BLOGS

Jaskaran Jeet Singh Deol v. State of Punjab (2026) : Judicial Approval required, if a Person is to be Re-Arrested after having been Unlawfully Arrested.

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Introduction

Recently the Supreme Court looked into the issue of re-arrest following an unconstitutional detention as seen in ***Jaskaran Jeet Singh Deol v. State of Punjab, 2026 INSC 1022***. The Court considered the situation in which an accused is set free because the police have breached **Article 22** of the Constitution and ruled that the power to re-arrest should not be left to the same police authority which had committed the violation. Before custody can be resumed, the investigating agency must secure the prior approval, or the judicial approval, of the competent Magistrate.

The Court likewise made it clear that the seriousness of the offence in question does not lessen the constitutional protection. The judgment was given on **21 September 2026** by **Justice Ujjal Bhuyan** and **Justice Atul S. Chandurkar**.

Facts of the case

- An FIR was filed in Punjab under **Sections 64, 65(1)** and **351** of the **Bharatiya Nyaya Sanhita, 2023**, together with **Section 6** of the **Protection of Children from Sexual Offences Act, 2012**. The claims involved the physical and sexual abuse of a minor girl.
- Jaskaran Jeet Singh Deol was arrested roughly at 7.54 a.m. on 17 May 2026 and was presented before a Judicial Magistrate on 18 May 2026, approximately at noon.
- The Magistrate observed two serious flaws. Firstly, the police had not provided the written reasons for the arrest, and secondly, the appellant had not been brought before the nearest Magistrate within the 24-hour period which is required by the constitution.

- The Magistrate, citing the ruling in *Mihir Rajesh Shah v. State of Maharashtra*, declared the arrest to be illegal and directed that the appellant should be set at once. However, the Magistrate did note that the investigating agency might request the appellant's custody once it had complied with the law.
- On that day the police once more applied for custody and gave the reasons for the arrest. The request for remand was rejected since the legal requirements had still not been met.
- The appellant then went to the Punjab and Haryana High Court asking for protection from being re-arrested. The High Court rejected the petition and stated that the investigating authority could apply for a warrant, re-arrest the appellant or ask for his custody in accordance with the law.
- The appellant brought this decision before the Supreme Court.

Issues before the Supreme Court

The main questions were:

1. Can a person be re-arrested for the same offence after having been released because violations of Articles 22(1) and 22(2) occurred?
2. If recapture is possible, should the police have the freedom to make their own decision?
3. What procedure has to be carried out before the accused is returned to custody?
4. What penalties should be meted out to the responsible officers?

Relevant constitutional and statutory provisions

Article 21 ensures life and personal liberty. Liberty can only be taken from a person by means of a procedure laid down by law.

Article 22(1) states that an arrested person must be told, as soon as possible, why they have been arrested and also guarantees the right to obtain legal advice from and to be represented by a lawyer of their own choosing.

According to **Article 22(2)**, any person who has been arrested or detained must be produced before the nearest magistrate within 24 hours of their arrest, provided that the time taken for the journey is not included. If a person remains in detention beyond that time, permission from a magistrate is required.

The safeguards are also provided for under the statutory scheme. **Section 50** of the Code of Criminal Procedure, 1973, required the communication of the details of the offence, while **section 57** made it unlawful to detain anyone for more than 24 hours without a Magistrate's order. These same safeguards are now included in the Bharatiya Nagarik Suraksha Sanhita, 2023.



What was the decision of the Supreme Court?

The Supreme Court cancelled the decision of the High Court as well as the relevant remarks of the Magistrate. It stated that the accused must be given the written reasons for their arrest as soon as possible and without exception in a language which they understand. This requirement is a mandatory constitutional protection and not merely a minor formality.

If no written grounds are given, the process of arrest and remand becomes unconstitutional. The person accused is set free from illegal detention. However, this release is not equivalent to being granted bail. A subsequent charge-sheet or an order directing the court to take cognisance cannot remedy the original constitutional breach.

The Court also stated that it is a violation of Article 22(2) to fail to produce the person accused before a Magistrate within 24 hours and that detention after that time becomes unlawful. Likewise, the same judicial approval safeguards apply if the investigating agency later states that custody is necessary.

The Court has not granted permanent immunity from arrest. In certain cases an investigation may call for custodial interrogation. Yet the police cannot re-arrest someone simply on their own decision after having violated the Constitution.

Procedure for re-arrest

The Court prescribed the following safeguards:

1. The agency carrying out the investigation should first provide the accused with the written reasons for their arrest.
2. The application must be submitted to the jurisdictional Magistrate together with an explanation of the reasons for the re-arrest and also of why custodial interrogation is necessary.
3. The application should state the reasons why the grounds for the arrest were not given the first time.
4. The application should have the approval of the superior police authority who is directly above it.
5. The Magistrate is required to apply the principles of natural justice and to decide the request as quickly as possible, ideally within one week.

6. The person who is being re-arrested can only be re-arrested if the Magistrate is of the opinion that the previous failure was due to genuine reasons and that detention is actually necessary.
7. The higher authority should hand over the investigation to a different officer and arrange for a departmental inquiry. If the results are adverse then departmental action will be taken and a note will be entered in the officer's service record.

The High Court also has the power to grant compensation as a public-law remedy in the case of a breach of Article 22(2). However, this does not stop the injured person from bringing a separate private-law claim for damages.

Earlier cases referred to by the Court

The judgment established a series of cases which safeguarded the right to know the reasons for one's arrest.

In the case of ***Pankaj Bansal v. Union of India*** the Supreme Court ruled that the reasons for an arrest under the Prevention of Money Laundering Act must be given in writing so that the person who has been arrested can understand the charges against him and apply for bail.

In the case of ***Prabir Purkayastha v. State (NCT of Delhi)*** the Court regarded the freedom provided for in Articles 20, 21 and 22 as a fundamental constitutional right and applied the requirement to an arrest made under the Unlawful Activities (Prevention) Act.

In the case of ***Vihaan Kumar v. State of Haryana*** the Court stated that the reasons must be made known in a clear way since it is impossible for a person to defend their liberty if they do not know why it has been restricted.

In the case of ***Mihir Rajesh Shah v. State of Maharashtra*** the Court made it clear that written grounds should usually be provided before remand and established a procedure for applying for custody when the arrest had been invalidated.

The Court also referred to the cases of ***Sanjay Dutt v. State*** and ***Rakesh Kumar Paul v. State of Assam***. The decisions in those cases dealt with default bail, which occurs when the investigating authority does not file a charge-sheet within the prescribed time period. In the present case, however, the violation took place at the very outset of the arrest and amounted to a breach of the fundamental rights provided for in Article 22. For this reason, the rules on default bail could not be applied in a mechanical way.

The Court also mentioned **Khatri & Ors. Etc vs State Of Bihar**, **Directorate Of Enforcement vs Subhash Sharma**, **Rudul Sah vs State Of Bihar** and **Smt. Nilabati Behera Alias Lalit Behera vs State Of Orissa** in connection with the requirement to produce them within 24 hours, the issue of unlawful detention and compensation under public law. On the basis of the opinion of Prabhu Dayal Deorah, it stated that the seriousness of an offence cannot be used as a reason for ignoring constitutional procedure.

Importance of the judgment

The ruling ensures that a constitutional safeguard does not become merely a formality. If the same police authority were able to re-arrest the person right away, the first release would provide little protection.

It establishes institutional accountability by switching the investigating officer and by holding a departmental inquiry. At the same time, it ensures that legitimate investigations can take place by permitting a further arrest if a Magistrate determines that there is a genuine need and bona fide reasons.

Conclusion

The judgment in *Jaskaran Jeet Singh Deol v. State of Punjab* reinforces the constitutional safeguards that are currently in place at the time of arrest and following unlawful detention. The Supreme Court has clearly stated that a person cannot be re-arrested automatically merely because Article 22 has been violated, but re-arrest cannot be carried out by the same authority on its own.

Thus, the judgment puts personal liberty at the heart of criminal procedure while still allowing for a lawful and properly supervised investigation.