



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.13835 OF 2024
WITH
INTERIM APPLICATION (ST) NO.14637 OF 2024**

Mahesh Pandurang Naik .. Petitioner

Versus

The State of Maharashtra & Anr. .. Respondents

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

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

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

API Sachin Kapse, attached to Malad Police Station.

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

DATED : 18th JULY, 2024

JUDGMENT (Per Bharati Dangre, J.) :-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 2023 Live Law (SC) 844

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

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

² (1997) 1 SCC 416



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

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

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

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

(7)

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

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

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

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



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

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



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

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

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

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

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

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

In this regard, reference was made to the existing

3 2022 (10) SCALE 577



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

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

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

4 2017 SCC OnLine Del 12108

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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

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

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

Rule is made absolute in the aforesaid terms.

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

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

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