

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3602 OF 2024

Faisal Ashraf Tole .. Petitioner

Versus

The State of Maharashtra and Anr. .. Respondents

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Mr. Ali Kaashif Khan Deshmukh a/w Adv. Snigdha Khandelwal
and Ms Hitanshi Gajaria, for the Petitioner.

Ms M. M. Deshmukh, APP, for the Respondent – State.

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CORAM: NITIN W. SAMBRE &
MANJUSHA DESHPANDE, JJ.
DATED : 24th SEPTEMBER, 2024

P.C:-

1. Heard learned counsel for the petitioner and the learned APP for the Respondent – State.

2. In Crime No.166 of 2024, registered on 15th March 2024 for an offence punishable under Sections 376, 377 and 420 of the Indian Penal Code, for an offence occurred on 05th September 2023 to 10th October 2023, the petitioner accused came to be apprehended on 21st March 2024 at about 01:50 a.m.

3. After the investigation was completed, the petitioner came to be chargesheeted.

4. The extraordinary jurisdiction of this Court is invoked claiming violation of fundamental right guaranteed under Article 22(1) of the Constitution, as it is claimed that the mandate provided under Section 50(1) of the Cr.P.C. is not complied with as the grounds of arrest/detention are not forthwith communicated to the petitioner.

5. Drawing support from the very scheme of Sub-section (1) of Section 50 of the Cr.P.C. and the mandate provided under Article 22(1) of the Constitution it is urged that, for failure of the respondent to communicate the grounds of arrest in writing, the very arrest of the petitioner renders illegal and, as such, it is necessary to direct the release of the petitioner forthwith. So as to substantiate aforesaid contentions the learned counsel for the petitioner has drawn support from the judgments of the Apex Court and this Court in the following matters:

(i) ***Mahesh Pandurang Naik V/s State of Maharashtra and Anr.¹***

(ii) ***Pankaj Bansal V/s. Union of India and Ors.²***

(iii) ***Prabir Purkayastha V/s. State (NCT of Delhi)³***

(iv) ***Manulla M. Kanchwala V/s. The State of Maharashtra⁴***

1 Cr. W.P.(stamp) No. 13835 of 2024 (Decided on 18.07.2024)

2 2023 INSC 866

3 2024 INSC 414

4 2024:BHC-AS:32869-DB

6. As against above, the learned APP appearing for the respondent no. 1 would urge that the grounds for detention were very much communicated to the petitioner, as could be inferred from not only general diary entry of 21st March 2024 but also the station diary entry.

7. At this stage it is brought to our notice that the respondent no.2- complainant is not served.

8 Issue notice to the respondent no. 2, returnable on 01st October 2024.

9. The Investigating Officer shall ensure that the notice is served on the respondent no. 2- complainant.

(MANJUSHA DESHPANDE, J.)

(NITIN W. SAMBRE, J.)