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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.13835 OF 2024

WITH

INTERIM APPLICATION (ST) NO.14637 OF 2024

Mahesh Pandurang Naik .. Petitioner

Versus

The State of Maharashtra & Anr. .. Respondents

...
Mr.Rishi Bhuta with Ashish Dubey, Ujjwal Gandhi, Neha Patil,
Prateek Dutta, Saakshi Jha, Risha Rathod with Omer Farooq
Khuraja for the Petitioner.

Ms.Sharmila Kaushik, A.P.P. for the State/Respondent.

Mr.Sudeep Pasbola with Suyash Khose, Chinmay Godse, Mrunal
Bhide and Rajan Gurnani for the Intervenor.

API Sachin Kapse, attached to Malad Police Station.

...

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 18th JULY, 2024

JUDGMENT (Per Bharati Dangre, J.) :-

1. The Writ Petition filed by the Petitioner, arraigned as an accused in C.R.No.68 of 2020 lodged with Malad Police Station, seek the following reliefs :-

“(A) This Hon’ble Court declare the arrest of the petitioner as illegal and gross violation of the fundamental rights of the petitioner guaranteed under 21 and 22 in relation to F.I.R.no.68/2020 dated 19.02.2020 of Malad Police Station.

(B) That this Hon’ble Court be pleased to declare and set-aside the remand order dated 23/2/24 passed by the Ld.Special Judge, MPID Court, Greater Bombay, null and void and further all the subsequent



remands as the same being passed in complete violation of all the constitutional mandates i.e. failure to comply with Section 50 of Code of Criminal Procedure being violative of the fundamental rights of the petitioner guaranteed under the Constitution of India.

(C) That this Hon'ble Court be pleased to direct the release of the petitioner in F.I.R.no.68/2020, vide special MPID case no.796 of 2023 of Malad Police Station, pending on the files of Special Judge, Greater Mumbai.

(D) That this Hon'ble Court be pleased to issue writ of habeas corpus granting interim bail to the petitioner pending the final hearing of the writ petition."

2. We have heard learned counsel Mr.Rishi Bhuta for the Petitioner and the learned Additional Public Prosecutor Ms.Sharmila Kaushik for the State.

The original complainant, at whose behest the C.R. was registered, has filed an intervention application being IA(St) No.14637 OF 2024 and, hence, we have heard learned counsel Mr.Sudeep Pasbola for the intervenor.

By consent of the learned counsel representing the parties, we issue Rule. Rule is made returnable forthwith.

3. In the wake of registration of C.R.No.68 of 2020 invoking Sections 406 and 420 read with Section 34 of the Indian Penal Code (for short, "IPC") to which subsequently Section 409 also came to be added alongwith Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, "MPID Act"), the Petitioner came to be arrested on 22/02/2024 and was produced before the Sessions Court on 23/02/2024, when he was remanded to police custody till 28/02/2024, which was further extended till 14/03/2024, and he was then remanded to judicial custody.



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On completion of investigation, on 22/05/2024, the charge-sheet was filed against the Petitioner.

4. We need not go into the accusations levelled against the Petitioner on its merits as the Petition filed is positioned on a claim, that his arrest on 22/02/2024 is illegal and is in gross violation of the rights conferred on him under the Constitution of India, rendering the subsequent remand orders as null and void, as there is abject failure to comply with the provision in Section 50 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."). The Petitioner, therefore, seeks declaration of the arrest as illegal and we would focus upon this very issue and refrain ourselves from entering into the merits of the accusations crystallized into the charge-sheet against the Petitioner.

5. It is not in dispute that the Petitioner came to be arrested on 22/02/2024 and the same is evident from the arrest form/proforma of arrest panchnama, which is produced before us by the learned A.P.P., Ms.Sharmila Kaushik.

In the proforma arrest form, the Petitioner is shown to have been arrested on 22/02/2024 at 18.31 hrs. in connection with C.R. No.68 of 2020 and a corresponding entry to that effect is reflected in station diary No.42 of 2024.

The learned APP has also placed on record a copy of the station diary, which correspond to the arrest of the Petitioner at 18.31 hrs. on 22/02/2024.



The arrest form reflect that while arresting, he was identified by API Kapse and column No.8 record that the information about the arrest was given to his mother, Laxmi Pandurang Naik. The station diary entry record that since the anticipatory bail application of the accused came to be rejected and since his involvement in the C.R. is evident, after apprising him of the reasons for arrest, he is arrested and the necessary entries are taken in the Register and the information about his arrest is given to his mother. It also record that at the time of effecting the arrest, the directives issued by Hon'ble Apex Court have been strictly complied with.

6. It is this aspect of communicating the grounds of his arrest, which is the thrust of the contention of Mr.Bhuta, as he place reliance on Article 22(1) of the Constitution of India and Section 50 of the Criminal Procedure Code, 1973 and it is his contention that there is no compliance of these provisions.

Mr.Bhuta has placed reliance upon the decision of the Apex Court in the case of *Pankaj Bansal Vs. Union of India & Ors.*¹, delivered on 03/10/2023, where the right conferred under Article 22(1) of the Constitution has been widely construed, by declaring that the grounds of arrest shall be furnished to the arrested person in writing as a matter of course and without exception and this was specifically made imperative for the reason that there would be always a contest whether the grounds were orally communicated or not and to avoid such a precarious condition and consequences thereof, if the grounds are furnished in writing, the debatable ipse dixit of the authorised office can be taken care of.

¹ 2023 Live Law (SC) 844



Another decisions from the Apex Court, making the law as laid down in *Pankaj Bansal* applicable to all arrest, is also relied upon by Mr.Bhuta and this is a decision in the case of *Prabir Purkayastha Vs. State (NCT of Delhi)* delivered by the Division Bench of the Apex Court, on 15/05/2024.

According to Mr.Bhuta, these two decisions has put a seal on the procedure to be followed, when a person accused of any offence is arrested and it being settled that the grounds of his arrest shall be communicated to him in writing, Mr.Bhuta would submit that in absence of such compliance, his arrest is vitiated and this is irrespective of the fact that on completion of investigation, the charge-sheet is filed in the competent court.

7. Learned APP Ms.Kaushik has attempted to justify the action of the Respondents and the procedure followed while arresting the Petitioner, by submitting that [the arrest panchnama as well as the station diary has clearly recorded that the grounds of arrest were communicated to him orally and it was also specifically mentioned that it was done in compliance of the directives of the Apex Court. She would submit that communicating the ground orally to person to be arrested, is sufficient compliance of the fundamental right conferred on him as well as Section 50 of Cr.P.C. and Ms.Kaushik has made a feeble attempt to submit that since the accused had also filed an application for anticipatory bail, he is expected to know the reasons for his arrest and, therefore, by merely raising a technical objection, his arrest cannot be declared as illegal.



We have also heard Mr.Pasbola, the learned counsel for the Complainant, who has adopted the stand of the learned APP and in addition, he would submit that the decision in *Pankaj Bansal* (supra) was restricted to PMLA offences and the pronouncement on the point of the compliance to be ensured at the time of his arrest is in the backdrop of Section 45 of the Prevention of Money Laundering Act, 2002, which enables a person under Section 19 to seek release on bail, which it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person shall not be entitled for bail. It is in this background, according to Mr.Pasbola, and to meet this requirement in specific, the Apex Court has observed that it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is in these peculiar facts, Mr.Pasbola submits that the compliance as mandated by Article 22(1) of the Constitution to be read with Section 19 of the Act of 2002 is held to serve higher purpose and must be given due importance.

In addition, he would submit that since *Prabir Purkayastha* (supra) is the decision pronounced on 15/05/2024, as regards other offences other than the one covered under the PMLA, which was the focus of *Pankaj Bansal* (supra); and it is from the date of decision in *Prabir Purkayastha* (supra), the compliance would be mandatory.



8. It is Chapter III of the Constitution of India, which has enumerated the fundamental rights, which have been time and again construed to be inherent and any law, which abrogates or abridges such right, would be violative of the basic structure doctrine, including a right of protection against arrest and detention in certain cases and sub-clauses (1) and (2) of Article 22 read thus :-

“22(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

Corresponding to this right enshrined in the Constitution, Section 50 of Cr.P.C. reads as under :-

“50. Person arrested to be informed of grounds of arrest and of right to bail.-(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.”

9. By the Amendment Act 25 of 2005 w.e.f. 23/06/2006, Section 50-A is introduced, making it imperative for every police officer or other person making arrest under the Code to forthwith give information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed/nominated



by the arrested person for the purpose of giving such information. Sub-section (2) of Section 50-A further makes it mandatory for the police officer to inform the person arrested, of his rights under sub-section (1) as soon as he is brought to the police station and the entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station, in such form as may be prescribed in this behalf by the State Government.

In addition, sub-section (4) of Section 50-A also cast a duty on the Magistrate, before whom the arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

10. In light of the aforesaid provision, it is a right of an accused to be informed as soon as, may be of the grounds of such arrest and upon his arrest, inform his friend, relative or a person, as he may desire about his arrest and he should be apprised of this right, as soon as he is brought to the police station.

11. Chapter V in Code of Criminal Procedure, 1973 comprise of provisions for arrest of person and the procedure to be followed while making an arrest. It include a provision in form of Section 46, setting out how the arrest is to be made and also prescribes the manner in which the procedure shall be at variance, where a woman is to be arrested.



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Arrest of an accused, therefore, forms an important aspect of investigation and this power can be exercised, either by the police officer or other person, so authorised, or even by the Magistrate, when the offence is committed in his presence, whether be a Executive or Judicial Magistrate, when he may either himself arrest or order any person to arrest the offender.

The arrest would amount to deprivation of liberty of a person, against whom a reasonable complaint is made or credible information is received or reasonable suspicion exists that he has committed an offence and it is necessary to arrest him for the purpose of proper investigation of the offence or to prevent such person from committing any further offence or from causing the evidence of the offence to disappear or tampering of such evidence in any manner.

12. Since arrest of a person is a drastic and desperate stage, it must necessarily be effected upon following the procedure prescribed and this include compliance of various provisions contained in Chapter V of the Code.

Article 22 in form of a fundamental right, also makes it imperative that as soon as a person is arrested and if he has to be detained in custody, he should be informed of the grounds of his arrest, which will enable him to consult and to be defended by a legal practitioner. It also serves a purpose as when the person is produced before the nearest Magistrate, as required within 24 hours of his arrest, he is aware of the grounds of his arrest.



The procedure contemplated under clauses (1) and (2) of Article 22, however, do not apply in two contingencies; i.e. to any person who for the time being is an enemy alien or to any person who is arrested or detained under any law, providing for preventive detention, since clauses (4) and (5) of Article 22 prescribe a distinct procedure to be followed, when a person is detained under any law providing for preventive detention.

Sub-clause (5) of Article 22 specifically require, that the authority making the order directing detention of any person, by way of preventive detention, to communicate as soon as may be to such person, the grounds on which the order has been made, so as to offer an opportunity of making a representation against the order.

13. The right to be informed about the grounds of arrest, have been construed as an important fundamental right available to an accused and in case of *D.K.Basu Vs. State of West Bengal*², while pronouncing upon the custodial deaths, being one of the worst crime of civil society governed by the rule of law, by holding that it was clearly violative of right to live with dignity, specific guidelines were issued to be followed in all cases of arrest or detention till the legal provisions are made in that behalf, by way of preventive measures, and this included the following directions :-

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

² (1997) 1 SCC 416



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(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7)

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation."

14. The requirements referred to above were held to flow from Article 21 and Article 22(1) of the Constitution of India and were directed to be followed scrupulously. It was specifically clarified that the requirements laid down by way of instructive guidelines, where in addition to the constitutional



and statutory safeguards and while emphasising upon the importance of the compliance to be undertaken under Articles 21 and 22, the Apex Court held as under :-

17. Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring this police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes Clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person



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dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.”

15. Following the aforesaid pronouncement, the amendment was effected in the Code of Criminal Procedure, with the very object of zealously safeguarding the inherent fundamental right available to every citizen and its protection at every stage, with a corresponding obligation to be discharged by every civilised State. Infraction of these fundamental rights have always been frowned upon by the Constitutional Courts and wherever necessary, for breach of the fundamental right,, compensation has been granted under public law, in addition to the private law remedy available to a person for tortious action and punishments have been imposed on the wrong doer.

16. In *Pankaj Bansal* (supra), this very right received a fresh look in connection with the offences under the Prevention of Money Laundering Act, 2002, pursuant to registration of an F.I.R.

Summons were issued by the Enforcement Directorate (ED) to Pankaj Bansal and one Basant Bansal, who appeared before the ED and while they were present in the ED office, both were shown to be arrested at different timings on 14/06/2023 in exercise of power under Section 19(1) of the Act of 2002. The arrested persons were then produced before the Additional Sessions Judge and were served with the remand application filed by ED and were remanded to custody of the Directorate, which was extended from time to time till they were taken into judicial custody.



In light of the decision of the Constitution Bench in *Vijay Madanlal Choudhary Vs. Union of India*³, the Bansals approached the Punjab & Haryana High Court, praying for 'reading down' and/or 'reading into' the provisions of Section 19, by asserting that the remand orders were passed in a patently routine manner by the Judge, without satisfying himself about due compliance of mandate of Section 19 and, therefore, it was prayed that the remand orders as well as the underlying arrest orders and arrest memos be quashed and set aside.

The Division Bench of the Punjab & Haryana High Court disallowed their prayer under the mistaken impression that there was challenge to the validity of the provision. The Apex Court considered the argument in light of the three-Judge Bench decision in *Vijay Madanlal Choudhary*, holding that Section 65 of the Act of 2002 predicates that the provision of Code of 1973 shall apply insofar as they are not inconsistent with the provisions in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings thereunder. Taking note of Section 19 of the Act of 2022 which prescribes the manner of arrest of a person involved in money laundering, with the inbuilt safeguards to be adhered to, by the authorised officers, such as recording of reasons for belief regarding involvement of the person in the offence of money laundering and, that the reasons shall be recorded in writing and while effecting arrest, the grounds of arrest are to be informed to that person.

In this regard, reference was made to the existing

³ 2022 (10) SCALE 577



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pronouncement in the case of *Moin Akhtar Qureshi Vs. Union of India*⁴, which held that Section 19 of the Act uses the expression 'informed of the grounds of such arrest' and does not use the expression, 'communicate the grounds of such arrest' and, therefore, the obligation cast upon the authorised officer is only to inform the arrestee about the grounds of arrest and does not oblige the authority to serve the grounds for such arrest. Reliance was also placed on the decision of the Division Bench of the Bombay High Court in *Chhagan Chandrakant Bhujbal Vs. Union of India & Ors.*⁵, where it was held that the grounds of arrest are to be informed to the person arrested and that would mean that they should be communicated at the earliest, but there is no statutory requirement of the grounds of arrest being communicated in writing.

In this background, it is relevant to reproduce the observations of the Apex Court on this relevant right :-

"29. In this regard, we may note that Article 22(1) of the Constitution provides, *inter alia*, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the

4 2017 SCC OnLine Del 12108

5 2017 (1) AIR Bom R (Cri) 929



officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance."

17. By making reference to the arrest order in Form No.III appended to the Prevention of Money Laundering.(The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005, it was noted that the format would be followed all over the country by the authorised officers, who exercise the power of arrest under Section 19(1) of the Act of 2002 but, in certain parts of the country; the authorised officer would inform the arrested person of the grounds of arrest by furnishing the same in writing, while in other parts of the country, on the basis of the very same prescribed format, the authorised officer would only read out or permit reading of the contents of the grounds of arrest and recording that this dual and disparate procedure to convey the grounds of arrest to the arrested person cannot be countenanced on the strength of the very same arrest order, in the aforesaid format, it was pertinently observed as under :-

"32. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to



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whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable *ipse dixit* of the authorized officer.”

18. Another reason why this course was found to be proper to be adopted as per the Apex Court was the constitutional objective underlying such information being given to the arrested person and it was succinctly observed as under :-

“Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses.”

19. In light of the aforesaid observation, the decision of Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), taking a contrary view, was held not to lay down the correct law, by a categorical observation as below :-

“35.To give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception”.

20. This direction is only intended to restrict to attain the statutory mandate of Section 19(1) of PMLA and in no other



case, is the submission of Mr.Pasbola. We must immediately reject his submission, as in *Prabir Purkayastha* (supra), this position is clarified and worth it to note that in this case, the offence involved were under Unlawful Activities (Prevention) Act, 1967 (for short, "UAPA") alongwith the offences under IPC and Appellant came to be arrested in his capacity as a Director of a company, in connection with the said offence. He was arrested on 03/10/2023 vide arrest memo prepared at PS Special Cell, Lodhi Colony, New Delhi and he was presented before the Court of Additional Sessions Judge, Patiala House Courts, New Delhi on 04/10/2023 and was remanded to seven days police custody.

While dealing with an argument as regards the communication of grounds contained in Section 43B(1) of UAPA, which is verbatim reproduction of the provision contained in Section 19(1) of PMLA, in paragraphs 19 and 20 of Their Lordships of the Apex Court, have recorded as under :-

"19.Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of *Pankaj Bansal* (supra) on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA.

"20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the aforesaid person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India."



21. Reiterating that right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India and any attempt to encroach upon the same would be looked at with all seriousness and to be dealt with strictly, it is specifically held that the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. It is also clarified that mere fact that the charge-sheet has been filed in the matter, would not validate the illegality and its unconstitutionality, committed at the time of arrest of the accused and the grant of initial police custody remand to the accused.

22. The concern expressed by Mr.Pasbola as regards the applicability of law, as laid down in *Pankaj Bansal* (supra), having a prospective effect, and since, a similar concern is vented before the Apex Court, came to be answered in the following words :-

*45. It was the fervent contention of learned ASG that in the case of *Ram Kishor Arora* (supra), a two-Judge Bench of this Court interpreted the judgment in the case of *Pankaj Bansal* (supra) to be having a prospective effect and thus the ratio of *Pankaj Bansal* (supra) cannot come to the appellant's aid. Indisputably, the appellant herein was remanded to police custody on 4th October, 2023 whereas the judgment in the case of *Pankaj Bansal* (supra) was delivered on 3rd October, 2023. Merely on a conjectural submission regarding the late uploading of the judgment, learned ASG, cannot be permitted to argue that the ratio of *Pankaj Bansal* (supra) would not apply to the present case. Hence, the pleas of Shri Raju, learned ASG that the judgment in *Pankaj Bansal* (supra) would not apply to the proceedings of remand made on 4th October, 2023 is misconceived.

46. We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the



constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India.”

23. On factually examining, whether the grounds of arrest were actually conveyed to the appellant, who was arrested on 03/10/2023, the day on which the decision in *Pankaj Bansal* (supra) was delivered, it was noted that the arrest memo nowhere conveyed the ground on which, the accused was being arrested, but it was a simple proforma indicating the formal ‘reasons’ for his arrest.

Recording the significant difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest’, it is concluded, that reasons would commonly apply to any person arrested on charge of a crime, whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer, which necessitated the arrest of the accused and the grounds of arrest informed in writing must convey to the arrested accused all basic facts for which he was being arrested, so as to provide him an opportunity of defending himself against custodial remand and for seeking bail.

By concluding that grounds of arrest, would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’, which are general in nature, the Apex Court held that the appellant was entitled for his release, by applying the ratio laid down in *Pankaj Bansal* (supra).

By recording that the arrest of the appellant followed by remand and also the impugned order passed by the High Court



of Delhi were invalid in the eyes of law, the same were quashed and set aside.

24. The decisions of the Apex Court in *Pankaj Bansal Vs. Union of India* and in *Prabir Purkayastha Vs. State (NCT of Delhi)*, which now is the law declared by the Apex Court, in the wake of Article 141 of the Constitution of India, bind all the Courts within the territory of India. Similarly, in terms of Article 144, since all the authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court, the law shall be followed by all concerned, including the Courts as well as the authorities exercising the power of arrest.

In light of the elucidation of law in the above manner, the focus being clause (1) of Article 22 of the Constitution of India, when we have examined the present case, it is evident that the grounds of arrest were not furnished to the Petitioner in writing and the arrest/surrender form/panchnama produced before us, column 8 is an unfilled column, which in fact expected the arresting authority to ensure, "whether the arrested person, after being informed of the grounds of arrest and his legal rights, was duly taken into custody on ---(date) --- (hours) --- (place)". The form only indicate that the intimation of arrest was given to Laxmi Pandurang Naik, mother of the Petitioner. The station diary entry record that note of his arrest has been taken in the concerned Register and he was apprised of the reasons of arrest (अटककी कारण) and, thereafter, he was arrested.



The procedure followed by Respondent No.2 is evidently in violation of sub-clause (1) of Article 22 of the Constitution of India and, since, this provision now stands interpreted by the Apex Court in *Pankaj Bansal* (supra) and in the wake of the declaration, coming into effect from 03/10/2023, any arrest made thereafter must ensure compliance, by indicating the 'ground(s) of arrest in writing' expeditiously.

The ratio laid down by the Apex Court having been declared to be law of land, binding on all courts of the country, by virtue of Article 141 of the Constitution of India, needless to state, must be followed by each and every one, including any officer/person/magistrate, before effecting arrest of a person, in any case, where his arrest is deemed necessary and this ground shall contain all such details in the hand of the Investigating Officer, which necessitated the arrest of the accused.

25. For the reasons recorded above, since the arrest of the Petitioner is not compliant with clause (1) of Article 22 of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973 and the position of law, as laid down by the Hon'ble Apex Court, to the above effect and it being binding on all the Court,, it is declared that the arrest of the Petitioner in connection with F.I.R.No.68 of 2020 registered with Malad Police Station is illegal and in gross violation of his fundamental right.

Resultantly, the remand order dated 23/02/2024 and the subsequent orders passed by the Special Judge, MPID



Court, Gr. Bombay, also cannot be sustained and are liable to be set aside and, accordingly, they are set aside.

Upon setting aside the aforesaid orders, the Petitioner is entitled for his release and, since, the charge-sheet has been filed against him, we direct his release from custody on furnishing bail and bonds to the satisfaction of the trial Judge.

Rule is made absolute in the aforesaid terms.

26. In view of the disposal of the Writ Petition, Interim Application also stands disposed off.

27. We request the learned Public Prosecutor Mr. Venegavkar to furnish the copy of this judgment to the Director General of Police (DGP), who shall circulate the same to all the Additional Director General of Police and (ADGP) and Inspector General of Police (IGP), so that it is circulated through the Commissioner of Police/Superintendent of Police to all the officers exercising the power of arrest within their jurisdiction and if it is deemed appropriate, the copy of the judgment shall also be uploaded on the website of the Police Department of the State of Maharashtra.

(MANJUSHA DESHPANDE, J.) (BHARATI DANGRE, J.)



2024 SCC OnLine SC 934

In the Supreme Court of India
(BEFORE B.R. GAVAI AND SANDEEP MEHTA, JJ.)

Prabir Purkayastha ... Appellant(s);

Versus

State (NCT of Delhi) ... Respondent(s).

Criminal Appeal No(s). of 2024 (Arising out of SLP(Crl.) No(s). of
2024) (D. No. 42896/2023)

Decided on May 15, 2024

Advocates who appeared in this case :

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Siddharth Aggarwal, Sr. Adv.
Mr. Arshdeep Singh Khurana, Adv.
Mr. Nitin Saluja, AOR
Mr. Harsh Srivastava, Adv.
Mr. Harshit Mahalwal, Adv.
Mr. Sidak Singh Anand, Adv.
Mr. Manan Khanna, Adv.
Mr. Nikhil Pawar, Adv.
Ms. Shivani Luthra Lohiya, Adv.
Ms. Saujanya Shankar, Adv.
Ms. Rupali Samual, Adv.
Ms. Pinky Dubey, Adv.
Ms. Asmita Narula, Adv.
Ms. Simran Khurana, Adv.
Ms. Ishita Soni, Adv.
Ms. Pranya Madan, Adv.
Mr. Saahil Mongia, Adv.
For Respondent(s) Mr. Suryaprakash V Raju, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Zoheb Hussain, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Vivek Gurnani, Adv.
Mr. Samrat Goswami, Adv.
Mr. Hitarthraja, Adv.

Ms. Madhumita Kesavan, Adv.

Ms. Abhipriya, Adv.

Ms. Ritumbhara Garg, Adv.

Mr. Vivek Gaurav, Adv.

The Judgment of the Court was delivered by

SANDEEP MEHTA, J.:— Leave granted.

2. The instant appeal by special leave is preferred on behalf of the appellant for assailing the order dated 13th October, 2023 passed by learned Single Judge of the High Court of Delhi whereby the learned Single Judge dismissed the Criminal Miscellaneous Case No. 7278 of 2023 filed by the appellant seeking the following directions:—

"A. Declare the arrest of the Petitioner as illegal and in gross violation of the fundamental rights of the Petitioner guaranteed under Article 21 and 22 of the Constitution of India in relation to FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police;

B. Declare and set aside the Remand Order dated 04.10.2023 passed by the Ld. Special Judge, Patiala House Court as null and void as the same being passed in complete violation of all constitutional mandates including failure to consult and to be defended by legal practitioner of his choice during the Remand Proceedings, being violative of Petitioner's right guaranteed under Article 22 of the Constitution of India.

C. Direct immediate release of the Petitioner from custody in FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police."

Brief Facts:—

3. The officers of the PS Special Cell, Lodhi Colony, New Delhi carried out extensive raids at the residential and official premises of the appellant and the company, namely, M/s. PPK Newsclick Studio Pvt. Ltd. ("said company") of which the appellant is the Director in connection with FIR No. 224 of 2023 dated 17th August, 2023 registered at PS Special Cell, Lodhi Colony, New Delhi for the offences punishable under Sections 13, 16, 17, 18, 22C of the Unlawful Activities(Prevention) Act, 1967 (for short "UAPA") read with Section 153A, 120B of the Penal Code, 1860 (hereinafter being referred to as the 'IPC'). During the course of the search and seizure proceedings, numerous documents and digital devices belonging to the appellant, the company and other employees of the company were seized. The appellant was arrested in connection with the said FIR on 3rd October, 2023 vide arrest memo(Annexure P-7) prepared at PS Special Cell, Lodhi Colony, New Delhi.

4. It is relevant to mention here that the said arrest memo is in a computerised format and does not contain any column regarding the 'grounds of arrest' of the appellant. This very issue is primarily the bone of contention between the parties to the appeal.

5. The appellant was presented in the Court of Learned Additional Sessions Judge-02, Patiala House Courts, New Delhi(hereinafter being referred to as the 'Remand Judge') on 4th October, 2023, sometime before 6 : 00 a.m. which fact is manifested from the remand order (Annexure P-1) placed on record of appeal with I.A. No. 217857 of 2023. The appellant was remanded to seven days police custody vide order dated 4th October, 2023.

6. The proceedings of remand have been seriously criticized as being manipulated by Shri Kapil Sibal, learned senior counsel for the appellant and aspersions of subsequent insertions in the remand order have been made. Hence, it would be apposite to reproduce the remand order dated 4th October, 2023 in pictorial form so as to form a part of this judgment.

7. ANNEXURE P-1

Present :- Sh. Abul K. Shaikh for the State
 SO in person
 Accused persons present with Remand
 counsel Sh. Umesh Kant
 Sh. Arshdeep Singh Khanna counsel for accused
 persons. Contact no. 9971140092 through telephone
 call.

DR. SUDIP KUMAR
 Additional Sessions Judge
 Court No. 02, Post P.O. 110011
 District Court
 New Delhi

An application has been moved by the SO
 seeking police custody remand of accused Prady
 Puriyathra and Amit Chakraborty for a period of
 15 days. Copy of remand application sent through WhatsApp
 to counsel for accused persons.
 Heard. Record Perused.

considering the intricate nature of investigation
 required in the instant matter, accused Prady
 Puriyathra and Amit Chakraborty are remanded to police
 custody for a period of 7 days i.e till 10/10/23.

Application is disposed of accordingly.

Accused persons must be medically examined
 every 48 hours during their police custody remand.



Additional Sessions Judge-02
 Court No. 02, Post P.O. 110011
 District Court
 New Delhi

7. The appellant promptly questioned his arrest and the police custody remand granted by the learned Remand Judge vide order dated 4th October, 2023 by preferring Criminal Miscellaneous Case No. 7278 of 2023 in the High Court of Delhi which stands rejected by the learned Single Judge of the High Court of Delhi vide judgment dated 13th October, 2023. The said order is subjected to challenge in this appeal by special leave.

Submissions on behalf of the appellant: -

8. Shri Kapil Sibal, learned senior counsel representing the appellant canvassed the following submissions in order to question the proceedings of arrest and remand of the appellant: -

- (i) That the FIR No. 224 of 2023 (FIR in connection of which appellant was arrested) is virtually nothing but a second FIR on same facts because prior thereto, another FIR No. 116 of 2020 dated 26th August, 2020 had been registered by PS EOW, Delhi

Police("EOW FIR") alleging violation of Foreign Direct Investment (FDI) regulations and other laws of the country by the appellant and the company, thereby causing loss to the exchequer. A copy of the said FIR was, however, not provided to the appellant. By treating the EOW FIR as disclosing predicate offences, the Directorate of Enforcement(for short "ED") registered an Enforcement Case Information Report(for short 'ECIR') for the offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (for short 'PMLA'). The ED carried out extensive search and seizure operations at various places including the office of the company-M/s. PPK Newsclick Studio Pvt. Ltd., of which the appellant is the Director.

- (ii) The company assailed the ECIR by filing Writ Petition(Crl.) Nos. 1129 of 2021 and 1130 of 2021 wherein interim protection against coercive steps was granted by High Court of Delhi on 21st June, 2021. The appellant was also provided interim protection in an application seeking anticipatory bail vide order dated 7th July, 2021.
- (iii) The FIR No. 224 of 2023 has been registered purely on conjectures and surmises without there being any substance in the allegations set out in the report. The contents of the FIR which were provided to the appellant at a much later stage discloses a purely fictional story without any fundamental facts or material warranting registration of the FIR.
- (iv) Admittedly, the copy of FIR No. 224 of 2023 was neither made available in the public domain nor a copy thereof supplied to the appellant until his arrest and remand which is in complete violation of the fundamental Right to Life and Personal Liberty enshrined in Articles 20, 21 and 22 of the Constitution of India.
- (v) Shri Sibal pointed out that the learned Remand Judge, vide order dated 5th October, 2023, allowed the application filed by the appellant seeking certified copy of the said FIR which was provided to the learned counsel for the appellant in the late evening on 5th October, 2023, i.e., well after the appellant had been remanded to police custody.
- (vi) That the grounds of arrest were not informed to the appellant either orally or in writing and that such action is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 of the Criminal Procedure Code, 1973 (hereinafter being referred to as the 'CrPC').
- (vii) Reliance was placed by the learned senior counsel on the judgment of this Court in *Pankaj Bansal v. Union of India*¹ and it

was contended that the mere passing of successive remand orders would not be sufficient to validate the initial arrest, if such arrest was not in conformity with law. Learned senior counsel urged that this Court in the case of *Pankaj Bansal* (supra) interpreted the provision of Section 19(1) of PMLA which is *pari materia* to the provisions contained in Section 43B(1) of the UAPA. Thus, the said judgment fully applies to the case of the appellant.

- (viii) Shri Sibal referred to the observations made in the judgment of *Pankaj Bansal* (supra) and urged that since the grounds of arrest were not furnished to the appellant at the time of his arrest and before remanding him to police custody, the continued custody of the appellant is rendered grossly illegal and a nullity in the eyes of law because the same is hit by the mandate of Article 22(1) of the Constitution of India.
- (ix) Shri Sibal further urged that the view taken by a two-Judge Bench of this Court in *Ram Kishor Arora v. Directorate of Enforcement*² holding the judgment in *Pankaj Bansal* (supra) to be prospective in operation would also not come in the way of the appellant in seeking the relief. He pointed out that the judgment in the case of *Pankaj Bansal* (supra) was pronounced on 3rd October, 2023 whereas the illegal remand order of the appellant was passed on 4th October, 2023 and hence, the law laid down in the case of *Pankaj Bansal* (supra) is fully applicable to the case of the appellant despite the interpretation given in *Ram Kishor Arora* (supra).
- (x)⁶² That the arrest of the appellant is in gross violation of the provisions contained in Article 22 of the Constitution of India, hence, the appellant is entitled to seek a direction for quashment of the remand order and release from custody forthwith.
- (xi) That the action of the Investigating Officer in arresting and in seeking remand of the appellant is not only *mala fide* but also fraught with fraud of the highest order.
- (xii) Referring to the remand order dated 4th October, 2023, it was contended that the appellant was kept confined overnight by the Investigating Officer without conveying the grounds of arrest to him. He was presented in the Court of the learned Remand Judge on 4th October, 2023 in the early morning without informing Shri Arshdeep Khurana, the Advocate engaged on behalf of the appellant who was admittedly in contact with the Investigating Officer because he had attended the proceedings at the Police Station Lodhi Colony, post the appellant's arrest. In order to clandestinely procure police custody remand of the appellant, the

Investigating Officer, presented the appellant at the residence of learned Remand Judge before 6 : 00 a.m. by informing a remand Advocate Shri Umakant Kataria who had never been engaged by the appellant to plead his cause.

- (xiii) Learned Remand Judge remanded the accused to police custody at 6 : 00 a.m. sharp as is evident from the remand order (supra). Shri Arshdeep Khurana, the appellant's Advocate was informed about the order granting remand by a WhatsApp message at 7 : 07 a.m. but the same was an exercise in futility because there was no possibility that the learned Advocate could have reached the residence of the learned Remand Judge in time to oppose the prayer for remand.
- (xiv) That, as a matter of fact, the remand application had already been accepted at 6 : 00 a.m. which fact is manifested from the time appended at the end of the remand order (supra). The learned Remand Judge signed the proceedings by recording the time as 6 : 00 a.m. Hence, there is no escape from the conclusion that the remand order was passed without supplying copy of the grounds of arrest to the appellant or the Advocate engaged by him. The appellant was intentionally deprived from information about the grounds of his arrest and thereby he and his Advocate were prevented from opposing the prayer of police custody remand and from seeking bail.
- (xv) He further urged that the stand taken by the respondent that the grounds of arrest were conveyed to the learned counsel for the appellant well before the learned Remand Judge passed the remand order is unacceptable on the face of the record because the time of passing the remand order is clearly recorded in the order dated 4th October, 2023 as 6 : 00 a.m. Admittedly, the grounds of arrest were conveyed to Shri Arshdeep Khurana, Advocate for the appellant well after 7 : 00 a.m. It was contended that the noting made by the learned Remand Judge in the order dated 4th October, 2023 that the learned counsel for the appellant was heard on the application for remand is a subsequent insertion clearly visible from the remand order. The fact of subsequent insertion of these lines is fortified from the fact that the appellant had already been remanded to police custody by the time the Advocate was informed and the copy of the remand application containing the purported grounds of arrest was transmitted to him.
- (xvi) That the foundational facts in the FIR No. 224 of 2023 are almost identical to the allegations set out in the EOW FIR. The appellant had been granted protection against arrest by the High

Court of Delhi in the EOW FIR. Owing to this protection, the *mala fide* objective of the authorities in putting the appellant behind bars was not being served and, therefore, a new FIR No. 224 of 2023 with totally cooked up allegations came to be registered and the appellant was illegally deprived of his liberty without the copy of the FIR been provided and without the grounds of arrest being conveyed to the appellant.

9. On these grounds, Shri Sibal implored the Court to accept the appeal, set aside the impugned orders and direct the release of the appellant from custody in connection with the above FIR.

Submission on behalf of the respondent:—

10. *Per contra*, Shri Suryaprakash V. Raju, learned ASG, appearing for the respondent vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant and made the following pertinent submissions:—

- (i) He urged that the judgment in the case of *Pankaj Bansal* (supra) has been held to be prospective in operation by this Court in the case of *Ram Kishor Arora* (supra).
- (ii) The appellant was remanded to police custody on 4th October, 2023 whereas the judgment in the case of *Pankaj Bansal* (supra) was uploaded on the website of this Court in the late hours of 4th October, 2023 and hence, the arresting officer could not be expected to ensure compliance of the directions given in the said judgment. He thus urged that the alleged inaction of the Investigating Officer in furnishing the grounds of arrest in writing to the appellant cannot be called into question as the judgment in *Pankaj Bansal* (supra) was uploaded and brought in public domain after the remand order had been passed.
- (iii) Without prejudice to the above, learned ASG urged that as per the appellant's version set out in the pleadings filed before the High Court of Delhi, he was actually remanded to the police custody after 7 : 00 a.m. With reference to these pleadings, Shri Raju contended that the appellant cannot be heard to urge that he was remanded to the police custody in an illegal manner and without the grounds of arrest having been conveyed to him in writing.
- (iv) Learned ASG referred to the provisions contained in Articles 22 (1) and 22(5) of the Constitution of India and urged that there is no such mandate in either of the provisions that the grounds of arrest or detention should be conveyed in writing to the accused or the detainee, as the case may be.
- (v) He urged that the right conferred upon the appellant by Article 22(1) of the Constitution of India to consult and to be defended

by a legal practitioner was complied with in letter and spirit because the relative of the appellant, namely, Shri Rishabh Bailey, was informed before producing the appellant before the learned Remand Judge. Admittedly, Shri Rishabh Bailey had intimated the appellant's Advocate, Shri Arshdeep Khurana regarding the proposed proceedings of police custody remand of the appellant.

- (vi) He urged that the Advocate transmitted a written objection against the prayer for police custody remand over WhatsApp through the Head Constable Rajendra Singh and the learned Remand Judge has taken note of the said objection opposing remand in the remand order dated 4th October, 2023 and thus it would be futile to argue that the order granting remand is illegal in any manner.
- (vii) Learned ASG further contended that now the investigation has been completed and charge sheet has also already been filed and, thus, the illegality/irregularity, if any, in the arrest of the appellant and the grant of initial police custody remand stands cured and hence, the appellant cannot claim to be prejudiced by the same.
- (viii) He vehemently urged that there are significant differences in the language employed in Section 19 of the PMLA and Section 43A and 43B of the UAPA and, thus, the law as laid down by this Court in *Pankaj Bansal* (supra) does not come to the aid of the appellant in laying challenge to the remand order.
- (ix) Learned ASG further urged that there is a presumption regarding the correctness of acts performed in discharge of judicial functions and hence, the noting recorded in the remand order dated 4th October, 2023 that the Advocate for the appellant had been heard on the remand application and that the grounds of arrest had been conveyed to the appellant cannot be questioned or doubted. He thus implored the Court to dismiss the appeal and affirm the order passed by the High Court of Delhi.

Rejoinder on behalf of learned counsel for the appellant:—

11. Shri Sibal, learned senior counsel for the appellant submitted that the argument advanced by learned ASG that the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA operate in different spheres, is misconceived. He urged that language of both the provisions is *pari materia* and hence, the law laid down in *Pankaj Bansal* (supra) fully covers the controversy at hand.

12. Shri Sibal emphasised that on a plain viewing of the order dated 4th October, 2023, it is clear that the lines indicating the sending of the copy of the remand application to the learned counsel for the appellant and the opportunity of hearing provided to the Advocate through

telephone call have been subsequently inserted in the order. He thus urged that the plea advanced by Shri Raju, learned ASG that there is a presumption regarding the correctness of judicial proceedings cannot be accepted as a gospel truth in the peculiar facts of the case at hand. He contended that applying the same principle to the remand order dated 4th October, 2023 is counter productive to the stand taken by learned ASG inasmuch as, the order records the time of passing as 6 : 00 a.m. whereas the Advocate was admittedly informed after 7 : 00 a.m. Thus, there was no possibility of the remand application being sent to the Advocate or he being heard before passing of the remand order. He, thus, reiterated his submissions and sought acceptance of the appeal.

Discussion and conclusion:—

13. We have given our thoughtful considerations to the submissions advanced at bar and have gone through the material placed on record.

14. Since, learned ASG has advanced a fervent contention regarding application of ratio of *Pankaj Bansal* (supra) urging that there is an inherent difference between the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA, it would first be apposite for us to address the said submission.

15. In the case of *Pankaj Bansal* (supra), this Court after an elaborate consideration of the provisions contained in PMLA, CrPC and the constitutional mandate as provided under Article 22 held as below:

“32. In this regard, we may note that Article 22(1) of the Constitution provides, inter-alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis

for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

36. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable *ipse dixit* of the authorized officer.

37. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji* (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were

produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.

38. We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as

already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained."

(emphasis supplied)

16. Section 19 of the PMLA and Sections 43A, 43B and 43C of the UAPA are reproduced hereunder for the sake of ready reference:—

Section 19 of the PMLA

"19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court."

Sections 43A, 43B and 43C of the UAPA

"43A. Power to arrest, search, etc.—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally

acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

43C. Application of provisions of Code. — The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act."

17. Upon a careful perusal of the statutory provisions (reproduced supra), we find that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the UAPA which can persuade us to take a view that the interpretation of the phrase 'inform him of the grounds for such arrest' made by this Court in the case of *Pankaj Bansal* (supra) should not be applied to an accused arrested under the provisions of the UAPA.

18. We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of the UAPA is verbatim the same as that in Section 19(1) of the PMLA. The contention advanced by learned ASG that there are some variations in the overall provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of the UAPA at the earliest because as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes. As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PMLA or under

the UAPA, have to be uniformly construed and applied.

19. We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of *Pankaj Bansal* (supra) on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA.

20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

21. The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in the case of *Roy V.D. v. State of Kerala*³: –

“7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.”

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

23. Learned ASG referred to the language of Article 22(5) of the Constitution of India and urged that even in a case of preventive detention, the Constitutional scheme does not require that the grounds on which the order of detention has been passed should be communicated to the detenu in writing. *Ex facie*, we are not impressed with the said submission.

24. The contention advanced by learned ASG based on the language of Article 22(5) of the Constitution of India persuaded us to delve deeper on the issue as to whether it is mandatory to communicate the grounds of arrest or detention in writing to the accused or the detenu, as the case may be, even though the constitutional mandate under Articles 22(1) and 22(5) of the Constitution of India does not explicitly require that the grounds should be communicated in writing.

25. A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of *Harikisan v. State of Maharashtra*⁴ and held that the communication of the grounds of detention to the detenu in writing and in a language which he understands is imperative and essential to provide an opportunity to detenu of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted hereinbelow:

"7. clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu would not amount to communication, in this context, must mean bringing home to the detenu effective knowledge of the facts

and circumstances on which the Order of Detention is based.

(emphasis supplied)

26. Further, this Court in the case of *Lallubhai Jogibhai Patel v. Union of India*⁵, laid down that the grounds of detention must be communicated to the detenu in writing in a language which he understands and if the grounds are only verbally explained, the constitutional mandate of Article 22(5) is infringed. The relevant para is extracted hereunder: –

“20. “Communicate” is a strong word. It means that sufficient knowledge of the basic facts constituting the “grounds” should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the “ground” to the detenu is to enable him to make a purposeful and effective representation. If the “grounds” are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.....”

(emphasis supplied)

27. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in *Harikisan* (supra), wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

28. Thus, there is no hesitation in the mind of this Court that the submission of learned ASG that in a case of preventive detention, the grounds of detention need not be provided to a detenu in writing is *ex facie* untenable in eyes of law.

29. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the ‘grounds’ of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned.

30. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person

placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

31. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in *Pankaj Bansal* (supra) laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.

32. Now, coming to the facts of the case at hand. Indisputably, FIR No. 224 of 2023 came to be registered on 17th August, 2023. Copy of the FIR was never brought in public domain as the same was not uploaded on the website by the Investigating Agency. Admittedly, the copy of the FIR was not provided to the appellant despite an application having been made in this regard on his behalf till after the order of police custody remand was passed by the learned Remand Judge.

33. The copy of the FIR was provided to Shri Arshdeep Khurana, learned Advocate representing the accused for the first time on 5th October, 2023 and hence, till the time of being deprived of liberty, no communication had been made to the appellant regarding the grounds on which he had been arrested.

34. The accused was arrested on 3rd October, 2023 at 5 : 45 p.m. as per the arrest memo (Annexure P-7). As per Section 43C of the UAPA, the provisions of CrPC shall apply to all arrests, search and seizures made under the UAPA insofar as they are not inconsistent with the provisions of this Act. As per Section 57 CrPC read with Section 167(1) CrPC, the appellant was required to be produced before the concerned Magistrate within twenty-four hours of his arrest. The Investigating Officer, therefore, had a clear window till 5 : 44 p.m. on 4th October, 2023 for producing the appellant before the Magistrate concerned and to seek his police custody remand, if so required. There is no dispute that Shri Arshdeep Khurana, learned Advocate, engaged on behalf of the appellant had presented himself at the police station on 3rd October, 2023 after the appellant was arrested and the mobile number of the Advocate was available with the Investigating Officer. In spite thereof, the appellant was presented before the learned Remand Judge at his residence sometime before 6 : 00 a.m. on 4th October, 2023. A remand Advocate, namely, Shri Umakant Kataria was kept present in the Court purportedly to provide legal assistance to the appellant as

required under Article 22(1) of the Constitution of India. Apparently, this entire exercise was done in a clandestine manner and was nothing but a blatant attempt to circumvent the due process of law; to confine the accused to police custody without informing him the grounds on which he has been arrested; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice so as to oppose the prayer for police custody remand, seek bail and also to mislead the Court. The accused having engaged an Advocate to defend himself, there was no rhyme or reason as to why, information about the proposed remand application was not sent in advance to the Advocate engaged by the appellant.

35. It is apparent that the appellant had objected to the appearance of the remand counsel before the learned Remand Judge and this is the reason, the Investigating Officer undertook a charade of informing of the Advocate engaged by the appellant on mobile. The learned Remand Judge recorded the presence of Shri Arshdeep Khurana, Advocate, mentioning that he had been informed and heard on the remand application through telephone call. The initial information about the accused appellant being presented before the learned Remand Judge was sent by the arresting officer to the appellant's relative Shri Rishab Bailey at around 6 : 46 a.m. and he, in turn, informed the Advocate Shri Arshdeep Khurana around 7 : 00 a.m. These facts are manifested from perusal of the call logs presented for the perusal of the Court. Thus, by the time, the Advocate engaged by the accused appellant had been informed, the order of remand had already been passed. Unquestionably, till that time, the grounds of arrest had not been conveyed to the appellant in writing.

36. The learned ASG had argued that the grounds of arrest were set out in the remand application which was transmitted through WhatsApp to Advocate Shri Arshdeep Khurana. However, the fact remains that the remand application was transmitted to the Advocate Shri Arshdeep Khurana after the remand had been granted by the learned Remand Judge which was at 6 : 00 a.m. as per the recording made in the remand order(reproduced *supra*). The contention of the learned ASG that there is variance in time of passing of the remand order as per the pleadings made on behalf of the accused appellant before the High Court of Delhi does not impress us in view of the time recorded in the remand order.

37. Learned Single Judge of the High Court of Delhi held at para No. 31 of the impugned order that the respondent had taken a categorical stand that the grounds of arrest were informed to the appellant orally and the same were also conveyed in writing as per the details set out in the memo of arrest. However, learned ASG fairly did not advance any such argument based on the arrest memo.

38. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column No. 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the 'reasons for arrest' which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the 'grounds of arrest' would be personal in nature and specific to the person arrested.

"9. Reason for arrest

- a. Prevent accused person from committing any further offence.
- b. For proper investigation of the offence.
- c. To prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner.
- d. To prevent such person from making any inducement threat or promise to any person acquainted the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer.
- e. As unless such person is arrested, his presence in the Court whenever required cannot be ensured."

39. The remand order dated 4th October, 2023 (reproduced *supra*) records that the copy of the remand application had been sent to the learned Advocate engaged by the accused appellant through shriApp. A bare perusal of the remand order is enough to satisfy us that these two lines were subsequently inserted in the order because the script in which these two lines were written is much finer as compared to the remaining part of the order and moreover, these two lines give a clear indication of subsequent insertion. It is quite possible that the learned Remand Judge may have heard the learned counsel for the appellant after signing the remand order and thus, these lines were inserted later without intending any harm or malintention but the fact remains that the order of remand had already been passed at 6 : 00 a.m. and hence, the subsequent opportunity of hearing, if any, provided to the counsel was nothing but an exercise in futility.

40. Learned ASG had argued that the copy of the remand application forwarded over WhatsApp to the learned counsel for the accused appellant gives a complete picture about the grounds of arrest. We feel that any comment on the contents of the remand application and whether the same actually conveyed intelligible grounds of arrest to the accused or whether the same are so vague that it would be impossible to understand, may prejudice the trial of the case.

41. We may, however, briefly mention that the grounds of arrest as conveyed to the Advocate are more or less a narration of facts picked up from the FIR which in itself does not indicate any particular incident or event which gave rise to the alleged offences. However, the law is well settled that the FIR is not an encyclopaedia and is registered just to set the process of criminal justice in motion. The Investigating Officer has the power to investigate the matter and collect all relevant material which would form the basis of filing of charge sheet in the Court concerned.

42. Extensive arguments were advanced by Shri Sibal, with reference to the stipulations made in Sections 13, 16, 17, 18, 22C of the UAPA in order to contend that even if the FIR and the grounds set out in the remand application are taken to be true on the face of the record, apparently, the same convey just a fictional web spun around conjectures and surmises. It was contended that though a reference is made in the FIR that the appellant and one Neville Roy Singham, a foreign national were found to be discussing how to create a map of India without Kashmir and to show Arunachal Pradesh as a disputed area but the fact remains that no such map was prepared or published or was found in possession of the appellant or on his devices till the date of his arrest.

43. Shri Sibal had also argued that the appellant was arrested without any indication as to how he was connected with the alleged incorrect map of India. He also urged that the FIR refers to farmers' agitation without justifying as to how the appellant was connected with those incidents. He contended that not a single incident is mentioned in the FIR or the remand application which can give rise to the offences alleged and that the FIR was registered without any plausible reason or basis just to victimise the appellant.

44. We do not feel persuaded to examine these aspects at this stage because the same would require entering into the merits of the case. This would be within the domain of the Court examining the matter after the filing of the charge sheet. The core issue in this appeal is regarding the illegality of the process whereby the appellant was arrested and remanded to police custody which does not require examining the merits of the case.

45. It was the fervent contention of learned ASG that in the case of *Ram Kishor Arora* (supra), a two-Judge Bench of this Court interpreted the judgment in the case of *Pankaj Bansal* (supra) to be having a prospective effect and thus the ratio of *Pankaj Bansal* (supra) cannot come to the appellant's aid. Indisputably, the appellant herein was remanded to police custody on 4th October, 2023 whereas the judgment in the case of *Pankaj Bansal* (supra) was delivered on 3rd

October, 2023. Merely on a conjectural submission regarding the late uploading of the judgment, learned ASG cannot be permitted to argue that the ratio of *Pankaj Bansal* (supra) would not apply to the present case. Hence, the plea of Shri Raju, learned ASG that the judgment in *Pankaj Bansal* (supra) would not apply to the proceedings of remand made on 4th October, 2023 is misconceived.

46. We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India.

47. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the Investigating Officer.

48. We have carefully perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a proforma indicating the formal 'reasons' for which the accused was being arrested.

49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person from making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

50. From the detailed analysis made above, there is no hesitation in the mind of the Court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant

or his counsel before passing of the order of remand dated 4th October, 2023 which vitiates the arrest and subsequent remand of the appellant.

51. As a result, the appellant is entitled to a direction for release from custody by applying the ratio of the judgment rendered by this Court in the case of *Pankaj Bansal* (supra).

52. Accordingly, the arrest of the appellant followed by remand order dated 4th October, 2023 and so also the impugned order passed by the High Court of Delhi dated 13th October, 2023 are hereby declared to be invalid in the eyes of law and are quashed and set aside.

53. Though we would have been persuaded to direct the release of the appellant without requiring him to furnish bonds or security but since the charge sheet has been filed, we feel it appropriate to direct that the appellant shall be released from custody on furnishing bail and bonds to the satisfaction of the trial Court.

54. We make it abundantly clear that none of the observations made above shall be treated as a comment on the merits of the case.

55. The appeal is allowed in these terms.

56. Pending application(s), if any, shall stand disposed of.

¹ 2023 SCC OnLine SC 1244

² 2023 SCC OnLine SC 1682

³ (2000) 8 SCC 590

⁴ 1962 SCC OnLine SC 117

⁵ (1981) 2 SCC 427

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सत्यमेव जयते
महाराष्ट्र शासन



29

पोलीस महासंचालक कार्यालय, महाराष्ट्र राज्य

महाराष्ट्र राज्य पोलीस मुख्यालय, शहीद भगतसिंग मार्ग, कुलाबा, मुंबई ४०० ००१

क्र. पोमसं/१४/६६/online SC९३४/२०२४/२५९/२०२४ मुंबई,

दिनांक- 5/०८/२०२४

न्यायालयीन प्राधान्य

परिपत्रक क्र.- ५/१४/२०२४

संदर्भ - १) मा. सर्वोच्च न्यायालयाचे Prabir Purkayastha V/s State (NTC of Delhi) या केस मधील (2024SCC online SC 934) दि. १५/०५/२०२४ चे आदेश.

विषय - भारतीय नागरीक सुरक्षा संहिता २०२३ चे कलम ४७ मधील आरोपी अटकेबाबतच्या तरतुदी बाबत.

राज्यातील सर्व घटक प्रमुखांचे लक्ष उपरोक्त नमुद संदर्भामधील मा. सर्वोच्च न्यायालयाच्या आदेशाकडे वेधण्यात येत आहे.

मा. सर्वोच्च न्यायालयाने Prabir Purkayastha V/s State (NTC of Delhi) या प्रकरणात परिच्छेद क्र. ४६ मध्ये, खालील प्रमाणे निर्देश दिले आहेत.

46." The grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India."

मा. सर्वोच्च न्यायालय यांनी सदर आदेशात 'Reasons of arrest' आणि 'Grounds of arrest' या दोन्ही मध्ये फरक सुध्दा स्पष्ट केला आहे. या संदर्भात मा. सर्वोच्च न्यायालय यांनी सदर प्रकरणात परिच्छेद क्र. ४९ मध्ये खालील प्रमाणे फरक स्पष्ट केला आहे.

49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase ' reasons of arrest ' and 'grounds of arrest'. The 'reasons of arrest ' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts

on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

मा. सर्वोच्च न्यायालयाच्या आदेशाप्रमाणे, गुन्ह्याच्या तपासामध्ये आरोपीस अटक केल्यानंतर आरोपी अटक पंचनामा/अटक मेमोमध्ये आरोपी अटकेच्या कारणासोबतच (Reason of arrest) आरोपी अटक करण्यासाठीचा आधार (Grounds of arrest) हा लेखी स्वरूपात देण्यात यावा व अटक पावतीवर आरोपीचे नाव नमुद करून सही घेण्यात यावी. तसेच आरोपी अटकेबाबत भारतीय नागरीक सुरक्षा संहिता २०२३ चे कलम ४७ (फौजदारी प्रक्रीया संहिता १९७३ चे कलम ५०) मधील तरतुदींचे तंतोतंत पालन करणेबाबत आपले अधिनस्त सर्व तपासी अधिकारी व पर्यवेक्षीय अधिकारी यांचे निर्देशनास आणून द्यावेत.

सोबत सहपत्र,

१. मा. सर्वोच्च न्यायालयाचे Prabir Purkayastha V/s State (NTC of Delhi) या केस मधील दि. १५/०५/२०२४ चे आदेश.

Sanyas
05/06/24
(संजय सक्सेना)

अपर पोलीस महासंचालक
(कायदा व सुव्यवस्था)

प्रति,

अपर पोलीस महासंचालक, गुन्हे अन्वेषण विभाग
अपर पोलीस महासंचालक, दहशतवाद विरोधी पथक
अपर पोलीस महासंचालक, लोहमार्ग
सर्व परिक्षेत्रीय विशेष पोलीस महानिरीक्षक / पोलीस उपमहानिरीक्षक,
सर्व पोलीस आयुक्त (लोहमार्गसह)
सर्व पोलीस अधिक्षक (लोहमार्गसह)