



2026:AHC:155251-DB

Reserved  
A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL MISC. WRIT PETITION No. - 25626 of 2025**

Rakesh

.....Petitioner

Versus

State of U.P. and others

.....Respondents

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|-----------------------------|---------------------------------------------|
| Counsel for the Petitioner  | : Dileep Kumar Shukla,<br>Shikhar Neelkanth |
| Counsel for the Respondents | : G.A.                                      |

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**Court No. - 2**

**HON'BLE J.J. MUNIR, J.**  
**HON'BLE TARUN SAXENA, J.**

**(Delivered by Hon'ble J.J. Munir, J.)**

1. This writ petition has been instituted by Rakesh with a prayer that the order of remand dated 20.04.2025 passed by the Remand Magistrate in Case Crime No. 0132 of 2025, under Sections 87, 127(4), 64(1) and 143(2) of the Bharatiya Nyaya Sanhita, 2023 (for short, 'BNS'), Police Station Gunnour, District Sambhal, be quashed. He seeks a direction in the nature of *mandamus* ordering the respondents to release the petitioner from custody, after quashing of the remand order authorizing his detention pending investigation and/ or trial in the said crime.

2. A First Information Report ('FIR' for short) was lodged by one Umar Ahmad son of Sharafat Khan on 18.04.2025 at Police Station Gunnour, District Sambhal with a case that the informant/ respondent no.4 was a resident of Village Patti Kurki, P.S. Anwala, District Bareilly. On 03.04.2025, his wife 'X', aged about 36 years,

was taken away by blandishment by the petitioner Rakesh. The petitioner later kept the victim in confinement. On 14.04.2025, the fourth respondent's wife was found in a disoriented condition in Village Bairpur, P.S. Junavai. The fourth respondent requested necessary legal action in the matter.

3. We must remark at the outset before proceeding further with the petitioner's case that this petition has nothing to do with the exercise of the right of bail by the petitioner and, *a fortiori*, if the allegations of the prosecution carried in the FIR, or those that have surfaced during investigation, are true or unreliable and false. The office of this petition is limited to the question, if the petitioner has been validly arrested in accordance with the mandate of Article 22(1) of the Constitution read with the statutory safeguards engrafted in the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS').

4. The point which the petitioner moots here is, if the petitioner's arrest is illegal at the inception in the sense that it has been effected in violation of his fundamental right guaranteed under Article 22(1) of the Constitution, no matter what the charge is or the gravity thereof, he is entitled to regain his liberty by an order quashing his remand in connection with the crime and his arrest as well. It hardly need be said that in the event, the petitioner's stand is vindicated and his arrest and remand declared illegal, he would be entitled to the restoration of his liberty. This is the essence of this petition and the scope of the challenge that the petitioner mounts in this case to his detention in the crime under reference.

5. The case of the petitioner is that the incident is said to have taken place on 03.04.2025, regarding which the FIR was lodged on 18.04.2025 with Police Station Gunnour, District Sambhal. After registration of the crime, the petitioner was shown to have been arrested on 20.04.2025 at 08.50 hours. The attention of this

Court has been drawn to the arrest memo, that is on record and to which we would allude later in this judgment. The petitioner was taken into custody by the Police and produced before the Remand Magistrate on 20.04.2025. The Remand Magistrate, in a routine and mechanical manner, passed a remand order on a printed proforma carrying blanks that were filled up without application of mind and remanded him to judicial custody in the crime. This order too is on record and is one made on 20.04.2025. Our attention again has been drawn to this order and we would allude to this too later in this judgment.

**6.** It is the petitioner's case that while remanding the petitioner to judicial custody, the learned Remand Magistrate failed to record any satisfaction regarding due compliance of the Police's obligation of communicating the petitioner with the grounds of his arrest, a fundamental right that flows from Article 22(1) of the Constitution. It is specifically averred by the petitioner in paragraph no. 17 of the writ petition that he was not informed of the grounds of arrest, either orally or in writing, a fact apparent from the arrest memo, that is on record. He also says that there is no other document corresponding to an arrest memo. Emphasis is laid upon the fact that in the arrest memo, there is no column pertaining to grounds of arrest, rendering the arrest memo itself illegal and foul of requirements of Article 22(1) of the Constitution. It is also emphasized in paragraph no. 18 that there is nothing in the arrest memo to show that the petitioner was informed of the grounds of his arrest. It is asserted that the petitioner was not apprised of the specific grounds of his arrest and was produced before the Remand Magistrate without sufficient knowledge of the allegations against him, thereby causing grave prejudice as he was unable to effectively present his defence while moving his bail application before the Court below.

7. The petitioner asserts in paragraph no. 21 of the writ petition that at the time of arrest, the Police are duty bound to inform the accused of the grounds and they must maintain a contemporaneous record, reflecting the same. However, in the petitioner's case, this obligation has not been fulfilled as the arrest memo contains no mention of the grounds of arrest, rendering the petitioner's arrest illegal. It is for this reason that the remand order passed on a printed proforma by the Magistrate, without ascertaining if the petitioner knew the grounds of his arrest, is unconstitutional and the petitioner's arrest illegal. It is emphasized that though the petitioner applied for bail to the Sessions Judge, Sambhal at Chandausi, it was rejected on 05.08.2025. The scope of this petition is entirely different from that of a bail plea, where a success to earn indulgence of bail ensures enlargement in constructive custody of the Court through sureties during trial. The scope of this petition is to question the legality of the arrest itself, which if granted, would place the petitioner in the same position as he was, before he was arrested. Both the rights to move for bail and question the legality of arrest are independent of each other, according to the petitioner, and availing one does not detract from the right to assert the other.

8. The learned Counsel for the petitioner has placed reliance upon **Arvind Kejriwal v. CBI, 2024 SCC OnLine SC 2550**. Reliance in this connection has also been placed upon the authority of the Supreme Court in **Kasireddy Upender Reddy v. State of A.P., 2025 SCC OnLine SC 1228**.

9. A counter affidavit has been filed on behalf of the State and what is said there in good part is about the merits of the case. It is emphasized that the allegations are very serious and so also the material collected during investigation. There are allegations of rape against the petitioner and human trafficking, where he cannot be permitted to question his arrest on the ground of its

illegality, based on something academic, like the violation of the fundamental right under Article 22(1) of the Constitution.

**10.** The petitioner in rejoinder has submitted that so long as there is non-compliance with the mandatory requirement of Article 22(1), that is to say, communication of the grounds of his arrest to the petitioner, at the time he was taken into custody, or soon thereafter, the validity of the arrest cannot be justified on the basis of seriousness of allegations. It is also asserted that the G.D. Entry, relied upon by the respondents to say that the grounds of arrest were orally communicated, too is silent as to the specific grounds that led to the petitioner's arrest. It carries vague details, which do not sufficiently make the charge or allegations known to the petitioner at the time of his arrest, or as soon as may be, on the foot of which he was taken into custody, thus, violating the petitioner's right under Article 22(1) of the Constitution.

**11.** Heard Mr. Shikhar Neelkhanth, learned Counsel for the petitioner and Ms. Manju Thakur, learned Additional Government Advocate-I on behalf of the State.

**12.** We have considered the rival submissions advanced by the learned Counsel for the parties.

**13.** We have already delineated the scope of challenge in this writ petition, which we find to be clearly distinct and different from that of a bail plea. All that we have to examine is the legality of the arrest and its consequences upon the petitioner's liberty.

**14.** We notice that there are no separate grounds of arrest in writing supplied to the petitioner. The learned A.G.A. wanted us to accept either the memo of arrest as a document carrying the grounds in writing or the G.D. Entry annexed as Annexure No. CA-10 of the counter affidavit for those grounds. It was mooted that the grounds of arrest were communicated to the petitioner orally at the time he was arrested and the G.D. Entry dated

20.04.2025 made at 09.38 hours vide G.D. Entry No. 27 is material enough to infer the oral communication of the broad grounds and the case, on the foot of which the petitioner has been arrested. The memo of arrest is annexed as Annexure No. 2 to the writ petition, and in all fairness, must be reproduced for every word of it. It reads as follows:

मु०अ०सं०/रो०आम० संख्या-132/25 दि०..... अन्तर्गत धारा 87/ 127(4)/ 64(1)/143 (2) बीएनएस गुन्नौर जनपद सम्भल

गिरफ्तारी मीमो

(भारतीय नागरिक सुरक्षा संहिता-2023 की धारा 35 के अन्तर्गत)

(भा० माननीय सर्वोच्च न्यायालय के निर्देशानुसार)

|                                                                                                                           |                                                                           |
|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| 1- गिरफ्तार व्यक्ति का नाम, उपनाम और उसके माता पिता नाम-                                                                  | राकेश पुत्र लल्लू नि० ग्राम नाधा थाना जरीफनगर जनपद बदायूं                 |
| 2- मोबाइल नम्बर/वाट्स अप नम्बर ईमेल आईडी-                                                                                 |                                                                           |
| 3- गिरफ्तार व्यक्ति का वर्तमान पता-                                                                                       | ग्राम नाधा थाना जरीफनगर जनपद बदायूं                                       |
| 4- गिरफ्तार व्यक्ति का स्थायी पता-                                                                                        | उपरोक्त                                                                   |
| 5- प्र०सू०रि/रो०आम संख्या एवं धारा/विधि-                                                                                  | मु०अ०सं० 132/25 धारा 87/127(4)/ 64(1)/बीएनएस 143(2)                       |
| 6- गिरफ्तारी का स्थान-                                                                                                    |                                                                           |
| 7- गिरफ्तारी की तारीख और समय-                                                                                             | 20.04.2025 समय 08.50 बजे                                                  |
| 8- गिरफ्तारी के बारे में जिसे भी सूचित किया है उसका नाम पता ईमेल आईडी और मोबाईल नम्बर-                                    | अशोक पुत्र लल्लू सिंह नि० ग्राम नाधा थाना जरीफनगर, बदायूं मो०- 7505839178 |
| 9-गिरफ्तारी करने वाले अधिकारी का नाम, पद और संख्या-                                                                       | उ०नि० विशाल शर्मा                                                         |
| 10- गिरफ्तारी का कारण-                                                                                                    |                                                                           |
| क- ऐसे व्यक्ति को कोई अग्रतर हां अपराध करने से निवारित करने के लिए-                                                       | हां                                                                       |
| ख- अपराध के उचित अन्वेषण करने हां के लिए-                                                                                 | हां                                                                       |
| ग- ऐसे व्यक्ति को अपराध के किसी साक्ष्य को मिटाने या ऐसे साक्ष्य में किसी प्रकार से छेड़छाड़ करने से निवारित करने के लिए- | हां                                                                       |

|                                                                                                                                                                                                         |     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| घ- ऐसे व्यक्ति को मामले के तथ्यों से परिचित किसी व्यक्ति को उत्प्रेरित करने धमकी देने या वचन देने निवारण करने के लिए ताकि उसे न्यायालय या पुलिस अधिकारी के समक्ष ऐसे तथ्य को प्रकट करने से रोका जा सके। | हां |
| ङ- क्योंकि जब ऐसा व्यक्ति गिरफ्तार नहीं किया जाता है उसकी न्यायालय में उपस्थिति जब कभी अपेक्षित हो सुनिश्चित नहीं की जा सकती है।                                                                        | हां |
| अभियुक्त का पता जो सत्यापित होना शेष है (आवश्यक होने पर)                                                                                                                                                |     |

ह० राकेश  
गिरफ्तारी व्यक्ति के हस्ताक्षर

- गवाह-
- 1- ह० बलवन्त सिंह
  - 2- ह० विनित पवार
  - 3- ह० विरेन्द्र सिंह

ह० अपठित  
अन्वेषण अधिकारी के हस्ताक्षर  
थाना-गुन्नौर  
दिनांक-20/04/2025

Seen  
ह० अपठित  
रिमाण्ड मजिस्ट्रेट  
जनपद-सम्भल  
20.4.25”

15. We cannot gloss over the fact that what is impugned here on the basis of the arrest memo dated 20.04.2025 is the order of remand passed by the Magistrate. A certified copy of the order of remand is on record at page no. 39 of the writ petition paper-book. It is described at the top of it as a Remand Sheet and is a printed

proforma with blanks only to be filled up by the learned Remand Magistrate, or may be an office hand. We would be failing in our duty, if we do not reproduce, not just a true copy of this remand order impugned, but a photostat copy thereof, in order to give an idea in what fashion the learned Remand Magistrate has passed the order impugned. A photostat copy of the impugned remand order is reproduced hereinbelow:

**रिमाण्ड शीट**

मु0अ0सं0- 132/25 धारा- 31

थाना- गुन्ौर बनाम-

1. शकेश श/ लल्लुसिंह नि० गाम-नाबा घाना-सरफिनगर जनपद-बलामू उम-२० वर्ष  
धारा- 87/12त(4)/64(1)/143(3) BNS

2. हवीर श/ हरीसिंह ] नि० गाम-रसूलपुर घाना-सरफिनगर जनपद-बलामू उम-२० वर्ष  
3. ओमकार श/ लालसहाय ] - उम- 35 वर्ष  
धारा- 143(2) BNS

आज दिनांक 20/4/2025 को मुलजिमान उपरोक्त को उक्त अ0सं0 व धारा में गिरफ्तार कर न्यायालय में मेरे समक्ष पेश किया। विवेचक ने 14 दिनों के रिमाण्ड की प्रार्थना की। समस्त कागजात का अवलोकन किया गया क्योंकि विवेचना 24 घण्टे के अन्दर पूरी नहीं हो सकती। अतः रिमाण्ड दिनांक 3/5/2025 तक स्वीकृत किया गया।

अभियुक्त को अभिरक्षा में लेकर बन्दी गृह खाना किया गया, नियत तिथि को अभियुक्त न्यायालय में पेश हो।

शकेश  
हवीर  
ओमकार

रिमाण्ड मैजिस्ट्रेट  
हसनबल-जयपुर  
20.4.25

तीन वाक्य भय विनिर्मुक्त प्रस्तुत किए  
C.1039 वि० न/ह

16. G.D. Entry No.27, on which much reliance has been placed by the learned A.G.A. as one furnishing the grounds of detention to the petitioner at the time of his arrest, together with whatever

was communicated orally constituting the grounds, must also be reproduced. G.D. Entry No.27 dated 20.04.2025 reads:

“General Diary Details

सामान्य दैनिकी विवरण

State (राज्य): उत्तर प्रदेश

P.S. (थाना): गुन्नौर

District/Unit (जिला/इकाई): सम्भल

1. G.D. No. (रोजनामचा सं.): 027
2. G.D. Date (रोजनामचा दिनांक): 20/04/2025 09:38 बजे
3. G.D. Type (रोजनामचा प्रकार): गिरफ्तारी/पुनः गिरफ्तारी /आत्मसमर्पण
4. Entry for (officer) (प्रविष्टि (अधिकारी के लिए)): POLICE STATION GUNNOUR
5. Case Type (प्रकरण के प्रकार) : प्रौढ
6. Subject (विषय) :  
दाखिला 03 नफर अभियुक्त गण सम्बंधित मु0अ0सं0 132/25 धारा 87/127(4)/ 64(1)/ 143(2) बीएनएस
7. G.D. Brief  
वापसी 30नि0 व मय हमराह कर्मगण व दाखिला 03 नफर अभियुक्त गण सम्बंधित मु0अ0सं0 132/25 धारा 87/127(4)/64(1)/143(2) बीएनएस - इस समय 30नि0 श्री विशाल शर्मा मय हे0कां0 156 बलवन्त सिंह मय कां0 1039 वीरेन्द्र मय कां0 488 विनीत कुमार के रवाना शुदा रफता रफट रो0 आम तरीख इमरोजा से बाद देखरेख शांति व्यवस्था व चौकिंग संदिग्ध व्यक्ति वाहन व तलाश वांछित अभियुक्त में अंदर इलाका थाना हाजा क्षेत्र से मय गिरफ्तारशुदा 03 नफर अभियुक्तगण 1. राकेश पुत्र लल्लू सिंह नि0 नाधा थाना जरीफनगर जपनद बदायूं उम्र 30 वर्ष 2. हरवीर पुत्र हरीसिंह उम्र 21 वर्ष 3.ओमकार पुत्र लालसहाय नि०गण रसूलपुर थाना जरीफनगर जनपद बदायूं उम्र 35 वर्ष सम्बंधित मु0अ0सं0 132/25 धारा 87/127 (4) /64(1)/143(2) बीएनएस के उपस्थित थाना हाजा आये। अभियुक्तगण की बाद लिवाने जामा तलाशी संतरी पहरा से लिवायी गयी तो जिस्म जरवात ताजा से पाक साफ है पुलिस बदसलूकी का साकी नही है खाना खाने व डाक्टरी कराने से मुनकिर है हस्वख्वाहिश खाना पानी दिया जायेगा । अभियुक्तगण को देकर हवालाती कम्बल व पीने योग्य पानी देकर अंदर हवालात मर्दाना किया गया। तालाबंद ठीक संतरी पहरा को दिखाया गया चाबी पूर्वत रही । । वाक्यात गिरफ्तारी अंकित कराया कि जब मैं 30नि0 मय हमराह कर्म0गण के दौरान देखरेख शांति व्यवस्था व चौकिंग संदिग्ध व्यक्ति वाहन व तलाश वांछित अभियुक्त मे अन्दर इलाका थाना हाजा क्षेत्र में मामूर था तो जरिये मुखबिर खास सूचना मिली की आपके मुकदमे से संबंधित

अभियुक्तगण 1.राकेश पुत्र लल्लू सिंह नि० नाधा थाना जरीफनगर जनपद बदायूं उम्र 30 वर्ष 2. हरवीर पुत्र हरीसिंह उम्र 21 वर्ष 3. ओमकार पुत्र लालसहाय नि० गण रसूलपुर थाना जरीफनगर जनपद बदायूं उम्र 35 वर्ष अस्थाई योग पार्क राजघाट रोड पर कही जाने की फिराक में खड़े हैं यदि जल्दी की जाये तो पकड़े जा सकते हैं। मुखबिर की बात पर विश्वास करके मय मुखबिर के बताये स्थान की तरफ अस्थाई योग पार्क राजघाट रोड पर पहुंचे तो मुखबिर खास ने दूर से इशारा कर बताया गया जो सामने जो लडका सफेद व ग्रे कलर की लाइनदार टी-शर्ट व मटमैली रंग की पैन्ट पहने खड़ा है वह राकेश है तथा जो लडका काली कलर की लाइनदार शर्ट व हल्की काली रंग की जीन्स पहने खड़ा है वह हरवीर है तथा जो व्यक्ति लाल रंग की चैकदार शर्ट व हल्की काले रंग की जीन्स पहने खड़ा है वह ओमकार है। ये ही आपके मुकदमे से संबंधित अभियुक्तगण हैं और इतना कहकर मुखबिर वहां से चला गया। मुखबिर द्वारा बताये लडको के पास पहुंचकर नाम पता पूछा तो खड़े लडको में से पहले ने अपना नाम राकेश पुत्र लल्लू सिंह नि० नाधा थाना जरीफनगर जनपद बदायूं उम्र 30 वर्ष तथा दूसरे ने अपना नाम हरवीर पुत्र हरीसिंह उम्र 21 वर्ष नि० रसूलपुर थाना जरीफनगर जनपद बदायूं व तीसरे ने अपना नाम ओमकार पुत्र लालसहाय नि० गण रसूलपुर थाना जरीफनगर जनपद बदायूं उम्र 35 वर्ष बताया। अभियुक्त राकेश उपरोक्त को उसके जुर्म धारा 87/127(4)/64(1)/143(2)) बीएनएस व अभियुक्तगण हरवीर व ओमकार उपरोक्त को उनके जुर्म धारा 143 (2) बीएनएस से अवगत करा समय करीब 08.50 बजे हिरासत पुलिस में लिया गया। दौराने गिरफ्तारी मा० सर्वोच्च न्यायालय व रा०मानवाधिकार आयोग के दिशा निर्देशों का पूर्णतः पालन किया गया। अभियुक्तगण की गिरफ्तारी की सूचना अभियुक्तगण के परिजनों को दी जायेगी।

8. Acts & Sections (अधिनियम और धारा(एँ)):

S.No. (क्र.सं.) | Acts (अधिनियम)

Sections (धारा(एँ))

Report Printed or (रिपोर्ट मुद्रण की दिनांक): 20/04/2025

Report Printed by (जिस के द्वारा रिपोर्ट मुद्रित):

Name (नाम): POLICE STATION

Rank (पद) : | (Inspector)

Signature (हस्ताक्षर):

Name (नाम): POLICE STATION

GUNNOUR

Rank (पद): I (Inspector)

No. (सं.) : 9454402938"

(emphasis by Court)

**17.** There has been considerable debate about the right guaranteed under Article 22(1) of the Constitution for reason that while the right under Article 22(1) of the Constitution is indeed a fundamental right of the foremost importance, as it safeguards the liberty of an individual from deprivation by State Authority, the Police and police like forces empowered to arrest persons in connection with crimes, they are suspected or accused to have committed, have traditionally paid scant regard to the requirements of Article 22(1). The man in uniform, by his training, duties and sometimes compulsion, thinks small of rights, including the fundamental rights. He looks sometimes with his scorn at judgments enforcing these rights and enumerating principles that seeks to realize the fundamental right to liberty. In the nature of things, the policeman, who sees every suspect and accused as guilty, is almost inclined to think that he understands the truth of the matter better than anyone, and, most certainly than a Judge sitting in a Court far away from the scene or the transaction of crime. The policemen never understands that there are always two sides to a fact, a thing or an allegation regarding an offence and he is per compulsion partisan looking at one side alone. The training, bereft of the knowledge of the law, deprives the policeman of the forensic eye to understand legal implications. The result is that the effort by Courts to crystallize the rights of an individual, who is suspect or accused of an offence, both under the statute and the Constitution, remain at the centre-stage of a tug of war between the holdings of the Court and dogged breaches by the Police. Since Courts, depending on facts, at times have to yield ground and carve a niche to make place for an exception to the rule they have developed, the Police think that they were right and they must go ahead the way they have done for centuries in this country, irrespective of pronouncements of Superior Courts declaring the effect of fundamental rights and statutory safeguards regarding an individual's liberty.

18. The law regarding the necessity to furnish grounds of arrest came to be recently emphasized in view of Article 22(1) of the Constitution, not to say that it was earlier not emphasized, by the Supreme Court in **Pankaj Bansal v. Union of India, (2024) 7 SCC 576**. Apparently, as the facts of the case in **Pankaj Bansal** (*supra*) would show the importance of the right to be informed of the grounds of arrest were highlighted because of onerous conditions for seeking bail involved there, as the arrest was in connection with a case under the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA'). Also Section 19 of the PMLA obliges the authorized officer to record reasons for his belief that a person is guilty and needs to be arrested. Nevertheless, what was expounded was the requirement of communicating the grounds of arrest to the accused at the time of his/ her arrest or as soon as may be, as required by Article 22(1) of the Constitution. In **Pankaj Bansal**, it was observed by the Supreme Court:

“38. 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 PMLA 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 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 2002 Act. 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 PMLA, is meant to serve this higher purpose and must be given due importance.

42. 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 authorised

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 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* [*V. Senthil Balaji v. State*, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] . 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 authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.”

**19.** The next authority, that has bearing on the point, is **Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254**. This was a case under the Unlawful Activities (Prevention) Act, 1967 (for short, ‘the UAPA’). The challenge was to the arrest and remand without furnishing the grounds of arrest, as required by Article 22(1) of the Constitution. In **Prabir Purkayastha** (*supra*), it was held by the Supreme Court:

“**18.** We may note that the modified application of Section 167CrPC 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 *Pankaj Bansal* [*Pankaj Bansal v. Union of India*, (2024) 7 SCC 576] 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.

**19.** 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.

**20.** 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 the following observations made by this Court in *Roy V.D. v. State of Kerala* [*Roy V.D. v. State of Kerala*, (2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p. 593, para 7)

“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.

**21.** 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.

**26.** From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in *Harikisan* [*Harikisan v. State of Maharashtra*, 1962 SCC OnLine SC 117] , 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.** 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 as the requirement to communicate the grounds of arrest is concerned.

**29.** 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.

**30.** Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in *Pankaj Bansal* [*Pankaj Bansal v. Union of India*, (2024) 7 SCC 576] 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 the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.

**37.** 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 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 the 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 tampering with such evidence in any manner.

(d) To prevent such person from making any 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 police officer.

(e) As unless such person is arrested, his presence in the court whenever required cannot be ensured.”

**48.** 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 tampering 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.”

**20.** The next authority of significance is **Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799**. The facts in **Vihaan Kumar** (*supra*), which was a case of arrest in connection with offences under the Penal Code, unlike the special statutes, with onerous conditions of bail involved in **Pankaj Bansal** and **Prabir Purkayastha**, can best be recapitulated in the words of their Lordships as these appear from the report in **Vihaan Kumar**. These read:

*“Factual aspect*

2. A reference to a few factual aspects would be necessary. The challenge in this appeal is to the judgment and order dated 30-8-2024 [*Vihaan Kumar v. State of Haryana*, 2024 SCC OnLine P&H 15495] passed by the learned Single Judge of the Punjab and Haryana High Court. The appellant was arrested in connection with First Information Report No. 121 of 2023 dated 25-3-2023 registered for the offences under Sections 409, 420, 467, 468 and 471 read with Section 120-B of the Penal Code, 1860 (for short “IPC”). According to the appellant's case, he was arrested on 10-6-2024 at about 10.30 a.m. at his office premises on the 3rd-5th floor of HUDA City Centre, Gurugram, Haryana. He was taken to DLF Police Station, Sector 29, Gurugram. He was allegedly produced before the learned Judicial Magistrate (in charge) at Gurgaon on 11-6-2024 at 3.30 p.m. Therefore, there was a violation of Article 22(2) of the Constitution and Section 57 of the Code of Criminal Procedure Code, 1973 (for short “CrPC”). The allegation is that neither in the remand report nor in the order dated 11-6-2024 passed by the learned Magistrate was the time of arrest mentioned. The FIR was registered at the instance of the second respondent. We may note here that, according to the case of the first respondent, the appellant was arrested on 10-6-2024 at 6.00 p.m. Therefore, compliance with the requirement of Article 22(2) was made.

3. There is another very serious factual aspect. The order dated 4-10-2024 [*Vihaan Kumar v. State of Haryana*, 2024 SCC OnLine SC 4701] passed by this Court records that after the appellant was arrested, he was hospitalised in PGIMS, Rohtak. The learned counsel appearing for the appellant produced photographs which showed that while he was admitted to the hospital, he was handcuffed and chained to the hospital bed. Therefore, a notice was issued on 4-10-2024 [*Vihaan Kumar v. State of Haryana*, 2024 SCC OnLine SC 4701] to the Medical Superintendent of PGIMS, calling upon him to file an affidavit stating whether the appellant was handcuffed and chained to the hospital bed. The order dated 21-10-2024 [*Vihaan Kumar v. State of Haryana*, 2024 SCC OnLine SC 4702] records the admission of the Medical Superintendent of PGIMS that when the appellant was admitted to the hospital, he was handcuffed and chained to the bed. On this aspect, we may note

that an affidavit was filed on 24-10-2024 by Shri Abhimanyu, HPS, Assistant Commissioner of Police, EOW I and II, Gurugram, Haryana. The affidavit states that the officials who were deployed to escort the appellant to PGIMS have been suspended, and a departmental enquiry was ordered against them by the Deputy Commissioner of Police on 23-10-2024.”

**21. In Vihaan Kumar**, stipulating the consequences of non-furnishing of grounds of arrest and its effect on the validity thereof, it was held:

“18. Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in *Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450]*, this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

19. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

20. We have already referred to what is held in paras 42 and 43 of the decision in *Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450]*. This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paras 42 and 43 of the decision in *Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450]* are suggestions that merit consideration. We are aware that in

every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non-compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

**21.** An attempt was made by the learned Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

**23.** In the present case, the first respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10-6-2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the first respondent. If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the Constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.

**24.** An argument was sought to be canvassed that in view of sub-section (1) of Section 50CrPC, there is an option to communicate to the person arrested full particulars of the offence for which he is arrested or the other grounds for the arrest. Section 50 cannot have the effect of diluting the requirement of Article 22(1). If held so, Section 50 will attract the vice of unconstitutionality. Section 50 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him. The “other grounds for such arrest” referred to in Section 50(1) have nothing to do with the grounds of arrest referred to in Article 22(1). The requirement of Section 50 is in addition to what is provided in Article 22(1). Section 47 of the BNSS is the corresponding provision. Therefore, what we have held about Section 50 will apply to Section 47 of the BNSS.

**25.** When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the courts to uphold the fundamental rights.

### ***Conclusions***

**26.** Therefore, we conclude:

**26.1.** The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

**26.2.** The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

**26.3.** When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the investigating officer/agency to prove compliance with the requirements of Article 22(1);

**26.4.** Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge-sheet and trial. But, at the same time, filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1);

**26.5.** When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

**26.6.** When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.”

**22.** At this stage, we must notice an unreported decision of the Supreme Court in **State of Madhya Pradesh and others v. Kusum Sahu in Criminal Appeal No. 4710 of 2025**, decided on 03.11.2025, to which our attention was drawn by the learned A.G.A. The facts in **Kusum Sahu** (*supra*) would show that the accused there, one Jibrakhan Lal Sahu, was arrested in connection with Crime No.157 of 2021, under Sections 409, 420 IPC on 12.12.2023. A charge sheet was filed on 09.02.2024. He made a bail application before the High Court, which was dismissed as withdrawn on 23.01.2024. He then filed a second bail application, which was dismissed by the High Court on 05.03.2024. A third bail application filed by the accused was rejected on 14.03.2024. A fourth bail application was also filed, which was dismissed by the High Court on 29.05.2024. The Supreme Court has remarked that the facts show that within a period of four months, the accused preferred four bail applications before the High Court and all failed. The accused's daughter then filed a writ petition before the High Court, seeking grant of a writ of *habeas corpus* to seek the accused's release from custody, which was termed as unlawful detention by the State. This writ petition was allowed by the High Court, which brought the State of

Madhya Pradesh in appeal to the Supreme Court by special leave. It was in this context of these facts that it was held by the Supreme Court in **Kusum Sahu**:

“16. The facts of the case, as noticed above, in brief, indicate that the manner in which the case has been dealt with really shocks the conscience of this Court. It is a case where accused was arrested and filed four bail applications before the High Court, which were rejected. Despite this, in a habeas corpus petition filed by his daughter, his custody has been held to be unlawful and he was directed to be released while examining the case on merits as if the Court was hearing appeal against the order rejecting the bail application. The process followed is totally unknown to law. Lest the High Court starts following the impugned order as a precedent to scuttle the due process of law, to nip the evil in the bud, we hold that custody of an accused in a criminal case registered against him cannot be held to be unlawful especially when his bail applications have been dismissed. In the case at hand, it is not disputed that Jibrakhan Lal Sahu, father of the respondent herein, is an accused in a criminal case registered against him in which chargesheet has also been filed.”

**23.** The last authority in point is **Mihir Rajesh Shah v. State of Maharashtra, (2026) 1 SCC 500**. The facts, giving rise to the issues involved in **Mihir Rajesh Shah** (*supra*), can best be noticed from the words of their Lordships as these appear in the report. These read:

“2. The main issue as raised by the appellants in these appeals is the violation of the appellants' right under Article 22(1) of the Constitution of India and Section 50 of the Criminal Procedure Code, 1973 (“CrPC”), now Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS 2023”) as the appellants assert that they were not informed of grounds of their arrest in writing.

3. For convenience, Criminal Appeal No. 2195 of 2025 is taken as the lead case. The facts in a nutshell are that on 7-7-2024, a white BMW car, driven at a high speed, collided violently with the complainant's scooter from behind. The force of the impact propelled both the complainant and his wife onto the car's bonnet, whereby the complainant was thrown to the side, and tragically, his wife became ensnared between the vehicle's front left wheel and bumper. Notwithstanding this grievous state, the driver, alleged to be Mihir Rajesh Shah, the appellant herein, persisted in his reckless flight, dragging the victim, thereafter absconding without rendering assistance or reporting the incident to authorities. The victim succumbed to the severe injuries sustained in this collision, as medically confirmed, while the complainant sustained minor injuries.

4. FIR No. 378/2024 was registered at Worli Police Station under the relevant provisions of Bharatiya Nyaya Sanhita, 2023 (“BNS 2023”), and the Motor Vehicles Act, 1988. Initial investigative steps included the identification of the offending vehicle through CCTV footage, and the discovery near Kalanagar Junction Flyover of the damaged BMW alongside Rajrishi Rajendra Singh Bindawat and Rajesh Shah, father of Mihir Rajesh Shah (hereinafter “the appellant”). Arrests soon followed, with co-accused Rajrishi Rajendra Singh Bindawat being taken into custody on the same day and Mihir Rajesh Shah being apprehended on 9-7-2024. The evidence collected firmly established the appellant as the driver at the material time, including CCTV footage capturing his presence at the wheel, consumption of alcohol shortly before the incident, an attempt to alter his appearance, and use of a Fastag registered in his name, amongst other incriminating particulars.

5. The remand proceedings saw the appellant being produced before the Judicial Magistrate First Class with initial police custody extending subsequently into judicial custody; a course contested on the grounds that the grounds of arrest were not furnished in writing as mandated by Article 22(1) of the Constitution of India and Section 47 of BNSS 2023 equivalent to Section 50CrPC.”

**24. Two questions were formulated by their Lordships of the Supreme Court for consideration, that read:**

“7. This Court, while considering the special leave petition recorded that the Court is not inclined to entertain the petition on its merits and issued notice only to the extent of considering the question of law/legal position. In connected cases, being Criminal Appeal No. 2189 of 2025 and Criminal Appeal No. 2190 of 2025, this Court vide order dated 22-4-2025 [*Mihir Rajesh Shah v. State of Maharashtra*, 2025 SCC OnLine SC 2531], has granted *ad interim* relief and directed the appellants to be released on bail during pendency of these appeals. In Special Leave Petition (Criminal) No. 8704 of 2025 vide order dated 2-6-2025 [*Ajit Atmaram Apraj v. State of Maharashtra*, 2025 SCC OnLine SC 2532], *ad interim* relief was also granted to the petitioner therein directing his release on bail. On 13-12-2024 [*Mihir Rajesh Shah v. State of Maharashtra*, 2024 SCC OnLine SC 5780], Mr Shri Singh, learned counsel, who was present in the Court was appointed as *Amicus Curiae* to assist this Court in this matter.”

**25. It was held in Mihir Rajesh Shah:**

“44. These above discussed principles embody the manifestation of the constitutional safeguard sought to be achieved in Article 22 of the Constitution of India which is that the arrested person must be well equipped with the information not only about his arrest but the reasons and grounds thereof prior to his production before the Magistrate so as to enable him to effectively defend himself and oppose the police and judicial custody and even press for bail. The obligation to inform the grounds of arrest to the arrestee is thus, not just a mere procedural formality, instead it flows from the fundamental right of personal liberty which sets the further course for protection from the oppressive restrictions imposed upon the free movement in the society of an arrestee during remand.

45. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the Constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as “*No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest...*”, it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22(1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the Penal Code, 1860 (now BNS 2023).

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in Part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

47. Another aspect, which flows from the above discussion and merits consideration is the mode of informing grounds of arrest to the arrested person to effectively serve the intended purpose of Article 22(1) of the Constitution of India.

This Court, as observed above, had held that it would not be ideal to read out the grounds of arrest to a person who is arrested, as he may not be in the frame of mind to remember the contents of grounds that are read out to him. The Court underscored that if the authorities are permitted to read out the grounds and claim compliance with the constitutional and statutory mandate, the very purpose of the constitutional protection would be nugatory.

**48.** As mentioned above, it has been held while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall *ipso facto* apply to Article 22(1). The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1). Reference at this stage may be made to the Constitution Bench judgment of this Court in *Harikisan* [*Harikisan v. State of Maharashtra*, 1962 SCC OnLine SC 117] wherein while dealing with Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person.

**49.** The relevant portion thereof reads thus: (*Harikisan case* [*Harikisan v. State of Maharashtra*, 1962 SCC OnLine SC 117] , SCC OnLine SC paras 7-8)

“7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that ‘he has studied up to 7th Hindi standard, which is equivalent to 3rd English standard’. The High Court negatived the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds, contained in many paragraphs, as indicated above, in order to be able effectively to make his representation against the order of detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detainee, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the order of detention and the grounds would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in *State of Bombay v. Atma Ram Sridhar Vaidya* [*State of Bombay v. Atma Ram Sridhar Vaidya*, 1951 SCC 43 : 1951 SCR 167] clause (5) of Article 22 requires that the grounds of his detention should be made available to the detainee 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 detainee 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 detainee 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 detainee 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 detainee would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detainee effective knowledge of the facts and circumstances on which the order of detention is based.

8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detainee must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.”

50. Further, the above judgment has been reiterated and followed by this Court in *Lallubhai Jogibhai Patel v. Union of India* [*Lallubhai Jogibhai Patel v. Union of India*, (1981) 2 SCC 427 : 1981 SCC (Cri) 463 : (1982) 52 Comp Cas 543] wherein it has been reaffirmed that grounds of detention must be communicated to the detenu in writing in a language which he understands.

51. On perusal of the above two judgments, it turns out that mere communication of the grounds in a language not understood by the person arrested does not fulfil the constitutional mandate under Article 22 of the Constitution of India. The failure to supply such grounds in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Articles 21 and 22 of the Constitution of India. The objective of the constitutional mandate is to place the person in a position to comprehend the basis of the allegations levelled against him and it can only be realised when the grounds are furnished in a language understood by the person, thereby enabling him to exercise his rights effectively.

52. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse.

53. The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard. The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1).

54. There is no harm in providing the grounds of arrest in writing in the language the arrestee understands, this approach would not only fulfil the true intent of the constitutional mandate but will also be beneficial for the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.

55. This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without

exception and the mode of the communication of such grounds must be in writing in the language he understands.

56. It would not be out of context now to refer to an obligation which has been imposed on a person making arrest, as provided under Section 50-A read in relation to Section 50CrPC (now Sections 48 and 47 of BNSS 2023 respectively), to inform the arrestee of his right to indicate his relative, friend or such other person for the purpose of giving information with regard to his arrest. Simultaneously, a duty has also been cast on the person making arrest to forthwith thereafter inform of such arrest with reasons and the place where the arrested person is being held to the such indicated person. The police officer/person making any arrest shall make an entry of the fact as to who has been informed of such an arrest in a book to be kept in the police station. Further protection in this regard is reflected when a duty has been cast on the Magistrate to satisfy himself, when the arrestee is produced before him, that the above requirement stands complied with. This requirement is in addition to the rights of an arrestee to be made aware of the grounds of arrest.

58. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says “as soon as may be” which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.”

26. We must remark here that there are some features regarding safeguards attending the arrest of the accused, which have been given a more definitive shape in **Mihir Rajesh Shah**. It has been beyond cavil for sometime now that there is an obligation upon the Police or the other enforcement agencies arresting an accused in a crime or a suspect, to furnish the grounds of detention at the time of arrest, or as soon as may be. It has also been settled that if the grounds of arrest in the language understood by the accused are not furnished, the arrest would be rendered illegal, notwithstanding the filing of a charge sheet or a prosecution going ahead. The grounds of arrest, as distinguished from reasons of arrest, have already been the subject matter of pronouncement in **Prabir Purkayastha**. The principle that grounds of detention should be in writing has also been clearly propounded in **Prabir Purkayastha** and that the breach of this obligation on the part of the investigating agency would render the custody illegal. The principle that the mere fact that a charge sheet has been filed, would not validate the illegality emanating

from non-communications of the grounds of arrest, is well crystallized in **Prabir Purkayastha**. These principles have been developed on the edifice of the earlier decisions governing the issue.

**27. Mihir Rajesh Shah** further crystallized the obligations of the Police or other investigating agency by saying that if the grounds are not furnished at the time of arrest, these have to be done as soon as may be, is a matter, which has to be confined to a precise time. Earlier what meant 'as soon as may be' was not defined with reference to a particular event or a calendar. Now, in **Mihir Rajesh Shah**, it has been held that if the grounds cannot be furnished at the time of arrest for any reason, this must be done within a reasonable time, and, in any case, at least two hours prior to production of the accused before the Magistrate for remand. The pegging down of time to two hours before remand proceedings is a principle laid down in **Mihir Rajesh Shah**. We notice that **Mihir Rajesh Shah**, on its own terms, makes the law there, applicable prospectively, that is to say, the future arrests. All arrests made after **Mihir Rajesh Shah** would have to abide by the further principles developed there. It has no retrospective application.

**28.** So far as the petitioner's case is concerned, he need not fall back upon **Mihir Rajesh Shah**, which would not be attracted to his case because the petitioner was arrested on 20.04.2025 and **Mihir Rajesh Shah** as decided on 06.11.2025. The concluding remarks of their Lordships in paragraph no. 58 of the report would make **Mihir Rajesh Shah** unavailable to the petitioner. Nevertheless, the principle evolved in **Pankaj Bansal, Prabir Purkayastha** and **Vihaan Kumar** are squarely applicable to the petitioner's case.

**29.** We must, at this stage, answer what the learned A.G.A. argued that the principle in **Kusum Sahu** would take this case out

of the teeth of **Pankaj Bansal, Prabir Purkayastha and Vihaan Kumar**, as this is a matter, where the petitioner had already applied for bail before the learned Sessions Judge and suffered a rejection of his plea. He cannot now turn around and say that the arrest was illegal and, thus, secure bail indirectly, what he could not do on merits. It is true that the principle in **Kusum Sahu** appears to be that way, but the illegality in **Kusum Sahu**, that was the subject matter of frown by their Lordships of the Supreme Court, was in an entirely different context. The first was that four successive bail applications were made to the High Court itself within a span of four months and all these were rejected. It was then that a *habeas corpus* petition was moved before the High Court, and invoking the principles of illegality of arrest, a writ of *habeas corpus* was granted, restoring the accused to his liberty. While doing so, their Lordships of the High Court appear to have examined the merits of the accused's case, which led the Supreme Court to remark that the High Court, while considering the *habeas corpus* plea, directed release of the accused "*examining the case on merits as if the Court was hearing appeal against the order rejecting the bail application*". This is not the case here at all. For one, the High Court was never moved by way of a bail plea, much less the plea being turned down.

**30.** What is more important is that in this petition, it is not the merits of the case that we have examined or were invited to examine by the petitioner. What we have examined is the legality of the arrest and the remand order, pursuant to which the petitioner is in judicial custody. If the arrest and the remand order are illegal applying the principles in **Pankaj Bansal, Prabir Purkayastha and Vihaan Kumar** *dehors* a reference to the merits of the prosecution or the defence, the principle in **Kusum Sahu**, to our understanding, would not be attracted. The contention of the learned A.G.A. on this score cannot, therefore, be accepted.

**31.** Now, we may turn to the steps taken in fulfillment of their obligations by the Police to arrest the petitioner. The only obligation is to inform the petitioner of the grounds of arrest at the time he is arrested, or as soon as may be. The petitioner says that he was never informed of the ground of his arrest, either at the time or within a reasonable period of time after the arrest. In fact, he was never informed of the grounds until remand. The only record of the grounds of arrest, which the State have produced, is the memorandum of arrest and G.D. Entry No.27 dated 20.04.2025. Both of these are said to carry the grounds of arrest. We have quoted both these documents *in extenso* earlier.

**32.** So far as the memo of arrest dated 20.04.2025 is concerned, column no. 10, which says, *giraftari kaa karan*, has been left blank for an answer by the respondent. It is utterly blank with nothing said for a reason. About this, we were told that sub-columns *ka, kha, ga, gha, anga* carry the relevant reasons, which constitute the grounds of arrest. Column no. 10-*ka* says 'to prevent such a person from further committing an offence'. The answer is '*haan* (yes)'. Column no. 10-*kha* mentions 'for the purpose of appropriate investigation into the offence'. The answer is again '*haan* (yes)'. Likewise, column no. 10-*ga* says 'to prevent such a person from destroying evidence or tampering with it'. The answer is again '*haan* (yes)'. Likewise, are the succeeding two columns and in answer to each, the answer is the same, which is '*haan* (yes)'. This arrest memo does not carry grounds of arrest, but reasons of arrest. The reasons have already been distinguished from grounds by the Supreme Court in **Prabir Purkayastha** (see paragraphs 37 and 48 of report). There is absolutely no ground mentioned in the memo of arrest.

**33.** We may next turn our attention to the case diary, in particular, G.D. No.27 dated 20.04.2025. No doubt, this part of the case diary is contemporaneous with the petitioner's arrest, but all

that it says for a reason, rendered into English, says: “*the accused Rakesh aforesaid was informed of his crime under Sections 87, 127(4), 64(1), 143(2) BNS and the accused Harveer and Onkar of their crime under Section 143(2) BNS, and taken into police custody at about 08.50 hours. During arrest, guidelines of the Supreme Court and the Human Rights Commission were fully complied with. Information of the accused's arrest will be given to their relatives*”. The other facts mentioned in the case diary relate to the manner of arrest, the receipt of information from a secret informer and confinement of the accused to the Police Lockup. There is nothing to show in G.D. No.27 that there is any contemporaneous mention of the grounds of arrest, much less something that was brought to the petitioner's notice at the time or soon after his arrest. There was nothing recorded contemporaneously, which could have been brought to the petitioner's notice at the time of arrest or as soon as may be. The mandate of Article 22(1) of the Constitution, necessitates furnishing the accused grounds of detention in writing in a language understood by him, the requirement of the grounds being furnished in writing being clearly culled out by the Supreme Court in **Prabir Purkayastha**. The purpose of furnishing these grounds is to enable the accused to exercise his right to win his liberty back at the time of proceedings for remand. The course of action here shows that everything happened from arrest to production before the Remand Magistrate on 20.04.2025 and all during this time, the petitioner was not informed of the grounds of his arrest. The petitioner was, therefore, disabled from exercising his right under Article 22(1) of the Constitution, either personally or through the assistance of Counsel, because he never knew in what connection and on what precise grounds and facts, he has been taken into custody. He might not have known the facts even thereafter until he moved his application for bail before the learned Sessions Judge. The petitioner has consistently denied

that no grounds were ever supplied to him and it is the burden of the Police to establish that the grounds were indeed supplied. They have not been able to discharge it.

**34.** The petitioner was produced before the Remand Magistrate on the same day i.e. 20.04.2025 and this takes us to the remand order passed by the Magistrate, which too we have not only extracted, but caused a photostat copy thereof to be shown in the earlier part of this judgment. A perusal of the remand order shows not only non-compliance with the provisions of Article 22(1) with the Magistrate inquiring into the grounds of arrest before granting a judicial remand, but shows that it is the most mechanical kind of remand granted by the learned Magistrate. The entire remand order is written on a printed proforma with blanks filled up. These have been filled up in either by a clerk or the reader attached to the learned Magistrate or by the learned Magistrate himself and signed by him. Everything else is already printed.

**35.** This is a classical case of a remand order made by the Judicial Magistrate, being rendered illegal due to the failure to ensure compliance with the requirements of Article 22(1) of the Constitution. In paragraph no. 25 of the report in **Vihaan Kumar**, the principle delineated is clear that when the arrested person is produced before a Magistrate, it is his duty to ascertain whether compliance with Article 22(1) has been made. If there is non-compliance, the arrest is rendered illegal and the accused cannot be remanded. A remand made without following the aforesaid procedure and ascertaining adherence to the mandate of Article 22(1) would be illegal and so also the ensuing custody.

**36.** In the result, this writ petition succeeds and is **allowed**. The impugned order of remand is hereby **quashed**. The petitioner shall be produced before the learned Magistrate or the Trial Court, where the case is pending, and upon his production, the Court shall release him from custody, subject to the petitioner furnishing

a bond in accordance with Section 91 BNSS to the satisfaction of the learned Magistrate or the Trial Court concerned. The petitioner shall by his bond undertake to regularly attend the trial on each date fixed and not seek adjournment on any ground. It is made clear that this order of ours will neither affect the ongoing trial at whatever stage it is, nor the merit or the worth of the charges that the prosecution have brought against the petitioner. The learned Sessions Judge, Sambhal is directed to ensure that all Magistrate functioning under his subordination do not grant a police or a judicial remand casually in a printed proforma and most certainly not without ascertaining the fact if the grounds of arrest have been communicated to the accused in writing by the Police or the other agency involved.

**37.** Let this judgment be communicated by the Registrar (Compliance) to the learned Sessions Judge, Sambhal, the Chief Judicial Magistrate, Sambhal and through the Chief Judicial Magistrate, Sambhal to the Jail Superintendent of the Jail where the petitioner is in custody.

**(Tarun Saxena,J.) (J.J. Munir,J.)**

**July 27, 2026**

Anoop