

# Vikas Chawla @ Vicky vs The State Nct Of Delhi on 28 March, 2025

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 28th March, 2025

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CRL.M.C. 4845/2024 & CRL.M.A. 18207/2024, CRL.M.A. 18283/2024

VIKAS CHAWLA @ VICKY

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Through: Ms. Rebecca M. John, Senior Advocate with Mr. Vishal Gosain, Mr. Arun Khatri, Mr. Sahil Khuran, Mr. Pravir Singh and Ms. Anushka Barua, Advocates.

versus

THE STATE NCT OF DELHI

.....Respo

Through: Mr. Sanjay Jain, ASG with Mr. Ama Usman, APP, Mr. Akhand Pratap Singh, Mr. Nishank Tripathi, Mr. Nishant Tripathi, Ms. Harshita Sukhija, Ms. Samriddhi and Ms. Palak Jain, Advocates. Mr. Sanjeev Bhandari, ASC with Mr. Arjit Sharma, Mr. Nikunj Bindal and Ms. Charu Sharma, Advocates. Insp. Ajay Yadav, P.S.: IGI Airpo

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

In what is arguably the most celebrated dissent in the history of Indian jurisprudence, it was said :

"... ... The history of personal liberty, we must bear in mind, is largely the history of insistence upon procedure. ... ..."

(H.R. Khanna, J. in ADM, Jabalpur vs. Shivakant Shukla<sup>1</sup>) (1976) 2 SCC 521 at para 583

2. By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 („Cr.P.C. ), the petitioner seeks quashing of order dated 06.06.2024 passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi, whereby the learned Sessions Court has cancelled the regular bail granted to the petitioner by the learned Additional Chief Metropolitan

Magistrate, Patiala House Courts, New Delhi vide order dated 28.03.2024 made in case FIR No. 200/2024 dated 13.03.2024 registered under sections 420/468/471 of the Indian Penal Code, 1860 at P.S.: I.G.I. Airport, New Delhi („subject FIR ).

3. Vide order dated 28.03.2024 the learned ACMM had "made absolute"

the interim bail granted to the petitioner by order dated 21.03.2024 made by a predecessor learned Magistrate.

4. Notice on the present petition was issued on 07.06.2024; pursuant to which Status Reports dated 11.06.2024 and 29.08.2024 have been filed in the matter.

5. Vide order dated 14.06.2024 passed in the present proceedings, the petitioner was granted interim protection against any coercive action, which has been continued from time-to-time. Subsequently, as recorded in order dated 09.10.2024, the State has informed the court that in the meantime, the petitioner was arrested in a different case. However, since the present proceedings are confined to case FIR No.200/2024, this court refrains from making any observations relating to any other matter.

6. The court has heard Ms. Rebecca M. John, learned senior counsel appearing for the petitioner; and Mr. Sanjay Jain, learned ASG who has appeared for the State.

#### BRIEF FACTS

7. Briefly, the accusation against the petitioner is that he had assisted an Afghan national to emigrate to Spain, based on a fraudulently obtained Indian passport alongwith an Aadhaar Card and a PAN Card, in consideration of having received money from the said person. This led to registration of the subject FIR, in which however the petitioner was not named and the only named accused was one - Arjeet Singh.

8. In the course of investigation, the petitioner was summonsed by way of a notice dated 16.03.2024 purportedly issued under section 41-A Cr.P.C. to appear before the investigating officer on 17.03.2024. Since the petitioner did not join the investigation on that date, a fresh notice was issued on 19.03.2024 requiring the petitioner to join investigation on 20.03.2024.

9. In compliance of notice dated 19.03.2024, the petitioner presented himself before the investigating officer on 20.03.2024; and after being interrogated, the petitioner was arrested by the investigating officer on the same day.

10. Subsequently, two applications came to be filed before the learned Magistrate, one by the investigating officer seeking police custody remand, and the second, by the petitioner seeking bail. Vide common order dated 21.03.2024, police custody remand was declined by the learned Magistrate and the petitioner was granted interim bail for 05 days; which was subsequently extended; and by order dated 28.03.2024 passed by the learned ACMM, the bail granted to the

petitioner was "made absolute".

11. Order dated 21.03.2024 granting interim bail and order dated 28.03.2024 confirming such bail were challenged by the State by way of a revision petition bearing Criminal Revision Petition No.197/2024 before the learned Sessions Court, which petition has been allowed vide order dated 06.06.2024, thereby cancelling the petitioner's bail.

#### PETITIONER'S SUBMISSIONS

12. Ms. John, learned senior counsel appearing for the petitioner has raised the following 04 contentions in support of their case :

12.1. That the revision petition filed by the State before the learned Sessions Court was not maintainable since orders dated 21.03.2024 and 28.03.2024 passed by the learned Magistrates denying police custody remand were „interlocutory orders and were not amenable to the revisional jurisdiction of the court in view of section 397(2) Cr.P.C.;

12.2. That notice under section 41-A Cr.P.C. was not served upon the petitioner in compliance with the mandate of the law and was therefore not a valid notice, by reason of which the learned Magistrate was correct in declining police custody remand of the petitioner;

12.3. That the petitioner was not served with the „grounds of arrest in writing in compliance with the mandate of the law; and accordingly the order of the learned Sessions Court directing that the investigating officer "... ..is at liberty to immediately re-arrest the respondent/accused... .." is bad in law; and 12.4. That the petitioner was not produced before the learned Magistrate within the 24-hour period from the time of his arrest, as prescribed in section 57 Cr.P.C.; and accordingly the resultant direction issued by the learned Sessions Court is illegal.

13. Ms. John has argued, that on point of law, the revision petition filed before the learned Sessions Court was not maintainable, since the order declining remand is an „interlocutory order as has been held by the Supreme Court in *Usmanbhai Dawoodbhai Memon & Ors. vs. State of Gujarat*.<sup>2</sup> The relevant portion of that verdict reads as under :

"24. At the conclusion of the hearing on the legal aspect, Shri Poti, Learned Counsel appearing for the State Government contended, on instructions, that an order passed by a Designated Court for grant or refusal of bail is not an "interlocutory order"

within the meaning of Section 19(1) of the Act and therefore an appeal lies. We have considerable doubt and difficulty about the correctness of the proposition. The expression "interlocutory order" has been used in Section 19(1) in contradistinction to what is known as final order and denotes an

order of purely interim or temporary nature. The essential test to distinguish one from the other has been discussed and formulated in several decisions of the Judicial Committee of the Privy Council, Federal Court and this Court. One of the tests generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue. In *V.C. Shukla v. State* [1980 Supp SCC 92 : 1980 SCC (Cri) 695] , Fazal Ali, J. in delivering the majority judgment reviewed the entire case law on the subject and deduced therefrom the following two principles, namely, (i) that a (1988) 2 SCC 271 final order has to be interpreted in contradistinction to an interlocutory order; and (ii) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties. It was observed that these principles apply to civil as well as to criminal cases. In criminal proceedings, the word "judgment" is intended to indicate the final order in a trial terminating in the conviction or acquittal of the accused. Applying these tests, it was held that an order framing a charge against an accused was not a final order but an interlocutory order within the meaning of Section 11(1) of the Special Courts Act, 1979 and therefore not appealable. It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time. It is however contended that the refusal of bail by a Designated Court due to the non-fulfilment of the conditions laid down in Section 20(8) cannot be treated to be a final order for it affects the life or liberty of a citizen guaranteed under Article 21. While it is true that a person arraigned on a charge of having committed an offence punishable under the Act faces a prospect of prolonged incarceration in view of the provision contained in Section 20(8) which places limitations on the power of a Designated Court to grant bail, but that by itself is not decisive of the question as to whether an order of this nature is not an interlocutory order. The court must interpret the words "not being an interlocutory order" used in Section 19(1) in their natural sense in furtherance of the object and purpose of the Act to exclude any interference with the proceedings before a Designated Court at an intermediate stage. There is no finality attached to an order of a Designated Court granting or refusing bail. Such an application for bail can always be renewed from time to time. That being so, the contention advanced on behalf of the State Government that the impugned orders passed by the Designated Courts refusing to grant bail were not interlocutory orders and therefore appealable under Section 19(1) of the Act, cannot be accepted."

(emphasis supplied)

14. It is argued that the aforesaid position of law has been reiterated by the Supreme Court in *State & Ors. vs. N.M.T. Joy Immaculate*,<sup>3</sup> the relevant portion of which reads as follows :

"13. Section 167 CrPC empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. Section 209 CrPC confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309 CrPC confers power upon a court to remand an accused to custody after taking cognisance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of

remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in Madhu Limaye case [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] it cannot be categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 CrPC, a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6-11-2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."

(emphasis supplied)

15. Reference in this behalf is also made to a recent judgment of the Supreme Court in Gautam Navlakha vs. National Investigation (2004) 5 SCC 729 Agency, 4 where a similar position has been articulated by the Supreme Court, with the following observations :

"72. Thus, an order under Section 167 is purely an interlocutory order. No revision is maintainable. A petition under Section 482 cannot be ruled out. Now at this juncture we must notice the following dimension. When a person arrested in a non- bailable offence is in custody, subject to the restrictions, contained therein, a court other than the High Court or the Court of Session, before whom he is brought, inter alia, can release him on bail under Section 437 CrPC. Section 439 CrPC deals with special powers of the High Court and the Court of Session to grant bail to a person in custody. The said courts may also set aside or modify any condition in an order by a Magistrate."

(emphasis supplied)

16. It is argued that based on the afore-noted articulation of law by the Supreme Court, an order granting or declining police custody remand are both interlocutory orders and no revision petition is maintainable against such orders, by reason of which impugned order dated 06.06.2024 made by the learned Sessions Court, reversing orders dated 21.03.2024 and 28.03.2024 passed by the learned Magistrates, is vitiated and is liable to be set-aside.

17. Insofar as the notice purportedly issued under section 41-A Cr.P.C. is concerned, it has been argued on behalf of the petitioner that such notice is required to be served in strict compliance with the procedure laid-down by a Division Bench of this court in Amandeep Singh Johar vs. State (NCT of Delhi) & Anr.,<sup>5</sup> which was not done in the (2022) 13 SCC 542 2018 SCC OnLine Del 13448 present case. It is pointed-out that based on the Division Bench judgment, the Commissioner of Police, Delhi has issued Standing Order No. 109/2020 dated 04.06.2020, which is a verbatim reproduction of the directions issued by the Division Bench. The relevant portion of Amandeep Singh Johar is extracted below :

"16. We have heard Mr. Sanjay Jain, learned ASG and Mr. Satyakam, ASC, GNCTD on the aforesaid issues and the reports. Upon consideration of the report and the suggestions made by the parties under the leadership of the Worthy Registrar General and with their consent, it is directed that so far as working of Section 41A, the following procedure shall be strictly followed by the police in Delhi:

Procedure for issuance of notices/order by police officers under Sections 41A \*\*\*\*\*

(v) A suspect/accused on formally receiving a notice under section 41A CrPC and appearing before the concerned officer for investigation/interrogation at the police station, may request the concerned IO for an acknowledgement.

(vi) In the event, the suspect/accused is directed to appear at a place other than the police station (as envisaged under Section 41A(1) CrPC), the suspect will be at liberty to get the acknowledgement receipt attested by an independent witness if available at the spot in addition to getting the same attested by the concerned investigating officer himself.

(vii) A duly indexed booklet containing serially numbered notices in duplicate/carbon copy format should be issued by the SHO of the Police Station to the Investigating Officer. The Notice should necessarily contain the following details:

a. Serial Number b. Case Number c. Date and time of appearance d. Consequences in the event of failure to comply e. Acknowledgment slip

(viii) The Investigating Officer shall follow the following procedure:--

a. The original is served on the Accused/Suspect; b. A carbon copy (on white paper) is retained by the IO in his/her case diary, which can be shown to the concerned Magistrate as and when required; c. Used booklets are to be deposited by the IO with the SHO of the Police Station who shall retain the same till the completion of the investigation and submission of the final report under section 173(2) of the Cr.P.C.

d. The Police department shall frame appropriate rules for the preservation and destruction of such booklets

(ix) Procedure booklets in format identical to the above prescription in guideline (vii) & (viii) with modifications having regard to the statutory provisions in the forms for the notices and acknowledgment shall be maintained.

(x) Failure on the part of the IO to comply with the mandate of the provisions of the CrP.C. and the above procedure shall render him liable to appropriate disciplinary proceedings under the applicable rules and regulations as well as contempt of Court in terms of the directions of the Hon'ble Supreme Court in the case of Arnesh Kumar

v. State of Bihar (2014) 8 SCC 273.

\*\*\*\*\* "17. It is directed that the above procedure shall apply also to the working of Sections 91, 160 and 175 of the CrPC as well. The above procedure shall be mandatorily followed by the Delhi Police when working the requirements of all the above noted sections."

(emphasis supplied)

18. It is accordingly argued, that a notice under section 41-A Cr.P.C. is required to be served by the investigating officer upon an accused/suspect in original and a receipted carbon copy is required to be retained by the investigating officer in the case diary. It is submitted that in the present case, it is clearly borne-out from the record, that when the learned Magistrate inspected the police file, the original notice issued under section 41-A Cr.P.C. was found in the police file/case diary and no carbon copy of the same was available on the file. In fact, in his order dated 21.03.2024, the learned Magistrate records that "... .. The acknowledgment receipt annexed with the notice is empty and the same does not indicate due receipt of the notice by the accused ... ..". Evidently therefore, the investigating officer had not served the original notice under section 41-A Cr.P.C. upon the petitioner; and therefore, the purported service of such notice upon the petitioner was not valid in law.

19. It is further pointed-out, that the mandatory procedure laid down by a Division Bench of this court in Amandeep Singh Johar has received the imprimatur of the Supreme Court in Satender Kumar Antil vs. Central Bureau of Investigation & Anr., 6 in which decision the Supreme Court has directed all State Governments and Union Territories as follows :

"100.4. All the State Governments and the Union Territories are directed to facilitate Standing Orders for the procedure to be followed under Section 41 and 41-A of the Code while taking note of (2022) 10 SCC 51 the order of the High Court of Delhi dated 7-2-2018 in Amandeep Singh Johar v. State (NCT of Delhi) [Amandeep Singh Johar v. State (NCT of Delhi), 2018 SCC OnLine Del 13448] and the Standing Order issued by Delhi Police i.e. Standing Order 109 of 2020, to comply with the mandate of Section 41-A of the Code."

20. Ms. John has also argued that the „grounds of arrest“ were not served upon the petitioner in writing, at the time of his arrest on 20.03.2024, in violation of the mandate of the Supreme Court judgment in Prabir Purkayastha vs. State (NCT of Delhi),<sup>7</sup> in which case the Supreme Court has held that the requirements set-out in Pankaj Bansal vs. Union of India & Anr.<sup>8</sup> apply to all criminal offences.

21. It is submitted that even the contents of the arrest memo issued to the petitioner were stereotypical in nature; and did not narrate any basis specific to the petitioner for which the petitioner was being arrested. It is accordingly argued, that at best, the arrest memo only sets-out the „reasons for arrest“ but not the „grounds of arrest“, which have been held by the Supreme Court to be two different and distinct concepts. To this end, attention of the court is drawn to the following

portion of Prabir Purkayastha :

"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 (2024) 8 SCC 254 (2024) 7 SCC 576 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 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."

(emphasis supplied)

22. It is further submitted, that the State's contention that the grounds of arrest were in any case communicated to the petitioner as part of the remand application is also wholly misconceived and untenable, since the remand application also did not contain any ground specific to the petitioner; and in any case, neither Prabir Purkayastha nor Pankaj Bansal hold that grounds of arrest can be supplied by way of, or as part of, the remand application.

23. Coming to the requirement of producing the petitioner before a Magistrate within 24 hours of arrest, it is pointed-out that the State has admitted that the time indicated on the section 41-A Cr.P.C. notice, at which time the petitioner was required to appear before the investigating officer on 20.03.2024 was changed from 02:00 p.m. to 05:00 p.m. by overwriting on the notice; and for this lapse, departmental action has already been initiated by the Delhi Police against the then investigating officer. It is therefore the admitted position that the overwriting made on the notice was impermissible. It is argued, that changing the time for appearance before the investigating officer from 02:00 p.m. to 05:00 p.m. is of serious consequence in the present case, since the record shows that the petitioner was not produced before the learned Magistrate within 24 hours of 02:00 p.m. on 20.03.2024, which violated the mandate of section 57 Cr.P.C.; and for that additional reason, the direction issued by the learned Sessions Court permitting the investigating officer to "re-arrest" the petitioner is vitiated.

24. Furthermore, it is Ms. John's contention that since the time on the section 41-A Cr.P.C. notice, as originally drawn-up, was 02:00 p.m., the petitioner reached the police station around that time; after which he was not at liberty to leave the police station, and must therefore be deemed to have



been under arrest from that time onwards. In fact, it is submitted that once the petitioner reached the police station at about 02:00 p.m., he was prevented from using his mobile phones and his personal belongings were taken-away by the investigating officer. Since admittedly the petitioner was produced before the learned Magistrate only at about 04:30 p.m. on 21.03.2024, which is beyond the 24-hour period prescribed in section 57 Cr.P.C., Ms. John submits that the investigating officer was remiss in complying with the mandatory requirement of that provision.

25. It is clarified that the time of 11:30 p.m., as indicated by the investigating officer on the arrest memo subsequently issued to the petitioner, is of no consequence, since the petitioner must be deemed to have been under arrest from the time he reached the police station, i.e., around 2:00 p.m. on 20.03.2024.

26. It is submitted that in an effort to monitor and document the activities within a police station in its verdict in *Paramvir Singh Saini vs. Baljit Singh & Ors.*,<sup>9</sup> the Supreme Court has directed that it is the duty and responsibility of the police to ensure that no part of a police station is "left uncovered" by CCTV cameras except the inside of washrooms/toilets, so as to ensure that the activities at the police station - which would include a person reaching a police station - can be verified, if required. In the present case, it is submitted that upon being asked to produce the CCTV footage of the relevant date and time, the police have taken the false and convenient plea that the relevant CCTV footage could not be retrieved, and that the equipment has been sent to FSL for retrieval of the footage.

27. It is argued, that even the relevant case diary was not produced before the learned Magistrate at the time when the petitioner was produced before that court, which is again contrary to the mandate of the Delhi High Court Rules and Orders (Volume 3, Chapter 11, Part-A, Serial Nos. 8 to 10), which is another reason that the police action against the petitioner is vitiated.

28. It is argued that by reason of the foregoing, both the learned Magistrates who dealt with the remand application vide orders dated 21.03.2024 and 28.03.2024 correctly noticed the following relevant (2021) 1 SCC 184 aspects : (i) that there was evident non-compliance with the mandate of *Amandeep Singh Johar* as approved by the Supreme Court in *Satender Kumar Antil*; (ii) that the case diary had not been produced for perusal of the learned Magistrate on the first date; and (iii) that the CCTV footage which would have shed light on the time when the petitioner reached the police station and the manner in which the investigating officer proceeded with the interrogation, was also not made available to the court. It is submitted that therefore, the orders passed by the learned Magistrates were justified, legal and valid; and quite apart from the fact that the revision petition was not maintainable before the learned Sessions Court, even on the merits of the matter, the learned Sessions Court was in error in reversing those two orders.

## RESPONDENT'S SUBMISSIONS

29. Refuting the contentions raised on behalf of the petitioner, Mr. Jain, learned ASG has argued that the petitioner is misinterpreting the judgment of the Supreme Court in *N.M.T. Joy Immaculate* since the said judgment was rendered in a case where police custody remand was granted and the

accused had challenged that order in the revisional jurisdiction of the Sessions Court. It is submitted that granting police custody remand is an interlocutory order and is therefore not amenable to challenge in the revisional jurisdiction by reason of section 397(2) Cr.P.C.; however, an order denying police custody remand is not an interlocutory order and a revision petition under section 397 Cr.P.C. is maintainable against such order.

30. To support the aforesaid submission, Mr. Jain has placed reliance on the following judgments of the High Courts : (i) Kandhal Sarman Jadeja vs. State of Gujarat 10 and (ii) P. Narayana vs. State of Andhra Pradesh, 11 pointing-out that it has been held in these decisions that an order declining police custody remand is not an „interlocutory but a „final order.

31. Learned ASG has further argued, that it is the settled position, that if in the course of investigation, offences entailing punishment of more than 07 years are disclosed, an investigating officer is entitled to arrest a person in exercise of powers under section 41(1)(b) of the Cr.P.C. regardless of the fact that the person may have been summonsed by way of a notice under section 41-A Cr.P.C. It is argued that it has been so held in Satender Kumar Antil.

32. To answer the contention that the notice under section 41-A Cr.P.C.

was not served upon the petitioner in compliance with the mandatory procedure laid-down by a Division Bench of this court in Amandeep Singh Johar and of the Supreme Court in Satender Kumar Antil, it is argued that the notice under section 41-A Cr.P.C. served upon the petitioner was in the prescribed format; that 02 computer generated copies had been prepared, any one of which could be treated as the original, and 01 of the 02 copies was delivered to the petitioner treating that as the original copy, while the other copy was retained by the investigating officer, duly receipted in acknowledgment by the 2012 SCC OnLine Guj 3104 2022 SCC OnLine AP 2867 petitioner. It is submitted that in this manner, the procedure for service of a notice under section 41-A Cr.P.C. as prescribed in Amandeep Singh Johar read with Satender Kumar Antil was duly complied-with.

33. It is further submitted that Prabir Purkayastha does not prescribe any format for serving the „grounds of arrest on an arrestee, and in the present case, the grounds of arrest were narrated in the remand application filed before the learned Magistrate, which gave the petitioner ample opportunity to contest his remand and to seek bail. Furthermore, it is submitted that in Ram Kishor Arora vs. Directorate of Enforcement<sup>12</sup> the Supreme Court has interpreted the wording in Article 22(5) of the Constitution of serving grounds of arrest in writing "as soon as may be" to mean that such grounds may even be served upon an arrestee within 24 hours of the arrest, i.e., at the time the accused is produced before a Magistrate; holding that that would be sufficient compliance with Article 22(5) of the Constitution.

34. Mr. Jain has argued that the petitioner's contention that merely because the time stated on the section 41-A Cr.P.C. notice was corrected by-hand from 02:00 p.m. to 05:00 p.m., the petitioner must be deemed to have been under arrest from the time he reached the police station around 02:00 p.m., is wholly misconceived. It is submitted that this contention has been negated by a Full Bench of the Madras High Court in Roshan Beevi & Ors. vs. Joint Secretary to 2023 SCC OnLine SC 1682

Government of Tamil Nadu & Ors.,<sup>13</sup> the relevant extract of which may be noticed below :

"37. For all the discussions made above, we hold that „custody and „arrest are not synonymous terms. It is true that in every arrest there is a custody, but not vice versa. A custody may amount to an arrest in certain cases but not in all cases but not in all cases. (sic) In our view the interpretation that the two terms „custody and „arrest are synonymous is an ultra legalist interpretation, which if accepted and adopted, would lead to a startling anomaly resulting in serious consequences."

(emphasis supplied)

35. Based on the afore-noted verdict, it is argued that the petitioner was not under arrest from the time he reached the police station around 02:00 p.m., since the petitioner's movements were not fettered within the premises of the police station. It is further pointed-out that at the time he came to the police station, the petitioner was accompanied by his brother and sister, who also had unfettered right of movement in the premises of the police station; and in fact the brother and sister stepped-out and re-entered the police station between 02:20 p.m. and 11:30 p.m. It is submitted, that on point of fact, since on 20.03.2024 the initial investigating officer, SI Reema, was pre-occupied in an orientation course, the investigation of the present case was assigned to Inspector Sumit Kumar; who (latter) was busy before a learned court in Patiala House and therefore the petitioner's interrogation could not commence until about 07:00 p.m. 1983 SCC OnLine Mad 163

36. It is further submitted, that if the petitioner chose to reach the police station at about 02:00 p.m., even though the time on the section 41-A Cr.P.C. notice had been changed to 05:00 p.m., he did so on his own accord; that there was no restraint on the petitioner's movement till the time he was arrested at 11:30 p.m. on 20.03.2024; and that therefore, the investigating officer was not remiss in producing him before the learned Magistrate at about 04:30 p.m. on 21.03.2024, which was within 24 hours of the arrest, in compliance with the mandate of section 57 Cr.P.C.

## ANALYSIS & CONCLUSIONS

37. Upon hearing learned senior counsel appearing for the parties, the 04 contentions that this court is required to address are the following :

37.1. Whether the revision petition filed before the learned Sessions Court impugning order dated 28.03.2024 passed by the learned ACMM and order dated 21.03.2024 passed by the learned Magistrate, was maintainable;

37.2. Whether notice dated 19.03.2024 issued under section 41-A Cr.P.C. by the investigating officer to the petitioner was in compliance of the decision of a Division Bench of this court in Amandeep Singh Johar as affirmed by the Supreme Court in Satender Kumar Antil;

37.3. Whether the petitioner must be deemed to have been under arrest from the time he reached the police station at about 02:00 p.m. on 20.03.2024 in compliance with the notice under section 41-A Cr.P.C. as originally drawn-up; and did the investigating officer comply with the mandate of section 57 Cr.P.C.; and 37.4. Whether the petitioner was served with the grounds of arrest in writing, in compliance with the mandate of Prabir Purkayastha read with Pankaj Bansal.

38. Maintainability of revision petition : As for maintainability, upon a close and meaningful reading of the judgment of the Supreme Court in Usmanbhai Dawoodbhai Memon, it is clear that the said case arose from rejection of bail by the High Court under the Terrorist and Disruptive Activities (Prevention) Act 1987 („TADA ), section 19 whereof contemplated an appeal to the Supreme Court from any judgment, sentence or order, not being an interlocutory order of a Designated Court. It was in this context that the Supreme Court held that the grant or refusal of bail is essentially an interlocutory order.

The Supreme Court further observed that the words „not being an interlocutory order used in section 19(1) must be interpreted in their natural sense, in furtherance of the object and purpose of the statute, with the purpose of excluding any interference with proceedings before a Designated Court at an intermediate stage. It was further held that there is no finality attached to an order by a Designated Court granting or refusing bail since an application for bail can always be renewed subsequently. It was accordingly held that an order of the Designated Court rejecting bail was an interlocutory order and therefore an appeal under section 19(1) directly to the Supreme Court was not maintainable. 14 It requires to be noted that therefore the observations in Usmanbhai Dawoodbhai Memon related not to an order granting or refusing remand but to an order granting or refusing bail, and that too under a special statute, viz. TADA, and in the context of section 19(1) of that special statute.

39. Then again, the decision of the Supreme Court in N.M.T. Joy Immaculate arose under the general criminal procedure, viz. the Cr.P.C., but that case only held that an order granting police custody remand was an interlocutory order and was therefore not amenable to revision under section 397(2) Cr.P.C.15 A close reading of N.M.T. Joy Immaculate would show that the said decision does not address the issue of refusal of police custody remand. Again, the legal logic of holding that an order granting police custody remand is an interlocutory order is easy to decipher, viz. that police custody remand cannot, by the very nature of such order, be final or dispositive of any rights and is a temporary order, which is why the Supreme Court held that such an order is an interlocutory order.

40. For completeness, it may be noted that the observation of the Supreme Court in Gautam Navlakha, viz. that an order under section 167 Cr.P.C. is purely an interlocutory order,16 arose from a reading of N.M.T. Joy Immaculate. It is important to note that that both N.M.T. Joy Immaculate as well as Gautam Navlakha were cases relating only Usmanbhai Dawoodbhai Memon at para 24 N.M.T. Joy Immaculate at para 13 Gautam Navlakha at para 72 to the grant of police custody remand and not to denial of police custody remand. At the risk of repetition, an order granting

police custody remand can never be a final order, since police custody would always be granted for a certain defined period of time, which may be subject to extension. However, an order denying police custody remand, would be a final order, inasmuch as even if police custody is prayed-for and granted subsequently, it may not serve the purpose for which it was prayed-for initially.

41. The decision brought to the notice of this court which deals squarely with the issue at hand, viz., whether an order refusing police custody remand is an interlocutory order, is a decision of a Division Bench of the Gujarat High Court in *Kandhal Sarman Jadeja*, in which J.B. Pardiwala, J. (as His Lordship then was), has held as follows :

"14. ... .. However, in the present case, we are looking into the question as to what will be the effect if remand is refused and thereby, taking away right of the Investigating Agency to have an accused in police custody for more than 24 hours for the purpose of proper investigation. ... ..

\*\*\*\*\* "17. In light of the aforesaid discussion, our final conclusion may be summarized thus:

(I) An order refusing to grant remand has direct bearing on the proceedings of the trial itself and in a given case will definitely have effect on the ultimate decision of the case. (II) An order refusing to grant remand may affect the progress of the trial or its decision in any manner if Investigating Agency is deprived of having custodial interrogation of the accused so as to effectively investigate the offence and gather necessary evidence and material to put the accused to trial.

(III) An order refusing to grant police remand would be a final order and a revision under Section 397 read with Section 401 of the Code would be maintainable."

(emphasis supplied)

42. An order granting police custody remand is therefore an interlocutory order; but an order declining police custody remand is not.

43. Since by way of orders dated 21.03.2024 and 28.03.2024, the learned Magistrate and the learned ACMM respectively had declined police custody remand of the petitioner, those orders would have a direct bearing and may affect the ultimate decision of the case, inasmuch as the requirement of police custody remand may have lost relevance once it was denied at a certain stage of investigation.

44. In light of the above, this court is of the view that orders dated 21.03.2024 and 28.03.2024 declining police custody remand were not interlocutory orders and were therefore amenable to the revisional jurisdiction of the learned Sessions Court under section 397 Cr.P.C. and the revision petition was therefore maintainable. Contention No. 1 is answered accordingly.

45. Service of section 41-A Cr.P.C. notice : Insofar as contention No.2 is concerned, the State was not able to show to the learned Magistrate when order dated 21.03.2024 was passed, nor to the learned ACMM when order dated 28.03.2024 was passed, nor to this court, any receipted copy of notice dated 19.03.2024 stated to have been served upon the petitioner by the investigating officer under section 41-A Cr.P.C.

46. Quite apart from the fact that there is no receipted carbon copy of such notice taken from a duly indexed booklet containing serial numbered notices, as was directed by Amandeep Singh Johar, there is in fact no copy of any notice under section 41-A Cr.P.C. available with the investigating officer on his file, to show that such notice was at all received by the petitioner.

47. The only inference therefore is that the notice under section 41-A Cr.P.C. was never served upon the petitioner as required under the directions contained in Amandeep Singh Johar as approved by the Supreme Court in Satender Kumar Antil and recently reiterated in a subsequent order in Satender Kumar Antil vs. Central Bureau of Investigation & Anr.<sup>17</sup>

48. We must always remind ourselves of the venerated principle of law laid down by the Privy Council in Nazir Ahmad vs. King-Emperor,<sup>18</sup> that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. It must be articulated that the convenience of an investigating officer in printing-out multiple copies of a section 41-A Cr.P.C. notice, will not serve as a valid, legal substitute for the procedure laid down in Amandeep Singh Johar. This court would also observe that a carbon copy (which is part of an indexed, serialized booklet) carries a certain authenticity, which was the reason for the procedure prescribed in Amandeep Singh Johar, Order dated 21.01.2025 passed in Miscellaneous Application No. 2034/2022 in MA 1849/2021 in AIR 1936 PC 253 (2) which procedure must be scrupulously complied-with. Contention No.2 stands answered accordingly.

49. Compliance of section 57 Cr.P.C. : Coming next to the contention whether the petitioner must be deemed to have been under arrest from the time he reached the police station at about 02:00 p.m. on 20.03.2024, suffice it to say that merely arriving at a police station may not imply that a person is automatically under arrest; and this question would depend on the facts of a given case, viz. whether a person was placed under restraint of liberty while in the police station and, if so, at what stage and from what time.

50. In the present case, for one, there is insufficient material to take a view on this issue; and besides, it also turns-out that examination of this contention is not central to a decision of the present petition. Contention No. 3 is accordingly left open, to be decided in an appropriate case.

51. Compliance with the requirement of serving grounds of arrest in writing : The next issue that requires adjudication is whether the petitioner was served with the grounds of arrest in writing in compliance with the mandate of the Supreme Court in Prabir Purkayastha read with the verdict in Pankaj Bansal.

52. In this regard, in its recent judgment in *Thokchom Shyamjai Singh & Ors. vs. Union of India & Ors.*,<sup>19</sup> this Bench has taken the view that on a combined reading of *Prabir Purkayastha* and *Pankaj Bansal* the 2025 SCC OnLine Del 980 requirement of serving grounds arrest in writing is attracted to every arrest made for any penal offence on or after 03.10.2023, which is the date of pronouncement of *Pankaj Bansal*. In the present case since the arrest was made on 20.03.2024, the investigating officer was duty bound to furnish to the petitioner the grounds of arrest in writing.

53. Furthermore, this Bench has held in *Marfing Tamang vs. State (NCT of Delhi)*<sup>20</sup> that the requirement under section 50 Cr.P.C. of serving the grounds of arrest forthwith must be read to mean that the investigating officer/arresting officer must serve upon an arrestee the grounds of arrest simultaneously with the issuance, or as part, of the arrest memo.<sup>21</sup> Furthermore, in *Marfing Tamang* this court has also expressed that serving the grounds of arrest in writing to an arrestee just sometime before the remand hearing cannot possibly be due or adequate compliance of the requirements set-out in section 50 Cr.P.C., since the purpose of serving the grounds of arrest in writing is to grant to an arrestee sufficient time to enable them to engage and confer with legal counsel, so as to grant to an arrestee a meaningful opportunity to resist his remand to police custody or judicial custody.<sup>22</sup>

54. In any event, in the present case, even the remand application, a copy of which is stated to have been served upon the petitioner, did not contain any grounds of arrest, viz. any grounds specific to the 2025 SCC OnLine Del 548 *Marfing Tamang* at para 30.7 *Marfing Tamang* at para 36 petitioner which necessitated his arrest, which was in clear violation of the mandate of the Supreme Court in *Prabir Purkayastha*. Therefore, the grounds of arrest were never served upon the petitioner, at any stage, in any form, or in any document. This omission clearly vitiates the petitioner's arrest.

55. It may be added that in *Vihaan Kumar vs. State of Haryana & Anr.*,<sup>23</sup> the Supreme Court has reiterated that when an arrestee alleges that grounds of arrest were not supplied to him, the burden to prove compliance of Article 22(1) of the Constitution of India is always on the investigating officer/agency. <sup>24</sup> In the present case, the investigating officer has failed to discharge that burden.

56. It may also be noted that in *Vihaan Kumar*, the Supreme Court has observed as follows :

"18. ... .. 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."

(emphasis supplied) 2025 SCC OnLine SC 269 *Vihaan Kumar* at paras 18 & 21(c)

57. In the opinion of this court, the sequitur to the aforesaid observations of the Supreme Court is, that since grounds of arrest must exist before an arrest is made; and there must be a contemporaneous record of the grounds of arrest in the police diary or other document, there can possibly be no reason or justification for an investigating officer/arresting officer to not communicate to an arrestee the grounds of arrest in writing. This communication must happen simultaneously with the issuance, or as part, of the arrest memo. 25 The purported mode of serving grounds of arrest as part of a remand application is therefore no compliance with the requirements of the law, since, inevitably, a remand application comes to be filed only much later when an arrestee is produced before the Magistrate. Contention No. 4 stands answered accordingly.

58. As a consequence of the above discussion, the present petition is allowed on 02 counts : first, that the notice under section 41-A Cr.P.C. was not served upon the petitioner; and second, that the grounds of arrest in writing were not served upon the petitioner as required in law.

59. Order dated 06.06.2024 passed by the learned Sessions Court is accordingly set-aside; and order dated 28.03.2024 made by the learned ACMM is restored, thereby holding that the petitioner is entitled to remain on bail granted to him by the learned ACMM in Marfing Tamang at para 30.7 case FIR No. 200/2024 dated 13.03.2024 registered under sections 420/468/471 IPC at P.S.: I.G.I. Airport, New Delhi.

60. The bail shall of course be subject to the conditions imposed vide order dated 21.03.2024 by the learned Magistrate as read with order dated 28.03.2024 passed by the learned ACMM.

61. The petition stands disposed-of in the above terms.

62. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

MARCH 28, 2025 ss/V.Rawat