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MCRC-18044-2026

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 15<sup>th</sup> OF MAY, 2026

MISC. CRIMINAL CASE No. 18044 of 2026

*LAXMIKANT SONI*

*Versus*

*SMT RADHA AND OTHERS*

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Appearance:

Shri Dilip Kumar Shrivastav - Advocate for the petitioner.

Shri Rajendra Yadav - Advocate for respondent no.1.  
.....

ORDER

The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred by the applicant challenging the legality, propriety and correctness of the order dated 02.04.2026 passed by the learned Additional Sessions Judge to the Court of Additional Judge, Deori, District Sagar in Criminal Revision No.02/2026 whereby the revisional Court affirmed the order dated 17.02.2026 passed by the learned Judicial Magistrate First Class, Deori in MJC No.257/2024 rejecting the applicant's application preferred under Section 480 BNSS seeking his release from judicial custody in execution proceedings arising out of a maintenance order passed under Section 125 Cr.P.C.I.A. No.8587/2026, filed seeking urgent hearing and interim relief for release of the applicant from continued detention, is also taken up for analogous consideration.

2. The factual backdrop, as borne out from the pleadings and documents



available on record, reveals that respondent No.1 is the legally wedded wife of the applicant whereas respondent Nos.2 and 3 are their minor children born out of the wedlock. Due to matrimonial discord and strained domestic relations, respondent No.1 started residing separately along with the minor children and thereafter instituted proceedings under Section 125 of the Code of Criminal Procedure seeking maintenance from the applicant on the allegation that the applicant had neglected and refused to maintain them.

3. The learned JMFC, Deori, after adjudication of the maintenance proceedings, partly allowed the application by order dated 17.09.2024 and directed the applicant to pay maintenance to the tune of Rs.1,500/- per month to respondent No.1 and Rs.750/- per month each to respondent Nos.2 and 3, thereby fixing total monthly maintenance liability at Rs.3,000/-. The applicant alleges that the said order came to be passed ex parte and without proper service of notice, however, the same attained operative force and execution proceedings were subsequently initiated by respondent No.1.

4. For enforcement and recovery of arrears of maintenance, respondent No.1 instituted proceedings under Section 144(3) BNSS before the learned JMFC, which were registered as MJC No.257/2024. The executing Court assessed accumulated arrears at approximately Rs.1,38,000/- and in furtherance thereof issued warrant against the applicant. Pursuant to the said warrant, the applicant was arrested on 30.10.2025 and was remanded to judicial custody in Sub Jail, Rahli.

5. The record further reflects that while in custody, the applicant moved an application under Section 480 BNSS before the executing Court asserting



that he was not a wilful defaulter and that despite his limited financial capacity he had already paid/deposited an aggregate amount of Rs.20,000/- towards maintenance liabilities, namely Rs.10,000/- allegedly paid on 04.07.2025 and another Rs.10,000/- deposited before the Court on 27.01.2026. The applicant further pleaded that he is a labourer by occupation and the sole earning member of the family and due to prolonged incarceration extending over several months, he had become incapable of earning any income, thereby frustrating his capacity to liquidate the outstanding arrears. The said application filed under Section 480 BNSS has been brought on record as Annexure A/1.

6. The learned JMFC, Deori, by order dated 17.02.2026 dismissed the said application and declined to release the applicant from custody. The trial Court observed that substantial arrears were still outstanding and that the applicant had failed to demonstrate sufficient readiness and willingness to satisfy the maintenance liability.

7. Aggrieved by the aforesaid order, the applicant preferred Criminal Revision No.02/2026 before the learned Additional Sessions Judge to the Court of Additional Judge, Deori. The revisional Court, after hearing the parties, dismissed the revision vide order dated 02.04.2026 and affirmed the findings recorded by the learned JMFC. The revisional order dated 02.04.2026 has been filed as Annexure A/4.

8. Learned counsel appearing for the applicant vehemently contended that the impugned orders passed by both the Courts below suffer from patent illegality, material irregularity and complete non-application of judicial



mind. It is submitted that the applicant has been continuously incarcerated since 30.10.2025 in one singular execution proceeding for recovery of maintenance arrears and such prolonged incarceration extending beyond four months has assumed a punitive character wholly alien to the object and scheme of maintenance law.

9. It is argued that imprisonment contemplated under the maintenance provisions is merely a coercive mode of enforcement and cannot be converted into indefinite punitive detention. Learned counsel submitted that once the coercive object stands exhausted, continued detention becomes oppressive, arbitrary and contrary to settled principles governing personal liberty. Learned counsel further submitted that the applicant never intentionally disobeyed the maintenance order and, in fact, demonstrated bona fide intention by making part payment of Rs.20,000/- despite severe financial distress. It is argued that the applicant belongs to a poor economic background and due to his continued incarceration he has completely lost the opportunity to earn livelihood, thereby making further compliance practically impossible.

10. It is also argued that the executing Court as well as the revisional Court failed to appreciate that prolonged imprisonment itself frustrates the object of maintenance proceedings because an incarcerated person is deprived of any practical means to generate income for payment of maintenance. It is further contended that the applicant is suffering from severe medical ailments was reportedly admitted in ICU/MICU. The medical documents and communication issued by the jail authorities have been filed as Annexure



A/5. It is submitted that the Courts below completely ignored these vital circumstances while rejecting the prayer for release.

11. Learned counsel additionally argued that respondent No.1 is not entirely destitute and is residing in the applicant's residential premises while also deriving income from a shop situated therein. It is contended that respondent No.1 deliberately suppressed her financial status and misled the Court while seeking execution. It is also argued that the original maintenance order dated 17.09.2024 itself was passed ex parte without ensuring valid service upon the applicant and therefore the foundation of the execution proceedings stands vitiated. However, learned counsel fairly submitted that the applicant is pursuing independent remedies in that regard.

12. Per contra, learned counsel appearing on behalf of the respondents opposed the petition and supported the impugned orders. It is submitted that respondent No.1 along with two minor children had been compelled to initiate maintenance proceedings because the applicant had failed to discharge his legal and moral obligation of maintaining them. It is contended that despite repeated opportunities granted by the Court, the applicant persistently defaulted in payment of maintenance and huge arrears accumulated over a substantial period. Learned counsel submits that the amount allegedly deposited by the applicant is insignificant in comparison to the outstanding liability and cannot absolve him of persistent default.

13. It is further submitted that both the Courts below concurrently recorded findings against the applicant after appreciating the material available on record and therefore this Court ought not to interfere with concurrent



findings while exercising jurisdiction under Section 528 BNSS unless manifest perversity or jurisdictional error is demonstrated. It is also argued that maintenance proceedings are intended to protect the wife and children from destitution and the conduct of the applicant clearly reveals negligence towards their welfare.

14. Heard the parties through their counsel and perused all the material available on record.

15. At the outset, it requires to be observed that proceedings relating to maintenance under Section 125 Cr.P.C. and corresponding provisions under the BNSS are social welfare measures intended to prevent vagrancy, destitution and economic abandonment of wives, children and parents. Simultaneously, the statutory mechanism prescribed for enforcement of maintenance orders has to be exercised within constitutional and legal limitations consistent with principles of fairness and proportionality.

16. The undisputed factual position emerging from the record is that the applicant was taken into custody on 30.10.2025 pursuant to execution proceedings instituted for realization of maintenance arrears and has remained continuously incarcerated thereafter. Thus, on the date of consideration of the present petition, the applicant has already undergone detention for more than five months in the same execution proceedings arising out of MJC No.257/2024.

17. The impugned orders reveal that both the Courts below principally proceeded on the consideration that substantial arrears were still outstanding against the applicant and therefore no indulgence was warranted. However,



upon careful examination, this Court finds that the Courts below failed to sufficiently examine the larger legal issue relating to the permissibility and proportionality of prolonged incarceration in a singular execution proceeding.

18. The law relating to imprisonment in maintenance execution proceedings has consistently recognized that detention is merely a coercive device intended to compel compliance and not a punitive sentence akin to criminal incarceration. Once detention ceases to operate as an effective coercive mechanism and instead assumes the nature of indefinite punitive confinement, the same travels beyond the permissible statutory framework.

19. The applicant has specifically pleaded and demonstrated that he is a labourer by occupation and derives livelihood through manual work. The inevitable consequence of prolonged incarceration of such a person is total deprivation of earning capacity. In the considered opinion of this Court, continued detention of an indigent person, who claims inability arising from prolonged incarceration itself, may ultimately frustrate the very purpose sought to be achieved by maintenance law because the person detained becomes economically incapacitated from discharging future liabilities.

20. This Court also cannot ignore the fact that the applicant has admittedly deposited an amount of Rs.20,000/- towards the arrears. Though the said amount may not be substantial compared to the total outstanding dues, nevertheless, it does indicate some degree of willingness on the part of the applicant to comply with the maintenance order.

21. The medical documents filed as Annexure A/5 further assume



significance. The communication issued from Sub Jail, Rahli reflects that the applicant was referred for higher medical treatment due to serious health complications. The material available on record prima facie indicates existence of medical issues requiring proper treatment and monitoring. The Courts below, while considering the application under Section 480 BNSS, were expected to balance the coercive purpose of detention against humanitarian and constitutional considerations flowing from Article 21 of the Constitution of India. However, the impugned orders do not reflect any meaningful consideration of the applicant's deteriorating medical condition.

22. At the same time, this Court is equally conscious of the rights of respondent No.1 and the minor children who are beneficiaries of the maintenance order. Maintenance is not a matter of charity but a legal entitlement flowing from statutory obligation. Therefore, release of the applicant cannot result in extinguishment or dilution of the maintenance liability.

23. The contention regarding invalid service and ex parte nature of the original maintenance order cannot be conclusively adjudicated in the present proceedings which arise out of execution orders. Nevertheless, liberty deserves to be reserved in favour of the applicant to avail such remedies as may be permissible in law against the original maintenance order.

24. Considering the cumulative effect of prolonged incarceration since 30.10.2025, the admitted part payment made by the applicant, the coercive rather than punitive nature of detention in maintenance execution proceedings, the applicant's medical condition reflected from Annexure A/5,



and the overarching constitutional mandate of fairness and proportionality, this Court is of the considered view that the continued detention of the applicant in the peculiar facts of the present case cannot be sustained.

25. Accordingly, the impugned order dated 02.04.2026 passed in Criminal Revision No.02/2026 by the learned Additional Sessions Judge to the Court of Additional Judge, Deori affirming the order dated 17.02.2026 passed by the learned JMFC, Deori in MJC No.257/2024 deserves to be and is hereby set aside. Consequently, the present petition stands partly allowed with the following directions:-

(i) The impugned order dated 02.04.2026 passed in Criminal Revision No.02/2026 and the order dated 17.02.2026 passed by the learned JMFC, Deori in MJC No.257/2024 are hereby quashed and set aside.

(ii) The applicant – LaxmikantSoni shall be released forthwith from judicial custody in connection with MJC No.257/2024, if his detention is not required in any other matter.

(iii) The applicant shall furnish a personal bond in the sum of Rs.50,000/- along with one solvent surety of the like amount to the satisfaction of the learned JMFC, Deori.

(iv) The applicant shall deposit an amount of Rs.25,000/- before the executing Court within a period of thirty days from the date of his release and shall continue to regularly pay future maintenance in terms of the maintenance order dated 17.09.2024.

(v) In the event of future default, it shall be open for the executing Court to proceed in accordance with law.



(vi) It is clarified that this Court has not expressed any opinion on the merits of the original maintenance proceedings and all remedies available to the parties in accordance with law are kept open.

(vii) The learned executing Court shall ensure that the amount deposited by the applicant is promptly disbursed to respondent Nos.1 to 3 in accordance with law.

26. In view of disposal of the main petition, I.A. No.8587/2026 also stands disposed of.

**(HIMANSHU JOSHI)**  
**JUDGE**