

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3529 OF 2024

Rajrishi Rajendrasingh Bindawat .. Petitioner

Versus

The State of Maharashtra and Anr. .. Respondents

WITH

CRIMINAL WRIT PETITION NO.3533 OF 2024

Mihir Rajesh Shah .. Petitioner

Versus

The State of Maharashtra and Anr. .. Respondents

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Mr. Niranjan Mundargi a/w Mr. Ujjawal Gandhi, Mr. Keral Mehta, Mr. Ashish Dubey, Adv. K. R. Shah, Ms. Ankita Bambolil i/b Kinjal Desai, for the Petitioner in WP/3529/2024.

Mr. Rishi Bhuta a/w Ms. Neha Patil, Ms. Bhumika Khandelwal, Ms. Saakshi Jha, Mr. Prateek Dutta, Ms. Risha Rathod, Adv. Omer Farooq Khwaja and Ms. Vaishnavi Jhaveri, for the Petitioner in WP/3533/2024.

Mr. H. S. Venegavkar, P.P. a/w Ms M. M. Deshmukh, APP, for the State in WP/3529/2024.

Mr. H. S. Venegavkar, P.P. a/w Ms S. S. Kaushik, APP, for the State in WP/3533/2024.

Mr. Ravi P. Jadhav a/w Mr. Himansu Patil, for the Complainant/Intervenor.

Mr. Hemant B. Kadalkar, Police Inspector, Worli Police Station, is present.

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**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 23rd SEPTEMBER, 2024**

P.C:-

1. We are conscious of the law laid down by the Hon'ble Apex Court in case of *Pankaj Bansal V/s. Union of India And Ors., reported in 2023 Live Law (SC) 844* as well as *Prabir Purkayastha V/s. State (NCT of Delhi), reported in 2024 SCC OnLine 934* which is also followed by us in several decisions but the question that arises before us today is in the wake of the gravity and seriousness of the incident, which occurred on 07.07.2024 in connection with two Petitioners came to be arrested, who alleged breach of the procedure guaranteed to a citizen under the two decisions including their rights under Article 21 and 22 of the Constitution of India and Section 50 of the Code of Criminal Procedure.

2. On 07.07.2024, Pradip Liladhar Nakhwa has lodged a complaint with Worli Police Station at around 5.25 a.m. informing that he alongwith his wife were proceeding on a scooty moped on Dr. Annie Besant Road to Worli Koliwada and suddenly it received a dash from back side. His wife, who was a pillion rider was thrown off the vehicle and she came down under the bonnet of the car and even the complainant was dragged from his vehicle. His wife got trapped in the left wheel and bumper of the car bonnet. Despite this ghastly mishap the vehicle MH.48-AK-4554 a BMW, has rashly sped away from the spot and all serious efforts on the part of the complainant

to stop the car, were unsuccessful.

Thereafter, the complainant even attempted to chase the car but was unable to do so as the car was driven away by break necking speed and he attempted to search his wife but was unable to find her. When he approached the police station and lodged the report, the information was received that a body is found at Worli Sea Link landing point and it was carried to Nair Hospital, which was identified to be the body of his own wife.

3. The reporting by the complainant resulting into registration of C.R. No. 378 of 2024, against unknown car driver by invoking section 105, 281, 125-b, 238, 324 (4) of the Bhartiya Nyay Sanhita 2023 read with Section 184, 134(a), 134(b) of the Motor Vehicles act, 1988.

During investigation, a spot panchanama was conducted and even the CCTV footages were collected and the car was identified alongwith its number and thereafter steps were taken by the Investigating Officer to arrest the person whom they suspected were in the car, Mr. Mihir Rajesh Shah, accused No.3 (Petitioner in WP/3533/2024) was found on the driving seat whereas Rajrishi Bindawat (Petitioner in WP/3529/2024) sitting next to the driving seat.

On the basis of the evidence that was collected through the CCTV footages Rajrishi Bindawat came to be arrested on 07.07.2024 at 20.16 hours and Mihir Rajesh Shah was arrested on 09.07.2024 at 11.33 p.m., in connection with the aforesaid C.R.

4. The two Petitioners have now approached before us seeking a declaration that their arrest is illegal as it is in gross violation of their fundamental rights guaranteed under Article 21 and 22 of the Constitution of India, as the grounds of arrest are not communicated to them in writing.

5. We have heard learned counsel Mr. Mundargi, for the Petitioner in WP/3529/2024 and the learned counsel Mr. Bhuta in WP/3533/2024, who have relied upon the aforesaid authoritative pronouncements to justify the relief sought.

6. We have also heard Mr. Venegavkar, representing the State who has relied upon the Affidavit of the Investigating Officer. In the affidavit filed in WP/3529/2024 we have specifically take a note of following averement :

“14. I say that during investigation the role of the present Petitioner Accused No.2 was revealed and therefore, the police arrested the Petitioner Accused No.2. I say that arrest form of the accused no.2, i.e. the petitioner was filled up by PSI Atul Kumbhar. I say that before the arrest, grounds for arrest, his legal rights were explained to the petitioner i.e. accused no.2 before two panchas. I say that accordingly the arrest form of the accused no.2, i.e. the petitioner herein was duly filled up by PSI Atul Kumbhar in the presence of two pancha namely Baccha Suresh Pande and Vitthal Nath Bhoite and they had signed on

the said arrest form accordingly. I say that the present Petitioner/Accused No.2 had signed on the said arrest form before PSI Atul Kumbhar and those panchas and accordingly entries in station dairy was done. I say that in column No.8 of the arrest form it's mentioned grounds of arrest, legal rights were explained to accused/petitioner. Hereto annexed and marked as Exhibit "A" is a copy of the arrest panchanama dated 07.07.2024."

Alongwith the affidavit, the arrest/Court Surrender Form of Rajrishi is annexed, where in column No.8 of the proforma, it records that the accused was apprised with the grounds of arrest and also of his legal rights, before his arrest was effected on 07.07.2024 at Worli. Similar statement is found in the Affidavit filed in Mihir Shah also.

7. In Criminal Writ Petition No. 3533 of 2024 in which Mr. Bhuta appears, we have noted that in paragraph No.13 the Investigating Officer has made a statement that before the arrest of the accused, reasons for arrest, his legal rights were explained in presence of two panchas and the Arrest Form was duly filled up by him.

8. As we have already set out about that we are bound by the law laid down by the Hon'ble Apex Court but we are also posed with the issue as to whether on technical grounds merely because the grounds of arrest have not communicated

in writing though the case of the Investigating Officer is that the grounds/reasons for arrest were specifically made known to both the Petitioners, we direct the Investigating Officer/the Deponent of the Affidavits filed before us in the two Writ Petitions, to make a specific statement on oath as to the manner in which the grounds/reasons of arrest were communicated and also whether the panchas were present when the exercise was undertaken.

9. Upon such affidavit being filed within a period of one week from today, we will hear the counsel for the Petitioners as well as the learned counsel for the victim, who is desirous in filing of his Intervention Application. Re-notify to 09.10.2024.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)