts the time of his arrest at 11:30 am on 27.5.2026 near the place of incident and Column 12 and column 13 regarding the reasons of Arrest and the grounds of arrest are a mere reiteration of the statutory form and are completely general and not specific to the corpus-petitioner. There are no independent local witnesses to the

arrest which is a grave violation of Section 36(a), 36(b)(i) of BNSS, 2023 as well as the guidelines issued by the Hon'ble Supreme Court in **D.K. Basu (Supra)**. In fact, the Investigating Officer/Arresting Officer is himself a witness in the Arrest Memo which is manifestly arbitrary and illegal. The arrest memo does not contains any clause with regard to any information of the arrest being communicated to the Designated Officer. The absence of any such column in the Arrest Memo is another grave violation of Section 37 read with Rule 25 of Chapter-7 of the UP BNSS Rules, 2024 as well as Clause 6 of the Circular No. 25/2025 dated 25.7.2025. Clause 6 of the said Circular categorically states that the Arrest Memo must bear a column regarding information of arrest to be provided to a Designated Officer which column is mandatory to be filled. However, no such column exists on the Arrest Memo, nor any such compliance has been done.

5. The Remand Order dated 27.5.2026 has been passed without considering the fact that the Petitioner was in fact arrested on 25.4.2026 and was not produced before the remand magistrate within 24 hours of arrest. Though the Arrest Memo was produced before remand magistrate, however, without considering the illegalities which are prima facie evident in the arrest memo, and without ascertaining or returning any finding as to whether the arrest of the petitioner was effected legally, the impugned Remand Order dated 27.5.2026 came to be passed without any application of mind. Therefore, the impugned Remand Order dated 27.5.2026 is in grave violation of the dictum laid down by the Hon'ble Supreme Court in the cases of:

**i.Madhu Limaye, In Re (1969) 1 SCC 292;**

**ii.Joginder Kumar v. State of U.P. ( 1994) 4 SCC 260 and**

**iii.Arnesk Kumar v. State of Bihar (2014) 8 SCC 273.**

6. Learned counsel for the petitioner further submits that it is settled law that Bail before Remand Magistrate follows the remand and ordinarily, when the court considers a request for remand there would be an application for bail and when no bail is granted there would be remand. The bail application of the petitioner was rejected by the remand magistrate by the order dated 27.05.2026 which has been passed mechanically without considering the glaring statutory and constitutional violations in the illegal arrest of the petitioner. Furthermore, the said Order dated 27.5.2026 does not even record any finding with regard to the need of custody of the petitioner and neither any parameters of bail have been considered. The said Order is a non-

speaking order. Thereafter the Petitioner applied for bail before the Sessions Court/FTC, Court No. 2, Prayagraj vide Order dated 8.5.2026 wherein it was specifically pleaded that the Petitioner was not produced before the remand magistrate within 24 hours, however, without applying any mind to the same and without returning any finding on the said aspect, the bail application of the Petitioner(corpus) has been rejected. It is humbly submitted that a writ of Habeas Corpus is maintainable even after rejection of Bail Application. Reliance in this regard is placed on the following Judgements:

**i. Hanumant Jagganath Nazirkar v. State of Maharashtra 2025 SCC Online:**

**ii. Madhu Limaye, In Re (1969) 1 SCC 292:**

**iii. Manubhai Ratilal Patel v. State of Gujarat (2013) 1 SCC 314 and**

**iv. Senthil Balaji v. The Deputy Director (2024) 3 SCC 51:**

7. Learned AGA has submitted that in this case bail application of the petitioner has been rejected by the learned Magistrate and the Sessions Court and as yet no charge-sheet has been filed in this case. It has been further submitted that there is no illegality in the procedure of arrest and, therefore, the Habeas Corpus Petition is not maintainable.

8. After hearing the rival submissions, this Court finds that the arrest memo of the petitioner dated 25.04.2026 shows that he has been arrested on the basis of the statement of the informant, inspection of the place of incident, CCTV footage, statements of the witnesses, statement of independent witnesses and other evidence collected by the investigating officer. The copy of the arrest memo was given to the detainee-petitioner, but not to any of his relatives or friends. The grounds of arrest were supplied to the petitioner also on a separate sheet wherein, it has been mentioned that he was involved in providing bomb to his friends and has caused substantial damage to the 9280 Restaurant. The offence alleged against the petitioner is grave and non-bailable offences. He has been provided grounds of arrest in writing.

9. Before proceeding further, a that a look at Article 22 of the Constitution of India is necessary:

*"22. Protection against arrest and detention in certain cases:*

*(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be*

*denied the right to consult, and to be defended by, a legal practitioner of his choice.*

*(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.*

*(3) Nothing in clauses (1) and (2) shall apply—*

*(a) to any person who for the time being is an enemy alien; or*

*(b) to any person who is arrested or detained under any law providing for preventive detention.*

*(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—*

*(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:*

*Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or*

*(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).*

*(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.*

*(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.*

*(7) Parliament may by law prescribe—*

*(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);*

*(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and*

*(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause(4)"*

10. Article 22 of the Indian Constitution provides certain safeguards regarding arrests and detentions. It aims to protect the rights and liberties of individuals who are arrested or detained by the authorities. It safeguards individuals against arbitrary arrest and detention. It ensures that no person can be arrested or detained without being informed of the grounds for such arrest or detention. Article 22 guarantees that an arrested person must be produced before the nearest magistrate within 24 hours of their arrest. This provision aims to prevent unlawful and prolonged detention without proper judicial oversight. It grants the right to an arrested person to consult and be defended by a legal practitioner of their choice. This right helps ensure that individuals have proper legal representation during the process of arrest and detention. An arrested person must be informed of the grounds for their arrest and detention. They have the right to know the reasons behind their arrest, enabling them to effectively exercise their legal rights.

11. In the case, [D.K. Basu v. State of West Bengal \(1997\)](#), A Public Interest Litigation was filed by Dr Dilip Kumar Basu related to a case of Custodial violence. The Supreme Court laid down strict guidelines related to custodial violence and deaths. These guidelines are to be followed in all cases of arrest and detention until legal provisions are made for the safeguard of a person in custody.

12. A perusal of the arrest memo of the petitioner dated 25.04.2026 shows that in this case Article 22(1) has been violated. There is no mention in the arrest memo of the petitioner that the petitioner was apprised of his right to consult and defended by legal practitioner of his choice nor it appears that any of his relative were informed of his arrest. It is also not clear whether he was produced before the Remand Magistrate within 24 hours of his arrest or

not.

13. We further find that the place of the arrest of the petitioner is not clear from by arrest memo and, therefore, there is violation of the judgment of the Apex Court in the Case of **D.K. Basu Vs. State of West Bengal AIR 1997 SC 610** and other judgments cited at Bar.

14. In view of the above consideration, the arrest and detention of petitioner is held to be illegal and he is directed to be released forthwith.

15. Habeas corpus petition is **allowed**.

16. Copy of this order shall be issued by the office today on payment of usual charges.

17. However, it shall be open to the respondents to proceed against the petitioner afresh, strictly in accordance with law, if so warranted.

**June 8, 2026**  
Abhishek

**(Vinai Kumar Dwivedi,J.) (Siddharth,J.)**