



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3529 OF 2024**

Rajrishi Bindawat .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents

**WITH
CRIMINAL WRIT PETITION NO.3533 OF 2024**

Mihir Rajesh Shah .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents

Mr.Niranjan Mundargi a/w Ujjawal Gandhi, Keral Mehta, Ashish Dubey, K.R. Shah, Ankita Bamboli, Parth Govilkar i/b Kinjal Desai for the petitioner in Writ Petition No.3529 of 2024.

Mr. Rishi Bhuta a/w Neha Patil, Bhumika Khandelwal, Saakshi Jha, Prateek Dutta, Risha Rathod, Omer Farooq Khwaja, Vaishnavi Jhaveri, Bhavi Kapoor for the petitioner in Writ Petition No.3533 of 2024.

Mr.H.S. Venegavkar, PP a/w Ms. M.M. Deshmukh, APP for the State in WP No.3529 of 2024.

Mr. H.S. Venegavkar, PP a/w Ms. S.S. Kaushik, APP for the State in WP No.3533 of 2024.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 25th NOVEMBER, 2024**

JUDGMENT:- (PER BHARATI DANGRE J)

1. 7th July 2024 was the most tormentous and unfortunate day for Pradeep Liladhar Nakhwa.

Ashish

At around 5:25 a.m., he accompanied with his wife Kaveri, aged 45 years was en-route towards Worli Koliwada, for sell of the produce, which he had purchased from Crawford market, since on account of the rainy season, fishing activity was prohibited. He being a fisherman by profession, earned his livelihood by selling the fish in the market.

The couple was travelling on their Suzuki Access scooter MH-01-DU 6418 and when they reached Ceejay House, near Landmark Jeep Showroom on Dr. Annie Besant Road, Worli, they were hit by a white colour car being driven in high speed and the impact of it was so powerful that both of them were lifted from the vehicle and hit the bonnet and he fell on the side way, but his wife Kaveri fell in front and was caught in the front wheel and bumper of the car. Despite this, the person driving the car continued to drive it with reckless speed dragging her from Ceejay House to Worli Sea link T Junction. The complainant noticed the person on the driving seat to be a young man between 22 to 25 years with long face having beard, whereas a middle aged person was occupying the seat next to the driver seat.

He garnered all his courage and stood up and took note that the fleeing car was a white colour BMW with numberplate MH-48-AK 4554. Realizing that his wife was caught between the bumper and the left wheel of the vehicle, he chased the car, but being over weight, he could not match its speed. In the meantime, since he noticed a taxi on the road, he stopped the same and boarded the same in search of his wife and travelled a long distance, but could not trace her.

Ashish

Pradeep, approached Worli Police Station and while he was in the process of lodging the complaint, information was received on wireless, that one unknown woman was found lying in an injured condition on the sea link and she was being taken to hospital.

He, along with the police personnel therefore, reached Nair Hospital, where he identified the woman to be his wife, who was dead as she has sustained serious injuries.

2. The aforesaid reporting of the incident by Pradeep Nakhwa resulted into registration of C.R. No.378 of 2024 at 15:15 hours on 7/07/2024, and the occurrence of the offence in the FIR was mentioned to be between 5:25 a.m. to 5:35 a.m.

The aforesaid CR invoked Section 105, 281, 125 (b), 238, 324 (4) of the Bhartiya Nyaya Sanhita (BNS), 2023, along with Section 184, 134 (A), 134 (B) r/w 187 of Motor Vehicle Act, 1988.

3. Upon registration of the offence, the spot panchnama was drawn and the CCTV footages along the road were collected, which identified the car responsible for the accident to be of BMW company bearing No. MH 48 AK 4554.

From the CCTV footage, it was revealed that the offending car proceeded in direction of Bandra from Sea link and therefore, a squad comprising of Police Inspector Chavhan K, and A.S.I. Suttar accompanied with others proceeded in the direction, and while they were proceeding to Kala Nagar, at the Kalanagar Junction Flyover, before the mount, they noticed the car in a broken condition. Two persons were standing near the car and even the towing van was also standing nearby. When inquiry was made with the two persons,

Ashish

one of them disclosed his name as Rajrishi Rajendra Singh Bindawat and the other disclosed his name as Rajesh Shah. Bindawat disclosed that the car had met with an accident, and this was apparent from the look at the car. The BMW car along with the two persons, was taken to the police station.

4. Rajrishi Bindawat, the petitioner in Criminal Writ Petition No. 3529 of 2024, was arrested on 7/07/2024, at 20:16 hours and was produced before the Magistrate, 62nd Court, Dadar on 8/07/2024.

The investigation revealed that Mihir Shah was the person who was also present in the car which had caused the accident and therefore, responsible for death of the wife of the complainant, was absconding.

In the Remand Application, the gist of the complaint filed by Pradeep Nakhwa was set out in detail and it was alleged that the car bearing No. MH 48 AK 4554 was being driven in a reckless speed and since it hit the vehicle on which Pradeep along with Kaveri were travelling, she sustained serious injuries as she was dragged ruthlessly despite having come under the wheels of the car and instead of rendering any medical assistance, she was dragged till T-Junction on Worli Sea link, where she separated from the car and was found lying on the road in an injured condition.

When her autopsy was conducted, the cause of her death was given as “Shock and Hemorrhage organs in multiple grade abrasion and injury to the vital organs in a case of road traffic accident (unnatural)”

Ashish

The remand report referred to the report of the investigation squad, which had examined the CCTV footage, from which it was discerned that, it is the BMW car which was responsible for the accident and this information corroborated the version of Pradeep, the complainant. The CCTV footage and the investigation with the arrested accused Rajrishi revealed that in the car, he was travelling along with Mihir Rajesh Shah. Their presence in the vehicle was established in the CCTV footage and the analysis of the CDR also reveal their presence in the area at the time when the accident had taken place.

The remand order also referred to the statements of several persons, who had corroborated the information given by the complainant in regards the accident where his wife sustained serious injuries. The remand application further mentioned that information of the accident was given to Rajesh Damji Shah, father of Mihir Shah, who assisted his son Mihir Shah who was present in the vehicle to flee.

5. It is in this background, Rajrishi Bindawat and Rajesh Shah came to be arrested and search was carried out for the absconding accused Mihir Rajesh Shah.

Remand report referred to the investigation carried out through various different teams considering the seriousness and gravity of the offence and the CCTV footages reflecting the movement of the car were collected.

Statements of two witnesses, who were present on the spot i.e. Akash Poni and Rizwan Abdul Shaikh were recorded.

Ashish

Based upon the information given by the arrested accused Rajsrishi, the investigating team recorded statement of one Tirup Inamdar, who was acquainted with Mihir for last one year and he provided the information that on 6/07/2024, he made a phone call to his friend and gave a proposal that accompanied by Mihir and Ankit they would have dinner. Accordingly, at 9:45 p.m. Mihir arrived in his Mercedes Car with his driver along with Dhruv and thereafter, they went to Vice Global Tapas Bar at 11:00 p.m. Since Dhruv Dhedia was a frequent visitor to the bar, after disclosing that they are major, the four people sat for dinner. They ordered for three large Jack Daniel Apple liquor, Red Bull, and Ginger Ale and as per Tirup Inamdar, Mihir Shah, Dhruv and he himself consumed the liquor and ordered food.

The order was repeated on three occasions and at around 1:05 a.m. and the bill was cleared by Mihir Shah by scanning the code from his mobile.

The car being driven by the driver, one of the friend was dropped in Borivali and Tirup was dropped thereafter. Dhruv and Mihir along with the driver Rajrishi left the spot.

Based upon the aforesaid statement, the investigation was made with the Bar and the bill of the food and liquor ordered was recovered, which corroborated the presence of Mihir Shah in the bar and also *prima facie* disclosed that he had consumed liquor.

6. Immediately after the incident, the statement of several other witnesses are recorded, which included the statement of Rizwan Razak Shaikh, who informed the police, that he was present on the

Ashish

Worli Sea link toll along with Akash Poni. Since it was raining heavily at around 5:15 a.m, they halted in a shed, and they heard a loud bang from the landing point of Sea link main gate and noticed a white colour BMW car, which stopped at distance of 100 feet. In the meantime, when their attention was drawn to the gate, as they would notice a naked woman lying in an injured condition. He immediately called helpline number 100 and the Ambulance reached the spot.

Statement of the persons, who formed part of the squad which was organized to trace the BMW car, were also recorded on the same day and even the statement of the person on the toll plaza is also recorded. The CCTV footage of toll plaza of Bandra Sea link, reveal that one white colour car stopped and the driver had given one card (fastag) to person at toll station and without taking it back, the boom was lifted and the car speeded away. This is reflected in the statement of Dashrat Bhat, who was present on the toll plaza. The fastag was in the name of Mihir Shah.

7. Mihir Shah, whose presence in the offending car was revealed from the CCTV footages and also statement of the co-accused, and since he had swiped his fastag, he absconded, but was arrested on 9/07/2024.

The statement of one Rajeev Rajbhan Singh was also recorded, who categorically told that Rajrishi and Mihir Shah on 7/07/2024 at 3:45 a.m. had purchased four tins of Budweiser beer from him.

On collection of material clearly incriminating the two petitioners in the subject CR, investigation was completed and the

Ashish

charge-sheet was filed on 3/10/2024.

8. We have heard Advocate Rishi Bhuta for the petitioner in Criminal Writ Petition No. 3533 of 2024, Mihir Rajesh Shah, and Mr. Niranjana Mundargi in Criminal Writ Petition No. 3529 of 2024 for Rajrishi Bindawat. In the two Writ Petitions filed by the petitioners, it is categorically stated that the petitioners have not filed Bail Application till date despite they being arrested in the month of July, 2024, Mihir Shah being arrested on 9/07/2024, whereas Rajrishi came to be arrested on the date of incident itself.

It is a common ground raised in both the petitions that the petitioners have been falsely implicated and since the grounds of arrest were not informed to them in writing, their arrest is in gross violation of constitutional mandate under Article 22 (1) of the Constitution of India and Section 47 of the Bhartiya Nagrik Suraksha Sanhita 2023. It is urged before us that mere passing of successive remand orders would not be sufficient to validate the initial remand, if the arrest is not in conformity with the law and on account of non-furnishing the 'grounds of arrest' before remanding them to custody, the continuing custody of the petitioner is rendered illegal and nullity in the eyes of law.

Both the petitioners therefore seek relief of declaration of their arrest as illegal, being in gross violation of the fundamental right guaranteed under Article 21 and 22 of the Constitution of India and also seek declaration for setting aside the remand orders passed by the judicial Magistrate First Class as null and void and for setting aside the subsequent remands, the same being passed in violation of the provisions of Section 47 of The Bharatiya Nagrik Suraksha

Ashish

Sanhita, 2023 (for short “BNSS, 2023”).

Mr. Mundargi as well as Mr. Bhuta has heavily relied upon the decision of the Apex Court in case of *Pankaj Bansal vs. Union of India and ors*¹ and *Prabir Purkayastha vs State (NCT of Delhi)*² as well as decision of this Court in case of *Mahesh Naik vs. State of Maharashtra*.

It is sought to be urged by the respective counsel that the decision of the Apex Court in case of Pankaj Bansal and Prabir Purkayastha (supra), which is now the law declared, in the wake of Article 141 of Constitution of India, deserve strict adherence. It is urged on behalf of the petitioners that a person to be arrested must be communicated the ‘grounds of his arrest’ which would contain all such details in the hands 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.

Reliance is also placed upon a decision delivered by this Bench (Justice Bharati Dangre and Justice Manjusha Deshpande) in case of *Manula Kanchwala vs State of Maharashtra*³, where this Court relying upon the law laid down by the Apex Court in this regard has considered a situation where a notice in writing was issued to the petitioner for remaining present before the Investigating Officer, pursuant to registration of CR against him invoking Section

1 (2024) 7 SCC 576

2 (2024) 8 SCC 254

3 Criminal Writ Petition No.326 of 2024, with Criminal Writ Petition No.3279/3281 of 2024.

406, 409, 420 r/w 34 of IPC and Section 3 and 4 of the MPID Act, 1999. Despite notice, he failed to remain present and concealed himself in Goa, when he was taken in custody and on preliminary inquiry, his participation in the offence was surfaced and therefore, he was arrested.

The argument advanced on behalf of the prosecution, to the effect that the petitioner was aware of the grounds of his arrest as a notice under Section 41 (1) was served upon him was rejected by holding that the notice issued was not a substitute for the 'grounds of arrest' which are to be imperatively communicated to the person under arrest and merely by assigning the 'reason for arrest', the Investigating Officer is not absolved from communicating the grounds of arrest when the remand application containing the reasons of arrest was furnished within 1 hour and 30 minutes of the arrest.

It is also brought to our notice that an SLP preferred against the said decision is dismissed by the Hon'ble Apex Court.

9. Per contra Mr. Venegavakar, the learned Public Prosecutor has vehemently opposed the petition in the backdrop of the gravity and seriousness of the offence, which is attributed to the petitioners and according to him, sufficient material has been collated by the prosecution which is now compiled in the charge-sheet and it is in the light of this material, the petitioners have chosen not to file applications for bail, though they have applied for default bail, but the application was not entertained.

According to Mr. Venegavkar, during investigation, the role of the petitioners has surfaced and Rajrishi was arrested on the

Ashish

very same day since he was found standing with accused no.3. Mihir Shah along with the vehicle which had broken down.

A statement is categorically made in the affidavit filed by the Investigating Officer in Criminal Writ Petition No.3529 of 2024, that before arrest the grounds for arrest and legal rights were explained to him before two panchas, and a specific statement in paragraph no.14 in the affidavit reads thus:-

*“14. I say that during investigation the role of the present Petitioner Accused No.2 was revealed and therefore, the police arrested the Petitioner Accused No.2. I say that arrest form of the accused no.2, i.e. the petitioner was filled up by PSI Atul Kumbhar. I say that before the arrest, grounds for arrest, his legal rights were explained to the petitioner i.e. the accused no.2, before two panchas. I say that accordingly the arrest form of the accused no.2, i.e. the petitioner herein was duly filled up by PSI Atul Kumbhar in the presence of two pancha namely Baccha Suresh Pande and Vitthal Nath Bhoite and they had signed on the said arrest form accordingly. I say that the present Petitioner/Accused No.2 had signed on the said arrest form before PSI Atul Kumbhar and those panchas and accordingly entries in station dairy was done. I say that in column No.8 of the arrest form it's mentioned grounds of arrest, legal rights were explained to accused/petitioner. Hereto annexed and marked as **Exhibit "A"** is a copy of the arrest panchnama dated 07.07.2024.*

15. I say that after his arrest, as per the information of the present Petitioner/Accused No.2 the requisite information of the arrest of the present Petitioner Accused No.2 was given to the brother of the petitioner. I say that after completing the prescribed procedure, the present petitioner/accused no.2 was arrested on dt. 7.7.2024 at 20.16 hours.”

10. In case of Mihir Shah, the affidavit filed on 13/09/2024, a hypothetical situation has been projected by stating that if an accused is caught red-handed on the spot in serious offence like murder, even assuming that he is provided with the particulars of the offence and the grounds of his arrest, the same shall be of no use to him till such time when he is produced before the Magistrate and if the Remand Application containing the material particulars of the offence or the grounds of arrest is provided to him at the time of remand, that will suffice in safeguarding his right to have effective

Ashish



representation. The affidavit specifically record thus:-

“28.It is submitted that in the present case, the advocate for the accused was given the copy of the Remand Application containing the full particulars of the offence and the grounds and reason for remand, before it was filed in the Court. It is submitted that the particulars of the offence i.e. the grounds of arrest were communicated to the accused well in time prior to the remand, and his right to effective representation was thereby safe guarded.

29. It is submitted that the purpose of the safeguards of Sec. 47 BNSS and Article 20 of the Constitution is for the sole Purpose of effective representation. The same has been complied with in the present case. The Petitioner’s Constitutional right was appropriately safe guarded. Hence there is no merit in the petition and the same deserves to be dismissed.

30. I respectfully submit that the present Petitioner has committed very heinous and serious offence. I say that there is cogent material evidence against the Petitioner.”

11. We have perused the affidavits filed in both the Writ Petitions along with the additional affidavit which is filed by the Investigating Officer on 8/11/2024, for placing on record the further investigation in the matter and opposing the relief prayed in the two writ petitions.

The affidavit in addition to the previous affidavit has relied upon the following facts and circumstances.

“3. I say that during the course of investigation, it was revealed that at 5.14 am in the morning on 07.07.2024, CCTV of RTI (Ratan Tata Institute) shows BMW Car halting and Mihir Shah Accused No. 3 alighting from left side of the car and proceeding to sit at the wheel. At the same time footage shows Rajrishi Bindawat Accused No. 2 getting down from the right side drivers seat and proceeding to sit on the seat next to the driver (Mihir Shah). Hereto annexed and marked as Exhibit A is the copy of the photographs of said incident from CCTV Footage.

I say that the incident was occurred on 07.07.2024 in between 5.25 a.m. to 5.30 am. in the morning when it was raining. I say that the CCTV Footage of CeeJay House dated 07.07.2024 shows that on the damaged bonnet of white colour car, one person was seen in blue raincoat. I say that the complainant approached the Police Station immediately after the incident at 5.50a.m. and Complainant informed the Police Station about the incident. While complainant and his wife (victim) were on scooty to sell fish (prawns), at Dr. A. B. Road in front of Jeep Showroom, at that time, one BMW car driven at high speed, hit the said scooty from back side and the complainant and the victim were thrown off the scooty and they fell face

Ashish



down on the bonnet of the car and thereafter complainant fell down on the road but his wife got trapped in the left wheel and bumper of the car. In spite of this, the person at drivers seat speedily drove the said car and sped away with the said car from the spot. Hereto annexed and marked as Exhibit B Colly, are the photographs of the CCTV of CeeJay House, Worli.

I say that the statement of Jyotiba Bhairu Desai who saw the white BMW Car in rash and negligent driving and the complainant was shouting his wife was dragged by the said BMW Car. Hereto annexed and marked as **Exhibit C** is the copy of the statement of Jyotiba B. Desai.

I say that the statement of Vinit Mukesh Saha who is eye witness of the incident was recorded who stated that at about 5.25 a.m. in the morning, one white colour BMW Car dashed one two wheeler from back side and dragged the woman with the car and one person was shouting and thereafter he immediately dialed 100 number. Hereto annexed and marked as Exhibit D is the copy of the statement of Vinit Mukesh Saha.

4. I say that on 07.07.2024 at 5.42 a.m. one wireless message was received from Control Room that near Sea Link landing point, one body was lying on the road and therefore, wireless van (Patrolling Van) proceeded towards the spot.

5. I say that on 07.07.2024 at 6.05 a.m., Police reached the spot, Sealink landing point where the body was lying.

6. I say that on 07.07.2024, two personnel one from Traffic Marshal Coastal Road and other person deputed at Sea Link Landing point, Worli by Toll Plaza informed the police that at earlier morning at 06.07. a.m one white BMW Car had come from Worli side stopped and they heard the loud voice and they saw one woman in injured condition on road and thereafter the said Car ie. BMW Car immediately proceeded towards Bandra from the Sea Link, Toll Plaza by leaving the injured woman. Hereto annexed and marked as **Exhibit E** is the copy of the statement of Rizwan Shaikh, Traffic Marshal Coastal Road.

I say that distance between the spot of incident and landing point of sea link where the body was found is more than 2 kms

I say that the CCTV at landing point of Sea link shows that white BMW Car stopped and the driver drove the car over the body and immediately left towards Sea Link Bandra Side rashly. Hereto annexed and marked as **Exhibit F** Colly, are the copies of the photographs of CCTV Footage of landing point

7. I say that after due procedure the ambulance was called and body was shifted to Nair Hospital

8. I say that on 07.07.2024 in the morning while police were proceeded towards Worli Sea Link, one person informed the police that one white colour BMW had broken down at Kalanagar signal, therefore, police team proceeded towards Kalanaagar signal and found that white colour BMW Car was in non condition and two persons were standing near BMW

Car, one is Rajesh Shah (Orig Accused No.1) and other one is Raj Rishi Bidawat (Present Petitioner Orig. Accused No.2). Hereto annexed and marked as **Exhibit G** Colly, are the copies of the photographs of BMW Car alongwith two accused persons near Kalanagar signal.

I say that the statement of the person who is towing the vehicle was also recorded to whom the call was made by Accused No.1 Rajesh Shah who towed his BMW Car.

9. *I say that the CCTV Footage of Toll Plaza of Bandra Sealink shows that car was stopped and driver had given one card to Toll person and during the course of investigation, the Toll Person handed over the Fastag to police which is in the name of Mihir R. Shah, Orig. Accused No.3. I say that statement of Dashrath Bhat, Toll person shows that driver had not collected Fastag and left. I say that further investigation with respect to record and details of Fastag is going on. Hereto annexed and marked as **Exhibit H** is the copy of the statement of Dashrath Bhat.”*

12. Mr. Venegavkar has also played before us the clipping of the CCTV footage which has recorded the happening on 7/07/2024, at 5:11:44 to 5:12:02, where it is clearly seen that the young boy is exchanging the seat with the elderly person and the young boy take the driving seat and drive the white colour car ahead. In another CCTV footage from the toll at Worli sea link, it is the young boy, who was seen in the driving seat and the white colour car is seen to be damaged at the front end.

The circumstance that the fastag was handed over to the person on toll booth and it is in the name of Mihir Shah clearly establish that he was driving the car. At the landing of the sea link, the person driving the car again exchanged his seat with the person who was sitting on the next seat.

Similarly, the video of the women being dropped from the said car and thereafter she found lying on the sea link is also perused by us.

The collection of the fastag in the name of Mihir Shah in

Ashish

booth no.11 clearly establish that the car was being driven by Mihir Shah accused no.3, who was accompanied by Rajrishi i.e. accused no.2.

The father, Rajesh Shah who is accused of assisting Mihir Shah to flee away has been released on bail during first remand.

13. It being a trite position of law that right to life and personal liberty is a most sacrosanct fundamental right guaranteed under Article 21 of the Constitution of India and any attempt to impinge upon this right, has been frowned upon by the Constitutional Courts, with a clear observation that the life and liberty of an individual which is precious, and cannot be allowed to interfere with except under and by the authority of law.

The right to be informed about the grounds of arrest flow from Article 22(1) of the Constitution, which prescribe the protection against arrest and detention, by providing 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 nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Another safeguard against the protection from arrest is the production of the person arrested and detained in custody, before the nearest Magistrate within period of 24 hours of such arrest and the prohibition on his detention in custody beyond the said period without the authority for Magistrate.

The aforesaid safeguards being specifically excluded in

Ashish

its applicability to a person who is an enemy alien or a person who is arrested or detained under any law providing for preventive detention.

Despite the exclusion of the aforesaid provision in regards the person who is detained in pursuance of an order made under the law providing for preventive detention, clause (5) of Article 22 make it imperative for the Authority making the order to communicate to such person, the grounds on which it has been made and to afford the earliest opportunity of making the representation against the said order.

14. The right to be informed about the grounds of arrest as contemplated under Article 22(1) has received a wider interpretation from the Hon'ble Apex Court in case *V Senthil Balaji vs. State represented by Deputy Director and ors⁴*, in the backdrop of Section 19 of the The Prevention of Money Laundering Act 2002, where the power of the authorized officer to arrest the person once he find the reason to believe that he is guilty of the offence punishable under the Act was held to be coupled with the mandatory duty of recording reasons. It was affirmed that, it is the bounden duty of the authorized officer to record the reasons for his belief and this safeguard was held to facilitate an element of fairness and accountability.

While towing the line ahead in Pankaj Bansal, the Court pronounced upon the manner of 'informing' the arrested person of the grounds for his/her arrest, as in its earlier in case of *V Senthil Balaji (supra)*, the Court did not elaborate upon the issue about the manner in which the grounds of arrest should be 'served'.

⁴ (2024) 3 SCC 51

It is in this context, and in the wake of divergence in the procedure being followed in communicating the grounds of arrest, it was conclusively held that, to give true meaning and purpose to the Constitution and the statutory mandate of Section 19 (1) of the Act, of 2002 of informing the arrested person about the grounds of his arrest, it was held to be necessary, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. Merely reading out the grounds of arrest to the appellant which is disputed by the appellants, it was categorically held that this form of indication, was not found to be adequate to fulfill compliance with mandate of Article 22(1) of the Constitution and as a result, the arrest was held to be not in tune with the provisions of the 2002 Act. As a consequence, the arrest of the appellants followed by the remand to the custody of ED and thereafter, to the judicial custody was held to be not sustainable.

In Prabir (supra), the Apex Court applied the aforesaid principle to a person arrested in a case registered under the provisions of Unlawful Activities (Prevention) Act and paragraph 20, highlighted that the purpose of informing to the arrested person the grounds of arrest, as salutary and sacrosanct, inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. In no uncertain words, the Apex Court declared the right as under:-

“Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India”. Any attempt to violate the fundamental right, was to be dealt with strictly is the dictum that flow from the Apex Court. While concluding that non compliance of the constitutional requirement and statutory mandate

Ashish

would lead to the custody or detention being rendered illegal, a parlance was sought in the scope of Article 22(5) of the Constitution, which was held to ipso facto apply to Article 22(1) of the Constitution of India in so far as the requirement to communicate the grounds of arrest is concerned.

15. From the authoritative pronouncement referred to above, the principle laid down clearly flows to the effect that the grounds of arrest must be communicated in writing to the person arrested for an offence at the earliest and informing the grounds orally, would not suffice. The 'ground of arrest' have been clearly understood to be all such details in hand of the Investigating Officer, which necessitated the arrest of the accused and it contemplated conveying of all basic facts on which he was being arrested, so as to provide him an opportunity of defending himself against custodial remand and to seek bail.

The 'grounds of arrest' as distinguished from 'reasons of arrest' are admittedly, the grounds which are personal to the accused and cannot be equated with the reasons of arrest, which are general in nature.

16. The law, as enunciated in the aforesaid manner, is followed by us, being recognized as a part of the fundamental right and any violation thereof, has been dealt with stern hand as the fundamental rights under Article 21 and 22, have been considered to be on the highest pedestal.

The question that arises before us in this case is, whether merely, because the grounds of arrest not being communicated to the petitioners before us, whether they deserve their release and the arguments advanced in that regard by the learned counsel Mr.

Ashish

Mundargi and Mr. Bhuta are to be examined by us, in the very peculiar facts involved and placed before us. We must make it clear that we are looking at the circumstances prevailing on the date of the arrest of the petitioner, and in no way, we are influenced by the material compiled in the charge-sheet, which is filed subsequent to the completion of the investigation.

Upon the information being lodged by Pradeep Nakhwa about the incident which occurred at 5:20 a.m. when he was riding on his scooter and his wife was pillion riding, a white colour BMW car rammed into their vehicle and due to the impact, both of them were thrown on the bonnet of the car and his wife Kaveri was caught in the wheels of the car and dragged ahead. The complainant categorically gave the description of the person on the driving seat, as a young boy between 22-25 years, with beard and a long face, who was accompanied by middle aged person sitting next to the driving seat.

When he chased the white colour car which had knocked him down, he noticed the number of the car and it's make.

The aforesaid incident was witnessed by Vinit Mukesh Shah, the taxi driver, who had halted his vehicle near the bus stop at Ceejay House, as at 5:20 a.m, he noticed a white colour BMW car being driven in a breath-necking speed which hit the scooter, which created a profound sound and he noticed a woman who had fallen down and one over weight person standing there in a frightened state.

According to him, the car driver did not halt the vehicle and dragged the woman ahead. He provided the number of the vehicle and its make and immediately made a phone call to the police

Ashish

informing that an accident had taken place in front of Atria Mall. There are other witnesses, who reported about the incident, by stating that they found the scooter lying on the road and they also reported about fishes being scattered on the spot.

Rizwan Shaikh, a traffic marshal and Akash Poni, who were present at the sea link toll also specifically referred to the white colour BMW car, when they could hear the banging sound at the sea link landing point and also noticed a woman being dropped at the spot in an injured condition and upon a help being sought from the police helpline, the police vehicle arrived there.

Balu Chavhan K who form part of the police squad received information at 5:50 p.m. about the incident and he reached Worli Sea Link landing point to find the woman lying in an injured and unconscious condition who was immediately moved to the hospital by an ambulance. Since the information was provided that the offending vehicle had proceeded ahead, he formed part of the search team, to find the said car being broken down near Kalanagar Bridge, Rajesh Shah and Rajrishi, and one of the Petitioner was found standing near the car.

The car was taken to the police station and its panchanama was drawn. The numberplate on the front side was found to be broken and bearing only number 54 and the front windshield was found to be shattered. Below the windshield and between the bonnet, few fishes/parts were found stuck. The front portion of the bonnet was found to be smashed and broken and near the bumper, a piece of blue colour plastic was found to be attached. Worth it to note that the woman on the road was also found to have been wearing a

Ashish

blue colour raincoat. The front bumper was broken, indicating as if it had received an impactful dash. The rear side numberplate of the vehicle was removed.

The panchanama reveal that the numberplate of the car which was removed was found in the car with number MH 48 AK 4554 and it was seized.

17. The identity of the car which had hit the scooter and the persons driving on it, in the wee hours was clearly identified, as the car was found in a broken condition near Kalanagar. When the investigating teams started with their search, it was also noted that the car had passed the Worli Sea Link and the CCTV footage at 5:35 a.m. recorded the presence of the car at booth no.12. The CCTV footage reveal that the car was driven by a person wearing a black colour shirt and his approximate age was 22-25 and the person in the driving seat handed over the fastag card to Dashrat Bhat, who was present on duty, but since he was not having the fastag machine, he got out of toll booth no.11 to find that the bonnet of the car had received a huge bent and even he noticed the number of the BMW car. When he approached booth no.11 to scan the fastag and it was scanned before he could reach booth no.12, the boom was lifted and the car left the toll booth towards Kalanagar.

18. In the whole episode, Rajrishi accused no.2, who was found with the offending car, was taken to the police station and he came to be arrested at 20:16 hours after the investigating agency had collected sufficient material to lead them to a belief that he was the person who was present in the car along with the absconding accused Mihir Shah. The encompassing circumstances pointing out to his

Ashish

prima facie involvement were placed in the remand application seeking police custody remand on 8/07/2024. It pointed out the connect between the offending car and Rajrishi by relying upon the material collected within 24 hours of the incident which included the CCTV footages depicting the journey of the car and also establishing that it was driven by Mihir Shah and Rajrishi by exchanging the seats on two occasions. By this time, the postmortem report was also received which had set out the cause for death of deceased, as injury to vital organs in a case of road accident.

The first remand application placed before the Magistrate on 8/07/2024, arraigned three accused persons, as Mihir Shah was absconding, as despite search for him through the separate squads, he was not traceable, with the help of his mobile phone, his search was in progress and investigation was made with his friends who were present with him, and who had travelled with him in the car.

In the remand application, the reasons for custody of Rajrishi were clearly set out, as relying upon the material collected in the investigation lead justiciable to a inference that the accused persons are responsible for death of the woman, as despite knowing that she was caught in the wheels of the car after being rammed from behind, while she was pillion rider on scooter, she was dragged for almost 1 and ½ km and she succumbed to the injuries.

The Magistrate while passing an order on 8/07/2024, has recorded that the reasons of arrest are not submitted before the Court, but in our considered opinion, the said statement is factually incorrect and even the conclusion of the Magistrate that there is no need for

Ashish

mentioning the reasons for arrest is also not legally sustainable.

We must, however, note that the Magistrate clearly concluded that since the charge faced by the accused no.1 Rajesh Shah was under Section 238 of Bhartiya Nyaya Sanhita, as he was accused of causing disappearance of the evidence, and since it was a bailable offence, there was no reason for grant of his custody. As far as Rajrishi is concerned, the Magistrate recorded his conclusion as under:-

“7. So far as role of accused No.2 Rajrishi is concerned, additional statement of investigating officer which is filed on record, (copy thereof is served on Ld. Adv. For accused) shows that accused No.2 has role in offence punishable under Section 105 of BNS. It is contended that initially Mihir Shah was driving said vehicle and he dragged the lady about 1 and half kilometer but at one point of time they had interchanged the seats and accused No.2 shifted to driving seat and he rammed the vehicle on the body of the lady. It is contended that they have CCTV footage to that regard. I.O has shown the mobile in which CCTV footage was stored. It is not clear from the footage, who was driving the vehicle that time when vehicle rammed over the body of said lady whether it was Mihir or present accused no.2 who allegedly shifted to driver seat at that moment. On this aspect investigating officer has shown case papers particularly statement of accused No.2 and further submitted that he has admitted that he had shifted to driver seat that moment. So prima facie there appears role of accused No.2 as contended by the investigating officer. Offence punishable under Section 105 of BNS is serious in nature. Investigation is at initial stage. Therefore, custodial interrogation of accused No.2 Rajrishi appears necessary. Hence, accused No.2 is remanded to police custody till 09/07/2024.”

In the second remand application of Rajrishi before the 9/07/2024, the police remand was sought to be extended primarily for the cause that the co-accused Mihir Shah was missing. Pursuant thereto, on 9/07/2024, by considering the seriousness of the offence, for proper investigation accused Rajrishi was remanded to Police custody till 11/07/2024.

19. As far as Mihir Shah accused no.3 is concerned, he was not traced as he fled away from the spot, when the car was broken

Ashish

down and he came to be arrested on 9/07/2024, at 23:33 hours from Palghar, and worth it to note that this arrest was effected by tracking his presence, on the basis of the electronic devices in his possession and once his location was tracked, he was arrested.

Upon his arrest, he was produced before the Magistrate on 10/07/2024, and once again taking into consideration the seriousness of the offence and the fact that the investigation was at initial stage, and finding substance in the accusations that he tried to dispose off the numberplate of the vehicle, so as to cause the evidence to disappear and since he himself absconded and was required to be arrested after a frantic search, he was remanded to police custody till 16/07/2024, and on the second remand application, he was directed to be taken in Magisterial custody.

20. It is in this background, when we appreciate the pleading raised in the petitions about the grounds of arrest not being communicated, we must record that both the petitioners are conscious of their serious act of hitting the moped driven by complainant, by the BMW car which was being driven by Mihir Shah with Rajrishi sitting next to the driving seat and the car being driven in a rash and negligent manner, with Mihir having consumed alcohol, when the mishap occurred. Instead of rendering assistance to the complainant and his wife, the victims of mishap, the accused persons chose to drive the vehicle continuing the high speed, till the time when the vehicle broke down. Sufficient evidence was available on the very first day of the incident in form of CCTV footages and the statement of witnesses including the complainant himself, who clearly gave the number of the offending car, and this was corroborated by the

Ashish



presence of the said car in the CCTV footages collected from different location. As far as petitioner Rajrishi is concerned, he was apprehended when he was found along with the Car in the company of accused no.1 and as far as the other accused Mihir Shah is concerned, he went absconding and with lots of efforts from the investigating team, he came to be arrested at a far off location, away from his house.

Both the petitioners, who had committed the accident which was seen by the eye witnesses and the fact that the fastag was swiped by the person driving the BMW at the sea link toll, was found to be in the name of Mihir Shah, considering the chain of circumstances and its continuity, which was well within the knowledge of the petitioners, and the attempt on part of accused Mihir Shah to flee the course of justice, apprehending his arrest, as he was aware about the charge he was bound to face, we are of the clear opinion that since the grounds of arrest in a situation like this, which are well within the knowledge of the offenders, they shall not be permitted to take advantage on the account that the 'grounds of arrest' are not communicated in writing.

For these reasons, though we record that the grounds of arrest admittedly are not communicated to the petitioners and as far as Mihir Shah is concerned, he was absconding and was required to be arrested and produced before the Magistrate, when the remand application clearly discerned to him the reasons for his arrest, we are of the firm view that in a serious offence of this nature, when the presence of both the petitioners is established in the offending car which is responsible for the mishap, they cannot take the benefit that

Ashish

the grounds of arrest are not communicated to them in writing. Admittedly, the petitioners apprehending that their applications for being released on bail on account of seriousness of the offence may not receive positive consideration have chosen not to file the bail applications.

Despite the fact that we are conscious of the position of law laid down by the Hon'ble Apex Court, and which we are duty bound to follow, we are making an exception in case of the present petitioners, as they were aware of the consequences of their gruesome act and since the petitioner Rajrishi was apprehended with the offending car, which itself offered a proof of his presence in the car, which was noticed in continuation, in the CCTV footages after the accident had occurred, and as far as petitioner no.2 chose to flee from the spot and remained absconding till he was arrested, we are not inclined to grant them the benefit of the orders of the Apex Court, when they are raising a plea of not furnishing the grounds of arrest and that their arrest shall be declared as illegal and so also the subsequent remand orders.

We, therefore, decline to extend the benefit of the said order to them in the above circumstances.

21. While being focused upon the rights of the accused, we, in the present case, also cannot lose sight of the victim. The complainant who lodged the complaint himself had sustained injuries in the mishap and lost his companion Kaveri.

For too long, the victims of crimes have been the forgotten persons in a criminal justice system. Crime is not a

Ashish

problem of the victim, since the victim did not create it.

For considerable time, what the system offered to the victim was only sympathy, but with the introduction of discipline of “victimology” the concept has gained momentum and found its place in the existing Code of Criminal Procedure, when the victim was introduced by providing a definition in Section 2(wa) of the Code of Criminal Procedure, 1908. Since the Indian Constitution through Article 39A cast an obligation upon the State to ensure that the operation of legal system promotes justice, on the basis of equal opportunity and in particular, in providing free legal aid, by suitable legislation or schemes, or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or any other disabilities. The principle enshrined in Article 51A of the Constitution, to develop ‘humanism’ imaginatively, has the seeds of victimology in it.

The Code of Criminal Procedure in its amended form as well as the new The Bhartiya Nagrik Suraksha Sanhita (BNSS) has conferred several rights on the victim including pre-trial rights i.e. of keeping the victim informed about the progress of investigation, filing of charge-sheets/closure reports and also a participation in the hearings to be conducted, including the Bail Applications. A specific provision in the new Sanhita in form of Section 123 has given right to the victim to present objections against the Bail ensuring the victim’s safety. The victim’s consent and participation is made mandatory during plea negotiations.

During the trial, victim is held entitled to legal assistance, either by appointing a private counsel or through a

Ashish

counsel to be provided through legal aid. Post trial, the victim is conferred with right to file Appeal against acquittal, challenge the conviction on lesser charge or inadequate sentence. In addition, the victims are also entitled to compensation from the State, irrespective of the accused conviction status and the scheme of compensation being implemented by the District Legal Services Authority.

The moot question that exists today is whether the victims right to representation is sufficiently addressed in the adversarial nature of trials and as to how shall the Courts balance victim's participation with the accused's right to a fair trial, including respecting the rights guaranteed to an accused being translated through the provisions of the Constitution or the Code of Criminal Procedure.

Though in the present case, the informant did not file any application, we have noticed his presence in the Court on every date of hearing and we have sensed his despair when the hearing was being conducted and he being represented by the learned P.P. Mr.Venegavkar. It is necessary to strike a balance between the right of the accused, which undisputedly are well recognized and settled and are found to be embedded in the criminal justice system through various authoritative pronouncements, but we are of the opinion that at some point of time, right of the victim must also be prioritized and this is a case where we feel that acting in utter derogation of respect to human life, the petitioners, mowed down, the wife of the complainant and in utter disregard to any humanitarian conduct, ruthlessly the vehicle was driven with her body being entangled between the bonnet and the wheels. Having no regard to human life,

Ashish

the petitioners are alleged to have fled away from the spot and not only this, the petitioner Mihir Shah went absconding and was required to be arrested after two days.

While we balance the rights of the accused which have been weighed on the parameters of life and liberty as enshrined in the constitution, we are of the firm view that the rights of the victim will also have to be tested on the same parameters of Article 21, which guarantees right to life and liberty and is equally applicable to the victim of the crime, before us.

In light of the aforesaid discussion, we do not find merit in the petitions, praying that their release on the ground of illegal arrest as “grounds of arrest” were not communicated to them.

Writ Petitions are dismissed with no order as to costs.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J.)

Ashish