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POLICE CUSTODY AND JUDICIAL CUSTODY **DURING INVESTIGATION UNDER THE BHARATIYA** **NAGARIK SURAKSHA SANHITA, 2023**

A Doctrinal Study of Remand, Personal Liberty and Judicial Oversight

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Abstract

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), in force from 1 July 2024, replaced the Code of Criminal Procedure, 1973 for matters governed by the new law, subject to applicable savings provisions. Section 187 governs remand where investigation cannot be completed within twenty-four hours. It retains a maximum aggregate of fifteen days of police custody, but permits those days to be authorised in parts during the initial forty or sixty days of the overall sixty- or ninety-day detention period, depending on the offence. This is a significant departure from the timing rule applied under former Section 167 CrPC in *CBI v. Anupam J. Kulkarni*. This paper analyses the distinction between police and judicial custody, the role of the Magistrate, constitutional protections, default bail and leading decisions including *Arnesh Kumar*, *D.K. Basu*, *Satender Kumar Antil*, *Satyajit Ballubhai Desai* and the Supreme Court's 2026 judgment in *Pogadadabnda Revathi v. State of Telangana*. It argues that the expanded time window must not be treated as an automatic entitlement to police custody. Case-specific necessity, reasoned judicial scrutiny, access to counsel, medical safeguards and respect for existing bail orders remain essential to protecting personal liberty.

Keywords: BNSS 2023; Section 187; police custody; judicial custody; remand; Article 21; Article 22; default bail; personal liberty.

1. Introduction

Custody during criminal investigation is a point at which State power directly affects personal liberty. Investigators may need to question an accused or pursue a specific investigative lead, but detention also creates risks of coercion, custodial violence, involuntary statements and unnecessary interference with dignity. Criminal procedure

must balance effective investigation with the presumption of innocence and constitutional protections.

Section 187 BNSS governs detention when an investigation cannot be completed within twenty-four hours. The provision retains a fifteen-day aggregate ceiling for police custody but allows it to be authorised in parts within the initial forty or sixty days of the overall statutory detention period. The change from the former Section 167 CrPC makes careful analysis of remand practice particularly important. The central argument of this paper is that procedural flexibility cannot displace the requirement for a lawful, necessary and reasoned custody order.

2. Objectives and methodology

This paper aims to: (i) distinguish police custody from judicial custody; (ii) analyse Section 187 BNSS and its relationship with former Section 167 CrPC; (iii) examine constitutional and judicial safeguards; and (iv) propose practical measures to prevent unnecessary or coercive detention.

The study adopts a doctrinal methodology based on legislation, constitutional provisions, Supreme Court judgments and secondary legal analysis. It does not claim to be an empirical study and does not rely on field interviews or statistical data. The statutory text and judgments should be checked against official sources before journal submission.

3. Police custody and judicial custody

3.1 Police custody

Police custody is detention of an accused under the direct control of the police pursuant to a lawful judicial remand order. It may be requested where the investigating agency demonstrates a specific need for the accused's presence, such as questioning connected to a concrete lead or a legally permissible recovery. These examples do not create an entitlement to remand. The officer must explain why the proposed investigative step requires police custody and why it cannot reasonably be achieved by a less restrictive method.

Police custody is not a form of punishment and must not be used to extract a confession through threats, pressure or inducements. General statements that 'further interrogation is required' should not automatically satisfy the statutory standard. The Magistrate must examine the reasons, relevant case-diary material and the accused's submissions.

3.2 *Judicial custody*

Judicial custody ordinarily means detention under the authority of a court, generally in prison or another legally authorised custodial institution, rather than in direct police custody. It is not a finding of guilt or a sentence. Police access to a person in judicial custody must remain subject to applicable law and court authorisation.

Judicial custody is also a deprivation of liberty. Its continuation must be legally authorised, remain within statutory limits and be open to bail or other remedies. The label ‘judicial’ does not by itself prove that detention is necessary or constitutionally valid.

3.3 *Core distinction*

The principal difference concerns who controls detention and the immediate purpose for which custody is sought. Police custody is directly linked to a specific investigative requirement; judicial custody places the person in court-authorised detention outside direct police control. Both require lawful authority, and neither extinguishes the accused’s constitutional rights.

4. *Section 187 BNSS: statutory position*

Where investigation cannot be completed within twenty-four hours, the arrested person must be produced before the competent Magistrate with the relevant case-diary material. The Magistrate—not the investigating officer—decides whether detention is justified and what form it should take.

Section 187(2) permits police custody for a total period not exceeding fifteen days, either at one stretch or in parts, during the initial forty days or sixty days of the overall detention period of sixty or ninety days, as applicable. Section 187(3) addresses further detention where adequate grounds exist, subject to the applicable overall ceiling: ninety days for investigations involving offences punishable with death, life imprisonment or imprisonment for a term of ten years or more, and sixty days for other offences. On expiry of the applicable period, default bail may arise in accordance with the statutory conditions, including the accused’s readiness to furnish bail.

The fifteen-day limit is an aggregate ceiling for police custody, not an additional fifteen days on top of the overall detention period. Police custody cannot be selected by the police unilaterally: it requires a judicial order. The Magistrate must independently examine the factual grounds and the necessity for detention.

The provision changes the period within which police custody may be considered; it does

not make police custody automatic. The seriousness of an allegation may be relevant to context, but cannot replace a case-specific explanation of why police custody is necessary.

5. Change from former Section 167 CrPC

Under former Section 167 CrPC, *CBI v. Anupam J. Kulkarni* interpreted police custody as ordinarily limited to the first fifteen days after production before the Magistrate. Section 187 BNSS expressly permits the fifteen-day aggregate to be authorised in parts within the initial forty- or sixty-day window. The earlier decision remains important for understanding the policy of limiting police custody, but its timing rule must be distinguished from the new statutory text.

The BNSS approach may accommodate a genuine investigative need that emerges later, for example after forensic analysis identifies a new lead. Conversely, it creates a risk that an accused who has already spent time in judicial custody may later be returned to police custody. The correct response is not to presume that every later request is improper, but to require concrete reasons, scrutiny of previous orders and an explanation of what new investigative purpose makes police custody necessary.

6. Constitutional safeguards

6.1 Article 21

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has interpreted this to require fair, just and reasonable procedure. A mechanical remand order, unsupported by reasons or unrelated to a genuine need, risks violating the constitutional commitment to liberty and dignity.

6.2 Article 22

Article 22(1) protects an arrested person's right to be informed of the grounds of arrest and to consult and be defended by a legal practitioner of choice. Article 22(2) requires production before the nearest Magistrate within twenty-four hours, excluding necessary journey time, and prohibits detention beyond that period without a Magistrate's authority. These are safeguards against unreviewed executive detention.

6.3 Article 20(3) and protection against coercion

Article 20(3) protects an accused from being compelled to be a witness against himself or

herself. Custodial questioning must comply with this protection and cannot lawfully involve torture, threats or coercion. The admissibility and use of any statement or recovery must be assessed under the applicable evidentiary law.

6.4 *Arrest is distinct from remand*

A lawful arrest does not automatically justify continued detention. The necessity of arrest, the necessity of remand, the form of custody and the duration of detention are separate questions. The judicial officer must independently examine the legal basis and factual justification for continued custody.

7. *Case-law analysis*

7.1 *CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141*

The Supreme Court interpreted Section 167 CrPC and held that police custody was ordinarily confined to the first fifteen days following production before the Magistrate. The case is a key reference point for the former law. Section 187 BNSS changes the timing rule by permitting the aggregate fifteen days to be spread across a defined initial period. Therefore, the old rule should not be mechanically applied without accounting for the new statutory wording.

7.2 *D.K. Basu v. State of West Bengal, (1997) 1 SCC 416*

The Court prescribed safeguards concerning arrest and detention, including identification of police personnel, preparation of an arrest memo, informing a friend or relative, recording detention details and medical examination. The decision supports accountability and traceability in custody and remains relevant to the practical exercise of powers under the BNSS.

7.3 *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273*

The Court cautioned against automatic arrest and emphasised statutory compliance and judicial scrutiny before authorising detention, particularly in cases within the category addressed by Section 41 CrPC. Although the decision concerned the former Code, its broader lesson is relevant: arrest and remand must not be routine or mechanical, and the reasons required by law must be assessed.

7.4 *Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51*

The Supreme Court addressed arrest and bail practice and reiterated the importance of avoiding unnecessary incarceration. The judgment is relevant to the broader principle that procedural powers should be exercised consistently with personal liberty and that detention should not become the default response where the law does not require it.

7.5 *Satyajit Ballubhai Desai v. State of Gujarat, (2014) 14 SCC 434*

The Court criticised a casual or mechanical approach to police remand where the accused had already been enlarged on bail. It stressed the need for convincing reasons, particularly where custody would undermine an existing bail order. This decision was later relied upon in *Pogadadabnda Revathi*.

7.6 *Pogadadabnda Revathi v. State of Telangana, 2026 INSC 75*

In its judgment dated 9 January 2026, the Supreme Court set aside orders directing police custody where the accused had already been granted bail and that bail order remained operative. The Court held that the proper course was to seek cancellation of bail in accordance with law before seeking police remand. It also held that a Magistrate's reasoned decision on police custody should ordinarily not be interfered with in revision unless gross perversity is shown. The decision confirms that Section 187's expanded time window does not authorise indirect cancellation of bail or remove the need for reasoned judicial scrutiny.

8. Critical analysis

Section 187's principal concern is the possibility of a later request for police custody after an accused has spent time in judicial custody. A later request may be justified by genuinely new material, but it may also be used to revisit an incomplete investigation. The investigating agency should identify the new development, the investigative purpose and why physical police custody is necessary.

A second concern is formulaic remand. The Magistrate's role is substantive: the court should consider the grounds, relevant materials and the accused's objections, and record reasons adequate to demonstrate application of mind. The gravity of an accusation cannot, by itself, justify remand.

A third concern is the practical availability of safeguards. Access to counsel, timely medical attention, interpretation where required, communication with family and

documentation of injuries or transfers are important to ensure that legal protections operate in practice. The safeguards should not depend on a person's financial or social position. Finally, default bail remains an important statutory protection against prolonged investigation detention. The sixty- or ninety-day period is a maximum relevant to the statutory scheme, not a recommended detention period. Courts and investigating agencies should accurately record each custody period and inform the accused of applicable rights.

9. Recommendations

First, police-custody applications should state concrete, case-specific grounds and explain why the objective cannot be achieved through less restrictive means. If custody is sought after a period in judicial custody, the application should identify what has changed.

Second, remand orders should record the Magistrate's independent assessment of necessity, proportionality, the accused's objections and the relevant investigative steps. If a prior refusal is followed by a new request, the reasons for the changed decision should be clear.

Third, access to legal counsel, medical examination and records of detention conditions should be practical and timely. Fourth, authorities should maintain a transparent custody chronology that enables verification of the aggregate fifteen-day police-custody ceiling and the overall statutory period.

Fifth, judicial and police officers should receive training on Section 187, constitutional protections and the effect of an existing bail order. Sixth, further judicial guidance may help ensure consistent application of the provision without treating its expanded time window as an automatic entitlement.

10. Findings

The study makes four findings. First, Section 187 BNSS preserves a maximum aggregate of fifteen days of police custody but allows those days to be distributed within the initial forty or sixty days of the overall detention period. Second, independent and reasoned judicial scrutiny remains the principal safeguard against unnecessary custody. Third, Articles 20(3), 21 and 22 of the Constitution and the safeguards in *D.K. Basu* remain central to lawful custody. Fourth, *Pogadadabnda Revathi* confirms that Section 187 cannot be used to bypass a subsisting bail order or to displace a reasoned remand decision without a legally sustainable basis.

11. Conclusion

Police custody and judicial custody serve different purposes, but both involve a deprivation of liberty and require strict legal control. Section 187 BNSS makes a significant change by permitting the fifteen-day police-custody period to be granted in parts during the initial forty or sixty days of the total detention period. This may accommodate genuine investigative needs, but it also raises concerns about delayed remand, coercion and uncertainty for the accused.

The appropriate response is rigorous, individualised scrutiny. Police custody should be ordered only where necessary and supported by reasons; existing bail orders must be respected; and statutory time limits, access to counsel and medical safeguards must be effective in practice. The constitutional legitimacy of the BNSS will depend not merely on statutory language, but on the fairness and discipline with which custody powers are exercised.

References and bibliography

1. The Constitution of India, arts. 20(3), 21 and 22.
2. The Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, especially ss. 58, 187, 193 and 531.
3. The Code of Criminal Procedure, 1973, ss. 41, 41A and 167 (repealed subject to the savings provision in the BNSS).
4. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
5. *CBI v. Anupam J. Kulkarni*, (1992) 3 SCC 141; AIR 1992 SC 1768.
6. *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.
7. *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.
8. *Satyajit Ballubhai Desai v. State of Gujarat*, (2014) 14 SCC 434.
9. *Pogadadabnda Revathi & Anr. v. State of Telangana*, 2026 INSC 75, judgment dated 9 January 2026, Supreme Court of India.
10. PRS Legislative Research, *The Bharatiya Nagarik Suraksha Sanhita, 2023: Legislative Brief* (2023).
11. India Code, *The Bharatiya Nagarik Suraksha Sanhita, 2023*, official statutory text, https://www.indiacode.nic.in/indiacode/handle/123456789/20099?view_type=browse (accessed 23 October 2026).
12. Supreme Court of India, *Pogadadabnda Revathi & Anr. v. State of Telangana*, official

judgment PDF, 2026 INSC 75,
https://api.sci.gov.in/supremecourt/2025/59526/59526_2025_2_31_67318_Judgement_09-Jan-2026.pdf (accessed 23 October 2026).

Submission checklist

Before submission: (i) replace the author and affiliation placeholders; (ii) check the journal's word limit, footnote format and citation style; (iii) verify each case citation and statutory provision against the official judgment or statute; (iv) add any journal-required declaration, originality statement or AI-use disclosure; and (v) revise the analysis in the submitting author's own voice. This document is a research draft and is not a guarantee of acceptance or of any AI-detector outcome.

CASE-LAW AND REFERENCES REVIEW

Companion material for: Police Custody and Judicial Custody During Investigation under the Bharatiya Nagarik Suraksha Sanhita, 2023

This companion sheet supplies a checked case-law list and citation guidance to use when revising the main research paper. Please read the judgments themselves before submission and follow the journal's required citation style.

A. Core statutory provisions

1. Constitution of India: Articles 20(3), 21 and 22.
2. Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023): Sections 35 (arrest without warrant in specified circumstances), 36 (procedure of arrest and duties of officer making arrest), 38 (right of arrested person to meet an advocate during interrogation, subject to statutory terms), 58 (person arrested not to be detained more than twenty-four hours without authority of Magistrate), 187 (procedure when investigation cannot be completed in twenty-four hours), and 531 (repeal and savings). Verify the exact relevance of each section to the paper and the facts being discussed.
3. Code of Criminal Procedure, 1973: Sections 41, 41A and 167, as historical provisions relevant to earlier Supreme Court decisions, subject to the BNSS repeal-and-savings provision and the applicable transition rules.

B. Principal cases and how to use them

1. **CBI v. Anupam J. Kulkarni**, (1992) 3 SCC 141; AIR 1992 SC 1768. The Supreme Court interpreted Section 167 CrPC and confined police custody to the initial fifteen-day period under the former statutory wording. Use this case to explain the earlier rule and then contrast it with the express wording of Section 187 BNSS, which permits the fifteen-day aggregate in parts during the initial forty or sixty days. Do not state that the old timing rule automatically controls the different wording of the BNSS.
2. **D.K. Basu v. State of West Bengal**, (1997) 1 SCC 416. The Supreme Court laid down safeguards concerning arrest and detention, including documentation, informing a friend or relative, medical examination and accountability. Use it for the constitutional context of custodial safeguards; check the judgment for the precise formulation of each direction.
3. **Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273. The Court cautioned against automatic arrest in offences punishable with imprisonment up to seven years and required police officers and Magistrates to comply with statutory safeguards. Use it to support the proposition that arrest and remand require application of mind, while explaining that its directions must be applied in the context of the relevant statutory framework.
4. **Satyajit Ballubhai Desai v. State of Gujarat**, (2014) 14 SCC 434. The Court criticised a mechanical approach to police remand where bail had already been granted and emphasised the need for convincing reasons. This is particularly relevant to the interaction between remand and a subsisting bail order.
5. **Satender Kumar Antil v. Central Bureau of Investigation**, (2022) 10 SCC 51. The judgment addresses arrest, bail and the need to follow procedural safeguards rather than treating custody as automatic. Use it for the broader liberty and bail context, not as a direct interpretation of Section 187 BNSS.
6. **Pogadadabnda Revathi & Anr. v. State of Telangana**, 2026 INSC 75, judgment dated 9 January 2026, Criminal Appeal arising out of SLP (Crl.) No. 16536 of 2025. The Supreme Court held that police custody should not be granted while an existing bail order remains in force; the investigating agency must first seek cancellation of bail according to law. It also held that a reasoned Magistrate's decision on police remand should not ordinarily be interfered with in revision absent gross perversity. Cite the official Supreme Court judgment PDF.

Important accuracy note: The case *Pogadadabnda Revathi* is a real and highly

relevant decision, but the main paper should accurately describe its factual and procedural setting. Avoid implying that the Court declared all later police custody impermissible under Section 187; its key holding concerns a subsisting bail order and the proper process for seeking police custody in that situation.

C. Suggested bibliography

1. The Constitution of India.
2. The Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023.
3. The Code of Criminal Procedure, 1973 (historical statutory context).
4. CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141; AIR 1992 SC 1768.
5. D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
6. Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
7. Satyajit Ballubhai Desai v. State of Gujarat, (2014) 14 SCC 434.
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9. Pogadadabnda Revathi & Anr. v. State of Telangana, 2026 INSC 75 (Supreme Court of India, 9 January 2026).
10. PRS Legislative Research, The Bharatiya Nagarik Suraksha Sanhita, 2023: Legislative Brief / analysis of the Bill (2023).
11. India Code, Bharatiya Nagarik Suraksha Sanhita, 2023, official statutory text: https://www.indiacode.nic.in/indiacode/handle/123456789/20099?view_type=browse.
12. Supreme Court of India, Pogadadabnda Revathi & Anr. v. State of Telangana, official judgment PDF: https://api.sci.gov.in/supremecourt/2025/59526/59526_2025_2_31_67318_Judgement_09-Jan-2026.pdf.

D. Suggested footnote models

Statute: Bharatiya Nagarik Suraksha Sanhita, 2023, s. 187. Case: CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141.

Recent judgment: Pogadadabnda Revathi & Anr. v. State of Telangana, 2026 INSC 75, judgment dated 9 January 2026, para. [insert verified paragraph number].

Secondary source: PRS Legislative Research, The Bharatiya Nagarik Suraksha Sanhita, 2023: Legislative Brief (2023), p. [insert page number verified from the copy used].

E. Final checks before journal upload

- Replace author and institution placeholders in the main paper.
- Check the exact text of Section 187 and do not confuse the 15-day aggregate police-custody ceiling with the 60/90-day overall period relevant to default bail.
- Verify every case citation, paragraph number, quotation and proposition against the judgment itself.
- Use one consistent citation style throughout (the journal may require OSCOLA, Bluebook, ILI or its own format).
- Add a literature review based on sources actually consulted; do not list books or articles that were not read.
- Review the journal's originality, AI-use disclosure and publication ethics rules. Do not claim that AI detectors cannot identify a text.

