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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 15.07.2025*

\+ **W.P.(CRL) 2045/2025 & CRL.M.A. 19062/2025**

ANWAR KHAN @ CHACHA & ORS. .....Petitioners

Through: Mr. Anurag Jain and Mr. MM Khan, Advocates for Petitioner no. 1.

Mr. Amit Chadha, Sr. Advocatewith Mr. MM Khan, Mr. Atin Chadha, Ms. Munisha Chadha, Mr. Sanjog Singh, Mr. Harjas Singh and Mr. Saarthak Sethi, Advocates for Petitioner no. 2

Mr. Sulaiman Mohd. Khan, Advocate along with Ms. Taiba Khan, Mr. MM Khan, Mr. Bhanu Malhotra, Mr. Gopeshwar Singh Chander, Mr. Abdul Bari Khan, Mr. Uvesh Khan, Ms. Aditi Chaudhary and Mr. Aditya Chaudhary, Advocates for Petitioner nos. 3 and 4.

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr. Sanjeev Bhandari, ASC (Crl) for State along with Mr. Akhand Pratap Singh, SPP with Mr. Sushant Bali, Mr. Arijit Sharma, Ms. Sakshi Jha, Ms. Samridhi Dobbal, Mr. Krishna Mohan Chander and Mr. Hritik Maurya, Advocates.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

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DR. SWARANA KANTA SHARMA, J

1. The petitioners, by way of this writ petition, seek a declaration that their arrest dated 10.06.2025 – in relation to FIR No. 629/2024, dated 07.12.2024, registered at Police Station Farsh Bazar, Delhi and currently being investigated by the Special Cell – was unlawful and unconstitutional; a direction for their immediate release from custody in the said FIR; and a declaration that the judicial remand orders dated 11.06.2025 and 16.06.2025, passed by the learned Vacation Judges, Patiala House Courts, as well as all subsequent proceedings, are null and void in law. The petitioners also challenge and pray for the setting aside of the order dated 04.07.2025 passed by the learned

ASJ-03/Special Judge, Patiala House Courts, New Delhi, which upheld the legality of their re-arrest.

2. The central issue that falls for consideration is whether the re-arrest of the petitioners – after their earlier arrest in the same FIR was held to be *non-est* in the eyes of law by the learned ASJ on the ground of non-supply of grounds of arrest – can now be sustained in view of fresh material and compliance with procedural safeguards.

FACTUAL BACKDROP

The Murder on 07.12.2024

3. The present case unfolds an incident that took place on 07.12.2024, which set in motion the events culminating in the present petition. On that morning, at around 08:25 AM, one Sumit Kumar Nahata was returning home on his Scooty along with his friend, Sunil Jain, after their routine walk at Yamuna Sports Complex. As they halted at the red light near Vishwas Nagar, two unidentified individuals on a blue-coloured TVS Apache motorcycle allegedly drove up beside them and, without warning, opened fire, discharging about 5 to 6 rounds at Sunil Jain. The assailants immediately fled the scene. Sunil Jain was rushed to Max Hospital, Patparganj, where he was declared brought dead. Based on the statement of Sumit Kumar Nahata, the present FIR i.e. FIR No. 629/2024 was registered at Police Station Farsh Bazar, Delhi for offences punishable under Sections 103/3(5) of the Bharatiya Nyaya Sanhita, 2023 [hereafter '*BNS*'] read with Sections 25/27 of the Arms Act, 1959. The

investigation was thereafter entrusted to the Special Cell (NDR), marking the beginning of a case that has since taken several complex and controversial turns.

4. As the investigation progressed, scrutiny of CCTV footage and witness statements led to the identification of the alleged shooters as Naveen Kasana and Mukesh Kumar @ Sachin @ Golu. Both individuals were found to have a long and serious criminal history, i.e., Naveen Kumar with nearly 15 prior cases and Mukesh @ Golu being involved in around 16 criminal cases pertaining to dacoity, robbery, attempted murder, abduction, etc. In light of the gravity and complexity of the case, the investigation was formally transferred to the Counter Intelligence Cell of the Special Cell, Delhi Police, by order dated 31.12.2024. Section 61(2) of the BNS was also added in this case.

5. However, what began as a targeted shooting soon appeared to be part of a larger web of gang rivalry and vengeance. As revealed during investigation, the murder of Sunil Jain was allegedly a case of mistaken identity. It was discovered that a few weeks prior, on the day of Deepawali in 2024, two individuals, i.e., Akash Sharma @ Chotu and Rishabh were allegedly killed by one Sonu @ Matka and a CCL. Akash and Rishabh were close kin of Yogesh Sharma @ Yogi, a figure allegedly involved in illegal gambling operations in North-East Delhi along with Nitin Jain @ Susu. Both Yogesh and Nitin were reportedly backed by the Hasim @ Baba gang. Seeking revenge for the murders of his brother and son, Yogesh Sharma, along with

Nitin Jain and the said gang, had allegedly conspired to eliminate the assailants. With the CCL in protective custody and Sonu @ Matka untraceable, the alleged shooters instead targeted Virat Sharma, the father of CCL. However, due to a confusion arising from the striking similarity in make, model, and colour of scooters, Sunil Jain, an innocent man, was tragically gunned down in place of the intended target.

6. The investigation took another turn with the interceptions of certain mobile communications between January-February 2025. These intercepted calls revealed that someone was not only assisting the absconding accused Mukesh @ Golu in evading arrest, but was also actively engaged in discussions about orchestrating future criminal acts. One of the voices in the intercepted calls was confirmed to be that of Mukesh @ Golu. To uncover the identity of the second caller, the recharge history of the associated mobile number was traced, which led them to a retail shop in Delhi. CCTV footage from the shop showed a man, later identified as Shahnawaz Khan of Dilshad Garden, purchasing the recharge. Upon examination, Shahnawaz disclosed that he had done so at the direction of one Sub-Inspector Sukhbir of Delhi Police. He further identified the voices in the intercepted calls as belonging to Sukhbir and Mukesh @ Golu. It was then revealed during the course of investigation that Sub-Inspector Sukhbir, had allegedly introduced the two shooters, Mukesh @ Golu and Naveen Kasana, to each other prior to the commission of the murder. Eventually, on 15.02.2025,

Sukhbir was apprehended while travelling in his vehicle, and following interrogation and evaluation of the evidence collected, he was formally arrested the next day.

The Invocation of MCOCA

7. As the investigation deepened, it was revealed that the shooting incident, and related events under investigation, were not isolated acts of violence but formed part of a larger chain of criminal activities orchestrated by a syndicate allegedly led by Anwar Khan @ Chacha and Sabir Chaudhary. In view of the same, Sections 3 and 4 of the Maharashtra Control of Organised Crime Act, 1999 [hereafter '*MCOCA*'] were invoked in the present case on 21.04.2025, and the investigation was accordingly transferred from the Counter Intelligence Cell to the New Delhi Range of the Special Cell. Consequent upon the addition of MCOCA charges, the case was committed to the court of the learned ASJ-03, Patiala House Courts, New Delhi, the designated court for MCOCA trials.

Uncovering the Role of Petitioners in the Organised Crime Syndicate & Their Arrest

8. Eventually, it came to light that the present petitioners – Hasim Baba @ Asim, Sameer @ Baba, Anwar Khan @ Chacha, and Zoya Khan – were the peripheral figures who sat at the helm of the organized crime syndicate itself. Following the revelations regarding their alleged role in the organised crime syndicate, the four petitioners were interrogated inside Tihar Jail with prior permission

of the Court. Based on what the investigating agency claimed to be sufficient evidence of their involvement in organised criminal activities, all four were formally arrested in the present case on 12.05.2025. The next day, the police sought seven days of custody remand before the learned ASJ, Patiala House Courts.

9. However, notably, the learned ASJ declined the request on 13.05.2025, observing that the due process of law had not been followed during the petitioners' arrest in jail. It was observed that the investigating agency had failed to communicate the gist of the material forming the grounds for arrest to the accused, as legally mandated. Consequently, the Court declared the arrest of all four petitioners as *non-est*, ordering their release in the present case, while also granting liberty to the State to undertake appropriate legal steps in accordance with law. The relevant portion of the order dated 13.05.2025 is set out below:

> "12. The Grounds of Arrest is a six line description which states after name and credential of accused, 'accused is hereby informed that on the basis of sufficient evidence against you under Section 3 & 4 of MCOCA in the present case under various offences, PS Farsh Bazar, investigated by Special Cell, New Delhi, you are hereby arrested in this case'. Thus, essentially, the only reason mentioned is 'on the basis of sufficient evidence against you. In the present matter, another accused has already been arrested and the case file/diary contains Grounds of Arrest of that accused namely Sukhbir Singh. This document (Grounds of Arrest of accused Sukhbir Singh) gives the details of Grounds of Arrest and mentioned live points indicating various aspects on the basis of which the ground of arrest have emerged.
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> 13. In the case titled as **Prabir Purkayastha v State (NCT of Delhi)** in Crl. Appeal D.No. 42896/2023, Hon'ble Supreme

Court of India, inter-alia, has held that it has been the consistent view of this court (Hon'ble Supreme Court of India) that grounds on which the liberty of citizen is curtailed must be supplied in writing so as to enable him to seek remedial measures against the deprivation of liberty. It is also held that non-compliance of this constitutional requirement and statutory mandate would lead to custody or detention being rendered illegal, as the case may be.

14. Adverting to the facts of this case as noted above, that Grounds of Arrest mentioned only on the basis of sufficient evidences which a generic term and does not enable accused to present his case or put up his defence. Whenever a requirement is laid down by law especially the condition, purpose of which is to redeem the promise which Constitution of India makes regarding upholding Fundamental Rights of Citizens/Persons, said condition cannot be reduced to just an empty formality which is observed as moonshine rather than in substance. Permitting this would amount to licensing honoring of law in letter only without respect for spirit and purpose of law.

14.1 It was pointed out by the Ld. Addl. PP for the State that there are statements of public witnesses including statement under Section 183 of BNSS. Said statements are in fact part of the record, however, same in itself is not sufficient. As per the established position of law noted above, gist of the material on the basis of which the investigating agency believed that Grounds of Arrest existed is to be conveyed but same is amiss in the present matter. Therefore, as sequel to above discussion, it is held that arrest of above four accused is not proper and not in terms of law. Hence, it is held to be non-est. Accused are directed to be released from custody in this case. It is clarified that since the arrest is held to be non-est on technical ground, State has liberty to complete the process as per law.

15. Application disposed of accordingly."

The Controversy of Re-Arrest

10. The investigating agency returned to Court on 15.05.2025, seeking further interrogation and re-arrest of the petitioners, after complying with all procedural safeguards. It was submitted that the

earlier order dated 13.05.2025 had not restrained them from proceeding afresh and that the nature of offences, i.e. punishable even with death, clearly necessitated their arrest. The matter was heard in detail, and by order dated 09.06.2025, the learned ASJ permitted the interrogation of the petitioners within jail premises in accordance with the applicable rules. As to the question of re-arrest, the Court carefully clarified that it was not within its legal mandate to grant advance permission for arrest. The Court observed that it is for the investigating agency to decide whether arrest is warranted, and the Court's role to assess the legality of such arrest would arise only once it is effected. The Court observed that any pre-emptive judicial sanction would amount to placing the cart before the horse and would be impermissible under law. The relevant portion of order dated 09.06.2025 reads as under:

> "6. Having heard contentions of both the parties and perused the record, it emerges that issue in hand before the court is to consider the prayer of State for further interrogation of above named accused persons and prayer to permit re-arrest of all these four persons. As far as, interrogation/questioning of accused persons are concerned, there was no quarrel on behalf of 4. Defence counsel representing the accused persons that investigating agency has right to continue their investigation rather it was argued that investigating agency may continue their investigation and for that, arrest of accused is not required. Otherwise also, to question a person who is suspect or an accused, the investigation may summon that person as many times as is required from the material on record and for proper investigating agency in the case. Even if on any occasion, if the proper procedure is not followed, it does not create a bar that, henceforth, accused cannot be called for questioning/ interrogation. Therefore, as far as the request regarding further interrogation of all the accused persons are concerned, in view of the submissions on behalf of above accused and in the

backdrop of position of law on this issue, the investigating agency is well within their right to continue or to do further interrogation of the above four persons. Accused are stated to be in custody in other case. Therefore, it is directed that applicant/investigating agency shall be facilitated by Jail authorities in terms of applicable jail rules for interrogation of accused by applicant/ investigating agency.

7. As far as, permission to re-arrest is concerned, it is beyond the scope of mandate of law for court that during investigation, any observation be given by court before arrest of accused that if or not arrest of accused is required. It is for the investigating agency to decide in terms of applicable law that if or not any accused is to be arrested. The role of court to evaluate the said arrest will begin once the arrest is effected. Needless to say that arrest is to be evaluated from two dimensions. Firstly, on the basis of material on record which shows that their exists sufficient and reasonable material showing involvement of accused. Secondly, it is the duty of court to ensure that. procedural safeguards laid down by statues as well as brought in by judicial interpretation in various pronouncement of Hon'ble High Courts and Hon'ble Supreme Court of India are observed in the letter and spirit. To make an observation in respect of arrest or re-arrest in advance would amount to putting the cart before the horse and will amount to tacit approval of court that material on record is sufficient to justify the arrest of accused on the basis of his involvement in the case. Such an observation on part of court, at this stage, is not warranted and permissibile under law. Therefore, at this stage, this part of application/prayer is not required to be adjudicated upon pre-mature. Application stands disposed of accordingly. Copy dasti. Copy of this order be sent to Jail concerned for informing applicant/ accused accordingly."

11. All four petitioners were rearrested in the present case on 10.06.2025. This time, more detailed and written grounds of arrest were furnished to the petitioners. Following their arrest, they were brought to the Patiala House Court and produced before the learned Vacation Judge. An application for seeking 10 days of police custody

remand was also filed by the State, which was opposed by the learned defence counsels. Taking cognizance of the circumstances, the learned Vacation Judge, by order dated 11.06.2025, directed the investigating agency to place on record a synopsis of fresh evidence gathered post the earlier judicial order dated 13.05.2025, and to demonstrate the legal permissibility of the petitioners' rearrest. The petitioners were initially remanded to judicial custody till 16.06.2025, and on that date, their custody was further extended, with the matter posted before the learned ASJ for 01.07.2025.

12. Subsequently, after hearing arguments on the legality of the rearrest, the learned ASJ passed the impugned order dated 04.07.2025, holding that the re-arrest of the petitioners in FIR No. 629/2024 was lawful and within the four corners of the applicable legal framework. The relevant observations of the learned ASJ in the impugned order dated 04.07.2025, which have been assailed by the petitioners, are set out below:

> "14.1 I have gone through the order dated 09.06.2025. The relevant paragraph in the said order is para no.7. It was emphasized on behalf of accused that the court has observed that it is beyond the scope of the court to permit arrest of accused. However, reading of para no.7 shows that said observation is only in respect of the mandate of law in respect of qua the stage of the case. In other words, the observation has been given in respect of mandate of law on the powers of court for direction for arrest during investigation. It is trite law that court cannot dictate and should not dictate as to which accused should be arrested or when. It is an established position of law that such authority is vested in the investigating agency to decide whether or not accused is to be arrested. It has been clearly held in para no.7 that said issue regarding permission to re-arrest need not to be adjudicated as it was premature. Once

it is held that an issue is premature, it means that court has not made any observation on the substance of the issue cither in terms of approval of the issue or disapproval of the issue. Hence, the arguments for permission to re-arrest having been rejected as it does not hold water.

15. It was also argued that prosecution has not complied with the direction issued by the order dated 11.06.2025 but by filing the progress of the investigation, the compliance has been made. It was argued on behalf of prosecution that accused being sent in judicial custody in two occasions and the said remand in judicial custody having been not opposed amounts to approval of the accused by the court cannot be accepted as the arguments raised on behalf of accused by Ld. Defence Counsel that the issue of legality of arrest being still pending, the direction for keeping the accused in custody till disposal of the issue does not amount to remand of JC after application of mind on the facts of the case has force.

16. The major thrust of the argument of Ld. Defence Counsel is that there is no legal basis for re-arrest of the accused and if such rearrest is allowed, it will amount to rendering the orders of the Constitutional Courts being infractuous as the prosecution/ investigating agency will attempt to wipe out the illegalities by making good of the lapses committed by them.

17. Whenever a person is arrested as an accused in a case and is produced before the court, before remanding the accused in custody of any kind i.e. police custody or judicial custody, court must ask prosecution to cross the twin test in respect of legality of arrest.

17.1 The first test would be regarding the compliance of procedural safeguards incorporated in statutes and brought in by various pronouncements of Hon'ble Constitutional Courts. Once, the investigating agency is able to show that all the safeguards have been observed in compliance, then the investigating agency need to show that material on record is sufficient to indicate prima facie involvement of accused warranting his arrest and need for investigation. In case the prosecution/investigating agency fails to cross the first test, the second stage is not reached and thus, material produced will not be evaluated as such.

17.2 In the present matter also, there has been similar circumstances for observance of mandate of supplying the

grounds of arrest in defiance through a formal compliance rather than meaningful supply of grounds of arrest. Thus, vide order dated 13.05.2025, the arrest was declared illegal as in the judgments referred above, Hon'ble Supreme Court of India has held that the requirement of supplying meaningful grounds of arrest is part of fundamental rights.

18. It was also argued on behalf of accused that there is noncompliance of Article 22 and Section 50 of erstwhile Cr.PC. Article 22 of Constitution of India requires supply of grounds of arrest to the arrestee and Section 50 of Cr.PC goes a step further whereby it is required that the ground of arrest are to be supplied 'forthwith'.

19. Chapter 5 of the erstwhile Cr.PC incorporates the provision in respect of arrest of person. Section 46 of erstwhile Cr.PC stipulates as to how the arrest is to be made. Necessary corollary is that this provision incorporates procedural safeguards in respect of the manner in which arrest is to be made. Article 21 of Constitution of India requires that life and liberty of a person shall not be curtailed without procedure established by law. Therefore, if the procedure established by law in the above noted provisions are not followed, it will amount to violtion of fundamental rights and consequently, arrest shall stands vitiated.

20. In this regard, it will be apposite to refer to judgment of Hon'ble High Court of Mumbai in the case titled as **Kavita Manikikar v CBI** Writ Petition No. 1142/2018. In the said matter, a female was arrested in violation of provision of Section 46(4) of erstwhile Cr.PC. Hon'ble High Court of Mumbai had declared the said arrest to be illegal and in utter violation of provisions contained in Section 46(4) of erstwhile Cr.PC. It was further held that arrest of petitioner is illegal and contrary to provision of Section 46(4) of erstwhile Cr.PC, however, CBI is not precluded to arrest the petitioner if investigation warrants so, by following the due process of law. This court in its order dated 13.05.2025 has also held that though the arrest of accused is illegal on the basis of ground of arrest having been not supplied, State had the liberty to complete the process as per law.

21. It was argued on behalf of accused that 'what is the law in this regard on the basis of which the re-arrest can be made. The tenor of argument indicated that there is no provision in the statute regarding re-arrest of accused. However, in the

Chapter on Arrest of Person, Section 43(2) Cr.PC incorporates the provision 'if a person is arrested in terms of Section 43(1) and if there are reason to believe that such person comes under the provisions of Section 41, a police officer shall re-arrest him'. Similarly, Section 437(5) Cr.PC, which is part of the Chapter on Bail, incorporates a provision stipulating that 'any court which has released a person on bail under sub-section (1), or subsection(2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody'. Further, Section 439(2) Cr.PC provides that 'a High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody'.

21.1 One may argue that this provision relates to cancellation of bail before re-arrest of accused. In this regard, suffice it to observe that concept of re-arrest is not completely new to Cr.PC or to the judicial pronouncement as is argued by Ld. Defence Counsel. In the case titled as Mohd. Alim @ Abdul Alim v State of UP, Crl. Appeal No. 2376/2023, it is, inter-alia, held by the Hon'ble High Court of Allahabad that:

> "68. When the appellants applied for bail, they had no notice of extension of time granted by the Special Court. Moreover, the application was made before the filing of the charge-sheet, hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of Sanjay Dutt (Supra) as well as in the case of Bikramjeet Singh (Supra), the Supreme Court held that grant of default bail does not prevent re-arrest of the appellant on the cogent ground after filing the charge-sheet. Thereafter, the accused can always apply for regular bail. However, as held by Supreme Court in the case of Mohamed Iqbal Madar Sheikh and others v. State of Maharashtra reported in (1996) 1 SCC 722, re-arrest cannot be made only on the ground of filing a charge-sheet. It all depends on the facts of each case."

22. Further, in the case titled as **Prahald Singh Bhati v NCT of Delhi,** Appeal (crl.) 324 of 2001, it has been held as under:

> "In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which

were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail carlier granted to the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed a irregularity by holding that "I do not agree with the submission made by the Ld.Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail."

23. It was also argued on behalf of accused that if after declaring the arrest of the accused persons as illegal, there subsequent arrest is approved, it will amount to rendering the law laid down by the Hon'ble Constitutional Courts as infractuous. This argument cannot be accepted for the reason that the purpose of procedural safeguards incorporated in statutes are required to be strictly observed in terms of law laid down by Hon'ble Constitutional Courts, it can never mean to permit or allow accused to have an advantage of lapse or inefficiency on the part of an officer of prosecuting agency.

23.1 In the case titled as **Vicky Bharat Kalyani v The State of Maharashtra & Anr.** Writ Petition No.5254 of 2024, it was argued that it has been referred to the Larger Bench and therefore, cannot be relied upon. Para no. 66 of said judgment deals with terms of reference to Larger Bench, however, perusal of these questions/points raised in such reference to Larger Bench are in respect of application of Section 50 of erstwhile Cr.PC, whereas, the question and the observation in the earlier paragraph are in respect of the post non- compliance

of Section 50 Cr.PC in terms of not providing grounds of arrest to accused.

23.2 It was also argued that the reliance by the prosecution is such which amounts to noting the contentions of government Reader and they do not assume the status of law. However, a clear observation has been made in para no. 58 of the above judgment that any embargo or bar upon re-arrest could be pointed out and the court agreed with the contention that there is no bar for rearrest the person who are released for non-furnishing the grounds of arrest in writing. It is further held that if accused are released on the grounds of not supplying the grounds of arrest leading to violation of provisions of Cr.PC would amount to infringing their constitutional right under Article 21 of Constitution of India, thereafter, if grounds of arrest are supplied to them, they cannot have any grievance. It is further apposite and germane to have reference to para no.57 of the said judgment and same is reproduced hereinunder:

> "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 WP-ST-24338-24-GROUP.odt 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."
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> 24. The purpose behind the procedural safeguards and direction of Hon'ble Constitutional Courts to ensure that Grounds of Arrest to be provided to accused in writing is to ensure that accused is being clearly informed as to why he/she has been arrested and also to ensure that accused are in position to defend themselves since very beginning. The purpose of such safeguard can never been to let an accused go scot free for procedural lapses. It is trite law that procedure is handmaid of justice and the contention of the prosecution and Ld. Defence Counsel are required to be evaluated in this background."

THE RIVAL CONTENTIONS

On behalf of the Petitioners

13. The learned counsel appearing for the petitioners contend that the arrest and subsequent judicial custody of the petitioners is illegal, being in violation of mandatory procedural safeguards enshrined in law. It is submitted that the first arrest of the petitioners was effectuated without supplying the grounds of arrest to the petitioners. The arrest memos were prepared in a cavalier and manipulative manner, reflecting a serious abuse of power by the police authorities. Reliance is placed on the decisions of the Hon'ble Supreme Court in ***Pankaj Bansal v. Union of India*****:** *(2024) 7 SCC 576,* ***Prabir Purkayastha v. State (NCT of Delhi):*** *(2024) 8 SCC 254,* and ***Vihaan Kumar v. State of Haryana & Anr.:*** *(2025) 5 SCC 799*, to submit that the statutory requirements governing arrest are not mere

formalities and must be scrupulously followed. The learned counsel emphasise that the learned ASJ, by order dated 13.05.2025, had categorically held that the arrest of the petitioners was *non-est*. Further, *vide* order dated 09.06.2025, the same Court declined to grant permission to re-arrest the petitioners. Despite these binding orders, the police proceeded to re-arrest the petitioners on 10.06.2025 without seeking appropriate legal recourse, thereby acting in contravention of law.

14. It is contended by the learned counsel that there exists no statutory provision authorising re-arrest in such circumstances, particularly when the initial arrest has been declared *non-est* and such declaration has not been set aside by any superior court since the State chose not to challenge the said order. The learned counsel further argue that the subsequent application for police custody remand, moved before the learned Vacation Judge on 11.06.2025, was completely silent on the earlier judicial findings, and reflects deliberate suppression of material facts by the investigating agency. It is urged that the police sought to bypass the judicial process by presenting the same relief before a different forum without disclosing that similar relief had already been declined twice by the learned ASJ.

15. Further, the learned counsel contend that the judicial orders dated 11.06.2025 and 16.06.2025 remanding the petitioners to judicial custody suffer from a legal infirmity as they were passed without adjudicating on the legality of the arrest, which is a serious

omission especially in view of the prior orders holding the arrest to be non-est. It is further contended that there was no fresh evidence or development justifying re-arrest or remand of the petitioners, and the reliance placed by the State on the judgments of the Bombay High Court and Kerala High Court is misplaced. It is argued that the Bombay High Court, in ***Vicky Bharat Kalyani v. State of Maharashtra & Anr:*** *2025 SCC OnLine Bom 193*, did not lay down a conclusive ratio on the issue of re-arrest, as the matter was referred to a larger Bench. It is also stated that the Kerala High Court's decision in ***Babu M. v State of Kerala & Anr.:*** *W.P. (CRL.) 240/2025* too, does not articulate any settled procedure for re-arrest in such circumstances and the said order is also under challenge before the Hon'ble Supreme Court.

16. It is argued on behalf of the petitioners that allowing such a course of action would set a dangerous precedent, which would enable the investigating agencies to circumvent the judicial findings which are against them simply by serving fresh grounds of arrest and re-arresting an accused. Accordingly, it is prayed that the impugned orders dated 11.06.2025, 16.06.2025, and 04.07.2025 be set aside, as the same are contrary to law.

On behalf of the State

17. The learned Additional Standing Counsel (ASC) appearing for the State contends that the arrest of the petitioners on 10.06.2025 was lawful and in strict compliance with procedural safeguards. It is

submitted that the earlier order dated 13.05.2025, which held the arrest of the petitioners as *non-est*, was passed solely on the ground of procedural irregularity, i.e., non-supply of proper written grounds of arrest, and not on any substantive finding that there was insufficient material to justify arrest. In fact, the Court, in the said order, had clarified that the State was at liberty to complete the process afresh in accordance with law. It is argued that the petitioners were never released on bail; rather, they were released solely because their initial arrest was declared non-est due to technical non-compliance. Therefore, the present case is not one where the State was required to seek cancellation of bail.

18. It is submitted that after securing liberty to interrogate the accused persons in judicial custody, the Investigating Agency, upon re-evaluating the material on record and after ensuring full procedural compliance, re-arrested the petitioners on 10.06.2025 and produced them before the competent Court the very next day. It is further contended that the decision to arrest or re-arrest is purely within the domain of the investigating agency; and in the present case, sufficient material exists to justify the arrest, and all the procedural safeguards under law have also been followed.

19. The learned ASC submits that the judgments relied upon by the petitioners do not bar the re-arrest of a person whose initial arrest has been declared illegal. On the contrary, the observations of the High Courts of Bombay and Kerala indicate that re-arrest is permissible under law once procedural deficiencies in the initial

arrest are rectified. The Bombay High Court, in ***Vicky Bharat Kalyani v. State of Maharashtra & Anr*** *(supra)* while considering a similar issue, has held that there is no bar to re-arrest an individual whose earlier arrest has been declared illegal on grounds of procedural error. It is further contended that though in this decision, some questions were referred to a Larger Bench, the portion relevant to post- non-compliance re-arrest stands independently supported by reasoning in the said decision. Similarly, the Kerala High Court in ***Babu M. v State of Kerala & Anr.*** *(supra)* has clarified that its finding on the illegality of arrest would not prevent the investigating agency from re-arresting the accused, provided such arrest is in accordance with law. As for the decision of Hon'ble Supreme Court in ***Vihaan Kumar v. State of Haryana & Anr.*** *(supra)*, it is pointed out that the judgment merely deals with the illegality of the arrest being violative of Article 22 of the Constitution of India and does not address the question of re-arrest at all. Therefore, it has no bearing on the issue involved in the present case.

20. It is contended by the learned ASC for the State that the object of procedural safeguards, such as furnishing written grounds of arrest, is to ensure that the accused is aware of the basis of his arrest so that he may prepare his defence. However, these safeguards are not intended to create a situation where an accused can avoid arrest altogether due to inadvertent lapses, particularly when such lapses have been cured. A contrary interpretation would not only defeat the ends of justice but also reduce the investigative process to a nullity.

In this regard, reliance is also placed on decision in ***Rakesh Kumar Paul v. State of Assam:*** *(2017) 15 SCC 67* wherein the Hon'ble Supreme Court, while declaring the petitioner to be entitled to default bail due to non-filing of chargesheet within the prescribed time period, had clarified that the same would not prohibit the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge.

21. Accordingly, it is argued that the re-arrest of the petitioners on 10.06.2025, having been affected after complying with all statutory requirements and procedural safeguards, cannot be said to be illegal or an abuse of process.

22. This Court has **heard** arguments addressed on behalf of the petitioners as well as the State, and has carefully perused the material placed on record by either side.

ANALYSIS & FINDINGS

The Alleged Absence of New Material at the Time of Re-Arrest

23. One of the central contentions raised on behalf of the petitioners is that the investigating agency could not have unearthed or collected any new incriminating material between 13.05.2025 i.e., the date on which the learned ASJ declared their initial arrest as illegal, and 15.05.2025, when the police moved an application seeking permission for their re-arrest. It was contended that within such a short span of less than 48 hours, the police could not have possibly gathered any fresh evidence that could justify a second

arrest. Attention was also invited to the proceedings before the learned Vacation Judge on 11.06.2025, wherein the Court had sought a specific explanation from the police as to what additional material had come to light post-13.05.2025 to warrant the re-arrest.

24. Insofar as this contention is concerned, in this Court's considered opinion, the aforesaid argument proceeds on an incorrect premise and an incorrect reading of the order dated 13.05.2025. It appears to proceed on the assumption that the arrest of the petitioners was declared illegal due to insufficiency of the material in possession of the investigating agency as on that date. However, a bare reading of the said order reveals that the learned ASJ had not undertaken any assessment whatsoever of the adequacy, sufficiency, or probative value of the material or evidence collected by the investigating agency against the petitioners. The order dated 13.05.2025 confined itself solely to the issue of procedural compliance with the constitutional and statutory safeguards governing arrest. Specifically, the Court found that the petitioners had not been supplied with adequate and meaningful written grounds of arrest as mandated by the Hon'ble Supreme Court in a catena of decisions.

25. It is manifest from the said order that what the learned ASJ found deficient was the form and content of the written grounds of arrest actually handed over to the petitioners, which comprised merely a six-line description devoid of any factual allegations, case-specific details, or articulation of the evidence linking the petitioners to the offence. Such non-compliance rendered the arrest of the

petitioners *non-est*. However, the learned ASJ did not enter upon any determination as to whether or not the police actually possessed sufficient material to justify the arrest of the petitioners. That question remained unaddressed and untouched. Therefore, it is evident from a bare perusal of the said order that the same did not address, nor was it called upon to assess, the sufficiency or relevance of the evidence collected by the police. Furthermore, it cannot also be said that the order dated 13.05.2025 having declared the first arrest *non-est* on procedural grounds, operated as a bar to future arrest based on the material already in possession of the police, so long as the arrest was now carried out in accordance with law, as the same was clarified by the learned ASJ itself in the last line of order which read as follows:

> "14.1 ……It is clarified that since the arrest is held to be non-est on technical ground, State has liberty to complete the process as per law."

26. It is, therefore, incorrect to argue that the re-arrest could only be justified on the basis of discovery of new material after 13.05.2025. Accordingly, the argument of the learned counsel for the petitioners that the re-arrest was impermissible in the absence of new material is unmerited.

27. It is to be reiterated that the learned ASJ had not even applied its mind to the sufficiency of evidence incriminating in nature or even its existence on merit while passing the order declaring the arrest being *non-est* and had gone a step further to clarify that the order

declaring the arrest *non-est* was being passed solely on technical ground and the same order implied that the investigating agency was at liberty to complete the process as per law. Therefore it meant that after the procedural lapse of non providing the grounds of arrest was rectified, there would have been no bar to arrest the accused persons.

Furnishing of Grounds of Arrest to the Petitioners

28. A key issue in the present matter also relates to compliance with the requirement of furnishing grounds of arrest, both at the time of the first arrest and upon the subsequent re-arrest of the petitioners.

29. It is undisputed that during the initial arrest, the petitioners were not provided with detailed written grounds of arrest. This formed the basis for the order dated 13.05.2025, whereby the learned ASJ declared the arrest as *non-est*, holding that such non-compliance violated the petitioners' fundamental rights and the settled law laid down in decisions such as ***Prabir Purkayastha v. State (NCT of Delhi):*** *2024 INSC 414*. That order attained finality, as it was not challenged by the State.

30. However, at the time of the re-arrest on 10.06.2025, this Court finds that detailed grounds of arrest were furnished to each of the petitioners, which have been placed on record before this Court by the State alongwith the Status Report. These grounds specifically outline the alleged roles of the petitioners in the organised crime syndicate and the specific allegations against them for commission of

alleged offences. The extract of grounds of arrest, supplied to one of the petitioner, i.e. petitioner no. 1, is set out below for reference:

Case FIR No. 629/2024 Dated 07.12.2024 u/s 103(1)/3(5)/249/61(2)/303/318/336/341 BNS & 25/27 Arms Act, 43/66/66(B)/72 IT Act, 3 & 4 MCOC Act PS Farsh Bazar (Investigated by Special Cell) Delhi.

Grounds of Arrest of accused Anwar Khan @ Chacha s/o Jumma Khan Age 52 years r/o H.No. C-35, Welcome, Shahdara, Delhi.

दिनांक 07.12.2024 को कृष्णा नगर, रेड लाइट, 60 फुटा रोड, विश्वेश नगर, दिल्ली पर गोलीबारी की घटना हुई जिसमें सुनील जैन पुत्र सुखपाल चंद जैन निवासी सी-3/3, अपर ग्राउंड फ्लोर, कृष्णा नगर, दिल्ली को दो अज्ञात व्यक्तियों ने गोली मार दी, जब पीड़ित और सुमित कुमार नाहटा दिल्ली के यमुना स्पोर्ट्स कॉम्प्लेक्स से मॉर्निंग वॉक के बाद अपनी स्कूटी पर लौट रहे थे। घायल सुनील जैन को मैक्स अस्पताल, पटपड़गंज, दिल्ली ले जाया गया, जहां उन्हें मृत घोषित कर दिया गया। तदनुसार उपरोक्त मामला पंजीकृत किया गया। बाद में मामले को आगे की जांच के लिए स्पेशल सेल को स्थानांतरित कर दिया गया। जांच के दौरान आरोपी सुखबीर सिंह को गिरफ्तार किया गया। जांच के दौरान पता चला कि अनवर खान और साबिर चौधरी के नेतृत्व में एक संगठित अपराध सिंडिकेट इस अपराध के पीछे शामिल है। तदनुसार, 21.04.2025 को, MCOC Act की धारा 23(1)(ए) के तहत सक्षम प्राधिकारी की पूर्व स्वीकृति लेने के बाद इस केस में MCOC Act की धारा 3 और 4 को लागू किया गया।

आपके खिलाफ नीचे दिए गए सबूतों के आधार पर आपको उपरोक्त केस में गिरफ्तार किया जा रहा है-

1. आपके खिलाफ सबूत है कि आप साबिर चौधरी के साथ मिलकर संगठित अपराध गिरोह का नेतृत्व कर रहे हैं और इसके अलावा आप साबिर चौधरी के साथ संगठित अपराध गिरोह के अन्य सदस्यों के साथ संगठित अपराध की गतिविधि जारी रखने में लिप्त हैं।

2. आपके खिलाफ सबूत है कि आप संगठित अपराध गिरोह के अन्य सदस्यों को संगठित अपराध करने में मदद करने, सहायता करने और उकसाने में लिप्त हैं।

3. आपके खिलाफ सबूत है कि आप संगठित अपराध गिरोह के सदस्यों को जो संगठित अपराध करने में शामिल पाए गए हैं को शरण देने में लिप्त हैं।

4. आपके खिलाफ सबूत है कि आप अपने संगठित अपराध गिरोह के किसी भी सदस्य के खिलाफ गवाही न देने के लिए गवाहों को धमकाने और मजबूर करने में शामिल पाए गए हैं।

5. आपके खिलाफ सबूत है कि आप संगठित अपराध गिरोह के लक्ष्य यानी क्षेत्र में वर्चस्व हासिल करने में गिरोह की मदद करने में लिप्त पाए गए हैं।

6. बीएनएसएस की धारा 180/183 के तहत जांच के दौरान गवाहों के बयान के रूप में आपके खिलाफ सबूत मौजूद हैं।

7. आपके खिलाफ सबूत मौजूद हैं कि आप संगठित अपराध गिरोह के सदस्यों के लिए धन की व्यवस्था करने की साजिश में शामिल पाए गए हैं।

8. आपके खिलाफ सबूत मौजूद हैं कि आप जबरन वसूली में शामिल पाए गए हैं और वसूली गई रकम का इस्तेमाल गिरोह के सदस्यों को अपराध करने में मदद करने के लिए किया गया।

10/06/25

RAHUL VIKRAM
(ACP SPECIAL CELL)
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New Delhi

31. Therefore, at the time of re-arrest, the mandatory requirements of law, as interpreted by the Hon'ble Supreme Court, were *prima facie* complied with. Thus, this Court is of the considered view that the defect which had vitiated the initial arrest was not repeated during the re-arrest, and the requirement of informing the accused of the grounds of arrest in writing was duly fulfilled.

Whether Re-Arrest is Permissible After Declaration of Initial Arrest as Non-Est due to Procedural Irregularity?

32. The essential question that now falls for determination is whether an accused person, whose arrest has previously been declared *non-est* or illegal on procedural grounds, can be lawfully re-arrested after compliance with the requisite legal formalities.

33. The petitioners have argued that such a re-arrest is impermissible, arbitrary, and violative of Article 21 of the Constitution. They rely on the judgment in ***Vihaan Kumar v. State of Haryana & Anr.*** *(supra)*, urging that once an arrest is invalidated due to violation of procedural safeguards, the police cannot affect a fresh arrest in the same FIR. According to the petitioners, the appropriate course for the police would have been to seek cooperation for investigation rather than proceed with re-arrest. On the other hand, the State has contended that there is no statutory or constitutional bar on re-arresting a person whose earlier arrest was invalidated for non-compliance with procedural mandates. The State contends that once the procedural irregularity has been cured – as it was in the present

case by furnishing detailed written grounds of arrest – there is no legal impediment to a lawful re-arrest.

34. This Court finds merit in the State's argument. Clearly, the Code of Criminal Procedure, 1973 as well as the Bharatiya Nagarik Suraksha Sanhita, 2023, does not contain any provision that either expressly prohibits or bars re-arrest of an individual in such circumstances. Moreover, to accept the proposition advanced by the petitioners would be to grant complete immunity to an accused from any future arrest, even in cases involving serious offences, merely because the initial arrest was vitiated by a procedural lapse, however, sufficient incriminating material is found against him, *qua* the same offence, later.

35. This Court is of the considered view that a lapse or omission on the part of the investigating agency, whether inadvertent or deliberate, cannot and should not result in a blanket immunity to the accused against any future arrest in the same case. To hold otherwise would amount to laying down a precedent which, in the long run, may prove perilous to the administration of criminal justice. It would essentially mean that a serious offender may escape the process of law solely on account of a procedural lapse committed by the investigating agency, even if sufficient material exists justifying his arrest.

36. This issue also raises a more complex question: what happens when the arrest of an accused in a serious offence is declared illegal

or *non-est* purely on technical grounds? Can the State, after rectifying the procedural irregularity, not arrest the said accused again, even if cogent grounds exist? The learned counsel for the petitioners contended that once the arrest is held to be *non-est*, the petitioners cannot be re-arrested. This Court is unable to accept such a proposition of law. Let us test this argument in a hypothetical but plausible situation: suppose a police officer, either due to oversight or deliberately, does not communicate the grounds of arrest in writing, and therefore the arrest is declared illegal by the Court, however, at the same time clarifying that such declaration was solely on technical ground and the investigating agency was at liberty to rectify such lapse, it would necessarily lead to a conclusion that there was no immunity or bar in future to arrest the accused *qua* the same offence. Assume further that the case in question involves grave allegations – say, charges of organized crime, murders, etc. Should the procedural lapse committed by one officer, however serious, be allowed to permanently shield the accused from arrest, even after the defect has been remedied? The answer, in this Court's view, must be in the negative.

37. This question assumes even greater significance in the context of the present case, where the petitioners are not first-time offenders but individuals with a long list of criminal antecedents. As per the material placed on record, some of the petitioners are involved in as many as 10, 15, or even 26 criminal cases, including offences such as robbery, extortion, attempt to murder, and even murder. The

provisions of MCOCA have been invoked in this case, and the prosecution's allegations, at least *prima facie* point towards the existence of a structured organised criminal syndicate. In such a context, the argument that an illegal or non-est arrest should completely shield the accused persons from future arrest, after complying with all procedural safeguards, cannot be accepted by this Court.

38. The view that re-arrest is not impermissible in such circumstances has also received judicial recognition. In ***Kavita Manikikar of Mumbai v. CBI:*** *2018 SCC OnLine Bom 1095*, the Bombay High Court held that while the initial arrest of the petitioner therein was declared illegal due to violation of Section 46(4) of Cr.P.C. (arrest of a woman after sunset), it was clarified that the police was not barred from affecting a subsequent arrest after rectifying the procedural irregularity. The relevant observations in this regard are as under:

> "34. In result, of the aforesaid discussion, the writ petition is allowed in terms of prayer clause (a) and it is held that the arrest of the petitioner is illegal and contrary to the provisions of Section 46(4) of the Code of Criminal Proce-dure. However, the CBI is not precluded to arrest the petitioner if investigation warrants so, by following the due procedure of law."

39. Similarly, in ***Vicky Bharat Kalyani v. State of Maharashtra*** *(supra)*, the Division Bench of the Bombay High Court clearly observed in paragraph 58 of the judgment that there was no legal bar on re-arresting an accused who had been released earlier due to

failure to furnish written grounds of arrest. Though the Division Bench referred six questions, including the issue of re-arrest, to a Larger Bench, it nevertheless recorded a clear and reasoned view in favour of permissibility of re-arrest in paragraph 58, and no contrary opinion was expressed anywhere in the said judgment. The relevant observations in this regard are as under:

> "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."
>
> (Emphasis added)

40. On the other hand, reliance on decision in ***Vihaan Kumar v. State of Haryana & Anr.*** *(supra)* can be of no help to the petitioners, inasmuch as the said judgment does not decide the question of whether re-arrest is legally permissible after an initial arrest is declared illegal. The Hon'ble Supreme Court in that case expressly noted that it was not necessary to adjudicate on that issue in the given set of facts of that case. Thus, no proposition of law was laid down in the said decision on the permissibility of re-arrest. The relevant observations in this regard are as under:

> "22. Another argument canvassed on behalf of the respondents is that even if the appellant is released on the grounds of violating Article 22, the first respondent can arrest him again. At this stage, it is not necessary to decide the issue."

41. However, this Court's attention was drawn to the judgment of ***Rakesh Kumar Paul v. State of Assam*** *(supra)* by the State wherein while releasing the petitioner on default bail, on the ground that chargesheet had not been filed within a period of 60 days, the Hon'ble Supreme Court had clarified that the release of petitioner shall not prohibit or otherwise prevent the arrest or rearrest of the

petitioner on cogent grounds in respect of the subject charge. The relevant observations in this regard are as under:

> "49. The petitioner is held entitled to the grant of "default bail" on the facts and in the circumstances of this case. The Trial Judge should release the petitioner on "default bail" on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case."

42. Thus, in the considered view of this Court, there is merit in the argument advanced on behalf of the State that when an accused is released or his arrest is declared illegal solely on technical or procedural grounds – such as in the cases of ***Rakesh Kumar Paul v. State of Assam*** *(supra)*, ***Kavita Manikikar v. CBI*** *(supra)*, or ***Vicky Bharat Kalyani v. State of Maharashtra*** *(supra)* – the State cannot be precluded from taking steps to re-arrest such a person, provided the subsequent arrest is affected strictly in accordance with the procedure established by law. The mere fact that the earlier arrest was vitiated on account of procedural lapses does not, by itself, create any blanket immunity from future arrest, especially where the investigating agency continues to be in possession of material implicating the accused and there has been no adjudication on the merits of such material by the court declaring the arrest illegal.

Conclusion

43. In view of the foregoing discussion, this Court finds that the initial arrest of the petitioners was declared *non-est* solely due to non-furnishing of written grounds of arrest and not due to insufficiency of material against them. Further, detailed and sufficient grounds of arrest were furnished to the petitioners at the time of re-arrest on 10.06.2025. This Court also concludes that there is no statutory or judicial bar on re-arrest of an accused after curing the procedural defects of a prior illegal arrest; and that the judicial precedents, including those of the Hon'ble Supreme Court and Bombay High Court (as discussed above) support the proposition that a subsequent arrest is permissible in law, provided procedural safeguards are followed.

44. The orders impugned in this petition are upheld, and the petition is accordingly dismissed. Pending applications are also disposed of.

45. It is however clarified that the observations made in this judgment are solely for the purpose of deciding present petition, and the same shall have no bearing on the merits of the case.

46. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 15, 2025/A