Vihaan Kumar vs The State Of Haryana on 7 February, 2025

Author: Abhay S. Oka

Bench: Abhay S. Oka

2025 INSC 162

REPORTABL

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(Arising out of Special Leave Petition (Crl.) No. 13320 of 2

VIHAAN KUMAR …APPELLANT

VERSUS

STATE OF HARYANA & ANR. …RESPONDENTS

JUDGMENT

ABHAY S. OKA, J.

ISSUE INVOLVED

1. Amongst other issues, the main issue canvassed by the appellant in this appeal is the violation of the appellant's right under Article 22(1) of the Constitution of India (for short 'the Constitution') as the appellant was not informed of the grounds for his arrest.

FACTUAL ASPECT KAVITA PAHUJA Date: 2025.02.07 18:54:59 IST Reason:

2. A reference to a few factual aspects would be necessary. The challenge in this appeal is to the judgment and order dated 30th August 2024 passed by the learned Single Judge of Punjab and Haryana High Court. The appellant was arrested in connection with first information report no.121 of 2023 dated 25th March 2023 registered for the offences under Sections 409, 420, 467, 468 and 471 read with Section 120-B of the Indian Penal Code (for short, 'IPC'). According to the appellant's case, he was arrested on 10th June 2024 at about 10.30 a.m. at his office premises on the 3rd-5th floor of HUDA City Centre, Gurugram, Haryana. He was taken to DLF Police Station, Section 29,

Gurugram. He was allegedly produced before the learned Judicial Magistrate (in charge) at Gurgaon on 11th June 2024 at 3.30 p.m. Therefore, there was a violation of Article 22(2) of the Constitution and Section 57 of the Code of Criminal Procedure Code, 1973 (for short, 'CrPC'). The allegation is that neither in the remand report nor in the order dated 11th June 2024 passed by the learned Magistrate was the time of arrest mentioned. The FIR was registered at the instance of the 2nd respondent. We may note here that, according to the case of the 1st respondent, the appellant was arrested on 10th June 2024 at 6.00 p.m. Therefore, compliance with the requirement of Article 22(2) was made.

3. There is another very serious factual aspect. The order dated 4th October 2024 passed by this Court records that after the appellant was arrested, he was hospitalised in PGIMS, Rohtak. The learned counsel appearing for the appellant produced photographs which showed that while he was admitted to the hospital, he was handcuffed and chained to the hospital bed. Therefore, a notice was issued on 4th October 2024 to the Medical Superintendent of PGIMS, calling upon him to file an affidavit stating whether the appellant was handcuffed and chained to the hospital bed. The order dated 21st October 2024 records the admission of the Medical Superintendent of PGIMS that when the appellant was admitted to the hospital, he was handcuffed and chained to the bed. On this aspect, we may note that an affidavit was filed on 24th October 2024 by Shri Abhimanyu, HPS, Assistant Commissioner of Police, EOW I and II, Gurugram, Haryana. The affidavit states that the officials who were deployed to escort the appellant to PGIMS have been suspended, and a departmental inquiry was ordered against them by the Deputy Commissioner of Police on 23rd October 2024.

SUBMISSIONS

4. The learned senior counsel, Shri Kapil Sibal, appearing on behalf of the appellant, invited our attention to the averments made in the writ petition filed before the High Court and, particularly, the grounds therein. He pointed out that grounds A and B contain a specific averment that the appellant was not informed about the grounds of arrest or reasons for arrest, and hence, there was a violation of Section 50 of CrPC. Further, Article 22(1) has also been violated. He pointed out that even in paragraph 13, there is a specific assertion to that effect. He invited our attention to the counter affidavit/status report filed by Shri Abhimanyu, Assistant Commissioner of Police, before the High Court. He submitted that it is not even a case made out by him that grounds of arrest were communicated to the appellant in some form. Moreover, the specific averment in the petition that the grounds of arrest were not informed to the appellant has not been denied. He pointed out that the only pleading was that the appellant's wife was informed about the arrest. Therefore, learned senior counsel, by relying upon decisions of this Court in the case of Pankaj Bansal v. Union of India1 and Prabir Purkayastha v. State (NCT of Delhi) 2, submitted that on the failure of the 1 st respondent to comply with the mandate of Article 22(1) and Section 50 of CrPC, the arrest of the appellant is rendered illegal. He also urged that there was a violation of Article 22(2) of the Constitution as he was not produced before the learned Magistrate within 24 hours of his arrest. Therefore, he must be forthwith set at liberty.

5. Learned senior counsel Shri Basant R. represented the 1 st respondent state. He submitted that the argument before the 1 (2024) 7 SCC 576 2 (2024) 8 SCC 254 High Court as noted by the learned Single Judge in paragraph 7 of the impugned judgment is that the grounds of arrest were not handed over to him in compliance with the provisions of law. He submitted that it was not argued that grounds of arrest were not even orally communicated as there is no requirement under Article 22(1) or in Section 50 of CrPC to communicate the grounds of arrest to the arrestee in writing. Moreover, he submitted that the mandate of Section 50 is that either the full particulars of the offence for which he is arrested must be communicated to an arrestee or the grounds of arrest. He invited our attention to the arrest memo, which contains details of the offence, time and date of arrest, etc. He pointed out that the case diaries were placed before the High Court and in fact, the High Court examined the case diaries. He submitted that in the daily diary, an entry was made at 6.10 p.m. on 10 th June 2024, noting that the appellant was arrested after informing him of the grounds of arrest. He submitted that though the High Court may not have recorded a finding based on the case diary, the fact remains that the learned Single Judge perused the diary and the entry mentioned above. In the written submissions, he urged that the grounds of arrest have been set out in the remand report dated 11th June 2024. He urged that there is a delay of more than 2 months in raising a contention regarding the violation of Article 22(1). He submitted that the appellant is now in custody under the process issued on the charge sheet. He submitted that there was a compliance made with the requirement of Article 22(2).

6. Learned senior counsel Shri Siddharth Luthra, appearing for the 2nd respondent, supported the submissions of the learned counsel appearing for the 1st respondent. He submitted that the case diary maintained by the police is a contemporaneous record which records that grounds of arrest were communicated to the appellant. Therefore, there is no reason to disbelieve the stand of the police.

CONSIDERATION OF SUBMISSIONS PROCEDURE TO BE FOLLOWED FOR ARRESTING A PERSON WITHOUT WARRANT

7. Sub-Section (1) of Section 41 of CrPC lists cases where police may arrest a person without a warrant. The corresponding provision in the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS') is Section 35. Section 41 of CrPC reads thus:

> "41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—
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> (a) who commits, in the presence of a police officer, a cognizable offence;
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> (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

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

(ii) the police office is satisfied that such arrest is necessary—

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

(b) for proper investigation of the offence; or

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

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-

section, record the reasons in writing for not making the arrest.

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

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

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

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

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

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in,

any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

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

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

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

8. In this case, a commission of a cognizable offence punishable with imprisonment for a term which may extend to more than seven years has been alleged against the appellant. Hence, clause (ba) of sub-Section (1) of Section 41 [clause (c) of sub-Section (1) of Section 35 of the BNSS] will apply. Therefore, a police officer can arrest a person without an order of a Magistrate or warrant subject to the following conditions:

> a) Credible information has been received against the person that he has committed a cognizable offence punishable with imprisonment for more than seven years and
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> b) The police officer has reason to believe on the basis of the information received that such a person has committed the offence.

Hence, a police officer cannot casually arrest a person against whom the commission of an offence punishable with imprisonment for more than seven years is alleged. He can arrest provided twin conditions in clause (ba) are satisfied. The emphasis is on "credible information". He cannot arrest a person under clause (ba) unless credible information is received.

9. Article 22 of the Constitution reads thus:

> "22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
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> (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the

magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (3) Nothing in clauses (1) and (2) shall apply—

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

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

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

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

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

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

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

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

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause

(a) of clause (4).” (emphasis added) Clause (1) of Article 22 provides 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.

Then comes Section 50 of CrPC (Section 47 of the BNSS), which reads thus:

“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.”

10. As far as Article 22(1) is concerned, the legal position is well settled. In the case of Pankaj Bansal1, this Court dealt with Section 19 of the Prevention of Money Laundering Act, 2002 (for short, ‘the PMLA’). Section 19 reads thus:

“19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. (2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed. (3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court.” (emphasis added) There are two parts of Section 19(1). The first part is the requirement of recording in writing the reason to believe that any person has been guilty of an offence punishable under the PMLA. No such requirement of recording in writing the reason to believe is found in clause (ba) of Section 41(1). The second requirement incorporated in Section 19(1) is that the person arrested shall be informed of the grounds of such arrest as soon as may be. The second part is the requirement incorporated in Article 22(1). Therefore, even under Section 19(1) of PMLA, there is a requirement to inform the arrestee of the grounds of arrest. This

decision deals with and interprets Article 22(1). In paragraph 38 of the decision, this Court held thus:

"38. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's "reason to believe" that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance." (emphasis added) In the said decision, this Court in paragraphs 42 and 43 observed thus:

"42. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non- compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] . Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.

> 43. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. 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. In this regard, the grounds of arrest in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose.

Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) PMLA." (emphasis added)

11. The view taken in the case of Pankaj Bansal1 was reiterated by this Court in the case of Prabir Purkayastha2. In paragraphs nos. 28 and 29, this Court held thus:

> "28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.
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> 29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be." (emphasis added)

12. This Court held that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical, and therefore, this Court held that interpretation of Article 22(5) made by the Constitution Bench in the case of Harikisan v. State of Maharashtra3, shall ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the ground of arrest is concerned. We may also note here that in paragraph 21, in the case of Prabir Purkayastha2, this Court also dealt with the effect of violation of Article 22(1) by holding that any infringement of this fundamental right would vitiate the process of arrest and remand. Paragraph 21 reads thus:

> "21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused." (emphasis added) 3 1962 SCC OnLine SC 117

13. In the case of Lallubhai Jogibhai Patel v. Union of India4, in paragraph 20, this Court held thus:

> "20. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the detenu, have been drawn up in English. It is true that Shri C.L. Antali, Police Inspector, who served the grounds of detention on the detenu, has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. But, that is not a sufficient compliance with the mandate of Article 22(5) of the Constitution, which requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the "ground" to the detenu is to enable him to make a purposeful and effective representation. If the "grounds" are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. If any authority is needed on this point, which is so obvious from Article 22(5), reference may be made to the decisions of this Court in Harikisan v. State of Maharashtra [1962 Supp 2 SCR 918 : AIR 1962 SC 911 : (1962) 1 4 (1981) 2 SCC 427 Cri LJ 797] and Hadibandhu Das v. District Magistrate [(1969) 1 SCR 227 : AIR 1969 SC 43 :
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> 1969 Cri LJ 274] ." (emphasis added) Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in the case of Pankaj Bansal1, this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under

> Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

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

15. We have already referred to what is held in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal1. This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal1 are suggestions that merit consideration. We are aware that in every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non- compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

16. An attempt was made by learned senior counsel appearing for 1st respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a chargesheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance

passed on the charge sheet. Accepting such arguments, with great respect to the learned senior counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

17. 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.

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

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

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

CONCLUSIONS

21. Therefore, we conclude:

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

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

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

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

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

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

FACTUAL ADJUDICATION

22. In ground A of the writ petition filed before the High Court, a specific factual contention has been raised to the following effect:

> "A. BECAUSE the arrest of the Petitioner dated 10.06.2024 is patently illegal inasmuch the Petitioner was not provided with the grounds or reasons of arrest.

..... " Even the same contention is raised in ground B very specifically and a further contention is raised due to non- compliance with the requirement of informing the appellant of the grounds of arrest, the appellant's arrest is rendered illegal. The same is the ground specifically taken in ground E also. Thus, the appellant repeatedly pleaded violation of

Article 22(1) by explicitly contending that he was not informed of the grounds of arrest.

23. A status report/reply was filed by Shri Abhimanyu, Assistant Commissioner of Police before the High Court in response to the petition. The grounds taken in the writ petition regarding failure to communicate the grounds of arrest are not dealt with in the reply at all. It is merely mentioned that the appellant's wife was informed about the arrest. Thus, it is not even pleaded before the High Court that grounds of arrest were communicated or informed to the appellant.

24. It is pertinent to note the stand Shri Abhimanyu took while filing a reply to the present Special Leave Petition. He has described in detail how the appellant was arrested. Most pertinently in paragraph 11, he stated thus:

> "……
>
> The petitioner, thereafter, gave his phone to IO to make call at the mobile no. of his wife.
>
> The IO called from the phone of the petitioner and his wife immediately responded the phone call. Thus, when informing Petitioner's wife about Petitioner's arrest, the grounds of arrest were also explained to her in detail as per the provisions of Section 50A of CrPC. Further, when Petitioner's wife came to meet the Petitioner, she was again explained the grounds of arrest in detail and shown the relevant documents.
>
> ……" (emphasis added) Thus, the stand taken by Shri Abhimanyu is that the grounds of arrest were explained to the appellant's wife in detail, and when she again came to meet the appellant, she was informed and explained the grounds of arrest. Thus, the stand taken shows that grounds of arrest were not informed to the appellant but to his wife. The contention that the appellant's wife was informed about the grounds of arrest is an afterthought, as no such contention has been raised in the reply filed before the High Court. Communication of the grounds of arrest to the wife of the arrestee is no compliance with the mandate of Article 22(1). As the ground of non-compliance with Article 22(1) has been specifically pleaded in this appeal, this was the second opportunity available to the 1st respondent to plead and prove that grounds of arrest were informed to the appellant. However, it has not been done, and his contention is that the grounds of arrest were communicated to the appellant's wife.

25. A contention has been raised in the written argument that the grounds of arrest were incorporated in the remand report. This contention has been raised for the first time in written submissions before this Court. This is not pleaded in the reply filed before the High Court and this Court. The police submit a remand report before the learned Magistrate for seeking remand without serving a copy thereof to the arrestee. The reason is that the Police cannot divulge the details of the investigation to the accused till the final report is filed. Mentioning the grounds of arrest in the remand report is no compliance with the requirement of informing the arrestee of the grounds of

arrest.

26. The stand taken before the High Court was that the appellant's wife was informed about the arrest. Information about the arrest is completely different from the grounds of arrest. The grounds of arrest are different from the arrest memo. The arrest memo incorporates the name of the arrested person, his permanent address, present address, particulars of FIR and Section applied, place of arrest, date and time of arrest, the name of the officer arresting the accused and name, address and phone number of the person to whom information about arrest has been given. We have perused the arrest memo in the present case. The same contains only the information stated above and not the grounds of arrest. The information about the arrest is completely different from information about the grounds of arrest. Mere information of arrest will not amount to furnishing grounds of arrest.

27. Reliance was placed in this regard on the case diary entry of 10th June 2024 at 6.10 p.m., which records that the appellant was arrested after informing him of the grounds of arrest. This was not pleaded before the High Court as well as in this Court in the reply of 1st respondent. This is an afterthought. Considering the stand taken in the reply filed before the High Court and this Court, only on the basis of a vague entry in the police diary, we cannot accept that compliance with Article 22(1) can be inferred. No contemporaneous documents have been put on record wherein the grounds of arrest have been noted. Therefore, reliance placed on the diary entries is completely irrelevant.

28. Therefore, in the facts of the case, we have no hesitation in holding that the arrest of the appellant was rendered illegal on account of failure to communicate the grounds of arrest to the appellant as mandated by Article 22(1) of the Constitution.

29. Before we part with this judgment, we must refer to the shocking treatment given to the appellant by the police. He was taken to a hospital while he was handcuffed and he was chained to the hospital bed. This itself is a violation of the fundamental right of the appellant under Article 21 of the Constitution of India. The right to live with dignity is a part of the rights guaranteed under Article 21. We, therefore, propose to direct the State Government to issue necessary directions to ensure that such illegalities are never committed.

30. We must refer to the reasons recorded by the High Court. Paragraph 7 of the judgment notes the contention regarding failure to serve grounds of arrest. Paragraph 9 of the impugned judgment reads thus:

> "9. In the above said para, it has been explicitly mentioned that petitioner was informed regarding his arrest and after that he was produced before the Judicial Magistrate, who had given the seven days police custody for conducting investigation. The allegations about non-supply of arrest, is simply bald. The analysis of above, would clearly point out that there is no violation of Article 22(1) of Constitution of India because there is nothing to disbelieve that petitioner was not informed about ground of arrest."

31. The learned Single Judge, unfortunately, has equated information given regarding the appellant's arrest with the grounds of arrest. The observation that the allegation of non- supply of the grounds of arrest made by the appellant is a bald allegation is completely uncalled for. All courts, including the High Court, have a duty to uphold fundamental rights. Once a violation of a fundamental right under Article 22(1) was alleged, it was the duty of the High Court to go into the said contention and decide in one way or the other. When a violation of Article 22(1) is alleged with respect to grounds of arrest, there can be possible two contentions raised: (a) that the arrested person was not informed of the grounds of arrest, or (b) purported information of grounds of arrest does not contain any ground of arrest. As far as the first contention is concerned, the person who is arrested can discharge his burden by simply alleging that grounds of arrest were not informed to him. If such an allegation is made in the pleadings, the entire burden is on the arresting agency or the State to satisfy the court that effective compliance was made with the requirement of Article 22(1). Therefore, the view taken by the High Court is completely erroneous.

32. In view of the above findings, we are not deciding the issue of violation of Article 22(2) of the Constitution.

33. Hence, the appeal is allowed, and we pass the following order:

a) The arrest of the appellant shown on 10 th June 2024 in connection with FIR no.121 of 2023 dated 25 th March 2023 registered at Police Station DLF, Sector-29, Gurugram stands vitiated;

b) Therefore, the appellant shall be forthwith released and set at liberty;

c) We clarify that the finding of this Court that the arrest of the appellant stands vitiated will not affect the merits of the chargesheet and the pending case;

d) We direct the appellant to regularly and punctually attend the trial court unless his presence is exempted, and cooperate with the trial court for early disposal of the trial.

We direct the appellant to furnish a bond in accordance with Section 91 of the BNSS to the satisfaction of the Trial Court within a period of two weeks from his release ;

e) The State of Haryana shall issue guidelines/departmental instructions to the police (i) to ensure that the act of handcuffing an accused while he is on a hospital bed and tying him to the hospital bed is not committed again. (ii) to ensure that the constitutional safeguards under Article 22 are strictly followed. If necessary, the State Government shall amend the existing Rules/guidelines; and

f) A copy of the judgment shall be forwarded to the Home Secretary of the State of Haryana.

.....J. (Abhay S. Oka) .....J. (Nongmeikapam Kotiswar Singh) New Delhi;

February 07, 2025

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024

(arising out of Special Leave Petition (Crl.) No.13320 of 2024) VIHAAN KUMAR ...APPELLANT(S) VERSUS STATE OF HARYANA & ANR. ...RESPONDENT(S) JUDGMENT NONGMEIKAPAM KOTISWAR SINGH, J.

1. I had the benefit of going through the draft opinion of my esteemed Brother Hon'ble Mr. Justice Abhay S. Oka and I concur with the analysis and conclusions arrived at. However, I wish to add a few lines in supplement to the aforesaid opinion.

2. The issue on the requirement of communication of grounds of arrest to the person arrested, as mandated under Article 22(1) of the Constitution of India, which has also been incorporated in the Prevention of Money Laundering Act, 2002 under Section 19 thereof has been succinctly reiterated in this judgment. The constitutional mandate of informing the grounds of arrest to the person arrested in writing has been explained in the case of Pankaj Bansal (supra) so as to be meaningful to serve the intended purpose which has been reiterated in Prabir Purkayastha (supra). The said constitutional mandate has been incorporated in the statute under Section 50 of the CrPC (Section 47 of BNSS). It may also be noted that the aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50A of the CrPC. As may be noted, this is in the addition of the requirement as provided under Section 50(1) of the CrPC.

3. The purpose of inserting Section 50A of the CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law.

The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detenue, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest

possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.

.....J. (NONGMEIKAPAM KOTISWAR SINGH) New Delhi:

February 07, 2025.