IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (STAMP) NO. 24338 OF 2024

Vicky Bharat Kalyani … Petitioner

Versus

The State of Maharashtra & Anr. ... Respondents

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WITH
WRIT PETITION NO.5254 OF 2024
WITH
INTERIM APPLICATION NO.5017 OF 2024
.....
WITH
WRIT PETITION NO.5270 OF 2024
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WITH
WRIT PETITION NO.5588 OF 2024
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WITH
WRIT PETITION NO.5590 OF 2024
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WITH
WRIT PETITION NO.5694 OF 2024
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WITH
WRIT PETITION NO.5845 OF 2024
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WITH
WRIT PETITION NO.5874 OF 2024
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WITH
WRIT PETITION NO.6000 OF 2024
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WITH
WRIT PETITION NO.6115 OF 2024
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WITH
WRIT PETITION NO.6223 OF 2024
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WITH
WRIT PETITION NO.6229 OF 2024
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WITH
WRIT PETITION NO.6663 OF 2024
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WITH
WRIT PETITION (ST) NO.19741 OF 2024
WITH
WRIT PETITION (ST) NO.19845 OF 2024
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WITH
WRIT PETITION (ST) NO.20923 OF 2024
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WRIT PETITION (ST) NO.20933 OF 2024
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WRIT PETITION (ST) NO.20938 OF 2024
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WITH
WRIT PETITION (ST) NO.20996 OF 2024
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WITH
WRIT PETITION (ST) NO.21638 OF 2024
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WITH
WRIT PETITION (ST) NO.22085 OF 2024
WITH
INTERIM APPLICATION (ST) NO.26922 OF 2024
IN
WRIT PETITION (ST) NO.22085 OF 2024
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WITH
WRIT PETITION (ST) NO.22813 OF 2024
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WITH
WRIT PETITION (ST) NO.24115 OF 2024
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WITH
WRIT PETITION (ST) NO.24183 OF 2024
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WITH
WRIT PETITION (ST) NO.24461 OF 2024
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WRIT PETITION (ST) NO.24704 OF 2024
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WRIT PETITION (ST) NO.24806 OF 2024
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WITH
WRIT PETITION (ST) NO.24885 OF 2024
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WITH
WRIT PETITION NO.55 OF 2025
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WITH
WRIT PETITION NO.284 OF 2025
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WRIT PETITION NO.336 OF 2025
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WRIT PETITION NO.337 OF 2025
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WRIT PETITION NO.395 OF 2025
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WRIT PETITION NO.5257 OF 2024
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WRIT PETITION NO.5263 OF 2024
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WRIT PETITION NO.5706 OF 2024
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WRIT PETITION NO.6046 OF 2024
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WRIT PETITION (ST) NO.17586 OF 2024
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WRIT PETITION (ST) NO.20400 OF 2024
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WRIT PETITION (ST) NO.21352 OF 2024
WITH
WRIT PETITION (ST) NO.21607 OF 2024
WITH
WRIT PETITION (ST) NO.22165 OF 2024
WITH
INTERIM APPLICATION (ST) NO.294 OF 2025
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WRIT PETITION (ST) NO.20755 OF 2024
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WITH
WRIT PETITION (ST) NO.23019 OF 2024
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WRIT PETITION (ST) NO.23383 OF 2024
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WRIT PETITION (ST) NO.23385 OF 2024
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WITH
WRIT PETITION (ST) NO.23527 OF 2024
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WITH
WRIT PETITION (ST) NO.23924 OF 2024

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[SR. NO.925]
Adv.Rishi Bhuta a/w Adv.Vivek Pandey, Adv.Neha Patil, Adv.K.R.Shah, Adv.Ashish Dubey, Adv.Ujjwal Gandhi, Adv.Ankita Bamboli, Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Bhavi Kapoor, Adv.Vaishnavi Javehri and Adv.Parth Govilkar–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Smt.M.H.Mhatre–APP, for Respondents–State.

[SR.NO.903]
WRIT PETITION NO.5254 OF 2024
WITH
INTERIM APPLICATION NO.5017 OF 2024
Mr.Binod Agarwal (In-person) present in Court for Petitioner/ Applicant.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor and Smt.M.M.Deshmukh–APP for Respondent–State.

[SR. NO.904]
WRIT PETITION NO.5270 OF 2024
Adv.Niranjan Mundargi i/b. Adv.Vinay J. Bhanushali, Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh–APP, Mr.S.R.Agarkar–APP for Respondents–State.

[SR.NO.905]
WRIT PETITION NO.5588 OF 2024
Adv.C.J.Joveson i/b. Adv.Simran Patil, Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh–APP and Mr.B.V.Holambe–Patil–APP for Respondents–State.

[SR.NO.906]
WRIT PETITION NO.5590 OF 2024
Adv.Vaibhav Jagtap–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor and Smt.M.M.Deshmukh–APP for Respondent–State.

[SR.NO.907]
WRIT PETITION NO.5694 OF 2024
Adv.Kamlesh Mahadev Satre, Advocate for Petitioner.
Adv.Aruna S. Pai, Advocate for Respondent No.1-Union of India.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh–APP, Smt.M.H.Mhatre–APP, for Respondent No.2–State.

[SR.NO.908]
WRIT PETITION NO.5845 OF 2024

Adv.Ujjwal Gandhi a/w Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor and Smt.M.M.Deshmukh–APP for Respondents–State.

[SR.NO.909]
WRIT PETITION NO.5874 OF 2024
Adv.Anil S. Kamble – Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh and Smt.M.H.Mhatre–APP for Respondent–State.

[SR.NO.910]
WRIT PETITION NO.6000 OF 2024
Mr.Sudeep Pasbola–Senior Advocate a/w Mr.Ayush Pasbola–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh and Mr.S.R.Agarkar–APP for Respondent–State.

[SR.NO.911]
WRIT PETITION NO.6115 OF 2024
Adv.Amit Singh–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh and Mr.Y.M.Nakhwa–APP for Respondents–State.

[SR.NO.912]
WRIT PETITION NO.6223 OF 2024
Adv.Ayaz Khan–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh and Smt.M.H.Mhatre–APP for Respondent–State.

[SR.NO.913]
WRIT PETITION NO.6229 OF 2024
Adv.Zehra Charania–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP for Respondent–State.

[SR.NO.914]
WRIT PETITION NO.6663 OF 2024
Adv.Suyash Nitin Khose a/w Mr.Mangesh Kusurkar, Mr.Abhishek Nandimath–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.B.V.Holambe-Patil–APP, for Respondent–State.

[SR.NO.915]
WRIT PETITION (ST) NO.19741 OF 2024
WITH
WRIT PETITION (ST) NO.19845 OF 2024
Adv.Taraq Sayed–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.Arfan Sait–APP, for Respondents–State.

[SR.NO.916]

WRIT PETITION (ST) NO.20923 OF 2024
Adv.Zehra Charania–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.S.R.Agarkar–APP, for Respondents–State.

[SR.NO.917]
WRIT PETITION (ST) NO.20933 OF 2024
Adv.Zehra Charania–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.B.V.Holambe-Patil–APP, for Respondent–State.

[SR.NO.918]
WRIT PETITION (ST) NO.20938 OF 2024
Adv.Ayaz Khan and Adv.Zehra Charania–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.S.R.Agarkar–APP, for Respondent–State.

[SR.NO.919]
WRIT PETITION (ST) NO.20996 OF 2024
Adv.Taraq Sayed–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.920]
WRIT PETITION (ST) NO.21638 OF 2024
Adv.Hitendra Parab–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.S.R.Agarkar–APP, for Respondent–State.

[SR.NO.921]
WRIT PETITION (ST) NO.22085 OF 2024
ALONG WITH
INTERIM APPLICATION (ST) NO.26922 OF 2024
IN
WRIT PETITION (ST) NO.22085 OF 2024
Adv.Rahul Arote–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, for Respondent–State.

[SR.NO.922]
WRIT PETITION (ST) NO.22813 OF 2024
Adv.Siddharth Sutaria a/w Adv.Suyash Nitin Khose, Adv.Chinmay Sawant, Mr.Vaibhav Mahajan and Adv.Ashwin Hirulkar–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.S.R.Agarkar–APP, for Respondent–State.

[SR.NO.923]
WRIT PETITION (ST) NO.24115 OF 2024
Adv.Ujjwal Gandhi a/w Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public

Prosecutor,Smt.M.M.Deshmukh–APP, Mr.B.V.Holamble-Patil –APP, for Respondent–State.
Adv.Nitee Punde a/w Adv.Mamta Omle, Adv.Siddharth Chandrashekar–Advocates for Respondent No.2.

[SR.NO.924]
WRIT PETITION (ST) NO.24183 OF 2024
Adv.Vishal M. Deshmukh–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.926]
WRIT PETITION (ST) NO.24461 OF 2024
Adv.Manoj R. Gowd–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.S.R.Agarkar–APP, for Respondents–State.

[SR.NO.927]
WRIT PETITION (ST) NO.24704 OF 2024
Adv.Ujjwal Gandhi a/w Adv.Saakshi Jha, Adv.Prateek Dutta and Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.928]
WRIT PETITION (ST) NO.24806 OF 2024
Adv.Rishi Bhuta a/w Adv.Manish Bohra, Adv.Neha Patil, Adv.K.R.Shah, Adv.Ashish Dubey, Adv.Ujjwal Gandhi, Adv.Ankita Bamboli, Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Vaishnavi Javheri, Adv.Parth Govilkar, Adv.Bhavi Kapoor–Advocates for Petitioners.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh–APP, Ms.Sharmila S. Kaushik–APP, for Respondents–State.

[SR.NO.929]
WRIT PETITION (ST) NO.24885 OF 2024
Mr.Amit Desai–Senior Advocate a/w Adv.Gopalkrishna Shenoy, Adv.Kushal Mor i/b.Adv.Rohan Chauhan–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.Arfan Sait–APP, for Respondent–State.

[SR.NO.930]
WRIT PETITION NO.55 OF 2025
Adv.Ganesh Gole i/b. Adv.Aarif Ali–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.Y.M.Nakhwa–APP, for Respondents–State.

[SR.NO.931]
WRIT PETITION NO.284 OF 2025
Adv.P.K.Sanghrajka a/w Adv.Parth H.Zaveri i/b. Adv.Momin Musaddique Ahmed–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.Arfan Sait–APP, for Respondent–State.

[SR.NO.932]
WRIT PETITION NO.336 OF 2025
Adv.Ali Kaashif Khan Deshmukh a/w Adv.Snigdha Khandelwal, Adv.Hitanshi Gajaria and Adv.Zainabh Burmawala, Adv.Shirish Shigwan–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.933]
WRIT PETITION NO.337 OF 2025
Adv.S.R.Mishra–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Smt.M.H.Mhatre–APP, for Respondents–State.

[SR.NO.934]
WRIT PETITION NO.395 OF 2025
Adv.Anil S. Kamble–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP, Mr.Y.M.Nakhwa–APP, for Respondent–State.

[SR.NO.935]
WRIT PETITION NO.5257 OF 2024
Adv.Ujjwal Gandhi a/w Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.936]
WRIT PETITION NO.5263 OF 2024
Adv.Ujjwal Gandhi a/w Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.937]
WRIT PETITION NO.5693 OF 2024
Adv.Ujjwal Gandhi a/w Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.938]
WRIT PETITION NO.5706 OF 2024
Adv.Ujjwal Gandhi a/w Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.939]
WRIT PETITION NO.6046 OF 2024
Adv.Rishi Bhuta a/w Adv.Ajay Bhise, Adv.Neha Patil, Adv.K.R.Shah, Adv.Ashish Dubey, Adv.Ujjwal Gandhi, Adv.Ankita Bamboli, Adv.Saakshi Jha, Adv.Prateek Dutta, Adv.Vaishnavi

Javheri, Adv.Parth Govilkar, Adv.Bhavi Kapoor–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.Sharmila S. Kaushik–APP, for Respondents–State.

[SR.NO.940]
WRIT PETITION (ST) NO.17586 OF 2024
Adv.Siddharth Sutaria a/w Adv.Suyash Nitin Khose, Adv.Chinmay Sawant, Adv.Vaibhav Mahajan, Adv.Ashwin Hirulkar–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.H.Mhatre–APP,for Respondent–State.

[SR.NO.942]
WRIT PETITION (ST) NO.20400 OF 2024
WITH
WRIT PETITION (ST) NO.21352 OF 2024
WITH
WRIT PETITION (ST) NO.21607 OF 2024
WITH
WRIT PETITION (ST) NO.22165 OF 2024
WITH
INTERIM APPLICATION (ST) NO.294 OF 2025
Adv.C.J.Joveson–Advocate for Petitioner in all the matters.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.943]
WRIT PETITION (ST) NO.20755 OF 2024
Adv.Sushil Gaglani i/b. Adv.Rohit R.Singh–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondents–State.

[SR.NO.944]
WRIT PETITION (ST) NO.23019 OF 2024
Adv.Sandeep R. Karnik–Advocate for Petitioner.
Adv.Shreeram Shirsat a/w Adv.Shekhar V. Mane–Advocates for Respondent–NCB.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,for Respondent–State.

[SR.NO.945]
WRIT PETITION (ST) NO.23383 OF 2024
Adv.Nitin Gaware Patil a/w Adv.Narayan Rokade, Adv.Siddharth Agarwal, Adv.Hrushikesh Sayaji Korhale, Adv.Pratibha Pawar, Adv.Vikrant Kadam, Adv.Siddharth Ghodke, Adv.Abhang Suryawanshi, Adv.Harish Jadhav–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Mr.Ankur Pahade, Mr.Sanjay Kokane i/b. Mr.Shishir Hiray–Special Public Prosecutor a/w Smt.M.M. Deshmukh–APP, for Respondent–State.

[SR.NO.946]
WRIT PETITION (ST) NO.23385 OF 2024
Adv.Nitin Gaware Patil a/w Adv.Narayan Rokade, Adv.Siddharth Agarwal, Adv.Hrushikesh Sayaji Korhale, Adv.Pratibha Pawar, Adv.Vikrant Kadam, Adv.Siddharth Ghodke, Adv.Abhang

Suryawanshi, Adv.Harish Jadhav–Advocates for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Mr.Ankur Pahade, Mr.Sanjay Kokane i/b. Mr.Shishir Hiray–Special Public Prosecutor, Smt.M.M.Deshmukh–APP, for Respondent–State.

WITH
[SR.NO.947]
WRIT PETITION (ST) NO.23527 OF 2024
Adv.Kishor Ajetrao–Advocate for Petitioner.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor,Smt.M.M.Deshmukh–APP,Mr.B.V.Holambe–Patil–APP, for Respondents–State.

[SR.NO.948]
WRIT PETITION (ST) NO.23924 OF 2024
Adv.Rahul Agarwal a/w Adv.Vritee Ssoni, Adv.Shruti Adde i/b. Agarwal and Dhanuka Legal – Advocates for Petitioner.
Adv.Kuldeep Patil a/w Adv.Dhavalsinh V. Patil–Advocates for Respondent-CBI.
Dr.Birendra Saraf–Advocate General a/w Mr.H.S.Venegavkar– Public Prosecutor, Smt.M.M.Deshmukh–APP,for Respondent–State.

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CORAM : SARANG V. KOTWAL, AND
S. M. MODAK, JJ.

RESERVED ON : 17th JANUARY, 2025

PRONOUNCED ON : 31st JANUARY, 2025

JUDGMENT : [*PER SARANG V. KOTWAL, J.*]

1. All these Petitions raise a common legal issue regarding interpretation of Section 50 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). In some of the Petitions, the interpretation of Sections 41 & 41A of Cr.P.C. is also necessary. The common contention in all these Petitions is the alleged violation of these provisions rendering the Petitioners' continued detention in

custody as illegal detention. The Petitioners are seeking their release on this ground. The facts pertaining to these Petitions individually are obviously different and, therefore, before considering the fact situation in each of these Petitions separately, we thought it fit to consider the interpretation of these provisions. Subject to such interpretation, an individual Petition from this group can be decided separately. To afford an opportunity to the counsel appearing for both the sides, we have listed these matters together.

2. We have heard respective learned counsel for the Petitioners as well as a Petitioner appearing as party in-person, in various Petitions. On the other hand, learned Advocate General Dr. Birendra Saraf, Learned Public Prosecutor Mr. Venegavkar, Learned counsel Ms. Nitee Punde and learned counsel Mrs.Aruna Pai appeared for the Respondents.

3. Learned Advocate General put forth the perspective on the issue on behalf of the State of Maharashtra. Mrs. Aruna Pai and Ms. Nitee Punde, appeared on behalf of the respective investigating agencies.

4. After hearing both the sides extensively, we have formed an opinion that these issues require serious consideration by a Larger Bench. There are two main contingencies in which the issues can be referred to a Larger Bench. The first contingency is – if there is a difference of opinion of the Coordinate Benches of equal strength, then the matters, for that issue, can be referred to a Larger Bench. Similarly, when a Bench is of the opinion that the issues can be more advantageously decided by a Larger Bench; in that case also the issues can be referred for consideration to a Larger Bench. Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules 1960 reads thus :

> “ **CHAPTER I**
>
> **JURISDICTION OF SINGLE JUDGES AND BENCHES OF THE HIGH COURT**
>
> **8. Reference to two or more Judges.**—If it shall appear to any Judge, either on the application of a party or otherwise, that an appeal or matter can be more advantageously heard by a Bench of two or more Judges, he may report to that effect to the Chief Justice who shall make such order thereon as he shall think fit.”

5. This particular Rule 8 is interpreted by different Benches of this Court to support our view that in the above two contingencies the matters can be referred to a Larger Bench. A reference can be made to the order passed by a Division Bench of this Court in the case of **Prajith Thayyil Kallil Vs. State of Maharashtra** in Anticipatory Bail Application No.161/2022 and connected matters decided on 5.5.2022[1]. The discussion on this point can be found from paragraphs-15 to 21 from the reported judgment. This reasoning was based on two more judgments; the first one was of a Full Bench of this Court in the case of **Anant H. Ulhalkar Vs. Chief Election Commissioner[2],** and the other was the order passed by a Division Bench of this Court in the case of **Jalgaon Janta Sahakari Bank Ltd. Vs. Joint Commissioner of Sales Tax and Another**[3].

We are relying on these judgments and orders to adopt the course of referring the issues before us to a Larger Bench. In the following discussion, we are expressing our disagreement and difference of opinion on certain views expressed by the coordinate

1 2022 SCC OnLine Bom 1051
2 2017(1) Mh.L.J. 431
3 Dated 25.11.2021 passed in OS W.P.No.2935/2018 [Division Bench of this Court]

Benches; and on certain issues we find that the issues lack clarity all throughout the State of Maharashtra about the necessary procedure and requirements for arrest and, therefore, we are of the opinion that the issues can be decided by a Larger Bench so that there is an authoritative pronouncement on all the issues, which would be binding on all the concerned parties.

6. As the legal issues were argued and debated before us, it became more and more apparent that, there is a total confusion and lack of clarity; particularly in the minds of the investigating agencies. The arrested accused are approaching various Courts viz. the Magistrate Courts, Sessions Courts and the High Court. Even before the High Court, some applications are filed before the learned Single Judge taking up bail applications and some matters are filed before the Division Bench seeking writ of *habeas corpus* and seeking exercise of the powers under Article 226 of the Constitution of India. Hence, there is a lack of clarity even in respect of the Forums which can grant such a relief. In some cases, this has given rise to unhealthy practices of choosing a Forum for the same relief. The same issues, simultaneously, are being

contested before the different forums and, therefore, there is a serious possibility of conflict of decisions by different Courts across the State. There is also confusion about the cut-off date and the date from which certain provisions are treated as mandatory provisions. In some of the cases, due to lack of awareness on the part of the investigating agencies, the accused are claiming benefits even in the most serious or heinous crimes like, rape, murder, offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) etc..

7. During the arguments made by both the parties, it was realized that the decisions on these issues will affect substantial majority of the cases, if not all the cases, wherein the accused are arrested till date.

8. During the arguments, it was emphatically submitted by different counsel for the Petitioners that there is total lack of uniformity in respect of the procedure followed at the time of obtaining the first remand of the arrested accused. There are no

clear Rules or Regulations regarding necessity to give a copy of the remand report to the accused or his Advocate. Though learned Public Prosecutor Shri Venegavkar submitted that in Mumbai and in other Districts of the State of Maharashtra the practice of giving a copy of the first remand report to the accused is followed. This claim was seriously disputed by learned counsel Shri Mor. He submitted that he appears in the Magistrate Courts in Mumbai and such practice is not followed. All these issues involving the liberty of citizens require serious consideration.

9. There cannot be two opinions regarding the necessity to make any arrested person aware as to why he is arrested. The questions which are raised before us are the requirements under Section 50 of Cr.P.C. as to whether this communication has to be in writing or oral communication is sufficient. The other issue is about necessity of issuing notice under Section 41A of Cr.P.C..

SUBMISSIONS ON BEHALF OF THE PETITIONERS

10. The arguments were opened by learned counsel Shri Rishi Bhuta appearing for the Petitioner in Criminal Writ Petition [Stamp] No.24338/2024. Very briefly the facts of the case were,

that, on 11.5.2023 an accused was apprehended carrying the contraband. The FIR under provisions of the NDPS Act was lodged and during investigation the name of the Petitioner Vicky surfaced. He was arrested on 28.9.2024. Before that, his anticipatory bail application was rejected in March, 2024. Now the Petitioner is claiming that the grounds of arrest were not given to him in writing at the time of arrest and, therefore, his detention is illegal. His Bail Application on merits was rejected by the Special Court in November, 2024. He did not prefer any Bail Application before the High Court on merits; instead, he has preferred Criminal Writ Petition (Stamp) No.24338/2024 claiming his release for violation of the mandatory provisions of Section 50 of Cr.P.C. and Section 52 of the NDPS Act. His first remand was obtained on 29.9.2024. The main submission of Shri Bhuta was in respect of non-compliance of Section 50 of Cr.P.C.. He has relied on various judgments of the Hon'ble Supreme Court and different Division Benches of this Court.

11. The arguments of all the learned counsel for both the sides revolve around these very judgments. These judgments are as

follows :

- **Judgments of the Hon'ble Supreme Court in the following cases :**

  i. **Pankaj Bansal Vs. Union of India and others**[4]
  ii. **Ram Kishor Arora Vs. Directorate of Enforcement**[5]
  iii. **Prabir Purkayastha Vs. State (NCT of Delhi)**[6]

- **A Division Bench of this High Court has granted relief to the accused in the following cases.**

  i. **Mahesh Pandurang Naik Vs. State of Maharashtra and another**[7]
  ii. **Manulla Kanchwala Vs. State of Maharashtra**[8]
  iii. **Nisha Gaikwad and others Vs. State of Maharashtra**[9]
  iv. **Jahir Sukha Khan Vs. State of Maharashtra**[10]
  v. **Sachin Nimbalkar Vs. State of Maharashtra**[11]
  vi. **Shrawan Joshi Vs. Union of India**[12]

- **Another Division Bench of this Court gave relief to the accused in the following cases :**

  i. **Bharat Chaudhary Vs. State of Maharashtra and others**[13]
  ii. **Hanuman Choudhary Vs. State of Maharashtra**[14]

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4 2023 SCC OnLine SC 1244
5 2023 SCC OnLine SC 1682
6 2024 SCC OnLine SC 934
7 Decided on 18.7.2024 in W.P. [St.] No.13835/2024 [Division Bench of this Court]
8 Decided on 14.8.2024 in W.P. No.3276/2024 [Division Bench of this Court]
9 Decided on 15.10.2024 in W.P. [St.] No.19472/2024 [Division Bench of this Court]
10 Decided on 16.10.2024 in W.P. [St.] No.18225/2024 [Division Bench of this Court]
11 Decided on 23.10.2024 in W.P.[St.] No.17029/2024 [Division Bench of this Court]
12 Decided on 25.11.2024 in W.P. [St.] No.21016/2024 [Division Bench of this Court]
13 Decided on 25.10.2024 in W.P. No.3604/2024 [Division Bench of this Court]
14 Decided on 25.10.2024 in W.P. [St.] No.17755/2024 [Division Bench of this Court]

12. Out of these cases, in **Nisha Gaikwad**'s case, the offences were under Sections 364-A and 389 of IPC. In **Jahir Khan'**s case, the offence was under Section 395 of IPC. In **Sachin Nimbalkar**'s case the offence was mainly under Section 302 of IPC. In the cases of **Bharat Chaudhary**, **Hanuman Choudhary** and **Shrawan Joshi** the offences were under the NDPS Act. In all these cases, the Petitioners therein were released on the ground of non-compliance of Section 50 of Cr.P.C..

13. Shri Bhuta submitted that the ratio of **Pankaj Bansal** and **Prabir Purkayastha** apply to the cases involving even serious, grave and heinous offences because Section 50 of Cr.P.C. flows from Articles 21 and 22 of the Constitution of India. If there is violation of the fundamental rights of the arrested accused, then, irrespective of the gravity of the offences he must get benefit of non-compliance of the mandatory requirements of giving grounds of arrest in writing under Section 50 of Cr.P.C.. Shri Bhuta submitted that at the most the investigating agency has 24 hours to give the grounds of arrest in writing if the ratio of **Ram Kishor Arora**'s case is applied. He submitted that the jurisdiction to release the arrested

accused on such consideration can be exercised by all the Courts including the Courts of Magistrate, Session and the High Court.

14. Shri Bhuta made his submissions in respect of the different view taken by the same Division Bench which decided **Mahesh Naik**'s case. The different view was expressed in a judgment dated 25.11.2024 passed in Criminal Writ Petition No.3533/2024 in the case of **Mihir Rajesh Shah Vs. State of Maharashtra**[15]**.** In the said case also, the arguments were advanced by Shri Bhuta. On that occasion, the same Division Bench which had decided Mahesh Naik's case; took a different view and had made an exception in refusing relief to the Petitioner in that case. Shri Bhuta submitted that the consideration in Mihir Shah's case was in respect of the circumstances in which he was apprehended and that the said ratio will not affect the ratio taken in all the other cases by the two different Division Benches of this Court in the aforementioned cases.

15. Learned Counsel Mr. C.J. Joveson in Criminal Writ Petition No.5588/2024 relied on certain observations from **Pankaj**

15 2024 SCC OnLine Bom 3660

Bansal's case to support the same submissions made by Shri Rishi Bhuta. In this case the offence was under Section 302 of IPC.

16. Learned Senior Counsel Shri Pasbola was representing the Petitioners, who were involved in the offences under Section 420 of IPC. The Petitioners were the bank officers. He submitted that irrespective of the gravity of the offences, the mandate of Section 50 of Cr.P.C. must be followed. Only when the accused is caught red-handed while committing the offence or soon thereafter the discretion may lie with the Court to consider that fact and deny him the benefit of his release.

17. Learned counsel Shri Niranjan Mundargi submitted that the language of Section 50 of Cr.P.C. does not leave any scope to consider the circumstances in which the accused is arrested and, in all cases, the mandatory provision of Section 50 of Cr.PC. of giving grounds of arrest in writing has to be followed. He submitted that, in future, there can be corrective measures viz. recording video at the time of giving grounds of arrest in writing; which would conclusively establish that such requirement is followed and there would not be any dispute about compliance of Section 50 of Cr.P.C..

18. Learned counsel Shri Satish Mishra supported the submissions of Shri Bhuta.

19. Learned counsel Shri Manoj Goud appeared in Criminal Writ Petition (Stamp) No.24461/2024. He submitted that the same Division Bench that had decided Mihir Shah's case against the accused, vide a subsequent order in the case of **Amit Giridhar Lalge Vs. The State of Maharashtra and another**[16] had directed release of the Petitioner in that case for non-compliance of Section 50 of Cr.P.C.. In that case, it was observed that Section 47 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) was *pari materia* with Section 50 of Cr.P.C.. Shri Goud submitted that in the case of **Amit Lalge** the allegations were that the Petitioner therein by using his authority had wrongly approved and disbursed tax refund to sixteen taxpayers who were not eligible to get it. Shri Goud, therefore, submitted that even after Mihir Shah's judgment , the Division Bench had granted relief to the accused in a serious case involving huge amount of money, for non-compliance of Section 50 of Cr.P.C..

20. Learned Counsel Shri Ganesh Gole addressed another

16 Decided on 28.11.2024 in Criminal W.P. No.4487/2024 [Division Bench of this Court]

issue. He supported all these submissions and further added that if the accused is released on these grounds he can be re-arrested only if further material is found out, necessitating his arrest. And at that time, there has to be due compliance of the procedure.

21. Learned counsel Shri Gaware-Patil referred to Sections 50 and 50-A of Cr.P.C. and supported the submissions in favour of the accused.

22. Learned Senior Counsel Shri Amit Desai concluded the debate on behalf of the Petitioners by making his own submissions. He submitted that all these judgments passed by the Hon'ble Supreme Court deal with the facet of fundamental rights under Articles 21 & 22 of Constitution of India. Therefore, if there is a breach of these rights by the investigating authorities, the question of prejudice caused to the accused does not arise. All these violations in respect of the fundamental rights, must uniformly and without exception lead to release of the accused. The only concession in these cases is that compliance of Section 50 of Cr.P.C. by giving grounds of arrest in writing is made mandatory by Pankaj Bansal's case from the date of that judgment. He submitted that in

a given case the victim may claim prejudice caused by release of the accused but the victim's right is limited only for fair investigation. The victim cannot have any say in the arrest and custody of the accused in any case. It is purely the discretion of the investigating officer. He submitted that, in case the accused is released on these grounds; suitable conditions can be imposed on the accused so that the victims are sufficiently protected and the accused does not commit any crime in future. He submitted that after the accused is released for non-compliance of Section 50 of Cr.P.C. he cannot be re-arrested as it would be violation of Article 21 of the Constitution of India. That would open flood-gates for litigation in cases where the accused are already released for such non-compliance of Section 50 of Cr.P.C.. Learned Senior Counsel made submissions regarding provisions of Sections 41 & 41A of Cr.P.C.. According to him, for the offence punishable upto seven years the notice under Section 41A of Cr.P.C. is mandatory before arrest. He referred to the circulars issued by the High Court and Director General of Police, Maharashtra State. One of them was a notification dated 21.10.2023 issued by the Registrar General of this Court bearing

No.Rule/Misc – 01/2023. The notification dated 21.10.2023 reads thus :

"HIGH COURT OF JUDICATURE APPELLATE SIDE
AT BOMBAY

NOTIFICATION
No. Rule/Misc – 01/2023 Date : 21/10/2023.

In exercise of the powers conferred under Article 227 of the Constitution of India and all other enabling powers and in compliance of the directions issued by the Hon'ble Supreme Court of India vide order dated 31.07.2023 passed in *Criminal Appeal No. 2207 of 2023*, titled as *Md. Asfak Alam Vs. The State of Jharkhand & Anr. 2023 SCC Online SC 892*, the Hon'ble the Chief Justice is pleased to direct that :

1. The police shall not automatically arrest when a case under Section 498-A IPC is registered. The Police shall first satisfy themselves about the necessity for arrest under the parameters laid down in *Arnesh Kumar Vs. State of Bihar and Anr. [Criminal Appeal No. 1277 of 2012]* flowing from Section 41 CrPC;
2. All police officers shall be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding / producing the accused before the Magistrate for further detention;
4. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;
5. The decision not to arrest an accused, be forwarded

to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court of Bombay.
8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the Bombay High Court.
9. The directions as aforesaid shall not only apply to the case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, but also such cases where offence is punishable with imprisonment for a terms which may be less than seven years or which may extend to seven years, whether with or without fine.

However, in view of Supreme Court's Judgment dated 07th August 2023, in Criminal Appeal Nos. 2284-2285 of 2023 in the matter of V. Senthil Balaji Vs. The State Represented by Deputy Director and Ors., Section 41A of CrPC shall have no application to an arrest made under the Prevention of Money Laundering Act, 2002.

This Notification shall come into force with immediate effect.

Strict compliance of the above directions is ensured.

HIGH COURT OF JUDICATURE)
AT BOMBAY) Sd/-
) R. N. JOSHI
Dated 21st OCTOBER, 2023) REGISTRAR GENERAL"

23. The other circular is in the nature of Director General's Standing Order No.3/2022 dated 20.7.2022. There is a reference to certain judgments of the Hon'ble Supreme Court. These are the directions to the various police officers issued by the Director General of Police, Maharashtra State asking the police officers to follow those judgments. Shri Desai submitted that if there is violation of the fundamental rights; the question of prejudice to the accused does not arise and the mandatory provisions flowing from the Articles 21 and 22 of the Constitution of India will have to be strictly followed.

24. Mr. Binod Agarwal appears as a party in-person and submitted that the ratio of the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar**[17] and **Satendra Kumar Antil Vs. Central Bureau of Investigation and another**[18], is that the issuance of notice under Section 41-A of Cr.P.C. is necessary in all cases including where the punishment is only upto seven years.

17 (2014) 8 SCC 273
18 (2022) 10 SCC 51

SUBMISSIONS OF LEARNED ADVOCATE GENERAL :

25. The learned Advocate General submitted that Section 50 of Cr.P.C. flows from Article 22(1) which is discussed in the aforementioned Supreme Court cases. He submitted that the investigating agency has at least 24 hours with them to furnish the grounds of arrest in writing to the arrested accused, as is held in the case of **Ram Kishor Arora.** He submitted that if the remand report is given to the accused and his Advocate within 24 hours at the time of the first remand, it is the sufficient requirement of giving the grounds of arrest in writing to the accused under Section 50 of Cr.P.C.. He submitted that depending on the circumstances, if those circumstances show that the grounds were within the accused's knowledge, then, there was no necessity to give him grounds of arrest because no prejudice would be caused to him. The necessity to communicate the grounds of arrest is with a purpose that the accused should be aware as to why he is arrested but when he is already aware that he is arrested because of his acts and the circumstances in which he is arrested; then obviously it is not necessary to complete the formality of giving grounds of arrest

in writing. He submitted that, for example, an accused is caught in the act of committing an offence like murder, in that case it would be totally illogical to expect the investigating agency to write down the grounds of arrest and hand them over to him. The circumstances can be tested by the Court granting first remand as to whether it was necessary to give grounds of arrest in writing. He submitted that the proper Forum to raise this issue of release of the accused for non-compliance of Section 50 of Cr.P.C. would be that of the Magistrate's Court before whom the accused is produced on the first occasion for the first remand. It was for the accused to raise this ground at the first available opportunity and, therefore, he can not be left to raise this issue at his wish in any other forum at a later point of time. He cannot raise this issue even before the High Court or before any other Court in bail applications or similar applications if he had not raised this issue at the first instance before the learned Magistrate. He further submitted that in cases where the accused had preferred Anticipatory Bail Applications showing that they were contested and decided and after that if he is arrested then obviously he would know why he is being arrested.

In such cases, it would not be necessary to give grounds of arrest. He submitted that the concept of requirement to communicate the grounds of arrest is not new. It was first considered in the case of **Madhu Limaye and others**[19]

26. Learned Advocate General relied on the case of **Prashant Kumar Brahmabhatt Vs. State of Maharashtra**[20] decided by the same Division Bench deciding the case of **Mahesh Naik**. But, on this occasion the arrested accused was not directed to be released because the Petitioner in that case had preferred Anticipatory Bail Application under Section 438 of Cr.P.C. and, therefore, it was held that he was aware of the grounds of arrest when he had approached the Court for anticipatory bail. In that case, it was held that it was not necessary to give the grounds of arrest to the accused.

27. The learned Advocate General referred to the order passed in the case of **Danish Rafiq Fansophkar Vs. State of Maharashtra**[21]. In that case, the Petitioner was caught with the

19 AIR 1969 SUPREME COURT 1014
20 Decided on 24.10.2024 in Writ Petition (Stamp) No.18663/2024 (Division Bench of this Court]
21 Decided on 16.10.2024 in Criminal Writ Petition (Stamp) No.19471/2024 (Division Bench of this Court]

contraband. His search had led to seizure of the contraband. The station diary entry mentioned that the Petitioner was informed about the grounds of arrest. It was observed that in a peculiar case like that, where the Petitioner was conscious of the fact as to why his arrest was being effected, since his search led to seizure of contraband from him and even if the formal grounds of arrest were not communicated to him, the Court did not find any flaw in the action on the part of the investigating agency; and hence he was not released.

28. Learned Advocate General submitted that the law laid down in **Mihir Shah**'s case is correct and it should be followed in all other cases. He tried to reconcile the ratio in **Mihir Shah** with **Mahesh Naik**'s case and submitted that in a given case depending on the circumstances, the Court has discretion to deny such a relief even if there is alleged non-compliance of Section 50 of Cr.P.C..

29. He submitted that the purpose to furnish grounds of arrest is to enable the accused to effectively defend himself at the stage of remand itself. According to him, giving a copy of the

remand report would be sufficient compliance of the requirement of giving the grounds of arrest in writing. Section 50 does not speak about the particular form or format in which the grounds of arrest are required to be given. He invited our attention to the specific language of Articles 21 & 22 of the Constitution of India in comparison with Section 50 of Cr.P.C. as well as in comparison to the language of Section 19 of PMLA and Section 43-B of UAPA. He further submitted that for the purpose of applying the ratio and thereby holding that if the requirement to give grounds of arrest in writing are to be considered, then it has to be from the date of the judgment passed by the Hon'ble Supreme Court in **Prabir Purkayastha** which was decided on 15.5.2024, in any case the cut off date cannot be prior to the date of **Pankaj Bansal**'s judgment which was decided on 3.10.2023.

30. The other main submission made by the learned Advocate General was that even if the accused is released on some procedural lapses on the part of the investigating agency, there is no bar for re-arresting the accused. In fact in such cases, the accused will have to be re-arrested after complying with the

procedural requirements which were not complied with. He submitted that if such course of action is not taken, the accused may abscond by taking advantage of these technical lapses and the victim may suffer irreparably. The investigation will not progress, causing miscarriage of justice. In some cases the accused may even leave the country and may not be available again. In short, the entire society will be affected if the accused is given benefit of technical lapses on the part of the investigating agency; if they are not allowed to be corrected subsequently. He submitted that there is no statutory embargo in rearresting the accused who is released because of non-supply of grounds of arrest in writing.

31. The learned Advocate General referred to the judgment of a Division Bench of this Court in the case of **Kavita Manikikar Vs. Central Bureau of Investigation and another**[22] in which even after directing release of the Petitioner therein for non-compliance of Section 46(4) of Cr.P.C., the Division Bench further observed that the investigating agency was not precluded from arresting the Petitioner if the investigation so warranted after following due

22 Decided on 10.5.2018 in Writ Petition No.1142/2018 (Division Bench of this Court)

procedure of law.

32. Learned Advocate General advanced his separate arguments on Sections 41 & 41A of Cr.P.C.. He submitted that the judgments of the Hon'ble Supreme Court in **Arnesh Kumar** and **Satendra Kumar Antil** clearly lay down that the provisions of Sections 41 & 41A of Cr.P.C. will have to be followed. He submitted that Section 41 provides a check-list which the investigating officer has to prepare in writing before arresting a person who is accused to have committed an offence punishable upto seven years and there is a proviso to Section 41(1)(b)(ii) which mentions that a police officer in all cases where the arrest of a person is not required under the provisions of this sub-section, must record the reasons in writing for not making the arrest. Section 41A refers to the provisions of sub-section (1) of Section 41 of Cr.P.C. and mentions that in all cases where the arrest of a person is not required under Section 41(1), a notice is required to be issued. He submitted that therefore Section 41A covers the offences not only where the punishment is more than seven years but also the offences where the punishment is upto seven years and in such cases only when the

arrest is not necessary, the police officer is duty bound to issue a notice. But when a police officer wants to arrest a person who has allegedly committed the offence punishable upto seven years he has to prepare a check-list provided in Section 41(1)(b) of Cr.P.C. and that check-list will have to be considered by the Magistrate granting remand. Apart from that, there is no embargo for the investigating agency to arrest any person if in its opinion the arrest is necessary.

33. Learned Advocate General referred to the judgment of a Division Bench of this Court in the case of **Abhijit Arjun Padale Vs. State of Maharashtra and others**[23]. In that case the offence for which the Petitioner was arrested was under Sections 384 and 506 of IPC. The maximum punishment under section 384 of IPC was extending upto three years. A contention was raised that the notice under Section 41A of Cr.P.C. was not served on the Petitioner and, therefore, he was entitled to be released. In paragraph-8 of the said judgment, it was observed that the offence alleged against the Petitioner was not punishable with imprisonment of more than

23 Decided on 22.8.2024 in Writ Petition No.1197/2022 (Division Bench of this Court).

seven years and as such the notice under Section 41A of Cr.P.C. ought to have been served on the Petitioner. As it was not served, the Petitioner in that case was directed to be released on bail. Learned Advocate General submitted that for the offences punishable upto seven years also when the opinion of the Police Officer is that the arrest of the accused is necessary, service of notice under Section 41A is not necessary. The only requirement is to prepare a check-list under Section 41(b)(ii) before the arrest of the accused, and therefore, it is necessary that this position is clarified by an authoritative pronouncement.

34. Learned Advocate General also referred to the order of another Division Bench of this Court in the case of **Bhairaram Saraswat Vs. State of Maharashtra**[24]**.** In that case the Petitioner was accused of the offence punishable under Section 420 read with 34 of IPC, which is punishable upto seven years imprisonment. The contention was that the Petitioner was not served with the mandatory notice under Section 41A, according to the Petitioner. In that case, the Division Bench expressed doubt as to whether

24 Decided on 5.4.2024 in Criminal Writ Petition (St.) No.7551/2024 (Division Bench of this Court).

Section 41-A notice was served and the Petitioner was released on interim cash bail. The Petition was kept pending. He submitted that this order would also indicate that for the offence punishable upto seven years, the notice under Section 41A was necessary. According to learned Advocate General this interpretation is not correct based on bare reading of Sections 41 & 41A of Cr.P.C.. He submitted that the specific directions of the Hon'ble Supreme Court in the cases of **Arnesh Kumar** and **Satendra Kumar Antil** are very clear that the provisions of Sections 41 & 41A will have to be followed strictly and, therefore, reading something into these provisions would be against the directions issued by the Hon'ble Supreme Court in both these cases.

35. Learned counsel Mrs. Pai appeared for NCB in Criminal Writ Petition No5694/2024. She relied on the observations of a Single Judge Bench of the High Court of Karntaka in the case of **John Moses D @ Madan Kumar s/o John Devamani Vs. State of Karnataka[25].** She submitted that this judgment has laid down that the interpretation of the judgments of the Hon'ble Supreme Court

25 Decided on 28.11.2024 in Writ Petition No.22042/2024 [Single Bench of Karnataka High Court]

in the case of **Pankaj Bansal** and **Prabir Purkayastha** cannot be stretched to the offences under IPC or any other penal law. It was further held that if the arrest is under the PMLA or UAPA then the directions of the Hon'ble Supreme Court in those cases would become applicable. It was further observed that what was held by the Hon'ble Supreme Court in those judgments was considered qua the facts in the case at hand and those observations would not become applicable to the offences under Karnataka Control of Organised Crime Act, 2000 (KCOCA) or the IPC or any arrest under any penal law.

36. Learned counsel Ms. Nitee Punde appearing for the CG-ST Authorities in Criminal Writ Petition (Stamp) No.24115/2024 referred to Section 69 of the CGST Act, 2017. She invited our attention to Sections 69 and 132 of the said Act. In such cases the arrest is effected only after preliminary investigation and, therefore, the accused is aware about the offence and hence furnishing separate grounds of arrest, according to her, was not necessary.

REJOINDER BY THE PETITIONERS :

37. In rejoinder on behalf of the Petitioners, learned Senior Counsel Shri Amit Desai submitted that the remand report is submitted for the purpose of asking for remand from the Magistrate and satisfying the Magistrate for necessity of police custody or judicial custody remand. The grounds of arrest are different for these considerations. The grounds of arrest are required to be given separately. They cannot be equated with the remand report. The Cr.P.C. does not mention or define the 'remand application'. However, Cr.P.C. refers to the phrase 'grounds of arrest'. There is no uniformity about the format of remand report or necessity to give a copy of the remand report to the accused. Therefore, that would be left to the arbitrary exercise on the part of the investigating agency to perform their duty if grounds of arrest in writing are to be equated with the remand report. Some directions are required to be given to ensure compliance of the Statutory and Constitutional mandate. He submitted that floodgates opening for litigation on the ground of non-supply of grounds of arrest is no reason to deny benefit to the arrested accused who are not given grounds of arrest

in writing. He submitted that re-arrest of the accused after release on procedural lapses, violates Article 21 of the Constitution of India and, therefore, is not permissible. The State should not be given a second chance to perform their duty, if they fail to protect the fundamental rights of a citizen while effecting arrest. Breach of fundamental rights is more important than consideration of possible prejudice to the accused. The Courts are required to see the breach as alleged by the accused and not the prejudice which is likely to be caused to the accused.

REASONS AND CONCLUSIONS :

38. Before discussing the reasons of our conclusion, it is necessary to refer to certain provisions which are the subject matter of this entire discussion. The relevant provisions are thus :

- **Articles 21 & 22 of the Constitution of India:**

> **21. Protection of life and personal liberty. --** No person shall be deprived of his life or personal liberty except according to procedure established by law.
>
> **22. Protection against arrest and detention in certain cases.--** (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.

(3) Nothing in clauses (1) and (2) shall apply-

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provision of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe-

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention

without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”
****

- **Sections 41, 41-A, 50 & 50A of Cr.P.C.:**

41.When police may arrest without warrant

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:--

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary--

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(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; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing.

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

……...

41A. Notice of appearance before police officer

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

……...

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.

……...

50A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person. -- (1) Every police officer or other person making any arrest under this Code shall forthwith give the 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 or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An 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.

(4) It shall be the duty of the Magistrate before whom such 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.]

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- **Section 19 of PMLA Act :**

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 (that 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 alongwith 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.

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- **Section 43B of UAPA :**

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.

****

39. As submitted by the learned Advocate General, in a given case viz., apprehending the accused while he is in the act of committing serious offence like murder or soon thereafter; it would not be possible for the police officers to write down the grounds of

arrest and handing over them to the accused. It would be equally difficult to serve grounds of arrest when an absconding accused or a proclaimed offender is arrested from a place which is not easily accessible. The circumstances of arrest in such cases would be important. However, if Section 50 is to be held mandatory to mean that the grounds of arrest must be given in writing then such requirement must apply to all the cases, or the arrest made under all the circumstances without exception, irrespective of the gravity or seriousness of the crime. Section 50 does not qualify its applicability to the circumstances in which the arrest is effected or the gravity of the offence. The Cr.P.C. itself takes note of different degree of gravity of offences. Depending on that differentiation, the offences are made bailable or non-bailable, cognizable or non-cognizable and takes note of different punishments provided for different offences. For example, Section 41 differentiates between the offences which are punishable upto seven years and the other offences punishable with more than seven years. But such differentiation is conspicuously absent in Section 50 of Cr.P.C. It is not possible to read something more in Section 50 than the clear

expressions of that particular Section. Therefore, we are unable to agree with the submissions of learned Advocate General that the Court has discretion to see the circumstances in which the accused is arrested.

40. We are unable to agree with the submissions of the learned Advocate General that if the accused has applied for anticipatory bail and after due consideration of arguments of both the sides and the material produced, it is rejected; then if he is arrested, in that case the grounds of arrest are not required to be served on him as he is aware as to why he is arrested. That would carve out an unfair category of the accused who exercise their statutory remedy of applying for anticipatory bail under Section 438 of Cr.P.C.. They would be deprived of the compliance of requirement or necessity enjoined on the investigating officers to furnish the grounds of arrest. To that extent we do not agree with the view expressed by a Division Bench of this Court in the case of **Prashantkumar Brahmabhatt** wherein it was held that since at the stage of anticipatory bail application the material against the accused was considered then there was no necessity to furnish

grounds of arrest. In that case relief of anticipatory bail was sought. The grounds taken for that relief would reflect that the Applicant was aware of the accusations levelled against him and what were the grounds which necessitated his arrest. In that case, it was held that the Petitioner had knowledge about the grounds and, therefore, no prejudice was caused to him; and he was not directed to be released, though the grounds of arrest were not served on him.

In fact, this particular view expressed in **Prashantkumar Brahmabhatt** was in direct contrast to the discussion and reasons mentioned in **Mahesh Naik**'s case by the Division Bench. In **Mahesh Naik**'s case also the same argument was noted in Paragraph-7. The learned APP had submitted that since the accused therein had filed anticipatory bail application, he was expected to know the reasons for his arrest. Therefore, this issue of filing anticipatory bail application was specifically raised in that case, which did not find favour for deciding that Petition directing the Petitioner's release. Thus, there is already a conflict of opinion on that particular issue.

In our opinion, whether the accused had preferred

anticipatory bail application or not should not make a difference and it would be the duty of the investigating agency to communicate to the accused as to why he is arrested. Having said this, the core question remains as to what should be the mode of communication, whether the grounds of arrest have to be given in writing or it is sufficient compliance if the accused is orally communicated forthwith of full particulars of the offence for which he is arrested or other grounds for such arrest.

41. The bare reading of Section 50 does not lay down that this requirement of communicating forthwith has to be in writing. As discussed earlier, under some circumstances, it would not be possible to prepare the grounds of arrest in writing and serving them on the accused. The word 'forthwith' will also have to be construed accordingly.

42. The next issue would be the effect of the aforementioned Apex Court judgments on Section 50 of Cr.P.C. and as to whether the ratio of those Supreme Court judgments would mean that the accused should be given the grounds of arrest in writing as a requirement of Section 50 of Cr.P.C.. On this issue, we are inclined

to agree with the observations of the learned Single Judge of the Karnataka High Court in the case of **John Moses D** and, therefore, we are taking a different view from the view expressed in **Mahesh Naik** and other cases, referred to hereinabove, which require that the grounds of arrest have to be served on the accused in writing at the time of his arrest within the meaning of Section 50 of Cr.P.C..

43. Section 50A of Cr.P.C. also provides safeguards against the arbitrary arrest and keeping the accused in custody arbitrarily. It is the duty cast on the police officer making arrest to forthwith give information regarding such arrest and the place where he is held, to his friends, relatives or other persons as disclosed or nominated by the arrested person and it is the duty of the police officer to inform the arrested person of his rights under Section 50A of Cr.P.C.. The Police Officers are also required to make an entry to that effect in a book kept for that purpose at the police station. And it is the duty of the Magistrate to satisfy himself that all these requirements are complied with. In the entire scheme of Section 50A the wordings used is '<u>forthwith</u> <u>give the information</u>' (emphasis supplied). Section 50 and Section 50A will have to be read

together. There is no doubt that the accused must be told why he is being arrested and the particulars of the offence, but if he is clearly informed about it, then whether it is further required that such information must be provided in writing, is the question.

44. It is our firm opinion that it is important to communicate forthwith to the arrested accused as to why he is arrested. We are also of the opinion that a copy of the remand report, particularly at the time of obtaining first remand, must be given to the accused or his Advocate so that they can resist grant of remand on the very first occasion. It is necessary that some rules are framed or provision is made to ensure fair opportunity to the accused to resist his custody on the very first occasion when he is produced before the Magistrate.

45. The question would arise whether at the time of arrest the grounds of arrest must be given in writing or oral communication forthwith would be sufficient. We are inclined to refer this issue to a Larger Bench for consideration.

46. The Division Bench of this court in the case of **Mahesh**

Naik has referred to the Judgments of the Hon'ble Supreme Court. The first judgment which needs to be discussed is **Pankaj Bansal's** judgment. In Paragraph-16 of the said judgment, the Hon'ble Supreme Court observed that the only issue for consideration was whether the arrest of those Appellants under Section 19 of PMLA was valid and lawful and whether the impugned orders of remand passed by the Additional Sessions Judge, Panchkula were valid. It was further observed that in that context, mere passing of an order of remand would not be sufficient in itself to validate their arrest if such arrests were not in conformity with the requirements of Section 19 of PMLA. In this background, the Hon'ble Supreme Court considered various other cases, including a Three Judge Bench judgment of the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary Vs. Union of India**[26] and the judgment of the Hon'ble Supreme Court in the case of **V. Senthil Balaji Vs. State**[27]**.**

In Paragraph-35, the Hon'ble Supreme Court observed that no consistent and uniform practice seemed to be followed by ED in respect of furnishing grounds of arrest in writing to the

26 (2023) 12 SCC 1
27 (2024) 3 SCC 51

arrested person, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are either read out to them or allowed to be read by them. Paragraphs-38, 39 & 42 lay down the ratio of this judgment which read thus :

> "**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 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.

39. We may also note that the language of Section 19 PMLA puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the Act of 2002. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority Under Section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) PMLA. As already noted hereinbefore, it seems that the mode of informing this to the persons arrested is left to the option of the ED's

authorised officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

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xxxxxxx

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 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 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 Vs. State (2024) 3 SCC 51. 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)

> PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer."

In Paragraph-43, it is observed that conveying the information regarding grounds of arrest was not only to apprise the arrested person as to why he/she was 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.

. In Paragraph-45, it was observed thus :

> "**45.** 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. ……."

Thus, it can be seen that this judgment exclusively deals with the provisions of the PMLA Act in terms of arrest and necessity to furnish the grounds of arrest in writing. Reference is also made to Section 45 of the PMLA Act where the twin conditions for grant of bail as referred to in Paragraph-38 are required to be considered.

47. After **Pankaj Bansal**'s case, the Hon'ble Supreme Court considered the words and phrases 'as soon as may be' in the case of **Ram Kishor Arora.** In Paragraph-22, the Hon'ble Supreme Court observed thus :

> "……...Therefore, in our opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e. as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 of PMLA but also of Article 22(1) of the Constitution of India."

The Hon'ble Supreme Court, in this case, also observed that **Pankaj Bansal's** judgment itself mentions that those directions would apply prospectively and from the date of **Pankaj Bansal's** case. A specific reference was made to Section 19 of PMLA.

48. Another important judgment in this context is in the case of **Prabir Purkayastha.** The brief facts of this case are that in connection with FIR No.224/2023 dated 17.8.2023 registered at PS Special Cell, Lodhi Colony, New Delhi, the residential and official

premises of the Appellant in that case, and one company were raided. The offences applied were punishable under Sections 13, 16, 17, 18, 22-C of the Unlawful Activities (Prevention) Act, 1967 (for short, 'UAPA') read with Sections 153-A, 120-B of IPC. The Appellant therein was arrested in connection with that FIR on 3.10.2023. He was produced in the Court of Additional Sessions Judge-02, Patiala House Courts, New Delhi on 4.10.2023 sometime before 6.00 a.m.. It was argued on behalf of the Appellant that the grounds of arrest were conveyed to the Advocate for the Appellant well after 7.00 a.m.. The Hon'ble Supreme Court while deciding this case extensively referred to the ratio of **Pankaj Bansal's** case. Section 19 of PMLA and Sections 43A, 43B & 43C of UAPA were quoted and considered. In Paragraph-16, it was observed that there was no significant difference in the language employed in Section 19(1) of PMLA & Section 43B(1) of the UAPA. It was observed that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of UAPA were verbatim as that in Section 19(1) of the PMLA. It was observed that both the provisions find their source in Article 22(1) of the Constitution of India. It was further observed that 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. Paragraphs-18 & 19 of the said judgment, in this context, are important which read thus :

> **"18.** We may note that the modified application of Section 167 Code of Criminal Procedure 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* 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."

In Paragraph-21, it was further observed that mere filing of the charge-sheet 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.

In Paragraph-29, it was further observed 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 cannot be breached under any situation and non-compliance of this constitutional requirement would lead to custody being rendered illegal. It was further observed that the copy of the FIR was provided to the learned Advocate for the Applicant for the first time on 5.10.2023 and till the time of being deprived of liberty, no communication had been made to the Appellant therein regarding the grounds on which he was arrested.

In Paragraph-37, it was explained that the reasons for arrest were formal in nature; whereas the grounds of arrest would be personal in nature and specific to the person arrested.

. In Paragraph-49 it was observed thus :

> **"49**. 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 Appellant - 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."

Thus, it can be seen that the Hon'ble Supreme Court had specifically considered the provisions of arrest under Sections 43A, 43B and 43C of the UAPA in comparison with the similar provisions under PMLA; and in Paragraph-49 it was also observed that copy of the remand application was not provided to the arrested Appellant in that case before passing of the remand order. The Hon'ble Supreme Court specifically considered the provisions of arrest under PMLA and UAPA. The discussion was in respect of procedure

of arrest under UAPA. The investigating agency was exercising the power under UAPA. Therefore, the procedure to effect arrest under UAPA was required to be followed notwithstanding the fact that even offences under IPC formed part of that case. The special power and procedure under UAPA was considered. In the cases involving offences only under IPC, the power and procedure for arrest under Cr.P.C. will have to be seen. Even under Section 5 of Cr.P.C.. when a special statute operates for a particular procedure then the procedure under that Special Statute will have to operate. Hence to effect arrest involving the offences under UAPA, the procedure for arrest under UAPA would apply notwithstanding the fact that some of the IPC Sections are also applied. In that context, the observations of **Prabir Purkayastha's** case will have to be seen. Hence even if some provisions of IPC are applied since the procedure for arrest is exercised under UAPA in that case, that procedure will prevail over Cr.P.C.. But if the offence is only under IPC, then the procedure under Cr.P.C. is applicable.

49. In **Mahesh Naik's** case the Division Bench of this Court relied on the judgment in **Prabir Purkayastha** to observe that even

for the offences only under IPC, the requirement of giving grounds of arrest in writing had to be followed. In this context, it would be advantageous to refer to the judgment of a Single Judge Bench of the High Court of Karnataka in the case of **John Moses D..** In this case the notice under Section 41A of Cr.P.C. was issued to the Petitioner. When he appeared before the investigating officer he was arrested. The contention was raised on his behalf that the notice of arrest would not suffice and what should be made known to the Petitioner was the grounds of arrest.

The High Court of Karnataka considered the judgments of **Pankaj Bansal**, **Prabir Purkayastha** and also the judgment in the case of **Arvind Kejriwal Vs. Central Bureau of Investigation**[28]. The learned Judge had considered this issue in the context of offences under the Indian Penal Code and the Karnataka Control of Organized Crimes Act, 2000 (KCOCA). In Paragraph-11 of this case, it was observed that in all those cases the Apex Court was considering the purport and importance of the UAPA and PMLA. In Paragraph-13 onwards, the Karnataka High Court considered as to whether interpretation

28 Decided on 12.7.2024 in Criminal Appeal No.2493/2024 [Hon'ble Supreme Court]

of the Apex Court should be stretched to the offences under the IPC or any other Penal Law for that matter. After that Section 50 of Cr.P.C. was quoted and various other judgments were considered. The important observations are made in Paragraphs-15 & 16, which read thus :

> "**15.** The Police Stations, in the country are close to 20,000, arrests happen day in and day out. If grounds of arrest is to be informed, as is held by the Apex Court in ***PANKAJ BANSAL, PRABIR PURKAYASTHA*** **and** ***ARVIND KEJRIWAL*** in every arrest on any cognizable offence, it would undoubtedly open a Pandora's box, of interpretation of what could be the grounds of arrest, and mushroom huge litigation before the constitutional Courts.
>
> **16.** The Apex Court holds it mandatory in the aforesaid three cases, owing to the fact that enlargement of an accused for the offences under the UAPA and PMLA on grant of bail, is extremely limited. The burden to prove that he is not guilty begins at the threshold. It is in fact a reverse burden on the accused. It is, therefore, in such cases the grounds of arrest should be informed to the accused. In the case, before the Apex Court, the arrest memo did not contain any grounds of arrest and it was blatant violation of the statute and the Constitution. Therefore, interpretation that has stood the test of time, *qua* Section 50 of the

> Cr.P.C., of information of grounds of arrest to the accused is what is required to be followed even in the case at hand as the offences are under the IPC and KCOCA, both of them would not mandate divergence of grounds of arrest except as found in Section 50 of Cr.P.C. What is informed to the petitioner in the case at hand is information of arrest. Cr.P.C. mandates that the accused should be informed of the grounds of arrest. In my considered view, the information of grounds of arrest as is indicated to the petitioner in the case at hand, would suffice and it would not vitiate the arrest and result in enlargement on grant of bail or interim bail."

The learned Judge referred to the judgment of the Hon'ble Supreme Court in the case of **Haryana Financial Corporation Vs. Jagdamba Oil Mills**[29] wherein it was observed that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Finally, the learned Judge held that what would

29 (2002) 3 SCC 496

unmistakably emerge is what was ingrained in the Cr.P.C., qua Section 50 should necessarily be followed and the information of grounds of arrest in the manner in which the Apex Court has held in **Pankaj Bansal, Prabir Purkayastha** or even **Arvind Kejriwal** would not become applicable to the offence under the KCOCA or the IPC or any arrest under any penal law except in cases of prevention of detention. It was also made clear that Section 50 of Cr.P.C. must necessarily be followed and information or grounds of arrest must necessarily be indicated to every accused who is to be arrested under the general law. If the arrest was under the PMLA or UAPA then what was laid down by the Hon'ble Supreme Court in those cases would straight away become applicable and non-divulgence would vitiate the arrest.

50. In the subsequent judgment of **Arvind Kejriwal** the Hon'ble Supreme Court referred to the judgment in the case of **Vijay Madanlal Choudhary.** In Paragraph-23 it was observed that the PMLA, a special legislation for the offence of money laundering creates a unique mechanism for inquiry/investigation into the offence. An analogy cannot be drawn with the provisions of Cr.P.C.

In Paragraph-40, the Hon'ble Supreme Court has observed that arrest under Section 41 of Cr.P.C. can be made on the grounds mentioned in clauses (a) to (i) of Section 41(1) of Cr.P.C.. The grounds mentioned in Section 41 are different from the juridical preconditions for exercise of power of arrest under Section 19(1) of the PMLA. Section 19(1) conditions are more rigid and restrictive. As such the two provisions cannot be equated. The legislature has deliberately avoided reference to the grounds mentioned in Section 41 and considered it appropriate to impose strict and stringent conditions that act as a safeguard.

It was further observed in Paragraph-41 that the power to arrest under Section 19(1) was not for the purpose of investigation. Arrest can and should wait, and the power in terms of Section 19(1) of the PMLA can be exercised only when the material with the designated officer enables them to form an opinion, by recording reasons in writing that the arrestee is guilty.

In Paragraph-42, it was further elaborated that Section 439 of Cr.P.C. does not impose statutory restrictions, except under Section 437(3) when applicable, on the court's power to grant bail.

However, Section 45 of the PMLA prescribes specific fetters in addition to the stipulations under the Code.

Thus, the observations of the Hon'ble Supreme Court clearly show that there is a difference between the provisions under Cr.P.C. and under the PMLA regarding the procedure for arresting a person. It was observed that the provisions from PMLA and Cr.P.C. cannot be equated. Thus, in effect there are sufficient indications that the observations in **Pankaj Bansal**'s, case which are in relation to PMLA, would not be applicable to the provisions of the Cr.P.C.. **Prabir Purkayastha**'s case relied on the observations in **Pankaj Bansal** and on the similarities between the PMLA and UAPA to apply the ratio in **Pankaj Bansal** to the procedure to arrest under UAPA.

51. The Division Bench of this Court in **Mahesh Naik**'s case has referred to the observations in Paragraph-19 of **Prabir Purkayastha**'s case to apply them to the offences under IPC. However, as discussed earlier, there is a difference in the procedure to arrest under UAPA and under Cr.P.C..

52. The same Division Bench of this Court in the case of **Mihir**

Shah however carved out an exception and even though the grounds of arrest were not furnished to the arrested accused in that case in writing it was not held that the arrest was illegal. There is, thus, direct conflict in the observations of the same Division Bench in the case of **Mahesh Naik** and **Mihir Shah.** In the case of **Mihir Shah** one of the accused was caught with the car which had the struck a motorcycle at a high speed. According to the prosecution case, the car was driven by Mihir Shah but he left the car after some time and absconded. He was subsequently arrested. In that case it was held that the accused Mihir Shah was aware as to why he was being arrested and, therefore, the grounds of arrest not having been furnished in writing was not held to be a ground for declaring his arrest as illegal. In that case it was observed that while focusing on the rights of the accused, the Courts cannot lose sight of the victim. It was further observed that, for too long, the victims of crimes have been the forgotten persons in a criminal justice system. Crime is not a problem of the victim, since the victim did not create it. For considerable time, what the system offered to the victim was only sympathy, but with the introduction

of discipline of 'victimology' the concept has gained momentum and found its place in the existing Cr.P.C.. We fully agree with the sentiments expressed and observations made by the Division Bench in the case of **Mihir Shah.** These observations are in direct contrast/conflict with the ratio expressed by the Division Bench in the case of **Mahesh Naik** and, therefore, there is a necessity to refer the issue to a Larger Bench. In our opinion, Section 50 of Cr.P.C. has to operate uniformly in all cases because it does not leave scope for discretion to the Court to consider the circumstances in which the accused is arrested or the gravity of the offence.

53. In this context, it would be advantageous to reproduce the observations of the Hon'ble Supreme Court in respect of rights of the victims vis-a-vis Article 21 of the Constitution of India.

54. It is well settled that Article 21 offers protection not only to the person who is being arrested but also to the victim to live the life of dignity.

55. Therefore, in the heinous cases like those involving the offence of rape or heinous sexual assault under POCSO and even

families of the victims of murder deserve protection under Article 21 of the Constitution of India.

56. The Hon'ble Supreme Court has held that right to life contained in Article 21 is also available to the victims. The Hon'ble Supreme Court in the case of **Bodhisattwa Gautam Vs. Subhra Chakraborty (Ms)**[30] has observed in the context of the offence of rape as follows :

> "….. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21"

57. The accused has certain rights, as discussed earlier. Similarly the victims also have their own rights. In cases involving heinous crimes like rape, murder, those under POCSO, MCOCA, NDPS, the victims and even the society are the sufferer. The victims do not have any control over the investigation and the investigating officers' efficiency or inefficiency. Therefore, if an accused is released on the ground of non-furnishing of the grounds of arrest in writing if required under Section 50 of Cr.P.C. that would cause

30 (1996) 1 SCC 490

serious prejudice to the victims. Such lapse can be attributed to various factors viz. inefficiency, lack of awareness etc.. In that case, the consequences would be causing serious prejudice to the victims. In a given case, the investigating agency may have material in their possession that propensity of the accused indicated that he is likely to commit a similar offence, and that would be a serious threat to the security and safety of the potential victims in the offences like rape, under POCSO etc.. If an accused is released on that ground then there could be serious threat to the witnesses also. Therefore, there is need to strike a balance between the rights of the victims and the rights of the accused. There is also a possibility of destruction of evidence, threatening of witnesses etc.. Merely imposing conditions in these cases may not suffice. On the other hand, when the bail applications are considered, then looking at the background of the case, the Court would exercise jurisdiction in bail matters taking into account all the factors including merits of the matter; which in the cases of violation of alleged rights of the accused under Section 50 of Cr.P.C. would not be possible for the Court to exercise.

58. In this context, we have seriously considered the arguments advanced by learned Advocate General about re-arrest of the accused who is released with or without bail bonds on the ground of alleged non-compliance of the provisions of Section 50 of Cr.P.C. for not giving the grounds of arrest in writing. In this context, Shri Bhuta could not point out any embargo or bar upon such re-arrest. Shri Amit Desai, however, submitted that once the accused is released on that ground, re-arrest would violate the protection of the accused under Article 21 of the Constitution of India. The State should not be given a second chance. In this connection, we are inclined to agree with the learned Advocate General that there is no bar in re-arresting the persons who are released for non-furnishing the grounds of arrest in writing. What the accused are claiming in this situation, is that, they were arrested in violation to the provisions of Cr.P.C. and it infringes their constitutional right under Article 21 but if they are released on that ground and thereafter if the grounds of arrest are supplied to them, they cannot have any grievance. The purpose behind these provisions is to make the accused aware as to why he was arrested

and thereafter enable him to defend himself. Leaving aside the issue whether such ground should be communicated orally or should be given in writing for the time being; if on the ground of non-communication they are released and if thereafter the grounds are furnished as per the requirement; then the accused cannot have any grievance, that they were not aware as to why they were arrested. From that point onward, the procedure for remand can be followed and the shortcoming of non-compliance of the provision is wiped out. In that context, reference can be made to the case of **Kavita Manikikar.** In that case, the Petitioner before the Court was a lady. She was released because she was arrested after sun-set for breach of Section 46(4) of Cr.P.C. Having held her arrest illegal, the Division Bench of this Court went on to observe that considering the seriousness of the allegations, she could be re-arrested after following due procedure of law. The same course can be adopted in the cases where the investigating agency wants to re-arrest the accused if they are released for non-compliance of Section 50 of Cr.P.C..

59. As discussed earlier, the cases of **Pankaj Bansal, Ram**

Kishor Arora and Prabir Purkayastha deal with the provisions of PMLA and UAPA specifically as mentioned earlier. As against that the Hon'ble Supreme Court in the case of **Arnesh Kumar** and **Satendra Kumar Antil** extensively dealt with the issue and procedure of arrest of persons under Cr.P.C. and the safeguards provided under Cr.P.C..

60. As we have discussed earlier, the Hon'ble Supreme Court had considered the provisions of PMLA and UAPA in the aforementioned judgments of **Pankaj Bansal, Prabir Purkayastha**, **Ram Kishor Arora** and **Arvind Kejariwal**. The question of necessity to arrest and power to arrest and the safeguards while effecting that arrest specifically fell for consideration before the Hon'ble Supreme Court in the case of **Arnesh Kumar.** In that case, Paragraphs-5 & 6 of the said judgment, are very important, which are as follows :

> **"5**. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and

surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made

> against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest."

Thus, the Hon'ble Supreme Court was considering the comprehensive measures as far as the arrest under Cr.P.C. was concerned. The safeguards were considered and there was a reference made to Sections 41 and 41A of Cr.P.C.. In this entire judgment, there is no reference made or requirement noted that the grounds of arrest were required to be furnished in writing to the accused at the time of his arrest.

61. The Hon'ble Supreme Court followed **Arnesh Kumar's** judgment in the case of **Satendra Kumar Antil.** In addition, various other provisions under Cr.P.C. were considered viz., Section 167 read with 57 and 60-A of Cr.P.C. and all the provisions for bail. Certain directions were issued. Even in this judgment there was no requirement laid down that the grounds of arrest had to be furnished in writing to the accused at the time of his arrest. These two judgments are directly on the subject of arrest of persons under Cr.P.C..

REQUIREMENT OF ISSUANCE OF NOTICE UNDER SECTION 41A Cr.P.C.:

62. The next question which requires consideration is regarding necessity to issue a notice under Section 41A of Cr.P.C. before effecting arrest. The arguments are advanced that the notice under Section 41A is necessary before effecting arrest in all cases and definitely for the cases involving offences punishable upto seven years under Section 41A of Cr.P.C..

63. As mentioned earlier, the Division Bench in the case of **Abhijit Arjun Padale** has taken a view in the case involving offence under Section 384 and 506 of IPC, where the punishment is less

than seven years it was necessary to issue a notice under Section 41A of Cr.P.C. and arrest effected without issuance of such notice was held to be illegal. A reference was made to the judgment of **Arnesh Kumar** by the Division Bench while deciding case of **Abhijit Padale.** In this context, it is necessary to reproduce Paragraphs-11 and 12 of **Arnesh Kumar,** which read as under :

> **"11**. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:
>
> **11.1.** All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;
>
> **11.2**. All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)*(b)(ii)*;
>
> **11.3.** The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases Under Section 498-A

> IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."

64. **Arnesh Kumar**'s judgment was followed in **Satendra Kumar Antil**'s case. Paragraphs-11 and 12 from the judgment of **Arnesh Kumar** were specifically quoted in **Satendra Kumar Antil's** case. Paragraph-11 of **Arnesh Kumar** judgment lays down the guidelines and requirements which are to be followed by the police officers and the Magistrates. There is a reference to Section 41(1)(b)(ii) and the check-list provided under that provision. Paragraph-11.6 mentions that notice of appearance in terms of Section 41A be served on the accused within two weeks from the date of institution of the case. The question is whether the notice is required to be issued under Section 41-A where the police officers want to arrest the accused. There is a check list provided under Section 41(1)(b)(ii) of Cr.P.C. when the police officer has reason to believe on the basis of the complaint, information or suspicion that the person has committed the offence. Section 41(1)(b) refers to the offences

where the punishment may extend upto seven years with or without fine. Section 41(1)(b)(i) requires that the police officer has to have reason to believe that such person has committed an offence and then he has to prepare the check-list mentioned in Section 41(1)(b)(ii) of Cr.p.C. as to the reasons in writing for making such arrest. The check-list includes necessity to prevent such person from committing any further offence, for proper investigation, for preventing destruction of evidence, for preventing the accused to make any inducement to the witnesses and to ensure his presence in the Court. There is an important proviso under Section 41(1)(b)(ii), which reads thus :

> "Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing, for not making the arrest."

This would mean that even when the police officer is of the opinion that the arrest of a person is not required he has to record the reasons in writing for not making the arrest. After this proviso, Section 41(1)(ba) upto 41(1)(i) lay down the different

categories where such check list is not mentioned. In other words for the offences punishable for more than seven years and other circumstances where the offender is a proclaimed offender etc., preparation of check list is not necessary. Thus, Section 41(1) differentiates between the offence punishable upto seven years and the offences which are punishable for more than seven years. As a safeguard, wherever the arrest is necessary for the offences punishable upto 7 years, the police officer has to prepare a check list in writing as to why the arrest is necessary.

Section 41A on the other hand refers to all cases. It does not make any distinction between the offences punishable upto seven years or the offences punishable for more than seven years. Sub-section 1 of Section 41A starts with the following words :

> "The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice ……." [Emphasis supplied].

The Section is very clear and it applies where the arrest of a person is 'not' required. Only in those cases the notice under

Section 41A is required to be issued to a person against whom a reasonable complaint is made or credible information is received or a reasonable suspicion exists that he has committed a cognizable offence; then the police officer has to issue a notice calling upon such a person to appear before such police officer. Therefore, this requirement of issuance of notice is applicable where a reasonable suspicion exists or credible information is available against such person and yet the police officer does not want to arrest him then it is the duty of the police officer to issue a notice to him. This provisions serves two purposes, first it prevents unnecessary arrests and secondly it aids in proper investigation. Therefore, this provision cannot be stretched to mean that in all cases including the offences punishable upto seven years, the notice has to be issued if the police officers want to arrest a person. Hence it cannot be said that serving of notice is a precondition of arrest of an accused even if the police officer is of the opinion that the arrest is required. On the contrary, such interpretation would defeat the clear language of Section 41A of Cr.P.C.. The safeguard is preparation of checklist if the offence is punishable upto seven

years.

65. In fact, the Hon'ble Supreme Court in the judgments of **Arnesh Kumar** and **Santendra Kumar Antil** have repeatedly held that the provisions of Sections 41 & 41A are required to be complied when the police officer wants to arrest a person. That also means even for offences which are punishable for more than seven years, the police officers do not have to arrest the accused when his arrest is not necessary. In that case, the police officer has to issue a notice to such person under Section 41A of Cr.P.C. asking him to appear before him. Sub-section (3) of Section 41A further provides that if such person complies with the notice then he shall not be arrested unless the reasons to be recorded that the police officer is of the opinion that he ought to be arrested. Again in this situation the police officer is given an option to arrest such person but he has to record his reasons for such an arrest.

Therefore in our opinion it is not the requirement of law where the police officers want to arrest a person, they have to give notice under Section 41A of Cr.P.C. to the accused. In fact when the arrest of a person is not required, only then the notice is required to

be issued. If it is to be held that in all cases before arrest and in particular in the cases involving offences upto seven years, the notice is required to be issued under Section 41A of Cr.P.C. then it could be argued that once notice is issued it would mean that the police officers did not want to arrest the accused which would run contrary to the express provision of Section 41A of Cr.P.C..

The accused person on receiving such a notice, can easily destroy the evidence, abscond or leave the country. It defeats the purpose of effective investigation. This may affect the cases where the offences are upto seven years of punishment viz. the offences under Section 420 of IPC or under Section 406 of IPC involving cheating or misappropriation of huge amounts wherein many persons are cheated. This may affect the investor's rights under the MPID Act. If the accused is given sufficient time before arrest, he can destroy the evidence or dispose of the property. In case of even serious offences like MCOCA he is likely to threaten the witnesses and in the cases of NDPS, the main offenders may get a hint. The investigation in all such cases will be seriously affected. These are the illustrative examples and certainly are not exhaustive list of

offences where the investigation will be seriously hampered. Therefore, we record our difference of opinion in respect of the ratio of the judgment of a Division Bench of this Court in the case of **Abhijit Padale.**

66. Based on the above discussion, in our opinion the proper course for us is to refer these important questions for consideration to a Larger Bench. The questions are formulated as follows :

(1) Whether the ratio of the decisions in **Pankaj Bansal Vs. Union of India 2023 SCC OnLine SC 1244, Ram Kishor Arora Vs. Enforcement Directorate 2023 SCC OnLine 1682, Prabir Purkayastha Vs. State (NCT of Delhi) 2024 SCC OnLine 934,** are applicable to Section 50 of the Code of Criminal Procedure, 1973 and involving the offences under the other statutes than Prevention of Money Laundering Act, 2002 & Unlawful Activities (Prevention) Act, 1967 ?

(2) Whether Section 50 of the Code of Criminal Procedure, 1973 mandates the furnishing of the grounds of arrest in writing to the accused ?

(3) If it is held that the communication of grounds of arrest in writing is necessary under Section 50 of the Code of Criminal Procedure Code, 1973, then

[i] Whether it has to be furnished at the time of arrest or any time before consideration of the first remand application ?

[ii] Whether the Court has discretion to consider such necessity depending on the gravity of the offence or circumstances in which the accused is arrested ?

[iii] Whether, in the given cases, the Court can consider the prejudice caused to the accused for not furnishing the grounds of arrest in writing ?

[iv] Before which forum the arrested person can raise his grievance for his release on this ground ? Whether it can be Magistrate's Court granting remand, Sessions Court, Single Judge of this Court exercising jurisdiction in bail matters or before the Division Bench exercising powers under Article 226 of the Constitution of India ?

[v] For implementation of this mandate, what should be the cut off date ? Whether it should be from the date of the decision in **Pankaj Bansal Vs. Union of India**

2023 SCC OnLine SC 1244 or from the date of decision in **Prabir Purkayastha Vs. State (NCT of Delhi) 2024 SCC OnLine 934** or from the date of decision in **Mahesh Pandurang Naik Vs. State of Maharashtra and another** decided on 18.7.2024 in Criminal Writ Petition [Stamp] No.13835/2024.

(4) If it is held that oral communication under Section 50 of the Cr.P.C. is sufficient, then whether it can be communicated within 24 hours of the arrest or at the time of first Remand or it has to be at the time of arrest.

(5) If a person is released for non-compliance of Section 50 of the Code of Criminal Procedure, 1973, can he be arrested again after following due procedure after his release ?

(6) Whether the notice under Section 41A of the Code of Criminal Procedure, 1973, is required to be given before arrest in all cases and in particular in the cases where the offence is punishable upto seven years, when the arrest of an accused is necessary ?

67. Apart from these questions formulated for consideration of a Larger Bench, we are of the opinion that some clear and definite guidelines are required to be issued to the Courts of Magistrates and to the investigating agencies to follow the procedure of giving a remand report sufficiently in advance to the arrested accused before his first remand application is considered by the appropriate Court.

68. The Registry is directed to place this order before the Hon'ble The Chief Justice for consideration for placing it before a Larger Bench consisting of three or more Judges. The Registry shall take such steps at the earliest considering that the issue raised in these Petitions is in respect of alleged illegal detention of large number of arrested accused.

(S.M. MODAK, J.) **(SARANG V. KOTWAL, J.)**

Deshmane (PS)