

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3601 OF 2024
WITH
CRIMINAL WRIT PETITION NO.3608 OF 2024
WITH
CRIMINAL WRIT PETITION NO.3606 OF 2024

Lalit Shyam Tekchandani .. Petitioner
Versus
State of Maharashtra & Anr. .. Respondents

WITH
INTERIM APPLICATION (ST) NO.21450 OF 2024
IN
CRIMINAL WRIT PETITION NO.3608 OF 2024

Clan City Welfare Association .. Applicant
Versus
Lalit Shyam Tekchandani .. Respondent

WITH
INTERIM APPLICATION (ST) NO.19661 OF 2024
IN
CRIMINAL WRIT PETITION NO.3608 OF 2024

Ganesh Kundansingh Bisht .. Applicant
Versus
State of Maharashtra & Anr. .. Respondents

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Mr.Taraq Sayed with Mayur Shikhare, Ashwini Achari, Anish Pereira, Alisha Parekh for the Petitioner.

Mr.H.S. Venegavkar, Public Prosecutor with Mrs.M.M. Deshmukh, Additional Public Prosecutor for the State/ Respondent.

Mr.Himanshu Kode for the Intervenor in IAST/21450/2024.

Mr.Vingent D'silva i/b Dinesh Vishwakarma for the Applicant in IAST/19661/2024.

PI Masvekar, Unit 1, HSG 1, EOW, Mumbai.

PI Shinde, Central Unit, Navi Mumbai.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 13th DECEMBER, 2024**

JUDGMENT:- (Per Bharati Dangre, J.)

1. The three Petitions filed by the same Petitioner, Mr.Lalit Shyam Tekchandani seek a somehow similar relief of declaring his arrest in three distinct CRs registered with three distinct police stations, to be illegal and in gross violation of the fundamental rights guaranteed to him under Article 21 and 22 of the Constitution of India.

Pursuant to the declaration that his arrest is illegal, it is also prayed that the subsequent remand orders passed by the Magistrate on his production also being in violation of Section

50 of the Criminal Procedure Code, 1973 (for short, “**Cr.P.C.**”) as well as in violation of his fundamental right, be also set aside and the Petitioner be set at liberty, by securing his release.

2. We have heard learned counsel Mr.Taraq Sayed with Advocate Mayur Shikhare for the Petitioner in the three Writ Petitions, whereas the learned Public Prosecutor Mr.Venegavkar has represented the Respondents i.e. the State. He is assisted by Mrs.M.M.Deshmukh, learned Additional Public Prosecutor in his endeavour to defend the action of the State Authorities.

We have also heard Advocate Himanshu Kode and Advocate Vingent D'Silva for the Intervenors, who have sought intervention on behalf of the Clan City Welfare Association and the investors, who has a grievance against the Petitioner, as according to them, the Petitioner is a prime accused and Promoter in M/s Supreme Construction & Developers Pvt. Ltd., the company responsible for the project's development, which had duped approximately 1700 flat purchasers.

By consent of the learned counsel appearing for the respective parties, we issue 'Rule'. Rule is made returnable forthwith.

3. Before we consider the rival contentions, it is necessary to set out the brief background in which the reliefs are sought in the three Petitions.

On 15/01/2024, the Petitioner was arraigned as Accused No.1 in C.R.No.08 of 2024 lodged with Housing-1, Economic Offences Wing (EOW), Mumbai (earlier registered with Chembur Police Station bearing C.R.No.19 of 2024), which invoked offence punishable under Sections 406, 409, 420 and 34 of the Indian Penal Code (for short, “**IPC**”) read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, 1999 (for short, “**MPID Act**”) alongwith Sections 4 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, “**MOFA Act**”).

The aforesaid C.R. was registered as the Complainant alleged that he gained knowledge that M/s Supreme Construction & Developers Pvt. Ltd. is undertaking new residential project at Mauje Rohinjan Gaon, Taloja, Navi Mumbai and he was informed that Mr.Lalit Shyam Tekchandani (Petitioner) and Mrs.Kajol Lalit Tekchandani are the Directors of the said company. He was informed that the project was under construction and by the year 2017-18, the

possession would be offered.

This persuaded him to book one flat in one of the buildings and he issued a cheque of Rs.1,00,000/- in favour of M/s Supreme Construction & Developers from his bank account. Thereafter, he deposited the amounts as and when he was asked to make the payments and was assured that the possession of the flat would be handed over to him on 31/12/2017. However, to his misfortune, the construction was never completed, as the project was delayed and it was then realised by him that there are many other persons, who have invested in the said project and paid huge amount to Supreme Developers, but the possession was not handed over to either of them and in fact on physical inspection, it was revealed that the activity of the project was at RCC stage and since 2016, the project had come to grinding halt.

4. It is in this background, the C.R.came to be registered and the Petitioner was arrested on 30/01/2024.

He was produced before the Special Court for MPID cases, Greater Mumber and was remanded to police custody till 05/02/2024, which was extended by further orders passed by the learned Judge till 13/02/2024, when he was remanded to judicial custody till 27/02/2024.

On completion of investigation of the said C.R., charge-sheet was filed by EOW on 25/04/2024.

5. Another C.R.No.18 of 2024 was registered with Talaja Police Station on the very same date i.e. on 15/01/2024, which was subsequently transferred to Central Cell, Crime Branch, Navi Mumbai.

The aforesaid C.R. was registered at the instance of one Mr.Ganesh Kundansingh Bisht, who levelled somehow similar allegation, that he was lured through a Sales Executive of Supreme Construction & Developers Pvt. Ltd. to invest his money into an on-going project 'Hex Blox', which offered residential flats at the price of Rs.80,00,000/-, which was likely to come up at Mauje Rohinjan. The Informant levelled allegations that he booked a 2BHK flat situated on 12th floor of Ruby Tower, which was estimated at Rs.30,50,000/-. In order to fructify the transaction, he procured home loan from ICICI Bank and deposited huge amount, including registration charges by transferring the amounts into the account of the Developer. He is also aggrieved by the non-completion of the project and, hence, lodged the complaint levelling similar accusations.

6. In connection with C.R.No.18 of 2024, the Petitioner was shown to be arrested on 21/02/2024 at 21.10 hrs., being produced on obtaining Production Warrant from the competent Court and he being presented through Arthur Road Jail.

On 22/02/2024, he was produced before the Special Court for MPID Cases, Panvel and remanded to police custody till 27/02/2024, which was extended to 05/03/2024, when he was remanded to judicial custody. On completion of investigation, charge-sheet has been filed on 20/05/2024.

7. One more C.R.No.20 of 2024 was registered with CBD Belapur Police Station on 12/02/2024, which was transferred to Central Cell, Crime Branch, Navi Mumbai.

The Complainant in this case is one Mr.Bhupesh Singh, who gained knowledge about the project 'Clan City' proposed by Supreme Construction & Developers and he alongwith his wife, decided to purchase two 1BHK flats for total consideration of Rs.92,00,000/-. To give effect to the arrangement, he obtained loan and paid an amount of Rs.85,00,000/- to Supreme Construction & Developers and two agreements, one for each i.e. for Flat Nos.3305 and 3306 was signed, executed and registered. Though it was assured

that the project would be completed by January 2024, since it was at stand still, he lodged the report.

The Informant gained knowledge that Mr. Tekchandani alongwith co-accused have obtained loan of Rs.26.50 crores from Janata Sahakari Bank, Ghatkopar Branch and as a security, had mortgaged several flats in the project before its sale, which included his two flats. He, therefore, alleged that he alongwith other flat purchasers are defrauded in the sum of Rs.19,18,49,964/-

In this C.R., once again the Petitioner was arrested on 12/04/2024 at 18.53 hrs. and was brought before the Court on Production Warrant. He was produced before the Holiday Court on 13/04/2024 and was remanded to police custody till 16/04/2024, when he was sent to judicial custody. On completion of investigation, the charge-sheet has been filed on 12/07/2024 in the subject C.R. for committing the offences under IPC, MPID Act and MOFA Act.

8. In all the three Petitions, common grounds are raised by the Petitioner, to the following effect:-

“(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 a 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.

(j) That Section 50 of the Code of Criminal Procedure lays down a very important constitutional safeguard to a person arrested and has to be uniformly construed and apply. That any accused arrested for any offence has a fundamental and statutory right to be informed about the grounds of arrest in writing or a copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course without exception at the earliest.

(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 reminding him to police custody felt it necessary to ask the prosecution whether there is compliance of due procedure of law during the remand.”

9. Mr. Taraq Sayed representing the Petitioner, would submit that the accusation levelled against the Petitioner in the three CRs are based on delayed possession of the flats in relation to the construction project undertaken by Supreme Construction in which the Petitioner was a Director. According to him, it is purely a civil dispute, as civil cases are pending before various forums, including the Consumer Court and RERA Tribunal and he admit that no doubt, there was some delay in completion of the project, but that do not establish any culpability on part of the Directors of the construction company.

Mr.Sayed has specifically submitted before us that the Petitioner, after filing of the charge-sheet, has not filed bail application before the Special Court and has never raised contentions, which are placed before this Court for declaring his arrest to be illegal.

Submitting that informing the arrested person the grounds of 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, then such person is in a better position to defend the police custody remand and seek bail. According to Mr.Sayed, the right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Article 21 and 22 of the Constitution of India and it cannot be allowed to be interfered except by an authority in law.

It is the specific submission advanced that the grounds of arrest to be communicated in writing has its genesis in Article 22(1) and Article 22(5) of the Constitution, as both the provisions require that the 'grounds of arrest' or 'ground of detention', as the case may be, must be communicated in writing. It is his contention that time and again, it has been held that the grounds on which the liberty of a citizen is curtailed, must be communicated to him in writing, so as to enable him to seek remedial measures against the deprivation of his liberty.

Submitting that in the entire charge-sheet, there is no mention that the 'grounds of arrest' are furnished to the Petitioner in writing and even the Arrest/Surrender Form compiled in the charge-sheet do not contain such grounds of arrest, it is contended that the 'reasons of arrest' by no stretch

of imagination can be equated to the ‘grounds of arrest’, as the ‘grounds of arrest’ are personal in nature, whereas the ‘reasons for arrest’ may be formal and general in nature, attributed to any person arrested on accusation of an offence being committed.

10. Reliance is placed by Mr.Sayed on the decision of the Apex Court in the case ***V. Senthil Balaji Vs. State, represented by Dy.Director & Ors.***¹ as well as two other decisions delivered by the Apex Court, which had categorically held that it is imperative to communicate the ‘grounds of arrest’ in writing and this include the decisions in ***Pankaj Bansal Vs. Union of India & Ors.***² and ***Prabir Purkayastha Vs. State (NCT of Delhi)***³

Relying upon the aforesaid authoritative pronouncements, he would submit that from the date of the said decisions, it is imperative that a copy of ‘grounds of arrest’ is furnished to the arrested person as a matter of course and without exception. Reliance is also placed upon the decision of this Court in ***Mahesh Naik Vs. The State of Maharashtra (Cri.W.P.(St) No.13835 24 decided on 18/07/2024)*** and also the order passed by this Court in case of co-accused *Manulla M. Kanchwala*, which has been upheld by

1 (2024) 3 SCC 51

2 (2024) 7 SCC 576

3 (2024) 8 SCC 254

the Apex Court, when the SLP was dismissed on 04/11/2024.

11. It is the contention of Mr.Sayed that despite his production on securing the Production Warrant under Section 273 of Cr.P.C., the arresting authority is not absolved of its onus to communicate the grounds of arrest, as the authorities are bound by the spirit of decisions in ***Pankaj Bansal and Prabir Purkayastha*** (supra), where the necessity of communicating the ‘grounds of arrest’ in writing is highlighted.

It is his submission that the term ‘warrant’ is not defined in the Code of Criminal Procedure, but according to Black’s Law Dictionary, ‘warrant’ is a writ or precept from a competent authority in pursuance of law, directing the doing of an act, and addressed to an officer or person competent to do the act, and affording him protection from damage, if he does it. He has invited our attention to the various provisions in the Code of Criminal Procedure and various types of warrants, including the following :-

- (a) Arrest Warrant – Section 70 of Cr.P.C.;
- (b) Search Warrant- Section 93 of Cr.P.C.;
- (c) Bailable Warrant;

- (d) Non-Bailable Warrant;
- (e) Execution Warrant – Section 78 of Cr.P.C.;
- (f) Bench Warrant.

In addition, he has taken us through the second schedule to the Code of Criminal Procedure, 1973, which has enumerated several types of warrants in distinct forms, which may be either a warrant for search, a warrant to discharge a person, warrant of attachment in case of a dispute as to the possession of land etc., warrant of commitment on a sentence of imprisonment or fine, warrant of commitment under sentence of death, warrant of execution of a sentence of death, warrant for recovery of fine, warrant of attachment against surety etc.

He has invited our attention to Section 267 of Cr.P.C., but it is his contention that the word ‘warrant’ is not used in the said provision and when a permission is contemplated from a Court under Section 267 and it do not absolve the prosecution of complying with the mandate of Section 50.

He would also rely upon a decision of this Court in case of *Bharat Pukhraj Chaudhary Vs. The State of Maharashtra & Anr. (Cri.W.P. No.3604/24 decided on 25/10/2024)* to which, one of us Justice Manjusha Deshpande is a party, where the

petitioner, accused No.5, was in the custody of Uttarakhand Police and before his arrest, on 11/02/2024, a Production Warrant was requested for from the Court of JMFC, Bhiwandi on 30/01/2024 and it was consequently endorsed by the Court of Additional Sessions Judge, Haridwar on 07/02/2024.

When a similar ground was raised about non-communication of the grounds of arrest, it is the following finding rendered by the Court, which resulted into his release :-

“The remand application dated February 11, 2024 further speaks of similar mention of the communication of reasons of arrest. However, we fail to understand as to what prompted the respondents not to produce on record the written communication served on the petitioner thereby informing him about the grounds of arrest. Failure of the respondents to above effect prompts this Court to draw adverse inference against the respondents.”

Yet one another pertinent observation from the said decision is relied upon by Mr.Sayed.

“Even though it is claimed by the learned Additional Public Prosecutor that while processing the request for production warrant, the petitioner was made aware about the grounds of arrest, we hardly see any such mention of grounds of arrest in the production warrant which was duly served on the petitioner. Rather there is a specific dispute to the aforesaid effect as has been raised by the petitioner and in such an eventuality, we are guided by the mandate of the Apex Court in Pankaj Biswas (supra). The Apex Court in the above judgment in categorical terms observed that the communication of the grounds of arrest to the arrested person must be in writing and that too at the earliest opportunity.”

12. Mr.Venegavkar, the learned Public Prosecutor has vehemently opposed the two Writ Petitions though in Cri. Writ Petition No.3606 of 2024, which is a Petition for declaration that the first arrest of the Petitioner on 30/01/2024 in C.R.No.19 of 2024 registered with Chembur Police Station i.e. C.R.No.08 of 2024, EOW, Mumbai, he concede that when the Petitioner was arrested, the grounds of arrest were not communicated to him, in writing thereby rendering his arrest illegal,

However, defending the action of the Investigating Officer in two other Writ Petitions, when the Petitioner was produced pursuant to a Production Warrant and taken out from jail, it is his submission that though the grounds of arrest are not specifically communicated in writing at the time of seeking a Transfer Warrant, the grounds of arrest were disclosed and based upon the same, he had approached the Court by filing Writ Petition No.518 of 2024, which was rejected by this Court on 04/03/2024. Mr.Venegavkar has placed before us the relevant documents in Writ Petition Nos.3601 and 3608 of 2024 pertaining to C.R.No.18 of 2024 of Taloja Police Station and C.R.No.20 of 2024 of CBD Belapur Police Station and we have perused the same.

13. As Mr.Venegavkar has conceded that grounds of arrest were not communicated to the Petitioner, when he was arrested in C.R.No.08 of 2024 registered with Chembur Police Station (Renumbered as C.R.No.19 of 2024) on 30/01/2024, the said Writ Petition deserve to be allowed by declaring the arrest of the petitioner illegal, since the grounds of arrest were not communicated to him.

Pursuant to the said declaration, the three orders passed on the Remand Applications moved before the Special MPID Court are also liable to be declared as null and void, and by setting aside the same, the Petitioner is entitled for his release.

14. Coming to the arrest of the Petitioner in C.R.No.18 of 2024, the documents placed before us reveal that on 13/02/2024, the API, EOW, Mumbai requested for grant of Production Warrant of Lalit Shyam Tekchandani by filing an application before the Special MPID Court. By referring to the details of C.R. No.18 of 2024, it is informed to the Court that it is necessary to investigate the accused, who is presently in judicial custody in C.R.No.19 of 2024 and request was presented that his custody shall be handed over to the EOW for conducting the investigation.

On 21/02/2024, the Registrar, City Sessions Court addressed a communication to the Superintendent, Arthur Road Central Prison, Mumbai informing that pursuant to the orders of the Special Court, the custody of accused-Lalit Tekchandani shall be handed over to the Central Unit, Crime Branch, Navi Mumbai for the purpose of investigation in C.R.No.18 of 2024. It was also mentioned that on completion of the investigation/interrogation by Taloja Police Station, it is directed to hand over the accused again to Arthur Road Central Prison, Mumbai.

The communication also recorded as below :-

“You are, therefore, required and authorized to receive the above named accused in the above case and produce them before Court No.07”

15. Upon production of the Petitioner before the Special MPID Court, the accused is shown to be arrested on 21/10/2024 at 21.10 hrs. and the Arrest/Court Surrender Form record the necessary details of the arrest. Column No.8, however, is left blank except recording that at 21.10 hrs., his custody is taken over by Central Cell, Crime Branch, Navi Mumbai.

Undisputedly, the arrest of the Petitioner is effected by executing the Arrest/Court Surrender Form except that there is no mention about the grounds of arrest being communicated to him or about the compliances as provided in column No.8 of the Arrest/Surrender Form.

Upon his arrest, the Petitioner was produced before the MPID Court on 22/02/2024, when a request for police custody remand was made by filing a Remand Application and setting out the reasons for securing his police custody.

16. The Special MPID Judge, on hearing the Advocate for the accused persons and the learned A.P.P., noted that the accused is in custody of the MPID Court, Mumbai and considering the nature of allegations, for the purpose of investigation, the police custody is justified. This being the first remand in the subject crime, the Petitioner alongwith co-accused was remanded in police custody till 27/02/2024.

The accused was once again produced on 27/02/2024 and by a detailed order passed by the Special MPID Judge, Mumbai, the custody was extended till 05/03/2024.

On 05/03/2024, upon production and on perusing the Remand Report, the Petitioner was remanded to judicial

custody.

17. The API, Central Cell, Crime Branch, Navi Mumbai once again on 06/03/2024 addressed a communication to the Special Court MPID, informing that in connection with C.R.No.18 of 2024, the accused, who was in judicial custody in connection with C.R.No.08 of 2024, by the permission of the Court and orders of the Central Prison came to be arrested on 21/02/2024.

Upon the police custody having been availed and, now since, the judicial custody was granted, the accused is surrendered to the Court for further appropriate directions.

18. A similar process is adopted in connection with C.R.No.20 of 2024, when his custody was warranted for investigation of the said C.R. and an application was preferred to the Judicial Magistrate First Class (JMFC), Belapur, Navi Mumbai on 20/022024 for obtaining Production Warrant at the instance of CBD Belapur Police Station, by stating that the accused was already in judicial custody in Arthur Road Jail.

The JMFC addressed a request letter to the Principal Judge, 7th Sessions Court, Mumbai, in whose custody the accused was, requesting the hand over of the accused to the

police party of Central Unit Crime Branch, CBD Belapur for investigation by specifically stating that the accused will be returned to his custody after completion of investigation.

Pursuant to the order passed by the learned Judge on 08/04/2024, the Registrar, City Sessions Court, addressed a communication to the Superintendent, Arthur Road Central Prison, Mumbai for handing over the custody of the accused to CBD Belapur Police Station for investigation in C.R.No.20 of 2024 and on 12/04/2024, the Superintendent, Central Prison, Thane, issued a Production Warrant in the name of Senior P.I. Central Cell, Crime Branch.

Once again, on 12/04/2024, the Petitioner came to be arrested by executing Arrest/Court Surrender Form on 12/04/2024, reflecting his arrest at 18.53 hrs. Column No.8 of the said form is left blank, whereas other columns are filled in by supplying the necessary information.

A Remand Application was preferred on 13/04/2024 before JMFC, Belapur, who passed an order directing police custody on one occasion. However, on the second date of his production on 16/04/2024, the Petitioner/Accused was remanded to judicial custody till 29/04/2024.

19. In the background of the aforesaid facts, the arguments advanced by Mr.Sayyed, on behalf of the Petitioner are to be appreciated.

It is not in dispute that the Code of Criminal Procedure do not define the term “warrant”, but throughout the Code, the term “warrant” has been applied in various provisions and on reading of the same, we can safely infer that “warrant” is an order, a mandate for ensuring a particular compliance.

Section 267 fall in Chapter XXII of the Code of 1973, under the heading “Attendance of Persons Confined or Detained In Prisons” and it is the power to require attendance of prisoners before the Criminal Court. The provision reads thus :

“267. Power to require attendance of prisoners.—(1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,—

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.”

The aforesaid provision thus convey that even if a person is confined or detained in prison, he shall be brought before the Court for answering to a charge of an offence or for the purpose of any proceedings against him or when he is to be examined as witness and in such a case, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for the purpose of proceeding or, as the case may be, for giving evidence. It is, therefore loosely known as ‘Production Warrant’.

The Prisoners (Attendance In Courts) Act, 1955 establishes the procedure for attendance in courts of persons confined in prison. The second Schedule annexed to the Act has prescribed the form to be filled in addressed to the officer in charge of the prison, who is ordered to produce the person confined in the jail before the Court on a particular date for the purpose set out therein and upon his attendance, he shall be conveyed under safe and sure conduct back to the prison.

The same procedure is also adhered to when the person, who is arrested in one offence and confined to prison, pursuant

to he being taken in judicial custody and when his production is sought by making an application to the competent Court in whose judicial custody he continue, the Court shall direct his production before the same Court, if the offence falls within his jurisdiction or before some other Court, if the offence pertains to the jurisdiction of the other Court.

Thereupon, a warrant is issued in form of Transfer Warrant by the concerned Court to the prison where a person is detained and it shall be executed by producing the person before the concerned Court.

In the case of the Petitioner, he was in judicial custody of the Special Court, MPID on being arrested in C.R.No.08 of 2024 registered with Chembur Police Station and, subsequently, transferred to EOW and his custody was required in C.R.No.18 of 2024, registered with Taloja Police Station. Accordingly, the API, EOW, made an application to the Special Court for issuance of Possession Warrant of Tekchandani, who was in judicial custody in connection with C.R.No.08 of 2024 (C.R.No.19 of 2024), stating that he has been named as an accused in the said C.R. and his custody is required for the purpose of investigation. Upon the orders passed by the Court on 21/02/2024, his custody was sought

from the Superintendent, Arthur Road Central Prison, Mumbai and he came to be arrested on 21/02/2024 at 21.10 hrs. and he was produced before the Special MPID Court, when police remand was sought for 14 days, as investigation was to be carried out.

20. When we specifically asked Mr.Venegavkar about whether grounds of arrest were communicated to him, when he was arrested in C.R.No.18 of 2024, he has submitted before us that the Transfer Warrant had indicated the reasons, but we do not find any such indication, as it is nothing but a proforma.

In any case, the application for that purpose is preferred to the Court and we do not find that the copy of the same is served upon the Petitioner, so as to enable him to be aware of the grounds of his arrest. Similar procedure was followed as regards C.R.No.20 of 2024 registered with CBD Belapur, when pursuant to a Production Warrant, he came to be arrested and produced before the Magistrate, who remanded him to police custody on the first date and subsequently remanded him to judicial custody.

21. On perusal of the papers produced before us, we have perused the Arrest/Court Surrender Form of the Petitioner in C.R.No.18 of 2024 and C.R.No.20 of 2024 with respective

police stations and we find that it is as good as arrest in the said offence and if it is so, then definitely when he is required to be produced before the Magistrate within 24 hours of his arrest, pursuant to which remand is sought for the purpose of investigation by the Investigating Officer, he is entitled to know the grounds of his arrest and the law down by the Apex Court in *Pankaj Bansal* and *Prabir Purkayastha* (supra) with all force comes into play.

It is trite position of law that where an accused is arrested in relation to an offence registered against him, but when he is released on bail, upon the subsequent addition of offences of serious nature against him, the investigating agency cannot straightway arrest such person and it is required to obtain order of arrest and custody with respect to such accused from the Court, which had earlier released him on bail.

Upon such serious offence subsequently added against the accused after grant of bail, it is also open for him to move an application for bail in respect of newly added offences in the Court concerned and if this bail application for newly added offences is rejected, then the accused can very well be arrested. It is not, however, necessary that earlier bail should

be cancelled by the Court in every case, before granting permission to the arrest of the accused on the basis of the newly added offence, as the Court in exercise of power under Section 437(5) as well as Section 439(2) of Cr.P.C. can direct the person who is already released on bail to be arrested and committed to custody on addition of graver offences.

22. In a recent decision of the Apex Court in ***Dhanraj Aswani Vs. Amar S. Mulchandani & Anr.***⁴, a question of general public importance fell for consideration and it is formulated as below :-

“Whether an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (for short, “CrPC”) is maintainable at the instance of an accused while he is already in judicial custody in connection with his involvement in a different case?”

23. Roving itself through the divergent views expressed by the different High Courts of the Country, the Apex Court pronounced upon the evolution of the concept of anticipatory bail and with reference to the said provision, had an opportunity to interpret the term ‘reason to believe’ by an accused that he may be arrested in relation to some other non-bailable offence.

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Finding fallacy in the reasoning adopted by one of the High Courts, it is recorded that if it is held that the application seeking anticipatory bail in relation to an offence, filed during the period when the applicant is in custody in relation to a different offence, would not be maintainable, then it would amount to precluding the applicant from availing a statutory remedy which he is otherwise entitled to and which he can avail as soon as he is released from custody in the first offence.

The specific observations of the Apex Court read thus :-

“39. In our opinion, no useful purpose would be served by depriving the accused of exercising his statutory right to seek anticipatory bail till his release from custody in the first offence. We find force in the submission of the respondent that if the accused is not allowed to obtain a pre-arrest bail in relation to a different offence, while being in custody in one offence, then he may get arrested by the police immediately upon his release in the first case, even before he gets the opportunity to approach the competent court and file an application for the grant of anticipatory bail in relation to the said particular offence. This practical shortcoming in the approach taken by the Rajasthan High Court is prone to exploitation by investigating agencies for the purpose of putting the personal liberty of the accused in peril.”

24. Repealing the contention advanced on behalf of the appellant that the person already in judicial custody in relation to an offence, cannot have a ‘reason to believe: that he may be arrested on the accusation of having committed a different offence, the Court observed thus :-

“41. ...There are two ways by which a person, who is already in custody, may be arrested-

a. First, no sooner than he is released from custody in connection with the first case, the police officer can arrest and take him into custody in relation to a different case; and

b. Secondly, even before he is set free from the custody in the first case, the police officer investigating the other offence can formally arrest him and thereafter obtain a Prisoner Transit Warrant (“**P.T. Warrant**”) under Section 267 of the CrPC from the jurisdictional magistrate for the other offence, and thereafter, on production before the magistrate, pray for remand;

OR

Instead of effecting formal arrest, the investigating officer can make an application before the jurisdictional magistrate seeking a P.T. Warrant for the production of the accused from prison. If the conditions required under 267 of the CrPC are satisfied, the jurisdictional magistrate shall issue a P.T. Warrant for the production of the accused in court. When the accused is so produced before the court in pursuance of the P.T. Warrant, the investigating officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1) of the CrPC. At that time, the jurisdictional magistrate shall consider the request of the investigating officer, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to remand the accused. [See: *State v. K.N. Nehru* reported in 2011 SCC OnLine Mad 1984]

42. As arrest in both the aforesaid circumstances is permissible in law, it would be incorrect to hold that a person, while in custody, cannot have a “reason to believe” that he may be arrested in relation to a different offence. As a logical extension of this, it can also be said that when procedural law doesn’t preclude the investigating agency from arresting a person in relation to a different offence while he is already under custody in some previous offence, the accused too cannot be precluded of his statutory right to apply for anticipatory bail only on the ground that he is in custody in relation to a different offence.

25. The Apex Court specifically recorded that the procedure for arrest of the accused in relation to an offence after he is released from custody in the first offence would be similar to the procedure of arrest which is required to be followed in any other cognizable offence.

Expressing a contingency that an accused could be arrested either when he is free or when he is in custody in some different offence, the possibilities that may emerge are specifically highlighted as below :-

- a. If an accused is arrested without a warrant while he is free and not in custody, then he has to be produced before the nearest Magistrate, who may remand him to police or judicial custody or may grant bail if applied for by the accused.
- b. If an accused is arrested with a warrant while he is free and not in custody, then Section 81 of the CrPC permits the production of such a person before the court issuing the warrant.
- c. If an accused is arrested with or without a warrant while he is already in custody in one offence, then it is only under Section 267 of the CrPC that he can be removed from such custody and produced before the Magistrate under whose territorial jurisdiction the other offence is registered.”

26. While focusing upon “arrest” as contemplated under Section 46(1) of the Code of Criminal Procedure, it is held that actual seizing or touching of the body of the person to be arrested is not necessary in a case where the arrester by word brings to the notice of the accused that he is under compulsion and, thereafter, the accused submits to that compulsion. This procedure is held to be in conformity with the modality of the arrest contemplated under Section 46 of Cr.P.C., which also provide that the submission of a person to be arrested to the custody of the arrester by word or action can amount to an arrest.

Focusing upon Section 267, the procedure is highlighted in paragraph 52, which reads thus :-

“52. As pointed out in the preceding paragraphs, a police officer can formally arrest a person in relation to an offence while he is already in custody in a different offence. However, such formal arrest doesn't bring the accused in the custody of the police officer as the accused continues to remain in the custody of the Magistrate who remanded him to judicial custody in the first offence. Once such formal arrest has been made, the police officer has to make an application under Section 267 of the CrPC before the Jurisdictional Magistrate for the issuance of a P.T. Warrant without delay. If, based on the requirements prescribed under Section 267 of the CrPC, a P.T. Warrant is issued by the jurisdictional Magistrate, then the accused has to be produced before such Magistrate on the date and time mentioned in the warrant, subject to Sections 268 and 269 respectively of the CrPC. Upon production before the jurisdictional Magistrate, the accused can be remanded to police or judicial custody or be enlarged on bail, if applied for and allowed. The only reason why we have delineated the procedure followed in cases where a person already in custody is required to be arrested in relation to a different offence is to negate the reasoning of the Rajasthan, Delhi and Allahabad High Courts that once in custody, it is not possible to re-arrest a person in relation to a different offence. When a person in custody is confronted with a P.T. Warrant obtained in relation to a different offence, such a person has no choice but to submit to the custody of the police officer who has obtained the P.T. Warrant. Thus, in such a scenario, although there is no confinement to custody by touch, yet there is submission to the custody by the accused based on the action of the police officer in showing the P.T. Warrant to the accused. Thereafter, on production of the accused before the jurisdictional Magistrate, like in the case of arrest of a free person who is not in custody, the accused can either be remanded to police or judicial custody, or he may be enlarged on bail and sent back to the custody in the first offence. A number of decisions have held that although Section 267 of the CrPC cannot be invoked to enable production of the accused before the investigating agency, yet it can undoubtedly be invoked to require production of the accused before the jurisdictional Magistrate, who can thereafter remand him to the custody of the investigating agency. Such an interpretation of the provision would give true effect to the words “other proceedings” as they appear in the text of Section 267 of the CrPC, which cannot be construed to exclude proceedings at the stage of investigation. [See: *C. Natesan v. State of Tamil Nadu and Others*, 1998 SCC OnLine Mad 931; *Ranjeet Singh v. State of Uttar Pradesh*, 1995 Cri LJ 3505; *State of Maharashtra v. Yadav Kohachade*, 2000 Cri LJ 959]”

27. Concluding that the option of applying for anticipatory bail in relation to an offence, while being in custody in relation to a different offence, will only be available to the accused till he is arrested by the police officer on the strength of the P.T. Warrant obtained by him from the court concerned. It was clarified that mere formal arrest would not extinguish the right of the accused to apply for anticipatory bail, because a formal arrest would not result in the submission of the accused, who is already in custody, to the custody of the police officer effecting a formal arrest in the subsequent case, as after effecting a formal arrest, the police officer on the strength of the same procures a P.T. Warrant from the jurisdictional Magistrate, the accused would have no other choice but to submit to that compulsion and the right of the accused to apply for anticipatory bail would thereafter get extinguished/

28. The aforesaid observations by the Apex Court has left no doubt in our mind that even though the arrest of the Petitioner is pursuant to a production of P.T.Warrant, it amounts to an arrest within the meaning of Code of Criminal Procedure and, since, there exist no distinction between the arrest effected, when the petitioner was produced on Production Warrant in the two subsequent cases and the first case when he was

arrested, as a free man, the procedural safeguards which were then available must also be made available to him, when he is arrested pursuant to a production or transfer warrant, which necessarily include communication of the 'grounds of arrest' in writing.

29. Communication of 'grounds of arrest' intended to have an avowed purpose, being to enable an accused to know as to what is the material in the hand of the Investigating Officer, which justify his arrest and enable him to oppose the remand and secure his release on bail, the safeguards provided in law must be availed by the accused at the time, when he is shown to be arrested in the subsequent two CRs i.e. C.R.No.18 of 2024 registered with Taloja Police Station and C.R.No.20 of 2024 registered with CBD Belapur Police Station.

On failure to do so, since the 'grounds of arrest' are not communicated to the Petitioner despite his arrest through Arrest/Court Surrender Form, is liable to be declared as illegal and even the subsequent remand orders are also declared as null and void.

Since the arrest of the Petitioner followed by the remand orders are found to be invalid in the eyes of law, they are quashed and set aside. Though we direct the release of the

Petitioner without requiring the furnishing of bond and surety, since the charge-sheet has been filed, but we direct that the Petitioner shall be released from custody on furnishing bail bond to the satisfaction of the trial Court.

In wake of the above, Writ Petition No.3601/2024, 3606/2024 and 3608/2024 are made absolute.

Pending Interim Applications stand disposed off.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)