



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO. 557 OF 2025

Between:

Riyaz H.Y.,
S/o Yusuf
Aged about 29 years
R/at House No.129,
Masagodu Village,
Thanniruhalla Post,
Somwarpet Taluk,
Kodagu District – 571 236.

...Appellant

(By Sri Mohammed Tahir, Advocate)

And:

National Investigation Agency
Ministry of Home Affairs
Branch Office, Bengaluru
3rd Floor, BSNL Telephone Exchange,
HAL 2nd Stage, Indiranagar,
Bengaluru – 560 008.
Represented by its Superintendent of Police/
Special Public Prosecutor.

...Respondent

(By Sri Prasanna Kumar P., Spl. PP)

This Criminal Appeal is filed u/s 21(4) of NIA Act 2008 praying to set aside the impugned order of bail dated 23.01.2025 at Annexure-A passed in Spl.C.No.123/2023 by the learned 49th Additional City Civil and Sessions Judge, Special Court for Trial of NIA Cases, CCH-50 at Bengaluru and etc.,



This Criminal Appeal, coming on for orders, this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

This appeal under Section 21(4) of the National Investigation Agency Act is filed by accused No.26 challenging the order dated 23.01.2025 passed by the Special Court for the trial of NIA cases rejecting his application for bail.

2. The allegation leveled against the appellant is that he harbored accused Nos. 4 and 20 and provided other help to them. They are two of the accused persons who are said to have involved in the murder of Praveen Nettaru on 26.07.2022 at Putturu. FIR was registered in Crime No. 63/2022 by the local police station, and then the investigation was handed over to the NIA. Appellant came into picture when supplementary charge sheet was filed against him



and accused No.25 invoking the offences punishable under Sections 120B and 212 of IPC and Section 19 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA').

3. On going through the statements of the witnesses, LW-344 and LW352 to 356, and other materials, the Special Court formed an opinion that there was prima facie evidence suggestive of involvement of the appellant knowingly that accused Nos.4 and 20 were involved in terrorist activities.

4. Sri Mohammed Tahir, learned counsel for the appellant, assails the order of the Special Court urging the following grounds :

(i) The materials do not indicate that the appellant harbored accused Nos.4 and 20.

(ii) The appellant had no knowledge that accused Nos.4 and 20 were facing the allegations of having committed offences under UAPA. Case of



simple murder is given the colour of terrorism with a view to targeting minority community.

(iii) For arguments sake, if it can be said that there is a prima facie case against the appellant, the offence that can be invoked against the appellant is the one punishable under Section 212 of IPC, not under Section 19 of UAPA. In that event there is no impediment for granting bail to the appellant.

(iv) Offence under Section 19 of UAPA is deliberately alleged against the appellant to see that he shall not be released on bail in view of restriction contained under Section 43D of UAPA.

(v) The word "Terrorist" is not defined under any law. Unless it is shown that an individual is a member of an organization mentioned in the First Schedule or name of an individual is included in the Fourth Schedule, as mentioned in Section 35 of UAPA, no one can be prosecuted for offences under UAPA



and since the appellant is not a member of any organization and that his name is not included in the Fourth Schedule, his prosecution under Section 19 of UAPA is illegal. Thus seen there is no prima facie material against him and he becomes entitled to bail.

5. On 05.04.2025, Sri Mohammed Tahir filed an application, I.A.2/2025, under Section 482 read with Section 391 of Cr.P.C to urge an additional ground that the NIA mechanically arrested the appellant without informing him grounds of arrest and thus the fundamental right under Article 21 and Article 22(1) of the Constitution of India was violated. He further submitted that denial of bail in the circumstances made out would also violate Article 21 of the Constitution of India. In support of his argument, Sri Mohammed Tahir has garnered support from a few decisions which will be referred to later.



6. Sri P.Prasanna Kumar, the Special Public Prosecutor for NIA, met the argument of Sri Mohammed Tahir in the following manner :

(i) The materials collected during investigation indicate that the murder of Praveen Nettaru was to strike terror in a section of society and thereby destabilize the unity and integrity of the nation. The accused in this case may think that the act complained of was a simple murder; it is ridiculous to classify the death of Praveen Nettaru as a simple one; what is important is the impact of the crime on the society. The opinion that an accused holds cannot be the basis for invoking the provisions of UAPA. The gravity of the situation and impact on the society at large are the factors that decide whether there are grounds to conduct investigation by the National Investigation Agency (for short 'NIA') in relation to scheduled offence.



(ii) In regard to argument of Sri Mohammed Tahir that the appellant had no knowledge that other accused were involved in terrorist act, it was the reply of Sri P.Prasanna Kumar that the evidence gathered by the NIA clearly indicates the knowledge of the appellant as to what kind of activities the other accused were involved in. At this stage prima facie satisfaction is enough. In addition to harbouring, there is an allegation that the appellant was a member of conspiracy, with regard to which also there are materials. Once the trial commences, the prosecution will prove its case; and only after completion of trial, it will be possible for the Special Court to decide whether the appellant had knowledge or not. No conclusion can be drawn about the knowledge as required under Section 19 of the UAPA at the stage of deciding an application for bail. Now the defence version about lack of knowledge cannot be considered at all. The Special Court has expressed an opinion about the existence of reasonable grounds



to believe that accusations against the appellant are prima facie true.

(iii) Referring to another limb of argument of Sri Mohammed Tahir with reference to Section 35 of UAPA, Sri Prasanna Kumar referred to the definitions of the terms "terrorist act" and "terrorist gang" given in Sections 2 (k) and (l), and Section 15 of UAPA to argue that an individual can be called a terrorist if he does any act as mentioned in Section 15, and any one who renders help in the manner stated in Section 19 is also a terrorist. He argued that Sections 15 and 19 must be read conjointly. And he argued further that it is not as though a person whose name is included in the Fourth Schedule of UAPA can be called a terrorist; he referred to the word 'whoever' in Section 15 to substantiate his submission that any person other than whose name is included in the Fourth Schedule can also be prosecuted for the scheduled offence and thus seen the appellant cannot contend



that Section 19 of UAPA cannot be invoked against him.

(iv) In regard to the additional ground urged on behalf of the appellant, it was the reply of Sri Prasanna Kumar that grounds of arrest were communicated to the appellant, and he acknowledged the receipt of grounds of arrest by putting his signature on its copy. So there was no violation of Article 22(1) of the Constitution of India. And about applicability of Article 21 of the Constitution, he argued in such a way that while there is no doubt that personal liberty of a citizen is sacrosanct, but when a person is arrested in due process of law and investigation shows his involvement in such type of crime as affecting the unity and integrity of the country, he cannot insist on protection to his liberty. He also argued that the instant case of killing cannot be viewed as an ordinary crime perpetrated against an individual for personal reasons, it is a crime



against society posing a serious threat to unity and integrity of the nation and therefore Article 21 of the Constitution cannot be applied at all.

(v) Referring to Sections 41 and 50 of Cr.P.C. he submitted that while furnishing reasons, the police officer is expected to provide that much of information available in his hands at the time of arrest, and not all the information that an accused expects to be provided. In this view, the appellant cannot complain of violation of Article 22(1) of the Constitution in order to claim bail. He concluded his argument with a final touch that, since this is an appeal, this court cannot interfere with the impugned order if it appears that discretionary power is properly exercised in accordance with law.

7. We have considered the arguments of learned counsel and perused the materials collected by the NIA to subject the appellant to prosecution. Before expressing any opinion on the findings



recorded by the Special Court, the technical issues that Sri. Mohammed Tahir highlighted while arguing are to be dealt with first.

8. It is true that UAPA does not define the expression 'Terrorist' specifically, but Section 2(k) states,

' "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly.'

8.1. Section 15 enumerates various types of offences which are tantamount to terrorist act if any of those offences are committed with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India, or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country. If the preamble of UAPA is seen, the main purpose of its enactment becomes more



clear; it is for the purpose of effective prevention of certain unlawful activities of individuals and associations, and for matters connected therewith. By Act No.29 of 2004, given into effect from 21.09.2004, a clause, "and for dealing with terrorist activities" was inserted. Therefore the thrust is firstly on unity, integrity and security of the nation and then comes interest of people or section of people, which can be succinctly called society. The acts amounting to crime as specified in clauses (a) to (c) of sub-section (1) of section 15 must appear to have been committed as a threat to the nation or society. Causing death of a person or persons also amounts to terrorist act in view of sub-clause (i) of clause (a) to sub-section (1) of section 15. As section 2(k) very specifically states that terrorist act has the meaning assigned to it in Section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly, they need not be defined separately; it can be said all the offences enumerated in Section



15(1) amount to acts of terrorism and those who are involved in committing such acts are terrorists.

8.2. Now about Section 35 of UAPA. It is difficult to accept the argument of Sri. Mohammed Tahir that has been already adverted to above. There is no bar as such to prosecute an organization or an individual whose name is not included in the First or the Fourth Schedule as the case may be. Section 35 contemplates a procedure to add an organization in the First Schedule, and an individual in the Fourth Schedule; it is an enabling provision in UAPA. The names of organizations found in the First Schedule are nothing but already included organizations and, likewise the Fourth Schedule which shows the names of known individuals who are involved in terrorist activities. Relevantly Section 36 of UAPA may be mentioned here to understand the scope of Section 35. Section 36 enables removal of an organization or individual from the respective Schedule. That means,



the name of any individual or organization may be added at any time following the procedure prescribed in Section 35, and in the same manner, the names can be de-notified any time. If anybody's name can be denotified in accordance with procedure prescribed in Section 36, anybody's name can also be added at any time following the prescribed procedure. If the name of any organization or an individual is added in the respective Schedules, it only connotes the meaning that such an organization is a proclaimed terrorist organization; and an individual, a proclaimed terrorist. Therefore, non-mentioning of the name of the appellant in the Fourth Schedule is of no consequence. As has been rightly argued by Sri P.Prasanna Kumar, the pronoun 'whoever' takes the meaning any person, it is not necessary that such person's name must find a place in the Schedule.

9. Now the role played by the appellant may be examined. It is mentioned in the charge sheet



that after the murder of Praveen Nettaru on 26.07.2022, accused No.20 Thufail harboured three assailants. After those three were arrested, accused No.20 absconded. While accused No.20 was absconding, the appellant along with accused No.22 – Abdul Nasir and accused No.24 – Abdul Rahaman provided shelter and hideout to accused No.20 at Dasarahalli in Bengaluru. The appellant provided money to accused No.20, besides facilitating the meeting between accused No.20 and his wife in the hideout at Dasarahalli. After the arrest of accused No.20, the appellant left for Dubai in the month of July 2023, and returned to India on the instructions of another absconding accused, i.e., accused No.24 and harboured Mustafa Paichar, i.e., accused No.4, in his house at Somawarpete during March, 2024, and, in the houses of his sister in Suntikoppa Taluk and in the house of Mohammed @ Mammucha in Somawarapete during March- April 2024. It is also stated that the appellant arranged for a meeting



between accused No.4 and, his wife and children. The other allegation is that he used his friend's car to transport accused No.4 to Sakleshapura, and to evade accused No.4 from being arrested, the appellant and accused No.25 took a piece of land on lease at Anemahal area in Sakleshapura and harboured him there. And during that time appellant provided groceries to accused No.4 who could not venture out in open. It is stated that the appellant knew the fact that accused No.4 was one of the main accused persons in the murder of Praveen Nettaru. These aspects are borne out from the statements of LW 344 and LWs 352 to 356.

10. Now the question is whether the materials only indicate an offence under section 212 of IPC or section 19 of UAPA. The difference between the two lies in a narrow compass. Section 212 requires proof that the harboring person had the knowledge that the harboured person was an offender or had the reason



to believe that he was an offender. Section 212 of IPC prescribes only term punishments. But to invoke Section 19 of UAPA, harboring person must have voluntarily harboured or concealed any person knowingly that such person i.e., harboured person is a terrorist. And the punishment prescribed is little higher in the sense that imprisonment period ranges from a minimum of three years up to life imprisonment. So, whenever Section 19 of UAPA is invoked, all that the prosecution has to establish additionally is that harbouring accused had the knowledge that harboured person is a terrorist. Whether this required knowledge was there or not, is essentially matter of trial, the initial burden being on the prosecution. After the witnesses are examined, the court has to draw inferences from the proved facts, for direct evidence as to knowledge or intention can be seldom made available, they being mental process. In this context a judgment of the Supreme Court in the case of ***Athar Parwez vs Union of***



India¹, may be referred here. Sri Mohammed Tahir referred to this judgment to gather support for his argument that the restriction found in Section 43D (5) of UAPA is not an impediment to grant bail. He referred to para 18 where the observations are as follows:

"18. This Court had an occasion to deal with the case of an accused charged under Chapters IV and VI of the UAPA, 1967, who sought bail during the pendency of the trial in the case of National Investigation Agency v. Zahoor Ahmad Shah Watali. In that case, this Court had gone to the extent of stating that the statutory bar on grant of bail could not be an impediment if the court on appreciation of totality of evidence is satisfied that the accusations are prima facie not true. The court is required to consider and examine not only the FIR but the case diary and charge sheet and to examine them on broad probabilities regarding involvement of the accused in the crime to determine whether the accusations are prima facie true as compared to holding the accused not guilty, which would entitle the provisions of

¹[2024 SCC Online SC 3762],



Section 43-D(5) of UAPA, 1967, being not an impediment in grant of bail.

The Court further concluded that if on perusal of the case diary and charge sheet, an opinion is formed that there are no reasonable grounds for believing that the accusations against such person are prima facie true, the accused can be released on bail. It may be added here that while forming an opinion as to whether there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise the said documents have to be accepted as it is. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise. "

(underlining by us)

11. Sri P.Prasanna Kumar also referred to very same paragraphs in support of his line of argument that if the accusations against a person appear to be prima facie true, restriction under Section 43D (5) are applicable and bail cannot be granted.



12. It is true that Section 43D(5) of UAPA is not a total bar for granting bail to an accused, all that the section states is that if the court can form an opinion on perusal of the case diary or the report under Section 173 of Cr.P.C that there are reasonable grounds to believe that accusation against an accused is prima facie true, bail cannot be granted. In other words if the court can form an opinion that the accusation appears to be not prima facie true bail can be granted. The underlined sentence in the extracted para makes it very clear that at the stage of deciding bail application, it is enough for the court to find out the probabilities of the involvement of the accused in the commission of offence based on the materials; it is not expected to hold a mini trial. In this context, judgment of the Supreme Court in the case of ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs State of Uttar Pradesh***², cited by Sri Mohammed

² [2024 SCC Online SC 1755],



Tahir can be usefully referred. In para 27.2, it is clearly held as below:

"27.2. Referring to the decision of this Court in NIA Vs. Zahoor Ahmad Shah Watali, this Court opined that the High Court in that case had virtually conducted a mini trial and determined admissibility of certain evidence which clearly exceeded the limited scope of a bail proceeding. Not only was it beyond the statutory mandate of prima-facie assessment under Section 43D(5) of the UAP Act, it was premature and possibly would have prejudiced the trial as well. It was in these circumstances that this Court in Zahoor Ahmad Shah Watali (supra) had to intervene leading to cancellation of the bail granted.

(emphasis supplied)

13. Another judgment that Sri Mohammed Tahir has relied on is **Vernon vs The State of Maharashtra and Another³**. He referred to para 29 of the said judgment. Sri Prasanna Kumar also relied on the very same judgment, but he referred to para 35. In para 29 what is held is:

³ [(2023) 10 SCALE 312]



"29. We have already observed that it is not possible for us to form an opinion that there are reasonable grounds for believing that the accusation against the appellant of committing or conspiring to commit terrorist act is prima facie true. The witness statements do not refer to any terrorist act alleged to have been committed by the appellants. The copies of the letters in which the appellants or any one of them have been referred, record only third-party response or reaction of the appellants' activities contained in communications among different individuals. These have not been recovered from the appellants. Hence, these communications or content thereof have weak probative value or quality. That being the position, neither the provisions of Section 18 nor 18B can be invoked against the appellants, prima facie, at this stage. The association of the appellants with the activities of the designated terrorist organisation is sought to be established through third party communications. Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of these communications. Nor there is any credible case of conspiracy to commit offences enumerated under chapters IV and VI of the 1967 Act. Mere



participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, with which they have been charged."

In para 35 following are the observations:

"35. In three decisions of this Court, Hitendra Vishnu Thakur and Others -vs- State of Maharashtra and Others [(1994) 4 SCC 602], Niranjana Singh Karam Singh Punjabi, Advocate -vs- Jitendra Bhimraj Bijjaya and Others [(1990) 4 SCC 76] and Usmanbhai Dawoodbhai Memon and Others -vs- State of Gujarat [(1988) 2 SCC 271], the manner in which stringent provisions of a statute ought to be interpreted has been laid down. In all the three authorities, observation of this Court has been that the Court ought to carefully examine every case, before making an assessment if the Act would apply or not. When the statutes have stringent provisions the duty of the Court would be more onerous. Graver the offence, greater should be the care taken to see that the offence would fall within the four corners of the Act. Though these judgments were delivered while testing similar rigorous provisions under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the same



principle would apply in respect of the 1967 Act as well."

14. On going through these two paras, it may be stated that while para 35 sets out the principles to be borne in mind while interpreting stringent provisions of a statute, the findings found in para 29 are based on the facts therein and it is not helpful to the appellant of this case. To understand the actual purport of the decision in **Vernon**, para 35 must be read first because the ratio is found in that para.

15. Sri Mohammed Tahir has placed reliance on a judgment of the Division Bench of the High Court of Kerala in the case of **Abdul Azeez P.V. and Others vs State of Kerala and Another**⁴. It appears that Sri Mohammed Tahir referred to this decision to make out a case that the materials collected by the investigating officer do not figure out the appellant to be called a terrorist and therefore the provisions of UAPA cannot be enforced against him. Sri P.Prasanna

⁴ [2016 SCC Online Ker 40231]



Kumar distinguished this judgment stating that any observation made therein is in an appeal filed against a conviction judgment and it cannot be made use of in an appeal against order on application for bail. The argument of Sri P.Prasanna Kumar is acceptable. Any finding that a court records after appreciation of evidence cannot be applied while deciding a bail application. Therefore the judgment of the Kerala High Court is not helpful to the appellant.

16. As it is found that there are sufficient materials indicative of role played by the appellant in giving shelter to accused Nos. 4 and 20, and facilitating the meeting between them and their family members when they were absconding, it can very well be stated that the accusations against the appellant are prima facie true and thereby the restriction found in Section 43D (5) of UAPA are applicable to deny bail.



17. Now the additional grounds urged by Sri Mohammed Tahir are considered. He pressed the point that after the appellant was arrested, he was not provided with the grounds of arrest as also the reasons for arrest and in support of this line of argument he has placed reliance on the judgment of the Supreme Court in the case of ***Vihaan Kumar vs. State of Haryana and Another***⁵. He referred to para 3 of the judgment delivered by Hon'ble Justice N.Kotiswar Singh. The said para is extracted below:

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

The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release,

⁵ [2025 SCC Online SC 269]



which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.”

18. The reason for this judgment being cited by Sri Mohammed Tahir is that, as has been observed there, the appellant’s friends, relatives and other



persons were not provided with the information about the arrest of the appellant and thereby arrest was illegal and this would enable him to claim bail. But Sri Prasanna Kumar showed a copy of acknowledgement given by the appellant himself for having received grounds of arrest and he also placed reliance on a judgment of the Supreme Court in ***Ram Kishor Arora vs Directorate of Enforcement***⁶, to substantiate his argument that, in case there was a lapse in furnishing the grounds of arrest it did not amount to an illegality.

19. In the application I.A.No.2/2025 for additional grounds Sri Mohammed Tahir has referred to two judgments of the Supreme Court in ***Pankaj Bansal vs Union of India***⁷ and ***Prabir Purkayastha vs State (NCT of Delhi)***⁸ where it is held that if an accused person is not informed of his grounds for his arrest, it amounts to violating Article 22(1) of the

⁶ [2023 SCC Online SC 1682]

⁷ [(2024) 7 SCC 576]

⁸ [(2024) 8 SCC 254]



Constitution of India. In para 23 of **Ram Kishor Arora** the following are the observations :

"23. As discernible from the judgment in Pankaj Bansal Case also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 of PMLA, directed to furnish the grounds of arrest in writing as a matter of course, "henceforth", meaning thereby from the date of the pronouncement of the judgment. The very use of the word "henceforth" implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not the mandatory or obligatory till the date of the said judgment. The submission of the learned Senior Counsel Mr. Singhvi for the Appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary "henceforth" that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. Hence non furnishing of grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal case could neither be held to be illegal nor the



action of the concerned officer in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 of PMLA as also Article 22(1) of the Constitution of India, as held in Vijay Madanlal (supra)."

(emphasis supplied)

20. It can be clearly noticed from the extracted para that furnishing of grounds of arrest was not mandatory till the judgment in *Pankaj Bansal* came. It is to be noted here that in *Vihaan Kumar*, there is reference to *Pankaj Bansal* and *Prabir Purkayastha*, but it appears that *Ram Kishor Arora* was not cited. It may not be impertinent if it is mentioned here that, since in *Ram Kishor Arora*, the Hon'ble Supreme Court has made it clear that *Pankaj Bansal* cannot be given retrospective effect, the ruling in *Vihaan Kumar* is not applicable to the case on hand. The Division Bench of the High Court of Kerala in ***Shafeek and Others vs Union of India and Another [Criminal Appeal***



388/2025) a ruling cited by Sri Mohammed Tahir,
has held as below:

"4.6. Later, in Vihaan Kumar v. State of Haryana and Another[2025 SCC OnLine SC 269], the Apex Court, following the principles of law laid down in Pankaj Bansal (supra) and Prabir Purkayastha (supra), had finally settled the law by holding as under:

21. Therefore, we conclude:

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

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

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the



Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

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

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

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory



restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

4.7. We notice that in Ram Kishor Arora v. Enforcement Directorate [(2024) 7 SCC 599], a Two-Judge Bench of the Apex Court interpreted the judgment in Pankaj Bansal (supra) to have a prospective effect. Indisputably, the appellants herein were remanded to police custody after 3.10.2023, on which day the judgment in Pankaj Bansal (supra) was delivered. In that view of the matter, the appellants cannot be denied the benefit of the law laid down by the Apex Court, being the law of the land and binding under Article 141 of the Constitution of India.

21. The judgment in **Vihaan Kumar** which has followed **Pankaj Bansal** cannot have retrospective effect. However in this case it is found that appellant was furnished with grounds of arrest. We have perused the copy of grounds of arrest placed before us. It contains the signature of the appellant for having acknowledged it. Though Sri Mohammed Tahir



disputes the signature of the appellant on it, it is difficult to accept his argument. It is a fact that appellant was informed of the grounds for his arrest. Therefore this additional ground fails.

22. And as regards 'personal liberty' of a person the established view is that the courts are expected to strike balance between societal interest and the individual's interest. The interest of the nation is always paramount; then comes the interest of the society; and then comes individual. If individual's interest is not in conflict with the interest of the nation or the society, his interest can be given importance. It is to be noted here emphatically that the victim of an incident has also personal liberty; liberty to live till attaining natural death; and what right can an accused against whom there are allegations of committing a crime, insist on his right till he is acquitted. Thus looked whenever a person is arrested in due process of law, his application for bail



is to be decided applying principles governing bail provisions and not with reference to personal liberty. If bail is denied in spite of there being grounds for granting, it may offend Article 21 of the Constitution.

23. The ultimate conclusion is that though the Special Court has not given elaborate reasons for dismissing the appellant's application for bail, its conclusion to deny bail cannot be said to be incorrect and improper. As the grounds urged by learned counsel Sri Mohammed Tahir are not worth acceptance, this appeal is ***dismissed***.

SD/-
(SREENIVAS HARISH KUMAR)
JUDGE

SD/-
(K.S. HEMALEKHA)
JUDGE

CKL
List No.: 1 Sl No.: 12