Pappula Chalama Reddy vs The State Of Andhra Pradesh on 18 December, 2024

Author: R. Raghunandan Rao

Bench: R. Raghunandan Rao

RRR,J & MRK,J
W.P.No.26769/2024

IN THE HIGH COURT OF ANDHRA PRADESH
***

+W.P.No.26769 of 2024 Between:

Pappula Chalama Reddy, S/o. Ramachandra Reddy, R/o. Thelakutla Village, Guruzala Mandal, Palnadu District.

... Petitioner AND $ 1. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, Secretariat Buildings, Velagapudi, Amaravati, Guntur District.

2. The Director General of Police, DGP Office, Mangalari, Guntur District.

3. The Superintendent of Police Palnadu District.

4. The Station House Officer, Inavolu Police Station, Palnadu District.

5. Sri Meesala Murali Krishna, S/o. Anjaneyulu, R/o. Thalariapalli Village, Nuzendla Mandal, Palnadu District.

... Respondents Date of Judgment pronounced on : 18.12.2024 HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO AND HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

1. Whether Reporters of Local newspapers : Yes/No May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes/No to Law Reporters/Journals:

3. Whether The Lordship wishes to see the fair copy : Yes/No Of the Judgment?

RRR,J & MRK,J *IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI * HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO AND * HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM % Dated:18.12.2024 Between:

Pappula Chalama Reddy, S/o. Ramachandra Reddy, R/o. Thelakutla Village, Guruzala Mandal, Palnadu District.

... Petitioner AND $ 1. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, Secretariat Buildings, Velagapudi, Amaravati, Guntur District.

2. The Director General of Police, DGP Office, Mangalari, Guntur District.

3. The Superintendent of Police Palnadu District.

4. The Station House Officer, Inavolu Police Station, Palnadu District.

5. Sri Meesala Murali Krishna, S/o. Anjaneyulu, R/o. Thalariapalli Village, Nuzendla Mandal, Palnadu District.

... Respondents ! Counsel for Petitioner : Sri S. Sriram, learned Senior Counsel representing Sri S. Dushyanth Reddy ^Counsel for Respondents : Learned Advocate General RRR,J & MRK,J <GIST :

>HEAD NOTE :

? Cases referred:

1. (2014) 8 SCC 273

2. (2024) INSC 414

3. (2022) 13 SCC 542

4. 1962 SCC Online ALL 11 (paras 4, 13, 14 & 31)

5. 2005 (3) CTC 540 (paras 11 and 13)

6. 2010 SCC Online Raj 1217 (paras 2, 12, 19 to 27)

7. 2022 (9) SCC 321

8. AIR 1966 SC 816 (para 5)

9. (1972) 3 SCC 256 (paras 6 & 7)

10. (1952) 1 SCC 118 (paras 9 & 10)

11. (1994) 5 SCC 410 (para 48)

12. (2019) 5 SCC 266 (paras 17 to 20.1)

13. (1982) 2 SCC 463 (para-4)

14. 2005 124 DLT 602 (paras-8 & 9)

15. 2024 SCC ONLINE SC 1703 (Para 40)

16. (2024) 3 SCC 51 : 2023 SCC OnLine SC 934 at page 77

17. (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475 : 2012 SCC OnLine SC 808 at page 324

18. 2023 SCC Online 1244 RRR,J & MRK,J APHC0105209 92024 IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI [3508] (Special Original Jurisdiction) WEDNESDAY, THE EIGHTEENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR PRESENT THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM WRIT PETITION NO: 26769/2024 Between:

Pappula Chalama Reddy ...PETITIONER

AND

The State Of Andhra Pradesh and others...RESPONDENT(S) Counsel for the Petitioner:

S. DUSHYANTH REDDY Counsel for the Respondent(S):

THE ADVOCATE GENERAL RRR,J & MRK,J The Court made the following Order:

(Per Hon ble Sri Justice R. Raghunandan Rao) Heard, Sri S. Sriram, learned Senior Counsel representing Sri S. Dushyanth Reddy, learned counsel appearing for the petitioner and learned Advocate General appearing for the respondents.

2. This Writ Petition has been filed by the petitioner, for issuance of a Writ of Habeas Corpus, for setting the detenue, who is his son, free by setting aside the order of remand, dated 08.11.2024, passed by the Learned Judicial First Class Magistrate, Vinukonda, remanding the detenue to judicial custody, in Crime No.104 of 2024, registered in Inavolu Police Station, Palnadu District.

3. The petitioner states that his son (hereinafter referred to as „the detenue) was arrested by the 4th respondent and produced before the territorial jurisdictional Magistrate, on 08.11.2024, who remanded the detenue to judicial custody. The petitioner disputes the record of arrest, showing arrest of the detenue at 11 am., on 08.11.2024. Nothing further turns on this issue, as the challenge to the arrest and remand is not on this ground.

4. The petitioner states that the 5threspondent had lodged a report before the 4th respondent, stating that the detenue had posted abusive material, on Face book, in relation to the Hon ble Chief Minister and also some morphed photographs showing

the Hon ble Deputy Chief Minister in a bad light, apart from posting an abusive message along with the morphed RRR,J & MRK,J photographs. On the basis of this complaint, the 4th respondent is said to have registered Crime No.104/2024, against the detenue, under the provisions of Sections 61(2), 196, 352, 353(2) of BNS and Section 67 of the Information Technology Act, 2000 (for short „the IT Act). Thereafter, the 4th respondent, by way of Memos, had added Sections 111, 226(4), 308 (5) and 340(2) of BNS.

5. The petitioner further contends that all the aforesaid provisions of law, except Sections 308(5) and 111 of BNS, attract punishment of imprisonment below 7 years. The petitioner further contends that Sections 308(5) and 111 of BNS are not attracted in the present case and consequently the arrest and subsequent remand of the detenue are illegal.

6. Apart from this, the petitioner would also contend that the investigating officer, instead of issuing a notice under Section 35(2) of BNSS (equivalent to Section 41 Cr.P.C.,), as required by the judgment of the Hon ble Supreme Court in Arnesh Kumar vs. State of Bihar1, had deliberately included the provisions of Sections 308(5) and Section 111 of BNS, only for the purpose of arresting and detaining the detenue.

7. The petitioner, apart from these grounds, would also contend that the arrest and subsequent remand by the Magistrate, is in violation of the directions of the Hon ble Supreme Court in the case of Prabhir Purkayastha vs. State (NCT of Delhi)2. The said judgment requires the officer, who arrests (2014) 8 SCC 273 (2024) INSC 414 RRR,J & MRK,J a person, to furnish grounds of arrest, and mere furnishing of reasons of arrest would not be sufficient. As the said grounds of arrest have not been served on the detenue, there is a violation of this judgment and consequently both the arrest and subsequent remand order would have to be set aside as being violative of the aforesaid directions and the detenue would have to be set free.

8. The petitioner would also contend that the learned Magistrate, without considering the applicability of Section 111 of BNS, had mechanically remanded the detenue to judicial custody. Apart from this, the learned Magistrate, by recording that the grounds of arrest had been served on the detenue, had passed the order of remand mechanically. In such circumstances, a writ of Habeas Corpus would be maintainable, as the Hon ble Supreme Court in Gautam Navlakha vs. National Investigation Agency3 (para-80) had held that a writ of Habeas Corpus would be maintainable even against an order of remand when it is passed mechanically.

9. This writ petition came to be filed on 19.11.2024, by way of a Lunch Motion. Sri S. Sri Ram, learned Senior Counsel appearing for the petitioner, had raised all the aforesaid grounds. The learned Government Pleader, in the office of the learned Advocate General, had submitted that the writ petition was not maintainable as a bail petition had already been moved.

10. The matter was again taken up on 20.11.2024, when the learned Advocate General appeared and raised objections as to the maintainability of (2022) 13 SCC 542 RRR,J & MRK,J the writ petition and sought time to place an affidavit on record, setting out the objections as well as the facts of the case. At that stage, the learned counsel for the petitioner had stated that they would not press the bail application.

11. The matter came up again on 29.11.2024. The learned Advocate General stated that the bail petition filed before the XIII Additional Sessions Judge, Narasaraopet, was pressed and came to be dismissed on 21.11.2024.

12. When the matter came up on 03.12.2024, the learned Advocate General had submitted that the counter affidavit, for the respondents, could not be filed as the Station House Officer, Vinukonda Rural Police Station, who had arrested the detenue, was not arrayed as a respondent.

13. This Court, had then, impleaded the Station House Officer, Vinukonda Rural Police Station, as respondent No.6 and granted time for filing a counter affidavit.

14. When the matter again came up on 06.12.2024, the learned Government pleader, who had appeared, submitted that the officer, who had arrested the detenue, was not the Station House Officer but the Inspector of the Police Station, Vinukonda Rural. However, it was also stated that a counter affidavit was being filed.

15. The matter was then heard on 10.12.2024. The learned Advocate General had pointed out that the 4th respondent, who is the complainant/victim had not been served with notice and the matter would have to be heard after RRR,J & MRK,J service of notice. At that stage, the learned counsel, appearing for the petitioner, had stated that the writ petition was not being pressed against the 4th respondent and a memo would be filed for this purpose. A memo has also been filed stating that the complainant/victim is a formal party against whom no relief is being sought.

16. Arguments of Sri S. Sri Ram, learned Senior Counsel:

a) The bail petition was moved on 14.11.2024. During the pendency of this petition, the present writ petition for issuance of Writ of Habeas Corpus was filed on 19.11.2024. When the matter came up on 20.11.2024, the bail application was argued before the trial Court. On the very same day, the present writ petition has already been heard by this Court and a representation was made that the bail application would not be pressed.

However, the arguments in the bail application had already been completed and consequently, the contention of the respondents that parallel proceedings were pursued is not correct.

b) Even otherwise, the writ petition would be maintainable even if the bail application had been pursued. An application for bail, would only result in the detenue being released to the custody of the sureties and that overall custody of the court remains. An order of release, under a Writ of Habeas Corpus, would release the detenue from the custody of every and any authority. In the light of these vital differences, the mere application for bail, or RRR,J & MRK,J pressing the bail application, would not preclude the petitioner from filing a Writ of Habeas Corpus.

c) The learned Senior Counsel would rely upon Zahir Ahmad v. Ganga Prasad, A.S.D.M., Ballia and Anr.,4; Wilfred Prakash vs. State of Tamil Nadu, rep. by the Secretary to Government (Home), Fort St. George, Chennai and Ors.,5; and Hridya Narayan Singh (Dr.) v. State of Rajasthan &Anr.,6.

d) The remand order, produced along with the Memo dated 02.12.2024, records that the police had complied with the requirement to serve the grounds of arrest, under Section 47 of BNSS, on the detenue. The Hon ble Supreme Court, in Prabhir Purkayastha vs. State (NCT of Delhi), had held that there is a vital distinction between the meaning of "grounds of arrest" and "reasons for arrest". Mere supply of reasons for arrest would not meet the requirement of serving "grounds of arrest". A perusal of the said notice would clearly show that none of the grounds of arrest, required to be set out, have been set out in the said notice. The said notice does not meet the requirements set out by the Hon ble Supreme Court in the case of Prabhir Purkayastha vs. State (NCT of Delhi). A learned Single Judge of this Court, in the order dated 28.10.2024, in Crl.P.No.6807 of 2024, had also held that the basic grounds of arrest would have to be supplied in writing and that there 1962 SCC Online ALL 11 (paras 4, 13, 14 & 31) 2005 (3) CTC 540 (paras 11 and 13) 2010 SCC Online Raj 1217 (paras 2, 12, 19 to 27) RRR,J & MRK,J is no uniform practice, which is being followed by the investigating officers and the same requires to be corrected.

e) The judgment of the Hon ble Supreme Court in Prabhir Purkayastha vs. State (NCT of Delhi), arose out of the PMLA Act. However, the observations and the principles laid down by the Hon ble Supreme Court, in this case, would be applicable not only to the provisions of the PMLA Act but also to any remand, of a person, in relation to any offence under any criminal law. The argument that the requirement of furnishing grounds of arrest is statute specific to the PMLA Act is incorrect. Section 19 of the PMLA Act, which requires furnishing of grounds of arrest, is similar to Section 47 of the BNSS. Similarly, Section 45 of PMLA Act setting out the circumstances in which bail can be given is similar to Sections 480 and 483 of BNSS and more specifically, second proviso to Section 480 and first proviso to Section 483 of BNSS.

f) In Prabhir Purkayastha vs. State (NCT of Delhi), the Hon ble Supreme Court, in paragraphs 17, 18, 20, 22, 24, 25, 29 & 30, had held that furnishing of grounds of arrest is mandatory and failure to furnish such grounds of arrest would be fatal to the arrest of the detenue. The Hon ble Supreme Court also held that this principle arises out of the provisions of Article 22 of the Constitution of India and the same cannot be waived. The learned Senior Counsel would also draw the attention of this Court to paragraph 49 of the same judgment, to explain the difference between the RRR,J & MRK,J reasons for arrest and grounds of arrest. He contends that the notice issued under Section 47, has neither reasons for arrest nor grounds of arrest and consequently the arrest itself is illegal and subsequent order of remand etc., is also illegal.

g) The Magistrate, in the remand order, has mechanically held that the provisions of law set out in the FIR, as amended by Memos, are applicable to the facts of the case. The Magistrate did not consider the fact that Section 111 of BNSS would be applicable only when, in the previous 10 years, a competent court had taken cognizance of at least two charge sheets, that have been filed against the accused person and in the absence of such charge sheets, no case under Section 111 of BNSS can be made out. Similarly, Section 308 (5) of BNSS, was not available in the original complaint. Sections 111, 336(4) and 342 of BNS were added on 06.11.2024 while Section 308(5) was added on 08.11.2024, by way of a Memo, without setting out any reasons in the said Memo as to why these provisions were being added. These additions are obviously to create a ground for arresting the detenue, though no such cause is available.

h). Written submissions have also been filed, reiterating the above submissions.

17. Arguments of Advocate General:

> a) The writ petition is not maintainable as the alternative remedy of bail has been invoked and pursued. This writ petition was filed on 19.11.2024.

RRR,J & MRK,J By then, an application for bail, before the trial court, had already been filed.In the course of the hearing of this writ petition, on 20.11.2024, this aspect was pointed out by the respondents. The learned counsel, for the petitioner, had stated that they would not press the bail application. However, the bail application was argued on 21.11.2024 and came to be dismissed. In view of these facts, the petitioner cannot continue to maintain the present writ petition and it requires to be dismissed on this short ground.

b) The petitioner has now filed an additional affidavit, stating that the bail application was argued on 20.11.2024, itself, and the counsel in the trial court could not be informed in time. This statement of fact is incorrect as the application was actually argued on 21.11.2024. Even if the petitioner s statement that the bail application was argued on 20.11.2024 is accepted, nothing prevented the petitioner to inform the trial Court and file a Memo stating that the bail application was not being pressed.

c) The Hon ble Supreme Court, in Jagjeet Singh & Ors., vs. Ashish Mishra alias Monu & Anr.,7, had held that the presence of the victim, is necessary, at all stages of proceedings before the Court. In the present case, the petitioner, having impleaded the complainant / victim in the writ petition, has effectively given up the victim as a party to the writ petition. In such circumstances, the petitioner cannot raise any grounds on the question of the applicability of provisions of law, including Sections 111 and 308 (5) of 2022 (9) SCC 321 RRR,J & MRK,J BNSS and all such issues will not be gone into as the victim is not available to defend his case

d) A composite writ petition of Habeas Corpus and challenge of judicial order of remand is not maintainable in as much as the judicial order of remand can be challenged only by way of initiation of statutory proceedings.

e) The Hon ble Supreme Court had held that an order of remand, by the magistrate, is a judicial order and can be challenged, only by way of the remedies available under the Statute, and not by way of a Writ of Habeas Corpus.

f) Judicial review, in a Writ of Habeas Corpus, can, at best, only take into account the fact situation as on the date of initiation, of the writ. In the present case, the writ petition was initiated on 19.11.2024. By then, the detenue had been remanded, by a valid order of remand, by a competent Magistrate. The proceedings prior to the order of remand cannot be looked into by this Court in view of the judgments in A.K. Gopalan v. Government of India8; Col. B. Ramachandra Rao (Dr) v. State of Orissa and Ors., 9; Naranjan Singh Nathawan v. State of Punjab10; Sanjay Dutt v. State through CBI, Bombay11; and Serious Fraud Investigation Office v. Rahul Modi and Anr.,12.

AIR 1966 SC 816 (para 5) (1972) 3 SCC 256 (paras 6 & 7) (1952) 1 SCC 118 (paras 9 & 10) (1994) 5 SCC 410 (para 48) (2019) 5 SCC 266 (paras 17 to 20.1) RRR,J & MRK,J

g) The contention of the petitioner, that the grounds of arrest had not been supplied to the detenue, is incorrect. The petitioner, who has deposed to the affidavit, is a third party who cannot speak of the proceedings in the court. The petitioner could have obtained the affidavit of the detenue regarding this issue. In any event, the order of remand, dated 08.11.2024, recorded the satisfaction of the Magistrate that there was compliance of service of notice under Section 47 of BNSS, service of grounds of arrest on the accused and the offer of legal aid, which was declined by the detenue.

h) The Hon ble Supreme Court in State of Maharashtra vs. Ramdas Shrinivas Nayak and Anr.,13 and the Hon ble High Court at Delhi in Vinod Kumar Gupta vs. Commissioner of Customs14 had held that the record of the Court, setting out the events which had occurred in the Court, cannot be disputed and the same would be accepted as true and correct. The Hon ble Supreme Court, in State of Maharashtra vs. Ramdas Shrinivas Nayak and Anr., had left open an avenue for correcting any record of facts, which is not accepted by a party, by filing an affidavit and getting the very same Court to correct the record. No such affidavit has been filed and consequently, recording of the satisfaction of the Magistrate, that the grounds of arrest had been served on the detenue, cannot be denied or disputed. Consequently, the entire writ would have to fail. (1982) 2 SCC 463 (para-4) 2005 124 DLT 602 (paras-8 & 9) RRR,J & MRK,J

i) The judgment of the Hon ble Supreme Court, in Prabhir Purkayastha vs. State (NCT of Delhi), came to be passed in relation to the provisions of the Prevention of Money Laundering Act, and the same would not be applicable to the provisions of the BNSS. This ratio can be seen from the judgment of the Hon ble Supreme court, in Arvind Kejriwal vs. Directorate of Enforcement15.

j) The provisions of Section 47 of BNSS only requires the arresting officer, to set out the provisions of law under which the case has been registered against the accused as that would be sufficient knowledge for the accused to oppose remand. No further grounds would be necessary. Even otherwise, grounds of arrest had been served on the detenue, and the same had been recorded by the Magistrate. In such circumstances, this Court would not go beyond the recording of such satisfaction.

k) Apart from this, Article 22 of the Constitution requires the furnishing of grounds of arrest, "as soon as may be". This requirement was complied with by furnishing the grounds of arrest in the remand report served on the detenue, at the time when he was produced before the magistrate.

l) Written submissions, on behalf of the 6th respondent, have also been filed.

2024 SCC ONLINE SC 1703 (Para 40) RRR,J & MRK,J Consideration of the Court:

18. The above facts and contentions raise the following issues, before this Court:

> 1. Would the writ be maintainable, even after the petitioner had availed the alternative remedy of bail; after the passing of an order of remand, by a competent magistrate; and the absence of the complainant/victim, on account of the petitioner withdrawing, effectively, the writ petition against the complainant/victim?
>
> 2. Whether the requirement of furnishing grounds of arrest, set out by the Hon ble Supreme Court, in Prabhir Purkayastha vs. State (NCT of Delhi), is applicable, to offences under the BNS and the Information Technology Act and has been complied ?

19. Before going into the above issues, certain contentions raised in the written submissions, on behalf of the 6th respondent require to be addressed.

20. In the written arguments filed on behalf of the 6th respondent, additional grounds on procedural violations have been raised. The order of remand, dated 08.11.2024, was challenged in the writ petition, on the ground of non application of mind, even without filing the remand order. Consequently, the writ petition is not maintainable, as the said allegation has RRR,J & MRK,J been made even without looking at the remand order. A composite writ, challenging an order of remand by a competent judicial Magistrate is not maintainable and can not to be entertained by this Court; the facts stated in the affidavit cannot be accepted as the petitioner did not disclose the source of his information. The learned counsel for the petitioner having orally submitted that the writ would be withdrawn against the victim has only filed a Memo stating that the victim is only a proforma respondent and no relief is sought against him. A writ ought to have been supported by an affidavit of the detenue himself as he would be available for signing the affidavit and a third party affidavit should not have been relied upon; the remand order, notices under Section 47 and 48 of BNSS etc., have not been filed along with the affidavit and had been presented before this Court along with a Memo which is not permissible and the Court cannot look into these documents.

21. All the aforesaid submissions, on the grounds of procedural violations, would not affect the maintainability of the writ petition. Firstly, the respondents themselves have handed over the order of remand as well as the notices issued under Section 47 & 48 of BNSS. When there is no dispute as to the record produced by the petitioner, the discretion to accept such documents and the mode of production is with the Court. This Court, in view of the fact that there is no dispute as to the contents of the documents, has permitted the said documents to be placed before the Court. In fact, arguments were advanced on these documents by both sides. In such RRR,J & MRK,J

circumstances, raising objections on the method of submission of documents, at this stage, is impermissible.

22. The contention of the respondents, that a composite writ is not maintainable, is incorrect. In fact, a composite writ has to be filed where an order of remand is available. The Hon ble Supreme Court in V. Senthil Balaji v. State16,while considering this very issue had held as follows:

> 30. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. State of Maharashtra v. Tasneem Rizwan Siddiquee [State of Maharashtra v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386] : (SCC p. 751, para 10) "10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 [Tasneem Rizwan (2024) 3 SCC 51 : 2023 SCC OnLine SC 934 at page 77 RRR,J & MRK,J Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] her husband Rizwan AlamSiddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued."

23. Apart from these reasons, the aforesaid objections are not accepted by this Court, on the wholesome principle that procedural law is but a hand maiden of substantive justice and such procedural lapses cannot be raised for the purpose of denying a substantive consideration of the issues before this Court.

24. It would also be necessary, to place on record, that this Court is not going into the merits of the allegations made in the complaint or the remand report. This Court, is testing the arrest of the detenue and his subsequent remand to judicial custody on two grounds. Firstly, whether the arrest of the detenue has been vitiated by non-service of grounds of arrest and whether the order of remand, has been passed mechanically and without application of mind.

RRR,J & MRK,J ISSUE NO.1:

25. The contentions of the learned Advocate General can be split up in the following manner.

a) The scope of the writ petition would have to be restricted to looking at the fact situation as at the time of the filing of the writ petition. This would mean that only the situation, as on 19.11.2024 onwards, can be looked into.

b) By 19.11.2024, the detenue had been remanded to judicial custody, by order of remand, passed by a competent Magistrate. Once an order of remand is in place, a Writ of Habeas Corpus is not permissible and liberty of the person, remanded to judicial custody, can be pursued only by invoking the statutory remedies available under law.

c) The order of remand, recorded that the grounds of arrest, as well as the provisions of law, under which the case had been instituted, had been served upon the detenue. Once, this finding is given, it would not be open to the petitioner, to contend that grounds of arrest have not been supplied and consequently, the writ petition would have to be dismissed as being non- maintainable.

d) The petitioner/detenue having filed an application for bail on 14.11.2024, and having pursued the bail till it was dismissed on 21.11.2024, cannot file or maintain a writ petition.

RRR,J & MRK,J

26. The Hon ble Supreme Court, in A.K. Gopalan v. Government of India; Col. B. Ramachandra Rao (Dr) v. State of Orissa and Ors.,; NaranjanSingh Nathawan v. State of Punjab; Sanjay Dutt v. State through CBI, Bombay; and Serious Fraud Investigation Office v. Rahul Modi and Anr., had held that, a Constitutional Court, testing the validity of the detention / judicial remand of any person, should consider the fact situation only from the date of initiation of the writ petition.

27. This proposition, enunciated by the Hon ble Supreme Court, in all the aforesaid judgments is binding on this Court.

28. In the case of State of Maharashtra vs. Ramdas Shrinivas, a submission was made before the Hon ble Supreme Court, that a concession recorded by the Hon ble High Court of Bombay, had not been made and had been wrongly recorded. The Hon ble Supreme Court declined to go into this submission and held, in Paragraph 4, that -

> "We are bound to accept the statement of the judges recorded in their judgment as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit or other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject."

29. After so observing, the Hon ble Supreme Court also held that no submission to the contrary is permissible, unless an affidavit is filed before the RRR,J & MRK,J Judge, who recorded the facts, and necessary corrections to the record is made by the Judge himself. There can be no quarrel when this proposition, as the same has been laid down by the Hon ble Supreme Court. However, these observations relate to the facts which happen in Court only. This proposition cannot be extended to bar a challenge to all the facts that may be recorded by the Judge. In fact, in Prabhir Purkayastha vs. State (NCT of Delhi) the Hon ble Supreme Court, considered the challenge to the facts recorded in the remand report. The satisfaction of the magistrate, recorded in the remand order, about service of grounds of arrest, which is said to have been done prior to the production of the detenue, before the magistrate, can be gone into.

30. The Hon ble Supreme Court, in Manubhai Ratilal Patel v. State of Gujarat,17,had held that, once an order of remand is passed by a Magistrate, the same would be a judicial order, under the relevant provision of criminal law, (Section 167 Cr.P.C., Section 47 of BNSS). The said ratio set out by the Hon ble Supreme court in the aforesaid judgments can be safely summarized in the following manner:

> 24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475 : 2012 SCC OnLine SC 808 at page 324 RRR,J & MRK,J it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

31. The Hon ble Supreme Court, on this basis, had held, in Col. B. Ramachandra Rao (Dr) v. State of Orissa and Ors.,; Sanjay Dutt v. State through CBI, Bombay; Serious Fraud Investigation Office v. Rahul Modi and Anr., that once a judicial order, such as an order of remand, has been passed, a Writ of Habeas Corpus, is barred and the remedy of seeking the liberty of the remanded person, is only by way of the statutory remedies of bail, quashing of the case itself, etc., except in exceptional circumstances.

32. The Hon ble Supreme Court, has also taken the view that a Writ of Habeas Corpus would not be barred merely because an order of remand has been passed by a Magistrate. The Hon ble Supreme Court, in Gautam Navlakha vs. National Investigation Agency, following earlier precedents, had held that ordinarily a Writ of Habeas Corpus would not be maintainable if an order of remand has

already been passed. However, a Writ of Habeas RRR,J & MRK,J Corpus would still be maintainable, if the order of the Magistrate has been passed in a mechanical manner and without application of mind. The following observations of the Hon ble Supreme Court, in the case of Gautam Navlakha vs. National Investigation Agency, extracted below are instructive.

77. However, the Court also held as follows :

> (Manubhai Ratilal Patel case [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] , SCC p. 326, para 31) "31. ... It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramachandra Rao [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] and Kanu Sanyal [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted."

(emphasis supplied)

78. One of us (U.U. Lalit, J.) speaking for a Bench of two, followed the aforesaid line of thought in the decision of Serious Fraud Investigation Office v. Rahul Modi [Serious Fraud Investigation Office v. Rahul Modi, RRR,J & MRK,J (2019) 5 SCC 266 : (2019) 2 SCC (Cri) 516] and held as follows : (SCC p. 289, para 21) "21. The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition."

79. We may also notice para 19 from the same judgment : (Rahul Modi case [Serious Fraud Investigation Office v. Rahul Modi, (2019) 5 SCC 266 : (2019) 2 SCC (Cri) 516] , SCC p. 285) "19. The law is thus clear that „in habeas corpus proceedings a court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings ."

80. Thus, we would hold as follows: If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a habeas corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of habeas corpus. Barring such situations, a habeas corpus petition will not lie.

33. The respondents contend that the petitioner, after having assured this Court, through his counsel, on 20.11.2024, that he would not be pursuing the bail application, had pressed the application on 21.11.2024 and the same was dismissed. The petitioner, on the other hand, contends

that the arguments in the bail petition were completed on 20.11.2024 itself and orders were passed on 21.11.2024. In support of this contention, the petitioner has produced the daily status of the Court of the XIII Additional District Judge, RRR,J & MRK,J Narasaraopet. The endorsement, dated 20.112.024, states that both sides had been heard and to call the matter on 21.11.2024 for orders. This record shows that hearing of the bail application was completed on 20.11.2024 itself.

34. The learned Advocate General had also raised the contention that the detenue having availed of the right to apply for bail and having lost the said bail application, cannot be permitted to invoke the remedy under Article 226 of the Constitution of India. The petitioner has relied upon Zahir Ahmad v. Ganga Prasad, A.S.D.M., Ballia and Anr.,; Wilfred Prakash vs. State of Tamil Nadu, rep. by the Secretary to Government (Home), Fort St. George, Chennai and Ors.,; and Hridya Narayan Singh (Dr.) v. State of Rajasthan &Anr., to contend that a Writ of Habeas Corpus was still maintainable even after an application for bail had been moved. The judgments in Zahir Ahmad v. Ganga Prasad, A.S.D.M., Ballia and Anr.,; and Hridya Narayan Singh (Dr.) v. State of Rajasthan &Anr., have enunciated the principle that a writ of habeas corpus would be maintainable even if a bail petition has been filed. The relevant extracts are as follows:

> 35. In Zahir Ahmad v. Ganga Prasad, A.S.D.M., Ballia and Anr.,
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> > 31. We have already examined the various provisions occurring in the Code of Criminal Procedure relating to bail and release on bail and it is clear from them that whereas a person released on bail is not in physical confinement, he still remains under the control of the Court and notionally in the custody of the Court, and that persons, who are his sureties, are only the agents of the Court. For these reasons it RRR,J & MRK,J appears to us that even a person who has been temporarily let out on bail but still on trial, can present an application for a writ of habeas corpus. We, therefore, overrule the preliminary objection made by the learned Additional Government Advocate.
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> 36. In Hridya Narayan Singh (Dr.) v. State of Rajasthan,:
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> > 27. On the basis of discussion made herein above and in view of principles of law laid down by Hon'ble Apex Court from time to time in this regard, we are of the considered view that the alternative remedy available or availed is no bar to the exercise of powers under Art. 226 of the Constitution and it has to be decided by the Court in the facts & circumstances of the case available in each case.

Therefore, we do not find any force in the preliminary objection of maintainability of these writ petitions raised by learned Government Advocate.

37. We are in respectful agreement with the above observations and hold that a writ of habeas corpus can be filed even after invoking the remedy of bail, if there is a challenge that the arrest and continued incarceration of the person under arrest was illegal.

38. For the purpose of testing the maintainability of the writ petition, this Court is now required to test whether the order of remand passed by the Magistrate was passed in a mechanical manner, without application of mind.

39. Sri S. Sriram, learned Senior Counsel, contended that the order of remand was passed in a mechanical manner, in as much as the learned Magistrate did not consider the question of whether Section 111 of BNS would RRR,J & MRK,J be applicable and whether grounds of arrest have been served on the detenue.

40. The order of remand reads as follows:

> Date: 08.11.2024 (Cr.No.104/2024 of Inavolu PS) Accused produced before me on 08.11.2024 at 7.00 p.m., through PC 3815, PC 4005 in Cr.No.104/2024 of Inavolu P.S. for the offences U/s.61(2), 111, 196, 336(4), 340(2), 352, 353(2), 308(5) BNS & Sec.67 IT Act Verified with the identity particulars of the accused and found to be correct. Case copies are furnished to accused. On enquiry accused reported no ill-treatment in the hands of the police.

Accused intimated about his right of having free legal aid for which accused reported that he is having means to engage a counsel of his own choice. Police complied Section 47 BNSS, i.e., he intimated about the grounds of arrest and his arrest is also intimated to his family members. He is examined by a registered medical practitioner.

Perused the remand report, FIR, and case record and upon such perusal, it is revealed that the FIR was initially for the offences punishable under Sections U/s 61(2), 111, 196, 336(4), 340(2), 352, 353(2), 308(5) BNS & Sec. 67 IT Act later investigating agency upon the perusal of entire record this court satisfied with reasons assigned by the investigation officer. Prima-facie case is found against the accused for the offences U/s 61(2), 111, 196, 336(4), 340(2), 352, 353(2), 308(5) BNS & Sec. 67 IT Act. Hence the accused is remanded to judicial custody till 21.11.2024.

Judicial Magistrate of I Class Vinukonda.

RRR,J & MRK,J

41. In this order, the Magistrate stated that the grounds of arrest have been intimated, by virtue of compliance with Section 47 of BNSS, i.e., the notice under Section 47 also intimates the grounds of arrest.

42. Notice under Section 47 of BNSS, supplied to the detenue, has been produced before this Court, which reads as follows:

> Notice U/S 47 BNSS The below marginally noted accused was arrested on 08.11.2024 at 12.30 pm at Talarlapalli Village out skirts near Tirupathamma Thalli Temple of Nuzendla Mandal, Palnadu District of Inavolu Police Station by the Inspector of

> Police, Vinukonda Rural Circle, in Cr.No.104/2024 u/s 61(2), 111, 196, 308(5), 336(4), 340(2), 352, 353 BNS & 67 of IT Act of 2000-2008 of Inavolu P.S and explained the reasons for his arrest by the under signed as per the provisions of Section 47 BNSS.

Name of the Accused:

> PappulaVenkatrami Reddy S/o. Chalama Reddy 29 years, Reddy, Telukutla Village, Gurazala Mandal, Palnadu District.

43. The learned Advocate General contends that once the Magistrate has recorded his satisfaction that the grounds of arrest have been served on the detenue, the said satisfaction cannot be challenged by way of an affidavit or submissions made across the bar. This contention has already been rejected. The satisfaction of the Magistrate, in the remand order, is recorded as follows:

> RRR,J & MRK,J "Police complied Section 47 BNSS, i.e., "he intimated about the grounds of arrest and his arrest is also intimated to his family members."

44. The Magistrate is recording the submission of the investigating officer that he had intimated the grounds of arrest to the detenue and the intimation of arrest to the family of the detenue.These observations are not a record of the proceedings of the court, but a recording of the submissions of the investigating officer. As such, there is no bar against going into these facts.

45. It is not clear whether the grounds of arrest were intimated orally or in writing. In view of the judgment of the Hon ble Supreme Court in Prabhir Purkayastha vs. State (NCT of Delhi), the grounds have to be served in writing to the detenue. Paragraph 13 of the counter affidavit filed on behalf of the 6th respondent, merely states that the grounds of arrest have been supplied by way of remand application. It is not the case of the respondent, that they have supplied grounds of arrest, apart from the notice under Section 47 & 48 BNSS, to the detenue. The only grounds of arrest, if any, supplied to the detenue, are said to be the grounds set out in the remand report.

46. To sum up, it is obvious that the Magistrate was not referring to the remand report, as the document containing the grounds of arrest, which had been served on the detenue. A perusal of the notice under Section 47, served on the detenue, as extracted above, does not contain any grounds of RRR,J & MRK,J arrest. There is no application of mind here nor has the magistrate verified, whether the Grounds of arrest, in writing, have been served on the detenue.

47. The relevant part of Section 111 of BNS reads as follows:

> 111. (1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such

> syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organized crime.

Explanation.--For the purposes of this sub-section,-

(i) "organized crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;

(ii) "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;

RRR,J & MRK,J

(iii) "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass- marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organization for obtaining monetary benefits in any form.

2. xxxx

48. This provision, on a plain reading, would be applicable only when, a competent court has taken cognizance of at least two charge sheets, filed against the person, accused of an offence under Section 111, within the last 10 years prior to the registration of an offence under Section 111. The remand report, filed by the investigating officer does not contain even a whisper of commission of any such offence by the detenue nor is there any mention of any charge sheet filed against the detenue in the last 10 years. On the face of the record, no case is made out under Section 111 of BNS. The satisfaction of the Magistrate, contained in the remand order, that an offence under Section 111 is made out is clearly a statement made without application of mind and in a mechanical manner. The contention that an order of remand need not contain elaborate reasons does not in any manner help the respondents in this case. The satisfaction recorded by the magistrate, as to the applicability of Section111, is clearly flawed, on the face of the order, and such satisfaction has been recorded without application of mind.

RRR,J & MRK,J

49. In view of the aforesaid two lacunae in the order of remand, passed by the Magistrate, it would have to be held that the order has been passed in a mechanical manner and without application of mind and consequently a Writ of Habeas Corpus would be maintainable.

50. The Hon ble Supreme Court in Jagjeet Singh & Ors., vs. Ashish Mishra alias Monu & Anr, had held that even the victim has a right to be informed, at every stage of the criminal process. The learned Advocate General contended that in view of this judgment, the petitioner could not have withdrawn the writ petition against the victim especially after impleading him as a party to the writ petition.

51. In this case, the accused is said to have caused the death of four farmers, one journalist, a driver of a vehicle and two others, on account of his deliberately driving a vehicle into a crowd. The accused moved an application for bail before the High Court and the same was granted. Aggrieved by the said grant of bail, some of the victims, who were injured, had approached the Hon ble Supreme Court. One of the contentions raised by the appellants, was that, their counsel was not heard, at the time of grant of bail, as the counsel was disconnected in the course of an online hearing. Subsequently, the Hon ble High Court is said to have not considered an application for rejecting of the bail application. The Hon ble Supreme Court while considering this objection had reviewed the development of law, regarding the victim s right to be heard and had held as follows:

> RRR,J & MRK,J
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> 24. The abovestated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:
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> 24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.
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> 24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

52. These observations which are binding precedent, set down by the Hon ble Supreme Court, affords a right to the victim to intervene at any stage. The ratio laid down by the Hon ble Supreme Court, does not require the accused to include the victim, as a respondent, while moving for bail, except in cases under special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. However, a victim can always intervene, by approaching the Court hearing the bail application. Apart from this, the RRR,J & MRK,J petition moved before this Court, is in relation to the question of whether the arrest and remand of the detenue, is illegal or has been done after due

compliance of all the requirements of law. The scope of the writ petition before this Court is only to that extent. The question, whether the facts alleged in the remand report or in the complaint are made out or not, is beyond the scope of this writ petition. The controversy, in the present writ petition, would have to be determined on the basis of the actions of the investigating officer, who arrested the detenue. In the circumstances, the presence or otherwise of the accused is not mandatory.

53. These facts make it amply clear that there was no direction by the Hon ble Supreme Court that a victim has to be made party to every application moved by the accused. The Hon ble Supreme Court had only empowered the victims to approach the Court if they feel the necessity to implead themselves and resist any application moved by the accused. Making the victim a proforma party would not be fatal to the maintainability of the writ petition.

54. The allegation, in the remand report, would enable the investigating officer, to include Section 308(5) of BNS. However, the probability and veracity of such allegations would have to be considered by the Magistrate while considering the application for bail or in any subsequent proceedings. It would not be appropriate for this Court to go into such issues, in a writ petition, under Article 226 of the Constitution of India. Though, this Court has held that the Magistrate had accepted the application of RRR,J & MRK,J Section 111 BNS in a mechanical way and that the Magistrate had accepted the submission of the investigating officer that the grounds of arrest had been served on the detenue in a mechanical way, the question of whether the grounds of arrest, have been served, in any other manner, would still have to be looked into.

ISSUE No.2:

55. This issue requires to be decided in two stages. The first stage requires a decision on the question of whether the directions of the Hon ble Supreme Court in PrabhirPurkayastha vs. State (NCT of Delhi) would be applicable only in cases of the Prevention of Money Laundering Act (PMLA) or Unlawful Activities (Prevention) Act, 1967 (UAPA) or whether it would apply to all criminal proceedings.

56. The requirement of furnishing grounds of arrest, under the provisions of PMLA came to be considered by the Hon ble Supreme Court in Pankaj Bansal v. Union of India18. In this case, the Hon ble Supreme Court, noticed that, a person arrested under the provisions of PMLA can be granted bail only when he can make out a case that the ingredients of the offence, alleged against him, in the complaint or the remand report, will still not bring home the offence alleged, on a prima facie basis. The Hon ble Supreme Court, taking this requirement, under the PMLA Act, into account, had held that an accused person, who has been arrested under PMLA,would have to 2023 SCC Online 1244 RRR,J & MRK,J be given the grounds on which he was arrested, so that he would have an opportunity, to make out his case under Section 19 of the PMLA.

57. In Prabhir Purkayastha vs. State (NCT of Delhi), the detenue had been arrested under the provisions of UAPA read with certain provisions of the Indian Penal Code. This arrest and subsequent remand were challenged,by way of a Writ of Habeas Corpus, on the ground that the

grounds of arrest had not been informed to the detenue either orally or in writing, and the same was in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India. The detenue also relied upon the judgment of the Hon ble Supreme Court in Pankaj Bansal v. Union of India, to contend that the principles laid down in Pankaj Bansal v. Union of India would be applicable to his case also as the relevant provisions of PMLA arein para materia with the provisions of UAPA. This ground was resisted by the State. The State also contended that Articles 22(1) & 22(5) of the Constitution of India did not require the grounds of arrest or detention, in writing , to be served on the arrested/detained person and such a condition cannot be complied.

58. The Hon ble Supreme Court, after noticing the relevant extracts of the Judgment in Pankaj Bansal v. Union of India and the relevant provisions of PMLA and UAPA had held that the principles set out in Pankaj Bansal v. Union of India would be applicable to a case under UAPA.

RRR,J & MRK,J

59. Apart from this, the Hon ble Supreme Court, had held that the right of an arrested person, to be informed of the grounds of his arrest, in writing, is also traceable to Article 22(1) of the Constitution of India and consequently, the right of an accused person to be informed, in writing of the grounds of his arrest, would be applicable to any criminal process.

60. The relevant extracts are 17, 18, 19, 20,21, 29, 30 & 31, which read as follows:

> 17. We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43-B(1) UAPA is verbatim the same as that in Section 19(1) PMLA. The contention advanced by the learned ASG that there are some variations in the overall provisions contained in Section 19 PMLA and Sections 43-A and 43-B UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43-B(1) UAPA at the earliest because as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes. As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied.
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> 18. We may note that the modified application of Section 167CrPC is also common to both the statutes. Thus, we RRR,J & MRK,J have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] on the aspect of informing the arrested person the grounds of arrest in writing has to be applied pari passu to a person arrested in a case registered under the provisions of the UAPA.

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

20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by thi s Court in Roy V.D. v. State of Kerala [Roy V.D. v. State of Kerala, (2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p.

593, para 7) RRR,J & MRK,J "7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens."

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

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.

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.

RRR,J & MRK,J

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.

30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.

61. In view of the aforesaid authoritative pronouncement by the Hon ble Supreme Court, it must be held that the judgment of the Hon ble Supreme court in Prabhir Purkayastha vs. State (NCT of Delhi) is applicable to all cases of arrest, under any criminal proceeding. Consequently, any arrest of a person, without serving, the grounds of arrest, in writing, on the arrested person would render the arrest illegal. An order of remand, passed in a mechanical manner, without ascertaining whether the grounds of arrest, in writing, have been served on the detenueor not, would invalidate the order of remand also.

RRR,J & MRK,J

62. The learned Advocate General, while contending that the satisfaction of the Magistrate, recording that the grounds of arrest have been served on the detenue, cannot be looked into, has also contended that even otherwise, the grounds of arrest are available in the remand report and there is no dispute that the said remand report has been furnished to the detenue.

63. The learned Advocate General would draw the attention of this Court to the language in Section 47 of BNSS and Article 22(1) of the Constitution, which reads as follows:

> Section 47 of BNSS
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> 47. (1) Every police officer or other person arresting any person without warrant shallforthwith communicate to him full particulars of the offence for which he is arrested or othergrounds for such arrest.

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

Article 22(1) of the Constitution

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.

RRR,J & MRK,J (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.

64. The learned Advocate General would contend that Section 47, is in the alternative. He would contend that the requirement of Section 47 is fulfilled when the officer arresting the accused, either furnishes the provisions of law, which are set out against him in the complaint or in the alternative furnishes other grounds of arrest. The learned Advocate General would contend that compliance of either requirement is sufficient compliance of Section 47 BNSS. He would submit that the language in Section 47 requires such provisions of law or other grounds of arrest being furnished at the time of arrest.A consideration of the aforesaid interpretation of section 47 of BNSS, may not be necessary, in view of the ratio of the Hon ble Supreme Court, in Prabhir Purkayastha vs. State (NCT of Delhi), that the requirement of supplying the grounds of Arrest, to an arrested person, is a constitutional requirement, under Article 22 of the Constitution, from which there cannot be any derogation.

65. The learned Advocate General submits that as far as Article 22(1) of the Constitution of India is concerned, the said provision mandates that grounds of arrest should be intimated "as soon as possible". He would submit RRR,J & MRK,J that the said language of Article 22(1) of the Constitution of India does not provide for furnishing of grounds of arrest at the time of arrest and gives some leeway for furnishing grounds of arrest at a subsequent stage as long as the grounds of arrest are supplied to the arrested person, at least within 24 hours. He would submit that, this requirement is complied, in the present case, as the grounds of arrest are available in the remand report and have been served on the detenue by the time he was produced in the Court.

66. It is contended by the learned Advocate General, that though the notice, under Section 47,may not have set out the grounds of arrest, the remand report served on the detenue contains the grounds of arrest and the same meets the requirement of the standard set out in Prabhir Purkayastha vs. State (NCT of Delhi). For this purpose, the learned Advocate General relies upon the following paragraph in Prabhir Purkayastha vs. State (NCT of Delhi):

> 50. From the detailed analysis made above, there is no hesitation in the mind of the court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the appellant-accused or his counsel before passing of the order of remand dated 4-10-

2023 which vitiates the arrest and subsequent remand of the appellant.

67. Learned Advocate General would contend that the aforesaid passage indicates that the requirement of serving grounds of arrest would be RRR,J & MRK,J satisfied, if the grounds of arrest are placed in the remand report and served on the detenue. He relies upon the aforesaid observations of the Hon ble Supreme Court as well as an unreported judgment of the Hon ble High Court at Madras, dated 01.10.2024, in W.P.No.17007 of 2024, in the case of Ahmed Mansoor and Ors., vs. State, rep. by Assistant Commissioner of Police Cyber Crime Branch and Anr.

68. In the case, in the judgment of the Hon ble High Court at Madras, the person arrested in that case, had not been served with the grounds of arrest, until they were set out in the remand report and served on the arrested person. A Division Bench of the Hon ble High Court at Madras, had held that such service of grounds of arrest, in the remand report, would be in accordance with the judgment of the Hon ble Supreme Court in Prabhir Purkayastha vs. State (NCT of Delhi).

69. Though there is an issue as to whether, the grounds of arrest are required, under Article 22 of the Constitution, to be served, in writing, at the time of arrest or can be supplied „as soon as possible , the same would not arise in this case, in view of the above observation of the Hon ble Supreme court. The aforesaid observation indicates, that such grounds of arrest can be contained in the remand application and can be served on the arrested person. Since, the application, for remand, would have to be moved, within 24 hours of arrest, such a course of action appears to have been accepted by the Hon ble Supreme Court and would have to be followed by this court. In the RRR,J & MRK,J present case, it is an admitted fact, on both sides, that the remand report had been served on the detenue before the remand order was passed by the Magistrate.

70. The further question left to be answered by this Court is whether the remand application contains, the grounds of arrest, as required by the Hon ble Supreme Court. In PrabhirPurkayastha vs. State (NCT of Delhi) the Hon ble Supreme Court reiterated the principle that the phrase "reason for arrest" and the phrase "grounds of arrest" have a significant difference, in the following manner:

> 48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase "reasons for arrest"
>
> and "grounds of arrest". The "reasons for arrest" as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making 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 investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the "grounds of arrest" would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic

> facts on which he was being arrested so as to provide RRR,J & MRK,J him an opportunity of defending himself against custodial remand and to seek bail. Thus, the "grounds of arrest"

would invariably be personal to the accused and cannot be equated with the "reasons of arrest" which are general in nature.

71. The requirement, set out in the above judgment of the Hon ble Supreme Court, regarding "Grounds of Arrest" is that the arrested person should be informed of the case against him, to enable him to prepare his defence and also for seeking bail or to oppose custodial remand. A formal heading of "Grounds of Defence" may not be necessary as long as the necessary details are set out. In the present case, the remand report sets out the case against the detenue, including the comments said to have been posted by him on the social media, and the subsequent actions.

72. In the circumstances, this writ petition is dismissed, leaving it open to the petitioner / detenue to avail of his remedies in accordance with law. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO,J MAHESWARA RAO KUNCHEAM,J Js.

RRR,J & MRK,J THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO AND THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM WRIT PETITION No.26769 of 2024 (per Hon ble Sri Justice R Raghunandan Rao) 18th December, 2024 Js