

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.3276 OF 2024**

Manulla M. Kanchwala

.. Petitioner

Versus

The State of Maharashtra

.. Respondents

WITH**CRIMINAL WRIT PETITION NO.3279 OF 2024****WITH****CRIMINAL WRIT PETITION NO.3281 OF 2024**

Manulla M. Kanchwala

.. Petitioner

Versus

The State of Maharashtra and Anr.

.. Respondents

...

Mr. Rishi Bhuta a/w. Mr. Ashish Dubey, Ujjwal Gnadhi, K.R. Shah, Neha Patil, Ankita Bamboli, Saakshi Jha, Prateek Dutta, Risha Rathod i/b. Mr. Bhomesh Bellam for Petitioner, in WP No.3276 of 2024.

Mr. Aabad Ponda, Sr. Advocate i/b Mr. Bhomesh Bellam, for the Petitioner in WP No.3279 of 2024.

Mr. Kapil Dave, i/b Mr. Bhomesh Bellam for the Petitioner in WP No.3281 of 2024.

Mr.H.V. Kode, Ms. J.S. Karnik, Mrs. V.S. Vaidya & Mr. Alok Velankar the intervenor.

Mr. Nikhil Wable, a/w Mihir Kakade, Parika M, Vinisha Bhavnani i/b Jayakar & partners for intervenor.

Mr. J.P. Yagnik, APP for the State.

CORAM: BHARATI DANGRE &**MANJUSHA DESHPANDE, JJ.****DATED : 14th AUGUST, 2024**

JUDGMENT (PER BHARATI DANGRE J):-

1 Mr. Manulla Kanchwala, arraigned as an accused in three CRs ; C.R. No.8 of 2024 dated 15/01/2024, lodged with Housing-1, EOW Mumbai (earlier registered as C.R. No. 19 of 2024 at Chembur Police Station), C.R. No. 18 of 2024, registered with Taloja Police Station and C.R. No. 20 of 2024 dated 12/02/2024 registered with CBD Belapur Police Station, has filed three Writ Petitions seeking a some what similar relief of declaring his arrest, as illegal, being in gross violation of his fundamental rights guaranteed under Article 21 and 22 of the Constitution of India.

 Upon such a declaration, he has also prayed for setting aside of the remand orders passed by the concerned Court as null and void and all the subsequent remand orders, the same being passed in utter violation of the Constitutional mandate and on failure to comply with Section 50 of the Code of Criminal Procedure, 1973.

 As a ultimate relief, the petitioner has sought his release in all the three cases registered against him, as his arrest is illegal as an alternative relief, a Writ of Habeas Corpus is sought for granting interim bail pending the final hearing of the Writ Petitions filed by him.

2 We have heard, learned Senior Counsel Mr. Aabad Ponda for the petitioner in Writ Petition No.3279 of 2024, whereas in Writ Petition No.3281 of 2024, the petitioner is

represented by Mr. Kapil Dave instructed by Mr. Bhomesh Bellam and in Writ Petition No.3276 of 2024, Mr. Rishi Butha a/w Mr. Ashish Dubey has represented the petitioner.

The State in all the three Writ Petitions is represented by Additional Public Prosecutor Mr. J.P. Yagnik.

By consent of the respective counsel for the parties, we issue 'Rule' and we have taken up the petitions for hearing.

In all the three Writ Petitions, an application for intervention is filed by Clan City Welfare Association, which is represented by Adv. Himanshu Kode, as the intervenor on the ground of seriousness of the accusations faced by the petitioner and he has opposed relief sought in the Writ Petitions, since it is his specific contention that around 1,700 innocent flat purchasers are cheated by the petitioner and he has completely violated the laws and specifically the provisions of MOFA, and had indulged in a planned monetary extortion strategy.

On 15/01/2024, C.R No.19 of 2024, was registered with Chembur Police Station, which was transferred to EOW, Mumbai on the same date, being re-numbered as C.R. No. 8 of 2024. The registration of the above C.R. was consequent to a complaint being filed alleging that the informant, on being supplied with information that M/s Supreme Construction and Developers Pvt Ltd is constructing a new residential project at Taloja, Navi Mumbai, and there is no condition of deposit of the entire amount, visited their office. He was introduced to Mr.

Makhijani, who provided him the necessary information and being impressed by the projection given by him about the scheme to be constructed, he booked a flat for which he agreed to part with the consideration and even issued a cheque in favour of M/s Supreme Construction and Developers.

It is a specific case of the informant, that he availed home loan in order to pay the EMI and the possession of the flat was to be handed over to him by end of 2017, but despite continuous follow up, the timelines were not met and several persons, who had invested their amount with M/s Supreme Construction Developers were cheated.

It is in this background the complaint was registered and as far as the role attributed to the applicant is concerned, he is alleged to be one of the Directors of Supreme Developers, since 1/4/2013. though it is a specific case of the petitioner that the equity, financial, operational and promoters of Supreme were always Mr. Lalit Tekchandani and Mrs. Kajol Tekchandani and he had no stake in the company.

3 The specific stand adopted by the petitioner on merits is, that the complaint registered is based on delayed possession of flats in relation to a construction project managed by Supreme Developers, in which the petitioner was a Director, but it is purely civil matter, for which civil cases are instituted before various forums like the RERA Tribunal and even the High Court. It is the stand of the petitioner that the project is ongoing

since 2010 and in fact there have been several delays and laches on account of various authorities like MMRDA for which Writ Petitions are filed and are pending before this Court.

4 Pursuant to the filing of charge-sheet, the petitioner moved an application for bail before the Special Court, for M.P.I.D. cases for Greater Bombay, Mumbai, purely on merits, in which the relief requested was refused to the petitioner.

Without prejudice to the proceedings initiated, the present petition is premised on a completely distinct ground and the writ jurisdiction of this Court is invoked for a declaration that his arrest is illegal and is in gross violation of his fundamental rights and in Writ Petition No.3279 of 2024, the writ jurisdiction of this Court is invoked by raising the following grounds:

“(b) That the grounds of arrest were not informed to the Petitioner in writing and such arrest is gross violation of the constitutional mandate under article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973

(c) That the Petitioner submits that mere passing of successive remand orders would not be sufficient to validate the initial remand if such arrest was not in conformity with law.

(d) That since the grounds of arrest were not furnished to the petitioner at the time of arrest and before remanding him to custody the continuing custody of the Petitioner is rendered grossly illegal and nullity in the eyes of law because the same is hit by the mandate of article 22(1) Constitution of India.

(e) That the Petitioner submits that his arrest is in gross violation of article 21 of the Constitution of India hence the petitioner is entitled to seek a direction for quashing of remand order and release from custody forthwith.

(f) That the action of the investigating officer in arresting and seeking remand of the petitioner is completely mala fide and the Petitioner was intentionally deprived of information about his arrest.

(k) That the petitioner submits that in the present case neither the grounds of arrest were informed to the petitioner as per the mandate of section 50 of the Cr.P.C., nor did the court remanding him to police custody felt it necessary to ask the prosecution whether there is compliance of due procedure of law during the remand.”

5 The learned Senior Counsel, Mr. Ponda, arguing for the petitioner in the first petition i.e. WP No. 3279 of 2024, has assertively submitted before us that right to life and personal liberty is one of the most sacrosanct fundamental right guaranteed under Article 20, 21 and 22 of the Constitution and any attempt to encroach thereupon has been consistently frowned upon by the higher Courts and in catena of decisions, it is held that any infringement of the fundamental rights would be dealt with strict hand.

 He would specifically invoke the principle enshrined in Article 22(1) and Article 22(5) of the Constitution of India, regarding communication of the grounds of arrest and detention, the learned Senior Counsel has submitted before us that the purpose of informing the arrested person of the grounds of his arrest is salutary and sacrosanct, in as much as if the information is provided in writing to the petitioner at the time of his arrest, it will enable the person to be in better suited position to oppose the police custody remand and seek bail.

 Mr. Ponda has relied upon the decision of the Apex Court in case of ***Pankaj Bansal vs. Union of India and ors***,¹, *and while dealing with an offence under the Prevention of*

¹ (2023) SCC Online SC 1244

Money Laundering Act, 2002, by invoking Article 22(1) of the Constitution, Their Lordships have concluded in the wake of Section 45 of the Act, that it would be essential for the arrested person to be aware of the grounds on which he was arrested and the basis for the officer's 'reason to believe' that he/she is guilty of an offence under the Act, and it is only if he has the knowledge of this fact, then he/she would be in a position to plead and prove the case before the Special Court, that the grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail.

According to Mr. Ponda, this principle received further expansion in case of ***Prabir Purkayastha vs. State (NCT of Delhi)***², where the offence involved was under Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and the Petitioner was arrested on 22/02/2024, and was produced before the Sessions Court on 23/02/2024, and the arrest was assailed on the ground that it is illegal as there was abject failure to comply with the provisions of Section 50 of the Criminal Procedure Code. Taking an expanded view of the situation prevailing expressing an expanded view, it is held that any person arrested for allegation of commission of offences, under UAPA or for that matter, any other offence(s) as a fundamental and statutory right to be informed upon 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

2 2024 SCC Online SC 934

and without exception at the earliest.

Mr. Ponda, has also placed reliance upon a decision of this Court (Justice Dangre and Justice Deshpande) in case of ***Mahesh Pandurang Naik vs. State of Maharashtra*** dated 18/07/2024, when the law laid down by the Apex Court was applied to the fact placed before us and the relief was granted in favour of the petitioner.

6 By placing before us the necessary facts from the documents annexed along with the petition, it is brought to our notice that on 5/02/2024, at 15.50 hours, vide station diary no.31 of 2024, the petitioner was arrested in C.R. No.8 of 2024, which had invoked Section 406, 409, 420 r/w 34 of IPC and section 4 of MOFA along with Section 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

The arrest/surrender form is annexed as Exhibit B to the petition and the Remand Application is also placed on record at Exhibit A, which specifically record the background of the complaint, resulting into invocation of the offences and it is mentioned that the present petitioner from the date of registration of the offence is concealing himself and on 25/01/2024, there was a search operation carried out at his residence and office, but he was not found and even his mobile was switched off.

On 29/01/2024, a notice in writing was issued, being addressed to him on his residential address, directing him to

remain present before the Investigating Officer on 31/01/2024, at 11:00 a.m. Though the notice was acknowledged by him, he did not remain present for the purposes of investigation, instead while the investigation was going on, he concealed himself in Goa and when information was received to that effect, by sending a special team, with the aid of the local Panji Police, on 5/02/2024, at around 7.28 hours he was taken in custody. He was thereafter, brought in EOW office at Mumbai and since on preliminary inquiry, it is revealed that he had participation in the offence, on 5/01/2024, at 15.50 hours, he is arrested and a note to that effect is taken in the diary maintained for that purpose.

The Remand Application also specifically aver that the necessary directives from the Apex Court in regard arrest have been strictly complied with and the son of the petitioner Al-Ahmed Manulla Kanchwala, was informed about his arrest.

For the purpose of remand, he was thus produced before the Special MPID Court, Mumbai.

7 Perusal of the Remand Application would reveal that the application includes the 'reasons for his arrest' and one of the reason, which is to be conspicuously found is, that despite being issued with a written notice dated 29/01/2024, asking him to report and participate in investigation on 31/01/2024, he failed to abide and has not rendered cooperation in investigation.

Other reasons for arrest are also specifically set out, being the apprehension of threatening of the witnesses, offering

them inducement, his chances of moving outside the country, destruction of evidence, etc.,. The Remand Application therefore, prayed for grant of his police custody of the accused for period of 10 days for detail investigation in the wake of the reasons stated therein.

8 On the very same day, the Court by making reference to the ‘reasons’ of his arrest passed the following order:

“On perusal of record it is revealed that the accused, who are apprehended are trying to avoid responsibility and pointing fingers towards each other. However, considering the depth of the accusations, it is apparent that exhaustive investigation is to be done. Other accused are still to be apprehended. Hence, considering all these aspects, accused is remanded to PCR till 15/02/2024”

Further, on 15/02/2024, the police custody is extended, however since we are concerned with the arrest of the petitioner at the first instance, we do not deem it is necessary to refer to the subsequent remand orders.

9 By relying upon the decisions of the Apex Court in case of Pankaj Bansal and Prabir Purkayastha (Supra), it is urged before us that the arrest, without furnishing the grounds of arrest in writing is violative of Section 50 of the Code and also violate the fundamental right of the petitioner.

It is the specific submission advanced that the Section 50 (1) of the Code of Criminal Procedure up keeps with the mandate of Article 21 of the Constitution and it is mandatory on part of the Police Officer or other persons arresting any person without warrant, to communicate immediately the

grounds of arrest as it is a constitutional safeguard provided under part III of the Constitution.

Submitting before us that though charge-sheet has been filed, and after filing of the charge-sheet, bail application was filed, which was not based on the grounds which are raised in the petition, this Court must consider the plea of the petitioner that his arrest effected is in violation of the Constitutional mandate and also failed to adhere the imperative mandate of Section 50 of the Code of Criminal Procedure.

10 Responding to the grounds raised in the petition in claiming that the arrest of the petitioner is illegal, Mr. Yagnik, the learned APP has placed reliance upon the affidavit filed by Senior Inspector of Police, Unit-I, EOW, Mumbai in Writ Petition No. 3279/2024, where it is pleaded that all efforts were made for ensuring compliance of Section 50 of Code of Criminal Procedure, by taking necessary entries in the station diary, as well as case diary of 5/2/2024 and notifying the arrest in the Arrest Form.

As regards the law laid down by the Apex Court in case of *Pankaj Bansal*, he would submit that the same would not be applicable to the present case, as it was confined to PMLA and especially to Section 19. Further, reliance upon the decision in case of *Prabir Purkayastha* (supra) pronounced on 15/5/2024, it is submitted that the arrest of the petitioner was made on 5/2/2024 which is before pronouncement of the said judgment

and therefore, his arrest cannot be alleged to be in breach of directions of the Apex Court.

In paragraph no.15, a very specific contention is raised and we must reproduce the same.

“15 It is submitted that, at the time of arrest, the grounds and reasons for arrest were orally communicated to the accused. The detailed grounds of arrest in writing were communicated to the petitioner by copy of Remand Application dated 05/02/2024 which was handed over to the petitioner within 1 hour and 30 minute from the time of his arrest. Thus, the arrest of the petitioner is not illegal nor it is in breach of Section 50 of the Code of Criminal Procedure. It is submitted that, none of the directions of the Hon’ble High Court and/or Apex Court were breached at the time of arrest of the petitioner.”

11 The counsel for the intervenor Mr.Kode has also joined hands with Mr.Yagnik in opposing the relief claimed in the petition and it is his contention that the petitioner and his Company is engaged in malpractices, illegalities, and commission of offence against Public Sector Undertakings and the members of the applicant’s association are the victims of this large conspiracy of duping so many people at a time. Mr.Kode has assertively submitted that victims are not expected to be mute spectators and have unbridled participatory rights at every stage in the trial, and he has strenuously laid before us the necessary material demonstrating that the members of the Society/flat purchasers were misrepresented by the Company and its Directors, that they have the property in their hand and the development is likely to commence soon, but they proved to be wrong as the project was never completed.

On the specific claim of the arrest of the petitioner being illegal, Mr.Kode, the learned counsel, in unison with the argument of Mr.Yagnik has submitted that the Remand Application has clarified that the petitioner was arrested at 15.50 hours on 5/2/2024 and presented before the Sessions Judge, Mumbai on the same day and his son was also informed about his arrest and the Remand Applications specifically mentioned the reasons for arrest and also the grounds for arrest. According to him, the copy of Remand Application was provided to the petitioner's Advocates who argued the matter on merits.

It is also emphasized by Mr.Kode that the roznama would reflect that the battery of Advocates appeared on behalf of the petitioner and argued the matter based on Remand Application, which was clearly indicative that the petitioner and their lawyers were duly informed of the grounds of arrest beforehand. It is also attempted to be suggested that the petitioner had already filed Bail Application before the Sessions Court, but now an attempt is made to circumvent the said process by pointing out procedural defects in arrest and remand and the detention, which this Court shall not entertain.

12 As far as the arrest of the petitioner on 5/2/2024 at 15.50 hours is concerned, the stand of the State Government in specific, is that a notice under Section 41(1) was served upon the petitioner to report to the Investigating Officer for the purpose of inquiry, but he did not abide by the same and rather went absconding and was apprehended from Goa.

This act of the petitioner has been relied upon as the prime reason for his arrest, as he did not render co-operation in the investigation, apart from the other reasons, contemplated in Section 41(1)(b)(a to d) of the Code.

13 The question that fall for consideration before us, is whether the requirement of communicating the ‘grounds of arrest’ can be diluted because, upon a notice being served to an accused, he did not comply and participate in the investigation.

The straight answer to this query is to be found in Pankaj Bansal (supra), when the Deputy Director, Directorate of Enforcement, opposing the challenge raised by Pankaj, after highlighting the seriousness of the offence, also adopted a stand that summons was served by the Investigating Officer and Pankaj Bansal reported to the office of Enforcement Directorate. The deponent, an Officer of E.D asserted that issuance of summons on immediate basis was a necessity, as both the accused had been deliberately avoiding investigation and were not complying with the previously issued summons on multiple occasions.

It was assertively submitted that an attitude of non-co-operation during investigation disentitled Pankaj Bansal of the necessary protection, as the grounds of arrest read to him included a ground of the potential of tampering with the evidence.

14 Responding to the said justification for arrest, the Apex Court in paragraph no.28 have observed thus :-

“28 We may also note that the failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002. Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal’s replies were categorized as ‘evasive’ and that record is not placed before us for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an ‘evasive reply’. In *Santosh S/o Dwarkadas Fafat vs. State of Maharashtra*⁸, this Court noted that custodial interrogation is not for the purpose of ‘confession’ as the right against self-incrimination is provided by Article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them.

In the wake of the aforesaid observation, the mere ground that the petitioner did not respond to the summons issued, definitely would not be a sufficient ground to effect his arrest without communication of the ‘grounds of arrest’.

15 The decision of the Apex Court in case of Pankaj Bansal was premised on Section 19 of Prevention of Money Laundering Act, 2002, which required the authorized officer to forward a copy of the arrest order, along with the material in his possession, referred to in Section 19(1) of the Adjudicating Authority in a sealed envelope, though it is not necessary for the arrested person to be supplied with all that material, but his

statutory right of 'being informed' of the grounds of arrest which are compulsorily recorded in writing received a recognition.

16 Reference was made to Rule 6 of the PMLA (Rules 2005) and in specific, form no.3 which prescribe the format of arrest order, which clearly contemplated information of grounds of such arrest.

However, noticing that there was disparity in different parts of the country, where the authorised officer in some cases, would inform the arrested person of the grounds of arrest in writing, while in other part, the grounds would be only read out or it permitted reading of the contents of the grounds of arrest, Their Lordships of the Apex Court have concluded thus :-

“36 That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.”

17 Apprehension expressed by the State about the non-applicability of the law laid down by the Apex Court in *Pankaj Bansal* to a case like that of the petitioner, received clarification in case of *Prabir Purkayastha*, where the arrest was effected on 4/10/2023, a day after the decision in *Pankaj Bansal* was pronounced and a somehow similar objection was raised by the learned ASG, by submitting that the judgment in case of *Pankaj Bansal* was uploaded on the website of the Court on late hours of 4/10/2023, and hence the arresting officer could not be expected to ensure compliance of the directions in the judgment, and therefore, his inaction in not furnishing the grounds in writing, could not be called in question.

The said submission was dealt that and find an answer in paragraph no.46 which reads as under :-

“46 We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India.”

18 In *Prabir Purkayastha*, the Apex Court made it clear that any person arrested for allegation of commission of offences under the UAPA, or for that matter, any other offence(s) has a fundamental and 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 this safeguard is culled out in the following manner to attain the desired purpose:-

“The purpose of informing to the arrested person the grounds of arrest, is a 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”.

19 Quoting the observations made in the case of **Roy V.D . Vs. State of Kerala**³ as below:-

“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 the principle which has been recognized and applied in all civilized countries. In our constitution, Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to its aliens.”

It is specifically observed that any attempt to violate such fundamental right, guaranteed by Article 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

20 The authoritative pronouncement in case of *Pankaj Bansal and Prabir Purkayastha*, came up before us in *Mahesh Naik, Pandurang Naik Vs. State of Maharashtra*.

When we have taken note of the contours of the provision for arrest contained in the Code of Criminal Procedure, and by observing that arrest would amount to deprivation of liberty of a person, and by applying the authoritative pronouncement of the Apex Court, in the two recent decisions in

³ (2000) 8 SCC 590

case of Pankaj Bansal, which received further clarification in Prabir Purkayastha, when we found the arrest of the petitioner, not compliant with clause (1) of Article 21 of the Constitution and Section 50 of Code of Criminal Procedure, the arrest was declared to be illegal and in gross violation of his fundamental right. Despite charge-sheet having been filed, we directed his release from custody on furnishing bail and bonds to the satisfaction of the trial court.

21 In the facts in hand, there is no denial of the assertions advanced on behalf of the petitioner that before arrest, the grounds were not furnished to him in writing, as the contention advanced is, a copy of the Remand Application dated 5/2/2024 was served on the applicant within time span of 1 hour 30 minutes of his arrest and this application categorically set out the 'grounds of arrest' of the petitioner. It is therefore, suggested that since the petitioner had duly received the copy of the Remand Application and passed an acknowledgment, he became aware of the grounds of his arrest.

It is also sought to be urged before us that by letter dated 29/1/2024, when he was directed to report to the Investigating Officer, the grounds of his arrest were informed to him but instead of complying with the said communication, he went absconding.

As regards the summons issued by EOW to the petitioner dated 29/1/2024 is concerned, the learned Senior counsel Mr.Ponda has placed before us a response to the said

notice dated 31/1/2024, intimating the Sr. Inspector that while he was on his way to meet him, he started getting palpitation and anxiety and expressed his readiness to co-operate with the investigation and sought for an appointment to meet him in his office on 1/2/2024 instead of 31/1/2024.

Though we do not intend to go into the justification of the absence, we are mentioning this fact only to complete the narration of the case of the petitioner.

22 In the wake of clause (1) of Article 22 of the Constitution, which confer protection against arrest and detention, by providing that no person who is arrested, shall be detained in custody without being informed, as soon as may be the grounds of such arrest, and this provision now receiving an expanded meaning, at the instance of the highest court of this country, by holding that the language used in Article 22(1) and Article 22(5) of the Constitution of India, regarding the communication of the grounds is identical and though neither of the provisions required that the grounds of arrest or detention must be communicated in writing, but the interpretation to this important facet of the fundamental right, as made by the Constitution Bench in ***Hari Kisan Vs. State of Maharashtra and ors***,⁴ while examining the scope of Article 22(5) of the Constitution of India, would *ipso facto* apply to Article 22(1) of the Constitution, insofar as the requirement to communicate the grounds of arrest is concerned.

4 (1962) SCC Online SC 117

23 The term ‘Reasons for arrest’ have been assigned a meaning and connotation distinct from ‘Grounds of arrest’ and in *Prabir*, in paragraph no.49, the difference is noted’ as the ‘reasons for arrest’ are purely formal, whereas the grounds of arrest would be required to contain all such details in the hands of Investigating Officer, which necessitated the arrest of the accused. As laid down by the Apex Court, the grounds of arrest 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 and definitely, the grounds of arrest would be invariably personal to the accused and cannot be equated for ‘reasons for arrest’ which are general in nature.

24 The reasons for arrest, may be either of the reasons, when the police officer, may, without an order from Magistrate and without a warrant arrest any person, against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exist that he has committed a cognizable offence punishable with Imprisonment for which may be less than seven years and which may extend to seven years, with or without fine, if the police officer has a reason to believe on the basis of such complaint, information or suspicion, that such person has committed the offence and the police officer is satisfied that the arrest is necessary to :

- (a) *to prevent such person from committing any further offence;*
- (b) *for proper investigation of the offence;*
- (c) *to prevent such person from causing the evidence of the*

- offence to disappear or tampering with the evidence in any manner;*
- (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer;*
 - (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured; and the police officer shall record while making such arrest, his reasons in writing:*

25 The application seeking remand of the petitioner has reflected some of these grounds, while setting out the reasons of arrest which are definitely distinct from ‘grounds of arrest’ and there is no denial at the end of the State Authority that the grounds of arrest are not communicated to the petitioner before the arrest was effected in connection with the subject C.R on 5/2/2024, and supplying the Remand Application, containing the ‘reasons for arrest’ within 1 hour and 30 minutes, is no compliance of the requirement of furnishing the grounds of arrest, necessarily, rendering the arrest of the petitioner illegal and in violation of Article 22(1) as well as Section 50 of Code.

26 It is for the very same reason the arrest of the petitioner in two other C.Rs, subsequent to the registration of the first C.R must also be declared as illegal.

As far as Writ Petition No. 3276/2024 is concerned, where the petitioner came to be arrested on 21/2/2024, in C.R. No.18/2024, invoking similar offences, as in the earlier C.R in which he is arrested, the Remand Application has once again set out the reasons for arrest, but the grounds of arrest are never

communicated to him.

In the response filed by the State Government, it is pleaded as under :-

“9 It is pertinent to note that, on 15/02/2024, the Petitioner and his lawyer were well aware of the charges which were levelled against the Petitioner/Applicant in CR No. 18/2024. I further say that at their Advocate's request before the Hon'ble Special Court, 7th Court, Session, Mumbai, my application for custody was kept in abeyance on the pretext of the statement of Advocate of Petitioner/Applicants as he being approached to Hon'ble High court, Bombay was quashing of FIR No. 18/2024, and also for Clubbing two CR No. 8/2024 EOW, Mumbai (Chembur Police Station) & CR No. 18/2024 (Taloja) and other consequential reliefs.

10 I state that in CR No.18/2024, the arrest Panchnama was drawn in presence of independent panchas while arresting the Petitioner/Applicant and the copy of said the arrest panchnama is annexed herewith and marked as **Exhibit “H”**, which shows the presence of Advocate of the Petitioner and it has been duly signed by the Petitioner. Hence, the Respondent No.02 states that due process of Law is duly complied with, while taking custody of the Petitioner/Applicant with Transfer Warrant issued by the Court by obtaining requisite leave of local/nearest Jurisdictional Court.”

27 The learned counsel Mr.Bhuta representing the petitioner however, submit that it is the other accused who had moved the High Court on the ground of double jeopardy and the petitioner himself had not filed any proceedings, but what is pertinent to note, is the non-communication of the ‘grounds of arrest’ and merely urging that the petitioner and his lawyer were aware of the charges levelled against him, is no sufficient justification to wriggle out of the mandatory compliance of Article 22(1) of the Constitution of India and Section 50 of Code of Criminal Procedure.

28 In the third case, i.e. WP No.3281/2024, where the petitioner came to be arrested on 12/4/2024, a similar methodology is adopted, and it is noted that on 15/2/2024 on production of the petitioner, an application was filed before the Magistrate, requesting for keeping the matter in abeyance,, till hearing of the Writ Petition No. 3317/2024.

 Accepting the said contention as regards filing of petition, the custody of accused to Taloja police station was directed to be kept in abeyance till 21/2/2024 and subsequently, on 21/2/2024, his custody was handed over to Crime Unit, Crime Branch, Navi Mumbai/Taloja for production as per application dated 21/2/2024.

 Even in this case, the grounds of arrest are not communicated in writing to the petitioner and the stand of the Sr. Inspector of Police, Central Crime Branch, Navi Mumbai, in his affidavit dated 7/8/2024, failed to impress us, where it is pleaded that the remand copy was given to the petitioner which was duly signed and his Advocate was present while he was arrested and also during the remand.

 The repeated response that the petitioner/accused was aware of the charges levelled against him in C.R.No. 18/2024 and pursuant to that knowledge, the crime was registered against him and the respective applications were filed for remand, can in no way, validate the non-compliance of the procedure as prescribed by law, and finding that there was no adherence to the due process of law, for the reasons recorded

above, we are satisfied that the arrest of the petitioner even in C.R.No. 20/2024 registered with CBD Belapur police station, invoking Sections 409, 420 r/w Section 34 of IPC is illegal.

29 The learned APP Mr.Yagnik and Mr.Kode for the Intervenor has attempted to canvass before us that on completion of investigation in the first case, the charge-sheet is filed and the Writ Petition filed by Lalan Shyam Tekchandani, the co-accused has been rejected, taking into account the seriousness of the offence and the fact that several persons, the figure being estimated as 1712, all flat buyers were aggrieved.

We have taken note of this decision delivered on 4/3/2024 in Cr. WP No. 518/2024 (Justice Prakash Naik and Justice N.R. Borkar), where the relief was sought to exercise the inherent power of the Court under Section 482 of the Code. for quashing of the FIR No.18/2024 and the petition being filed by Lalit Shyam Tekchandani, who was arrested on 30/1/2024.

Perusal of the decision would reveal that the point on which the petitioner has sought the relief in the present petition for declaring his release as illegal, was never canvassed in the said Writ Petition and the prayer being restricted to quashing of the FIR in exercise of inherent power under section 482 which was declined, considering the factual matrix of the case and the involvement of the accused persons, the petition was dismissed.

30 Mr.Kode has placed reliance upon the decision of Delhi High Court in case of *Nitin Garg Vs. Union of India* pronounced on 19/12/2023, where the Division Bench of the

High Court as failed to consider the case of the petitioner, who alleged that the continued detention order suffers from the vice of being in vacuum, as there is no judicial order remanding them to judicial custody as mandated u/s.167 of the Code.

We have given our thoughtful consideration to the said decision, which according to us, stand on a different footing altogether and in addition, this decision do not take into consideration the authoritative pronouncement of the Apex Court in case of *Pankaj Bansal* (supra) and the question before the Delhi High Court revolved around the order of remand and the competency of the Court remanding the accused to the custody of the Jail Superintendent, Tihar Jail.

Since in all the three petitions filed by the petitioner, we are satisfied that the respondent authorities have failed to ensure the safeguards enshrined in Article 22(1) of the Constitution and being in violation of Section 50 of the Code, the Writ Petitions are allowed, by declaring the arrest of the petitioner in the three distinct cases in C.R. Nos.18/2024, 19/2024 and 20/2024, as being illegal and in gross violation of his fundamental rights.

In our opinion, even when the petitioner was produced before the Court, on his custody being handed over for the purpose of investigation in some other case, the requirement of communicating the grounds of arrest in writing, do not wither away and merely by contending that the arrestee was aware of the grounds of detention, shall provide any succor to him as the

mandate of law of providing him, the grounds of his arrest are not complied with. The pretention that the petitioner was arrested in the three cases which are interlinked to each other, and therefore, he was supposedly aware of the grounds of his arrest, also do not offer an exemption in not communicating the grounds of arrest in each and every case independently, as in each case, the separate procedure for arrest is followed.

We must offer one clarification, being that while declaring the arrest of the petitioner to be illegal, we have not touched or pronounced upon the seriousness of the offence or the gravity of accusations, but merely because the procedure prescribed in law was not adhered to, we have declared his arrest to be illegal.

As a consequence of the above discussion, Rule is made absolute in all the three petitions and we pass the following order :-

ORDER

- (i) We declare the arrest of the petitioner Manulla M. Kanchwala in C.R.Nos. 18/2024 on 21/2/2024, C.R.No. 19/2024 on 5/2/2024, and CR.No. 20/2024 on 12/4/2024 in WP No. 3281/2024 as illegal and in gross violation of his fundamental rights under Article 21(1) and 21(2) of the Constitution of India.
- (ii) The initial remand order passed against the petitioner in each of the three C.Rs by the competent Court is declared null and void along with all the subsequent remands, the same being in violation of the constitutional mandate as well as non-

compliance of Section 50 of the Code of Criminal Procedure.

Upon setting aside the aforesaid orders of remand, the petitioner is entitled for his release from custody on furnishing bail and bonds to the satisfaction of the trial Judge.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)