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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **BAIL APPLN. 190/2026 & CRL.M.A. 1559/2026**

NEERAJ KUMAR .....Petitioner

Through: Dr. Alok, Ms. Smriti Walia, Mr. Dhananjay Mittal, Mr. Shivam, Ms. Aanchal Budhiraja, Mr. Mayank Deswal, Mr. Arjan Verma, Advocates

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Hitesh Vali, APP with Insp Sanjeev Kumar, PS: Punjabi Bagh.
Mr. Dayan Krishnan, Sr. Advocate [*Amicus Curiae*] with Mr. Shreedhar, Mr. Sukrit Seth, Ms. Radhika Yadav and Ms. Ananya Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. By way of this petition, under Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], (corresponding to Section 439 of the Criminal Procedure Code 1973 ["CrPC"]), the petitioner seeks interim bail in connection with FIR No. 652/2025, registered at Police Station Punjabi Bagh, under Section 103(1) the Bharatiya Nyaya Sanhita, 2023 ["BNS"], and Sections 25/27 of the Arms Act, 1959 ["Arms Act]".

A. FACTUAL BACKGROUND

2. The FIR relates to allegations against the applicant in respect of the murder of one Muskan, who was shot inside her residence on 15.11.2025, after she repeatedly refused to marry him despite his persistent pressure, and threats. It is further alleged that after shooting Muskan, the applicant also shot himself inside the same premises.

3. The applicant has been in judicial custody in connection with the said FIR since 21.11.2025.

4. The grounds on which interim bail is sought relates to his medical condition, including a gunshot injury on his chest and pulmonary tuberculosis, resulting in chronic pain, restricted mobility and related complications.

5. The Sessions Court *vide* order dated 18.12.2025, in Bail Application No. 2126/2025, granted interim bail to the applicant for a period of eight weeks on the basis of the medical status report, and relying upon the judgment of this Court in *Vijay Aggarwal vs. Directorate of Enforcement*[1], in which the claim for interim bail was traced to Article 21 of the Constitution.

6. The grievance of the petitioner, however, is that the Sessions Court had passed a further order dated 14.01.2026, upon an application filed by the Investigating Officer [“IO”] for cancellation of the interim bail granted to the applicant, by which the period of interim bail was reduced. The applicant was directed to surrender before the concerned Jail Superintendent on 16.01.2026, instead of 18.02.2026.

[1] BAIL APPLN. No 1762/2022, decided on 13.12.2024.

7. The order of the Sessions Court dated 14.01.2026 treated the application as one for modification of bail, and further recorded as follows:

> "*Submissions has been made that instant application be treated as an application seeking modification in the bail condition and not an application seeking cancellation of bail.* ***The medical status report of accused Neeraj as per which he is found to be ambulatory and is being called by the Hospital concerned at the interval of two weeks. Moreover, as submitted by the IO that no investigation in the present case has taken place as the accused had suffered gunshot injury and that he intends to take police custody remand of the accused for the effective investigation.*** *Therefore, this court is inclined to treat the instant application as the one seeking modification of condition imposed upon accused Neeraj which grant of interim bail on 18.12.2025.*
>
> *It is settled law that this court has a larger duty towards the cause of justice which warrants that the liberty of the accused is to be protected while balancing it with the rights of the investigating agency****. In the present case, since the investigation has not commenced at all for the medical health condition of the accused and the fact that he has been admitted to interim bail on medical ground for a period of eight weeks, commencing from 18.12.2025, which would eat up the major portion of the days on which IO may apply for grant of police custody remand of accused Neeraj. In the present scenario it is the right of the investigating agency which are being affected. Pertinently, accused Neeraj is no longer wheel chair bound.***
>
> *Thus, considering the totality of facts and circumstances and also considering the medical status report of accused Neeraj* ***this court is of the considered opinion that the medical condition of the accused can very well managed while his remaining in the custody. Hence, this court is inclined to allow the instant application by modifying the condition no. 6 of the order dated 18.12.2025 passed by this court to the effect that accused Neeraj shall surrender before the concerned Jail Superintendent on 16.01.2026 instead on 18.02.2026****. The rest of the conditions as imposed upon accused Neeraj vide abovesaid order shall remain unchanged. Needless to say the accused Neeraj shall join the investigation as and when directed to do so by the court concerned or the IO.*"[2]

[2] Emphasis supplied.

8. Notice was issued in this petition on 16.01.2026, and it was directed that the applicant would continue to be enlarged on bail, on the same terms and conditions as provided in the order of the Sessions Court dated 18.08.2025, until further orders. This interim order has been continued from time to time.

B. SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES AND LEARNED AMICUS CURIAE

9. Dr. Alok and Ms. Smriti Walia, learned counsel for the applicant, submitted that the Sessions Court has erred in restricting the period of interim bail on the ground of improvement in the applicant's medical condition, and also in its perception that the original period of interim bail would render it impossible for the IO to seek remand of the applicant in police custody.

10. With regard to the provision of Section 187 of the BNSS, they have drawn my attention to the judgment of the Kerala High Court is *Fisal PJ v. State of Kerala*[3], in which it has been held that the period of release on temporary bail would not be added, while computing the period of detention under Section 187 of the BNSS. They, therefore, submitted that, on a proper interpretation, the period of release on interim bail would not restrict the period during which police remand of the applicant could be sought.

11. Ms. Priyanka Dalal, learned Additional Public Prosector, who appeared for the State, also advanced the same contention with regard to interpretation of the statutory provisions.

[3] BAIL APPL. NO. 11634/2025 [hereinafter, "*Fisal PJ*"]..

12. Having regard to the fact that the interpretation of Section 187 BNSS may have wider ramifications, Mr. Dayan Krishnan, learned Senior Counsel, was requested to assist this Court as *Amicus Curiae* by order dated 27.01.2026. He also concurred with the interpretation advanced by learned counsel for the parties. Mr. Krishnan has placed written submissions and a compilation of judgments on record. In addition to the judgment in *Fisal PJ*, he also drew my attention to the judgment of the Supreme Court in *Gautam Navlakha v. National Investigation Agency*[4].

C. ANALYSIS

13. For the purposes of the present judgment, the provisions of Section 187 of BNSS and Section 167 of CrPC are of relevance. Section 187 of the BNSS replaced the earlier provision of Section 167 of CrPC, relevant extracts of which are tabulated herein below:

Section 187 of BNSS	**Section 167 of CrPC**
"*187. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary*	*167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the*

[4] (2022) 13 SCC 542, [hereinafter, "*Gautam Navlakha*"].

hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate. *(2)* ***The Magistrate to whom an accused person is forwarded under this section may****, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled,* ***authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3),*** *and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.* *(3)* ***The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—*** ***(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;*** *(ii) sixty days, where the investigation relates to any other offence, and, on*	*diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.* *(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:* *Provided that—* *[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—* *(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;* *(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this*

the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter. xxxx xxxx xxxx	*sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]* *[(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;"* xxxx xxxx xxxx

14. The two statutory schemes, as submitted by Mr. Krishnan, are different to the extent that, while Section 167 of CrPC permitted remand for a period of 15 days, Section 187 of BNSS specifically speaks of remand for a term not exceeding 15 days, "*in the whole, or in parts*". The aforesaid period must be within the first 40 days or 60 days, out of the detention period of 60 days or 90 days respectively, depending upon the severity of the offence. Upon expiry of the aforesaid period of 60 days or 90 days, as the case may be, the accused becomes eligible for release on default/statutory bail.

15. Mr. Krishnan drew my attention to the judgment of the Supreme Court in *CBI v. Anupam J. Kulkarni*[5], which held that the period of police custody under Section 167(2) of CrPC would be the first 15 days of total remand. He also pointed out that the correctness of this view has been

[5] (1992) 3 SCC 141.

referred to a larger Bench by *V. Senthil Balaji v. State*[6]. However, in view of the amendment to the statutory scheme under the BNSS, I do not consider it necessary to refer to the aforesaid judgments in detail.

16. The legal question for consideration is whether the timeline specified in Section 187(2) of BNSS would be reckoned on the basis of the period of actual custody of an individual, i.e. excluding the period during which they are released on interim bail, or whether the period of interim bail would also be counted while computing the said timeline.

17. This very question has been considered in the judgment in *Fisal PJ*, cited by learned counsel for the parties, as also by Mr. Krishnan. The view taken by the Kerala High Court, while computing the period for statutory bail, was as follows:

> *"12. The learned Amicus Curiae has taken me to the various decisions and the relevant statutory provisions. The learned Amicus Curiae relaying on Amir Hassan Mir v. UT of J & K and others, (Manu/JK/0206/2022), submitted that the petitioner could not be treated to be in detention or custody for the period he was released on temporary bail. The learned Amicus Curiae submitted that the period during which he was released on temporary bail should not be computed for the purpose of reckoning the period of 180 days as he had not been in detention. The learned Amicus Curiae submitted that an accused who has undergone custody in two spells in the same crime is entitled to get the two spells combined to claim default bail under Section 187(3) of the BNSS. The learned Amicus Curiae also submitted that only when the continuous or broken periods of custody pieced together reaches the requisite period; default bail becomes the right of the detained person. The learned Amicus Curiae submitted that only the actual custody undergone by the accused will be counted for computing the period for default bail. The learned Amicus Curiae, on going through the facts of the case, submitted that the petitioner has remained in detention only for 140 days. Therefore, he is not entitled to statutory bail.*

[6] (2024) 3 SCC 51.

> *13.* ***What matters for statutory bail is detention, as provided in the statutory provisions, whether it is in one spell or in two spells. An accused person is entitled to be released on statutory bail by adding the truncated periods of detention suffered by him. I have no doubt in concluding that the period during which the accused person was released on temporary/interim bail should not be computed for the purpose of reckoning the period for statutory bail, as only the actual period of detention undergone by the accused need be counted for.*** *Therefore, the necessary conclusion is that the petitioner is not entitled to statutory bail."*[7]

18. The Kerala High Court thus rejected the submission of learned counsel for the accused, that the period of interim bail would also count towards the period for availing statutory bail, as the liberty of the individual was not absolute.

19. The Kerala High Court cited, *inter alia*, the judgment of the Supreme Court in *Gautam Navlakha*, to which Mr. Krishnan also referred. The following observations of the Supreme Court, *albeit* in the context of entitlement to statutory bail under Section 167 of CrPC, are relevant:

> "*82. Let us, however, delve a little more into the issue. Let us take a case where a Magistrate orders a remand under Section 167 and at the same time, he also rejects the application for bail preferred by the accused. The accused approaches the High Court under Section 439 CrPC. The Court reverses the order and grants him bail. The accused who was sent to custody means police custody or judicial custody is brought out of his custody and is released on bail pursuing to the order of the High Court. This order is challenged before the Supreme Court. The Supreme Court reverses the order granting bail. The original order passed by the Magistrate is revived. It is apparent that the accused goes back to custody. Since assuming that the period of 15 days is over and police custody is not permissible, he is sent back to judicial custody. Equally if he was already in judicial custody, the order granting judicial custody is revived. Let us assume in the illustration that the accused was in custody only for a period of 10 days and after the order passed by this Court and the accused who*

[7] Emphasis supplied.

spent another 80 days, he completes, in other words, a total period of custody of 90 days adding the period of custody, he suffered consequent upon the remand by the Magistrate. ***That is by piecing up these broken periods of custody, the statutory period of 90 days entitling the accused to default bail, is reached.*** *Can it be said that the order of this Court granting custody should not be taken into consideration for calculating the period of 90 days, upon completion of which the accused can set up a case for default bail. We would think that the mere fact is that it is the Supreme Court which exercised the power to remand, which was wrongly appreciated by the High Court in the illustration, would not detract from the custody being authorised under Section 167.*

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84. Therefore, while ordinarily, the Magistrate is the original court which would exercise power to remand under Section 167, the exercise of power by the superior courts which would result in custody being ordered ordinarily (police or judicial custody) by the superior courts which includes the High Court, would indeed be the custody for the purpose of calculating the period within which the charge-sheet must be filed, failing which the accused acquires the statutory right to default bail. We have also noticed the observations of this Court in State of U.P. v. Abdul Samad [State of U.P. v. Abdul Samad, 1962 SCC OnLine SC 40 : AIR 1962 SC 1506]. ***In such circumstances broken periods of custody can be counted whether custody is suffered by the order of the Magistrate or superior courts, if investigation remains incomplete after the custody, whether continuous or broken periods pieced together reaches the requisite period; default bail becomes the right of the detained person.***

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107. Now, it is necessary to make one aspect clear. ***An order purports to remand a person under Section 167. It is made without complying with mandatory requirements thereunder. It results in actual custody. The period of custody will count towards default bail.*** *Section 167(3) mandates reasons be recorded if police custody is ordered. There has to be application of mind. If there is complete non-application of mind or reasons are not recorded, while it may render the exercise illegal and liable to be interfered with,* ***the actual detention undergone under the order, will certainly count towards default bail.*** *Likewise, unlike the previous Code (1898), the present Code mandates the production of the accused before the Magistrate as provided in clause (b) of the proviso to Section 167(2).* ***Custody ordered without complying with the said provision, may be illegal. But actual custody undergone will again count towards default bail***."[8]

[8] Emphasis supplied.

20. The aforesaid judgment, even in the context of Section 167 of CrPC, refers to "*piecing up*" broken periods of custody, for determining the individual's entitlement to default bail. The Court's observation that the period in "*actual detention*" must be reckoned, is relevant for interpretation of Section 187 of BNSS also.

21. To similar effect is the judgment of the Madhya Pradesh High Court in *Pratap Singh Arya v. State*[9]. The petitioner was granted bail by the Trial Court on the same day as he surrendered [01.03.2023], but the Supreme Court, by an order dated 17.07.2023, cancelled bail granted to him. He surrendered on 18.07.2023, was thereafter remanded to police custody for one day. The order of remand was passed, even though more than 15 days had lapsed from the date of original arrest. This lends support to the submission that the period during which he was not in actual custody, would be excluded from the computation of time, under Section 187 of BNSS.

22. I am in respectful agreement with the view taken by the Kerala High Court in *Fisal PJ*, that only the period of actual custody would count towards reckoning of time under Section 187(2) of BNSS. Such an interpretation is, in my view, consistent with the plain language of the statute, as also the judgments referred to above.

23. Applying these principles to the facts of the present case, it is evident that the application of the IO for cancellation/modification of the interim bail granted to the applicant, and the observations of the Sessions

[9] MISC.CRIMINAL CASE NO. 33257/2023 and connected matter, decided on 07.08.2023. The judgment was upheld by the Supreme Court *vide* order dated 06.10.2023 [SLP(Crl.) Diary No(s), 37058/2023], which dismissed the SLP.

Court in order dated 14.01.2026, were misconceived. There was no basis for suggesting that the period available to the prosecution to seek remand in police custody, would lapse if the applicant remained on interim bail on medical grounds, for eight weeks, as granted by the order dated 18.12.2025 of the Sessions Court. Properly understood, the aforesaid period would be excluded altogether from the computation of the time available for police custody to be sought under Section 187(2) of BNSS.

24. Factually, the applicant was arrested on 21.11.2025 and appears to have been remanded to judicial custody on 22.11.2205. He was released on interim bail on 18.12.2025, i.e. after 28 days in custody. As the FIR in the present case is under Section 107(1) of BNS, which is punishable with life imprisonment or death, the available period during which he can be remanded to police custody of 15 days (whether in one stretch or in shorter tranches) is the first 60 days of custody. Even after expiry of his interim bail of eight weeks, as originally granted, there would thus be a period of 32 days still available, during which police custody could be sought.

25. The Sessions Court has also erred in proceeding to restrict the period of bail already granted to the applicant, on a re-assessment of his medical condition. The fact that the medical condition of the accused had shown some improvement, and he was ambulatory, was insufficient to revoke the liberty which had already been afforded to him. The very purpose of granting bail on medical grounds is to give the accused an opportunity of recovery. There was also no allegation of misuse of liberty, or of the initial order of bail having been secured on the basis of any misrepresentation.

D. CONCLUSION

26. For the reasons aforesaid, I am of view that it is appropriate to direct that the applicant would remain enlarged on interim bail on medical grounds for the period of eight weeks, as granted by the order dated 18.12.2025, and subject to the conditions mentioned therein.

27. The petition is therefore allowed, with the above observations.

28. It is made clear that this Court has not made any observations on the merits of the matter.

29. The Court expresses its deep appreciation to Mr. Dayan Krishnan, Senior Advocate, for his valuable assistance as *Amicus Curiae.*

PRATEEK JALAN, J

FEBRUARY 11, 2026
SS/AD/