

CHAPTER XXVIII

RULES FOR THE ISSUE OF WRITS OR ORDERS IN THE NATURE OF WRITS OF HABEAS CORPUS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

1. Applications for writs of Habeas Corpus under Article 226.

— All applications for writs or orders in the nature of writs of Habeas Corpus under Article 226 of the Constitution of India shall be made to the Division Bench taking criminal business of the Appellate Side of the High Court duly verified by oath or affidavit setting forth the circumstances under which the writ or order is sought.

2. Rule nisi on prima facie case. — If such Court is of opinion that a *prima facie* for granting the application is made out, a rule *nisi* shall be issued calling upon the person or persons against whom the order is sought to appear on a day to be named therein to show cause why such order should not be made and at the same time, if the Court so directs, to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law:

Provided that a Single Judge may grant a rule *nisi* if the conditions specified above are fulfilled; but he shall not pass any final order on the application.

3. Order on hearing of rule. — On the return day of such rule, or on any day to which the hearing thereof may be adjourned, if no cause is shown, or if cause is shown and disallowed, the Court shall pass an order that the person or persons improperly detained shall be set at liberty or delivered to the person entitled to their custody, If cause is allowed, the rule shall be discharged.

4. Service of writs. — Where the place of detention is known the High Court writ shall be served upon the jailor with a copy to the detaining authority. Where the place of detention is not known, the writ should be served upon the detaining authority. But an attempt should be made by the Office to find out where the place of detention is; and if the place is ascertained, then a copy of the writ shall be served upon jailor.

As far as possible, writs in Bombay should be served personally.

5. Costs of rule in discretion of Court. — In disposing of any such rule, the Court may, in its discretion, make an order for the payment by one side or the other of the costs of the rule.

6. Procedure as to evidence to be recorded. — The Court may, if necessary, direct a Court of Session or a Magistrate to take evidence as provided in section 391 of the Criminal Procedure Code.

7. Procedure in case of difference of opinion. — In case of difference of opinion between the Judges composing the Division Court, the procedure laid down in section 392 of the Code of Criminal Procedure shall be followed.

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