



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION No. 128/2026

1. Khushbu W/o. Iddrish Khan, : **PETITIONERS**
Age about 26 years,
Occupation : Housewife,
2. Iddrish S/o. Manjur Khan,
Age 35, Occ. Private
Both R/o. Ward No.4, Sillewada,
Tq. Saoner, District Nagpur

VS.

1. State of Maharashtra, : **RESPONDENTS**
Through Police Station Officer,
Khapa, Tq. Saoner, District – Nagpur
2. Superintendent of Police,
Nagpur (Rural), District Nagpur

Mr. S.I. Ghatte, Advocate for the petitioners

Ms. P.C. Bawankule, APP for Respondents

**CORAM: URMILA JOSHI PHALKE AND
NIVEDITA P. MEHTA, JJ.**

Date of reserving the judgment : 29.6.2026

Date of pronouncing the judgment: 03.07.2026

JUDGMENT (PER : Nivedita P. Mehta, J.) :

1. Rule. Rule made returnable forthwith. Heard finally, by consent of the learned counsel appearing for the respective parties.

2. The petitioners have invoked the writ jurisdiction of this Court seeking a direction to the respondent-police authorities not to harass, threaten or intimidate the petitioners or their family members except strictly in accordance with the procedure established by law in connection with Crime No.26/2026 registered at Police Station Khapa for the offences punishable under Rule 134 of the Maharashtra Motor Vehicles Rules, 1989 and Sections 281 and 125(a) of the Bharatiya Nyaya Sanhita, 2023 (for short, "the BNS"). The petitioners further seek a declaration that the alleged action of respondent No.1 in forcibly entering their residential premises, harassing the women members of the family without issuance of any notice, and illegally seizing and retaining the mobile phone of petitioner No.1 for two days without following the procedure prescribed under Section 105 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "the BNSS"), is illegal, arbitrary, unconstitutional and violative of Articles 14 and 21 of

the Constitution of India. A further direction is sought requiring the respondents to strictly adhere to the procedure prescribed under the BNSS while investigating bailable offences, including compliance with the statutory requirement of issuance of notice and conducting a lawful investigation without resorting to coercive or extra-legal measures. The remaining prayers are consequential and ancillary in nature.

3. Briefly stated, the facts giving rise to the present petition are that Crime No.26/2026 came to be registered on 24.01.2026 at Police Station Khapa for the offences punishable under Rule 134 of the Maharashtra Motor Vehicles Rules, 1989 and Sections 281 and 125(a) of the BNS. According to the First Information Report lodged by one Sachin Deepak Kalamkar, resident of Khapa, on 24.01.2026 at about 2.30 p.m. he received information that one Ashish Sheshrao Nile met with an accident near the Kanhan River, in the vicinity of Paradkar's field. The informant stated that a silver-coloured four-wheeler collided with motorcycle bearing registration No.MH-40-BV-0670, which was being driven by Ashish Nile, resulting in injuries to his head, hand and leg. It is further alleged that the

driver of the four-wheeler fled from the spot immediately after the accident.

4. It is the case of the petitioners that petitioner No.2, who is the husband of petitioner No.1, is not named as an accused in the aforesaid crime. Nevertheless, according to the petitioners, respondent No.1 repeatedly visited their residence situated at Ward No.4, Sillewada, in connection with the investigation of the said crime.

5. The petitioners contend that on 25.01.2026 at about 11.30 p.m., police personnel visited their residence when petitioner No.1 was alone and made enquiries regarding the aforesaid crime. It is further alleged that on 31.01.2026 at about 5.00 p.m., officers attached to Police Station Khapa again visited the residence and interrogated petitioner No.1 despite being informed that her husband was not present. According to the petitioners, on both occasions the police personnel entered the residential premises without producing any warrant, written authorisation, notice under the BNSS or any other lawful order. It is further alleged that no lady police constable

accompanied the police personnel, though petitioner No.1 was questioned inside her residence.

6. According to the petitioners, the enquiry was conducted in a coercive and intimidating manner, causing severe mental distress and fear. It is further alleged that the police personnel entered the bedroom of petitioner No.1 and took possession of her mobile phone. The petitioners asserts that no seizure panchnama was prepared, no independent panch witnesses were called, no procedure prescribed under the BNSS was followed and no acknowledgment or receipt of the seized mobile phone was issued. It is their further case that the mobile phone remained in the custody of the police for two days without any contemporaneous documentation and evidentiary compliance with prescribed procedure under BNNS. Petitioner No.1 immediately submitted a complaint to respondent No.2 regarding the alleged illegal acts; however, according to the petitioners, no action has been taken thereon.

7. It is further the case of the petitioners that thereafter respondent No.1 issued a notice under Section 35(3)

of the BNSS directing petitioner No.2 to appear before the Investigating Officer in connection with Crime No.26/2026. As petitioner No.2 was stated to be out of town during the relevant period, the police allegedly continued to visit the residence of the petitioners and harass petitioner No.1. It is alleged that the officers attached to the local police as well as the Local Crime Branch repeatedly visited their residence during the day as well as late at night. On 03.02.2026, petitioner No.1 submitted a representation to respondent No.2 enclosing CCTV footage allegedly depicting the aforesaid acts of the police personnel.

8. The petitioners further contend that although the offences registered are bailable in nature, petitioner No.2 filed an application before the learned Judicial Magistrate First Class, Saoner, seeking permission to surrender in connection with Crime No.26/2026. Notice of the said application was issued to respondent No.1; however, no reply was filed. By order dated 04.02.2026, the learned Magistrate observed that the name of petitioner No.2 did not find place in the First Information Report, which had been registered against an

unknown driver, and that mere issuance of a notice under Section 35(3) of the BNSS would not, by itself, render petitioner No.2 an accused when the investigation was still in progress. Consequently, the application seeking permission to surrender came to be rejected. According to the petitioners, notwithstanding the said order, respondent No.1 continued to visit the residence of petitioner No.1 and harass her and her family members. Placing reliance upon the CCTV footage and alleging inaction on the part of respondent No.2 despite repeated complaints, the petitioners have approached this Court by way of the present writ petition.

9. Learned counsel for the petitioners submits that it is well settled that a woman is ordinarily required to be examined at her residence and that such examination must be conducted in a manner consistent with her dignity and the safeguards recognised by law. It is urged that the respondent No.1-police personnel entered the house of the petitioners, proceeded into the bedroom and interrogated petitioner No.1 in the absence of a lady police constable. It is further submitted that the mobile phone of petitioner No.1 was taken possession of without

following the procedure prescribed under Section 105 of the BNSS. According to the petitioners, no seizure panchnama was drawn, no independent panch witnesses were associated, no acknowledgment or receipt of seizure was issued and no videography of the seizure was undertaken. It is, therefore, contended that the retention of the mobile phone for two days without following the mandatory procedure prescribed under the BNSS constitutes a clear violation of the statutory provisions as well as the constitutional safeguards available to the petitioners.

10. In support of the aforesaid submissions, learned counsel for the petitioners has placed reliance upon the decision in **Dnyaneshwar v. State of Maharashtra, reported in 2019 SCC OnLine Bom 4949.**

11. Per contra, learned Additional Public Prosecutor appearing for the respondents submit that on 25.01.2026 at about 11.30 p.m., the Investigating Officer visited the residence of the petitioners in connection with the investigation of Crime No.26/2026. The visit was undertaken solely for the purpose of

investigation and petitioner No.1 was requested to inform petitioner No.2 to remain present before the Investigating Officer, as he had failed to do so despite earlier instructions. During the visit, the in-laws of petitioner No.1 were also present in the house and, therefore, the allegation that petitioner No.1 was alone is factually incorrect. According to the respondents, repeated visits to the residence of the petitioners were necessitated solely for the purpose of investigation.

12. It is further submitted that the Investigating Officer attempted to conduct a panchnama in respect of the Digital Video Recorder (DVR) installed at the residence of the petitioners; however, the DVR had allegedly been removed by the petitioners with a view to suppress material evidence and to lend support to the allegations made in the complaint addressed to respondent No.2. It is further contended that the mobile phone in question was produced by the mother-in-law of petitioner No.1, namely Shahida Khan Mansoor Khan, and was thereafter seized in accordance with law. Further, the said mobile phone has been forwarded for forensic examination and

that the report is awaited. Learned APP, while tendering the case diary across the bar for the perusal of the Court, submits that the investigating agency has complied with the procedure prescribed under Section 185 of the BNSS relating to search, production and seizure. It is, therefore, contended that the allegations levelled against the investigating officers are wholly incorrect and devoid of merit.

13. We have heard Mr. Siddhant Ghatte, learned counsel for the petitioners, and Ms. P C. Bawankule, learned APP for the State and have perused the material placed on record. The controversy in the present petition essentially centres around the legality of the search allegedly conducted at the residence of the petitioners and the seizure of the mobile phone of petitioner No.1 during the course of investigation. It is, therefore, necessary to examine whether the action of the investigating agency was in conformity with the procedure prescribed under the Bharatiya Nagarik Suraksha Sanhita, 2023 and whether the statutory as well as constitutional safeguards relied upon by the petitioners stand infringed, for the alleged non-compliance.

14. Before advertng to the rival contentions, it would be apposite to refer to the provisions of Section 185 of the BNSS, since the principal controversy relates to the legality of the alleged search conducted at the residential premises of the petitioners and the seizure of the mobile phone of petitioner No.1 during the course of investigation. Section 185 of the BNSS, which empowers a police officer to conduct a search during investigation in emergent circumstances subject to the conditions prescribed therein, reads thus:

“ 185. Search by police officer :

(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief in the case-diary and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person. Provided that the search conducted under this section shall be recorded through audio-video electronic means preferably by mobile phone.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Sanhita as to search-warrants and the general provisions as to searches contained in section 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith, but not later than forty-eight hours, be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.”

15. A plain reading of the aforesaid provision makes it evident that, where a search is to be conducted during the course of investigation without obtaining a search warrant from the Magistrate, the officer in charge of the police station is required to strictly comply with the conditions stipulated under Section 185 of the BNSS. The essential requirements of the provision are as follows:

(a) During the course of investigation, where the officer in charge of a police station has reasonable grounds to believe

that anything necessary for the purpose of investigation may be found in any place within the limits of the police station under his charge, and that such thing cannot otherwise be obtained without undue delay, he may conduct or cause a search to be conducted only after recording in writing the grounds of such belief in the case diary and specifying, as far as practicable, the article or thing for which the search is to be made;

(b) The provision further mandates that, as far as practicable, the search shall be conducted personally by the investigating officer. It also requires that every search conducted under the said provision shall be recorded through audio-video electronic means, preferably by using a mobile phone;

(c) Where the investigating officer is, for reasons to be recorded in writing, unable to conduct the search personally and no other competent officer is available at the relevant time, he may authorise a subordinate officer to conduct the search by issuing a written order specifying the place to be searched and, as far as possible, the article or thing for which the search is to be made;

(d) The provision further requires that copies of all records prepared under Section 185 shall be forwarded to the

jurisdictional Magistrate forthwith and, in any event, not later than forty-eight hours from the conduct of the search.

16. The power to conduct a search without obtaining a search warrant is not an unfettered power. The object underlying Section 185 of the BNSS is to empower the investigating agency to conduct a search in emergent circumstances only where he has reasonable grounds to believe that anything necessary for the purposes of investigation may be found at a particular place and obtaining a search warrant from the Magistrate may occasion undue delay and thereby prejudice the investigation. At the same time, the legislature has incorporated procedural safeguards to ensure that such extraordinary power is exercised fairly, transparently and in accordance with law. The grounds of such belief and the reasons necessitating an immediate search must be recorded in writing before the search is undertaken. The requirement of recording reasons is not an empty formality but constitutes an important safeguard. The requirements engrafted under Section 185 are, therefore, mandatory in nature and admit of strict compliance.

17. In the present case, we find that there has been a clear non-compliance with the statutory requirements prescribed under Section 185 of the BNSS. Admittedly, there is no material placed on record to indicate that, before conducting the search, the investigating officer recorded in writing the grounds of his belief that the search was immediately necessary or that the articles sought could not otherwise be obtained without undue delay. Equally, there is no material in the case diary produced before this Court to demonstrate that the investigating officer had recorded any satisfactory reason regarding the urgency necessitating the search or the likelihood of concealment or destruction of material relevant to the investigation. The general case diary entries also do not disclose any contemporaneous record regarding the conduct of the search or the steps taken upon its completion, as contemplated under Section 185 of the BNSS.

18. That apart, the allegation that the police personnel entered the bedroom of petitioner No.1 and forcibly took possession of her mobile phone, in the absence of a lady police

constable and without adhering to the statutory procedure, constitutes a serious intrusion into the privacy of the petitioner No.1. The right to privacy, being an integral facet of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India, cannot be infringed except in accordance with the procedure established by law. The explanation offered by the respondents that the search was undertaken in connection with the investigation of Crime No.26/2026 does not, by itself, justify departure from the mandatory safeguards prescribed under the BNSS. The procedural requirements enacted by the legislature are intended to ensure fairness, accountability and transparency in the investigative process, and cannot be dispensed with on the mere plea of investigation. In our considered view, the decision of this Court in *Dnyaneshwar v. State of Maharashtra (supra)* squarely governs the controversy involved in the present case. The relevant observations contained in paragraphs 15, 16 and 17 thereof are reproduced hereinbelow:

“15) In the case reported as State v. Rehman (AIR 1960 SC 210) it is laid down by the Apex Court that as search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. The provision of section

165 of the Cr.P.C. is enacted to enable police to take search when there is urgency and when it is not permissible to follow lengthy process, securing search warrant from Magistrate. In the case of Rehman (cited supra) the Apex Court has laid down that as the provision of section 165(1) of the Cr.P.C. is mandatory in nature, it should be strictly followed. Thus, before entering a house, investigating officer has to specify in writing the things for which search is to be made and also the ground of his belief that such things would be found in the house which is to be searched. In view of the wording of the provision it can be said that the provision is not restricted to search of what is stolen or believed to be stolen and it permits the police officer to make search for anything necessary for the purposes of investigation into any offence. Thus, on one hand the provision enables police to take search of the house for investigation of any crime, on the other, it becomes mandatory for police to record reasons as the first step before entering the house.

16) Sub section (2) of section 165 of the Cr.P.C. shows that police officer taking action should be either police officer in charge of the police station or the investigating officer. It can be said that in cases of urgency, the investigating officer may depute his subordinate but in view of the provision of section 165(1) of the Cr.P.C. such deputation must be in writing. That is also made clear in section 165(3) of the Cr.P.C.

17) The provision of section 165 of the Cr.P.C. shows that it applies to searches when offence is committed under general Act like Indian Penal Code, or special Acts or also local Acts provided that the conditions given in section 165 of the Cr.P.C. are satisfied. This Court has gone through the provisions of the Arms Act 1959 as the respondents have come with the defence that there was specific secret information against the petitioner that he was in possession of firearm illegally. There is nothing in the Arms Act and the Rules framed under that Act to enable police to take such search by ignoring the provision of section 165 of the Cr.P.C.

This Court has also gone through the provisions of the Maharashtra Police Act to ascertain the powers of police officer and this Act also does not show that police can bypass the provision of section 165 of the Cr.PC.”

19. Apart from the non-compliance with Section 185 of the BNSS, the seizure of the mobile phone of petitioner No.1 also does not satisfy the mandatory requirements prescribed under Section 105 of the BNSS. The said provision contemplates that where any property is seized during investigation, the seizure must be effected in accordance with the procedure prescribed by law by preparing a contemporaneous seizure memo in the presence of independent witnesses, furnishing an acknowledgment to the person from whose possession the property is seized, maintaining proper documentation of the seized article and ensuring transparency in the process of seizure, including recording the proceedings through electronic means wherever mandated. The statutory safeguards are intended to preserve the sanctity of the investigation and to protect citizens against arbitrary deprivation of their property.

20. In the present case, the respondents have failed to place any material on record demonstrating compliance with the aforesaid statutory requirements. There is no contemporaneous seizure panchnama evidencing the seizure of the mobile phone from petitioner No.1. No acknowledgment or receipt of seizure was issued. There is no material to indicate that independent panch witnesses were associated with the seizure or that the seizure proceedings were electronically recorded as contemplated by law. The explanation subsequently sought to be offered by the respondents cannot cure the initial illegality in the absence of contemporaneous records demonstrating due compliance with the statutory procedure.

21. The cumulative effect of the non-compliance with Sections 185 and 105 of the BNSS unmistakably establishes that the search of the residential premises and the seizure of the mobile phone were not carried out in accordance with the procedure established by law. The action of the respondent-police personnel, therefore, cannot receive the imprimatur of this Court.

22. The right to privacy has now been recognised as an inseparable facet of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Entry into the residential premises of a citizen, more particularly into the bedroom occupied by a woman, without adherence to the statutory safeguards and the forcible seizure of her mobile phone without following the procedure prescribed under the BNSS, constitute a serious invasion of the petitioner's privacy and dignity. The explanation offered by the respondents that the search was undertaken in connection with the investigation of Crime No.26/2026 cannot justify a departure from the mandatory safeguards enacted by the legislature. The investigating agency is expected to act strictly within the bounds of law, and the object of investigation cannot legitimise an otherwise illegal search or seizure.

23. The decision of this Court in *Dnyaneshwar v. State of Maharashtra* (supra), interpreting the provisions *pari materia* to Section 185 of the BNSS, squarely applies to the facts of the present case. We are, therefore, satisfied that the

search conducted by respondent No.1 and the consequential seizure of the mobile phone of petitioner No.1, were illegal and in violation of the statutory provisions as well as the constitutional guarantee under Article 21 of the Constitution of India.

24. In the facts and circumstances of the case, we are of the considered opinion that the petitioner is entitled to compensation in exercise of the public law jurisdiction of this Court. Although monetary compensation cannot fully redress the invasion of privacy and dignity suffered by petitioner No.1, it would provide some measure of solace for the violation of her constitutional rights and would also serve as a reminder that investigative powers must be exercised strictly in accordance with law and not arbitrarily. Accordingly, the following order is passed:

ORDER

- (i) The writ petition is allowed.
- (ii) It is hereby declared that the search conducted at the residential premises of the petitioners and the consequential

seizure of the mobile phone of petitioner No.1 in connection with Crime No. 26/2026, registered at Police Station Khapa were not carried out in accordance with the procedure prescribed under Sections 185 and 105 of the BNSS, and are, therefore, unsustainable in law.

(iii) The respondents shall return the mobile phone seized from petitioner No.1 forthwith, if the same is no longer required in accordance with law in connection with any pending investigation or judicial proceedings.

(iv) The State Government shall pay compensation of Rs.10,000/- (Rupees Ten Thousand only) to petitioner No.1 within a period of two months from the date of this judgment. It shall be open to the State Government to recover the said amount from the concerned police officer(s), after fixing responsibility upon them in accordance with law.

(v) In the event the compensation is not paid within the aforesaid period, the amount shall carry interest at the rate of 8% per annum from the date it became due until its actual realization.

Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(NIVEDITA P MEHTA,J.)

(URMILA JOSHI PHALKE, J.)

MP Deshpande