

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3476 OF 2024

Rajeshree Bhausahab Vikhe Patil Age. 56 years, Occ: Lawyer Currently Residing at 1080, Songav Road, At Post: Loni, Tal: Rahata, Loni BK, District: Ahmednagar - 413736	}	Petitioner
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Versus

1. The State of Maharashtra 2. Senior Inspector of Police Vanrai Police Station, Mumbai	}	Respondents
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Mr. Rishi Bhuta a/w Ms Neha Patil, Ms Saakshi Jha, Mr. Prateek Dutta and Ms Vaishnavi Javheri, for the Petitioner.

Mr. Shahaji Shinde, 'A' Panel Counsel a/w Mr. D. J. Haldankar APP, for the Respondent - State.

Mr. Khandagale, PSI, Vanrai Police Station, is present.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 22nd AUGUST, 2024**

Order: (Per Manjusha Deshpande, J.):

1. The petitioner is seeking declaration that her arrest in relation to FIR No. 72 of 2024 dated 18.02.2024, registered with Vanrai Police Station, Mumbai is illegal and in gross violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

The petitioner is further seeking declaration that the

remand order dated 04.07.2024 passed by the Learned M. M. Court at Borivali, is null and void and subsequent orders passed are in complete violation of the constitutional rights of the petitioner which are guaranteed under the Constitution of India. Resultantly, the petitioner is seeking direction to release her from custody in FIR No. 72 of 2024 registered with Vanrai Police Station, Mumbai.

2. It is the contention of the petitioner that she has been arrested on 04.07.2024, since she has been arraigned as an accused in FIR No. 72 of 2024, registered with Vanrai Police Station, on the complaint of one Mr.Rajshekhar Shivajirao Deshmukh for offence punishable under Sections 34, 420, 465, 468 and 471 of the Indian Penal Code.

3. It is the case of the prosecution that, the complainant, Rajshekhar Deshmukh has filed a complaint against the husband of the petitioner namely Vishnu Ramchandra Mahadik alleging that, the complainant was assured by Vishnu Mahadik that, he will provide a flat of MHADA Scheme at cheaper rate. On such promise some amount was parted by the complainant in favour of Vishnu Mahadik. Since Vishnu Mahadik failed to provide the flat and also avoided to return the amount, the complaint has been filed against him. It is further alleged that, he has also prepared certain false and bogus allotment letters and documents in respect of the flat which was promised to the complainant, but did not give the physical possession of the flat as mentioned in the allotment letters.

On this premise, the FIR No. 72 of 2024 was registered against the husband of the petitioner (Vishnu Mahadik) as well as against the petitioner.

4. According to the petitioner, she had received a notice vide Inward No.4625/2023 dated 18.08.2023 issued by Vanrai Police Station to attend the inquiry in connection with the complaint filed by the complainant Rajshekhar Deshmukh on 13.03.2023. On receiving the said notice through WhatsApp, she immediately moved an Anticipatory Bail Application, but the same came to be dismissed on the ground that, no FIR was filed.

5. The petitioner contends that she had appeared before the concerned Investigating Officer (I.O.) alongwith her Advocate and her statement was also recorded. After recording her statement, the present FIR came to be registered after 10 long months. She has been arrested without informing or giving her any notice under Section 41(a) of the Code of Criminal Procedure.

6. The petitioner has approached this Court in its writ jurisdiction seeking declaration that, her arrest is illegal and in gross violation of the fundamental rights guaranteed under the Constitution of India. According to her, the grounds of arrest were not communicated to her in writing, and as such, the arrest is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and also contrary to the mandate of Section 50 of the Code of Criminal Procedure, 1973.

It is further contended that, since grounds of arrest were not furnished to the petitioner at the time of her arrest and before remanding her to the custody, her continuing custody is rendered illegal and null in the eyes of law, since it is hit by the mandate of Article 22(1) of the Constitution of India.

7. After hearing the learned counsel for the petitioner, we have called upon Mr. Shahaji Shinde, learned 'A' Panel Counsel to respond to the grounds raised by the petitioner in relation to non-adherence of Section 50 of the Cr.P.C. and violation of Article 22(1) of the Constitution of India. The learned 'A' Panel Counsel has produced the original file of the petitioner which contains the details of the case diary and the documents in relation to the arrest of the petitioner.

8. According to the learned counsel, the petitioner was arrested on 04.07.2024 and details of her arrest are given in the arrest panchanama. In the said arrest panchanama it is mentioned that, one Neha Patil has been intimated about the arrest of the petitioner on 04.07.2024. According to him, the case diary dated 04.07.2024 reflects that the petitioner was arrested by adhering to the guidelines issued by the Hon'ble Apex Court, as the intimation of her arrest was given to her friend namely, Neha Patil. According to the learned 'A' Panel Counsel, the intimation given to the near friend of the petitioner amounts to adherence to the guidelines issued by the Apex Court.

We have perused the papers produced by the learned 'A' Panel Counsel, we could not locate any documents in the said

papers which would indicate that the grounds of arrest were communicated to the petitioner in writing in adherence to the guidelines issued by the Apex Court. Apart from the evidence collected by the prosecution during the investigation and the papers in relation to the remand of the petitioner, there is nothing in the record which would indicate that there is a compliance of the guidelines issued by the Apex Court.

9. After hearing the respective counsel, from the arguments advanced as well as the documents produced by the learned 'A' Panel counsel, it is not in dispute that the petitioner has been arrested on 04.07.2024. The same is evident from the arrest panchanama produced by the learned 'A' Panel counsel.

10. Mr. Rishi Bhuta, the learned counsel for the petitioner has placed reliance on Article 22(1) of the Constitution of India and Section 50 of the Cr.P.C. for asserting the rights of the petitioner qua her detention. The learned counsel for the petitioner while advancing his argument has placed reliance on the judgment delivered by this Court in ***Mahesh Pandurang Naik V/s. The State of Maharashtra and Anr.***¹. The petitioner therein was also similarly placed. While challenging the arrest of the petitioner in the said Writ Petition, it was contended that the arrest was in utter violation of Article 22(1) of the Constitution of India and Section 50 of the Cr.P.C. Both the provisions provide safeguard against illegal detention and right of protections against arrest.

1 WP(Stamp)/13835/ 2024 (Decided on: 18.07.2024)

Article 22(1) of the Constitution reads thus:

“(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”

Section 50(1) of the Code of Criminal Procedure also provides a safeguard, which reads thus:

“50. Person arrested to be informed of grounds of arrest and of right to bail.- (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2).....”

11. Taking into consideration the two safeguards, this Court has taken a view in ***Mahesh Pandurang Naik*** (*supra*), which is consistent with the judicial pronouncements in ***Pankaj Bansal Vs. Union of India & Ors.***² and ***Prabir Purkayastha Vs. State (NCT of Delhi)***³, which reads thus:

*“24. The decisions of the Apex Court in ***Pankaj Bansal Vs. Union of India*** and in ***Prabir Purkayastha Vs. State (NCT of Delhi)***, which now is the law declared by the Apex Court, in the wake of Article 141 of the Constitution of India, bind all the Courts within the territory of India. Similarly, in terms of Article 144, since all the authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court, the law shall be followed by all concerned, including the Courts as well as the authorities exercising the power of arrest.*

2 2023 Live Law (SC) 844

3 2024 SCC OnLine SC 934

In light of the elucidation of law in the above manner, the focus being clause (1) of Article 22 of the Constitution of India, when we have examined the present case, it is evident that the grounds of arrest were not furnished to the Petitioner in writing and the arrest/surrender form/panchnama produced before us, column 8 is an unfilled column, which in fact expected the arresting authority to ensure, “whether the arrested person, after being informed of the grounds of arrest and his legal rights, was duly taken into custody on ---(date) --- (hours) ---- (place)”. The form only indicate that the intimation of arrest was given to Laxmi Pandurang Naik, mother of the Petitioner. The station diary entry record that note of his arrest has been taken in the concerned Register and he was apprised of the reasons of arrest (अटकेची कारणे) and, thereafter, he was arrested.

*The procedure followed by Respondent No.2 is evidently in violation of sub-clause (1) of Article 22 of the Constitution of India and, since, this provision now stands interpreted by the Apex Court in **Pankaj Bansal** (supra) and in the wake of the declaration, coming into effect from 03/10/2023, any arrest made thereafter must ensure compliance, by indicating the ‘ground(s) of arrest in writing’ expeditiously.*

The ratio laid down by the Apex Court having been declared to be law of land, binding on all courts of the country, by virtue of Article 141 of the Constitution of India, needless to state, must be followed by each and every one, including any officer/person/magistrate, before effecting arrest of a person, in any case, where his arrest is deemed necessary and this ground shall contain all such details in the hand of the Investigating Officer, which necessitated the arrest of the accused.”

Since the arrest of a person entails in restricting free movement and personal liberty of an individual which is guaranteed under Article 21 of the Constitution, it is necessary to adhere to the procedure prescribed by law and

comply with various provisions before restricting his freedom of movement.

If a person has committed an offence and it is necessary to arrest him for the purpose of proper investigation or to prevent him from committing any further offence or from causing the evidence to disappear or tamper with such evidence, only in such cases the arrest of a person would be justified, that too after following the prescribed procedure of law and due compliances of various provisions. Articles 21 and 22(1) of the Constitution guarantee protection against arrest and detention in certain cases by making it mandatory, for the grounds of arrest to be communicated to a person before his arrest. Similarly, Section 50 of the Cr.P.C. makes it mandatory upon the police officer or a person arresting any person to communicate to the accused about the full particulars of the offence for which he is arrested and the ground for such arrest.

The above two provisions which has been considered by the Apex Court in a catena of decisions right from ***Vijay Madanlal Choudhary V/s Union of India***⁴, and recently in ***Pankaj Bansal*** (*supra*), the decision of the Apex Court in ***Pankaj Bansal*** and ***Prabir Purkayastha*** (*supra*), bind all the courts within the territory of India, hence, considering the judicial pronouncements in the above mentioned judgments, it is imperative for the police authorities to follow the mandate of the said judgments.

12. Considering that this Court has already taken a view in

4 2022 (10) SCALE 577

case of ***Mahesh Pandurang Naik***, wherein all the judgments governing arrest of a person and adherence to the provisions of Code of Criminal Procedure as well as the Constitution have been dealt with in detail, and since the present petitioner has also challenged her arrest on the grounds similar to the grounds raised in ***Mahesh Pandurang Naik*** (*supra*), the decision in the said case will squarely apply to the present Writ Petition. It is declared that arrest of the petitioner in connection with FIR No. 72 of 2024 registered with Vanrai Police Station is illegal and in gross violation of fundamental rights of the petitioner. As a result, the subsequent remand orders dated 04.07.2024 passed by the learned M. M. Court Borivali being unsustainable, are quashed and set aside. As a result of setting aside the order of arrest and remand order, the petitioner is entitled to be released.

Accordingly, we direct to release the petitioner from custody.

Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)