

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3604 OF 2024

Bharat Pukhraj Chaudhary, Aged about -43 years,
 Having address at – Bhadras, Post-Sadri, Tehsil -
 Disuri, District Pali, State Rajasthan (Presently in
 Judicial Custody).

PETITIONER

- **VERSUS** -

1. The State of Maharashtra.
2. Sr.Inspector of Police (Bhoiwada Police Station),
 District : Thane at Bhiwandi, and subsequently
 investigated by Crime Branch, Unit-2, Bhiwandi.

RESPONDENTS

Shri Rishi Bhuta, Advocate with Vikram Singh, Ujjwal Gandhi, Prateek Dutta,
 Saakshi Jha, Vaishnavi Jhaveri and Parth Goenka, counsel for the petitioner.
 Miss M.M. Deshmukh, Additional Public Prosecutor for the respondents-State.

CORAM : NITIN W. SAMBRE AND MANJUSHA DESHPANDE, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : SEPTEMBER 24, 2024

DATE ON WHICH JUDGMENT IS PRONOUNCED : OCTOBER 25, 2024

JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and heard finally with
 consent of the learned counsel for the parties.

2. The petitioner has sought a declaration that his arrest in Crime
 No.221 of 2023 registered with Bhoiwada Police Station, Thane on October
 21, 2023 under Section 8(K), 22(K) of the Narcotic Drugs and Psychotropic
 Substances Act, 1985 read with Section 18(K), 18(A) punishable under
 Section 27(B) and 28(A) of the Drugs and Cosmetics Act, 1940 is illegal and
 is in gross violation of the fundamental rights guaranteed under Articles 21
 and 22 of the Constitution of India so also Section 50 of the Code of Criminal

Procedure, 1973. The petitioner has also sought quashing of the remand order dated February 11, 2024 and subsequent remand orders in the aforesaid case.

3. The facts necessary for deciding the writ petition are as under:-

4000 bottles of various cough syrups were found in possession of co-accused Shiraj. The possession was with an intention to illegally market the same, which falls within the definition of psychotropic substance. As a sequel of above, the offence being Crime No.221 of 2023 referred above came to be registered. The present petitioner is impleaded as accused no.5 and his address is shown as resident of Pali District, Rajasthan.

4. The petitioner was already detained in Haridwar prison located in the State of Uttarakhand. During the investigation, direct involvement of the petitioner was noticed in the above crime. Based on the production remand, the petitioner was produced and shown to have been arrested on February 11, 2024, as the transit warrant was honoured by the Court at Haridwar on February 07, 2024. Based on the above, the petitioner came to be arrested and produced before the Magistrate on February 11, 2024 and was then subjected to various remand orders.

5. The counsel for the petitioner would urge that in law, it is mandatory to communicate in writing the grounds of arrest to the petitioner in view of

the settled position of law reflected in catena of judgments, the petitioner's arrest has to be declared as illegal. He would place reliance on the judgment of this Court in *Mahesh Pandurang Naik Versus The State of Maharashtra & Another* [**Writ Petition (ST) No. 13835 of 2024 with Interim Application (ST) No.14637 of 2024**] decided on July 18, 2024 which is based on the judgment of the Apex Court in *Pankaj Bansal Versus Union of India & Others* [**2023 Live Law (SC) 844**], wherein the scheme of Section 50 of the Code of Criminal Procedure and the fundamental right guaranteed under Article 22 of the Constitution of India are discussed. So as to substantiate the case, he would also draw support from the judgments in *Prabir Purkayastha Versus State (NCT of Delhi)* [**Diary No.42896/2023**] decided on May 15, 2024 and *Dhanraj Aswani Versus Amar S. Mulchandani & Another* [**Criminal Appeal No.2501 of 2024**], decided on September 09, 2024. As such, it is claimed that the arrest of the petitioner is required to be declared illegal being contrary to the scheme of Section 50 of the Code of Criminal Procedure, 1973 and the fundamental right guaranteed under Article 22 of the Constitution of India and as such remand order is also liable to be quashed.

6. As against above, the Additional Public Prosecutor appearing for the respondents would urge that the involvement of the petitioner was found through the accused nos.1 to 4 as these accused persons procured cough syrups in commercial quantity from the present petitioner. It is claimed that the petitioner has criminal antecedents. It is also urged that the petitioner

was produced on transfer warrant issued by the Court of Judicial Magistrate First Class, Bhiwandi *vide* order dated January 30, 2024 which was then honoured by the Special Judge, N.D.P.S. Court, Haridwar *vide* order dated February 07, 2024. In such an eventuality, the scheme of Section 50 of the Code of Criminal Procedure, 1973 will not be attracted. It is claimed that the General Diary Entry dated February 11, 2024 speaks about the communication of the reasons of arrest to the petitioner. In such an eventuality, according to the Additional Public Prosecutor the petitioner cannot claim that he was not aware about the grounds of his arrest as this Court must infer that during the hearing of the production warrant and subsequent thereto, the petitioner was communicated about the reasons of arrest.

7. We have considered the rival claims.

8. The fundamental right guaranteed under Article 22 of the Constitution of India and the consequences of violation of such fundamental right has been dealt with by the Apex Court in *Pankaj Bansal* (supra). The Apex Court has held that Article 22(1) of the Constitution of India mandates that a person arrested shall be communicated the grounds of arrest without further delay as such delay results in infringing the fundamental rights of the arrested person. It has further held that the mode of conveying the information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. The communication of the grounds of arrest as mandated by Article 22(1) of the Constitution of India is meant to serve the

higher purpose viz. making arrested person aware of the grounds on which the authorized officer has arrested him or her. The grounds of arrest are required to be furnished to the arrested person as a matter of course in writing and without exception, as oral communication of grounds of arrest 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. The Apex Court has further held that the purpose of communicating the grounds of arrest in writing to the arrested person is not only with an intention to apprise the arrested person of why he is being arrested but also to enable such person to seek legal counsel and to facilitate effectively presenting the case before the Court.

As such, the Apex Court in categorical terms has held that the purpose of informing the grounds of arrest to the arrested person is salutary and sacrosanct as this information would be the only effective means for the arrested person to consult to 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. The Apex Court has also noted that an attempt to violate the fundamental rights guaranteed under Articles 20, 21 and 22 of the Constitution of India would have to be dealt with strictly as 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. The Apex Court in *Prabir Purkayastha* (supra) in paragraph 29 has observed that even if the 'grounds

of arrest' or 'detention' are not in express terms required to be communicated in writing as provided under Article 22(1) or 22(5) of the Constitution of India, but the interpretation of the importance of the fundamental right requires that the same be communicated in writing and failure of which would lead to custody or detention being rendered illegal, as the case may be. In the aforesaid decision, the Apex Court has also dealt with the significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The Apex Court has held that the 'reasons for arrest' would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which had necessitated the arrest of the accused. The grounds of arrest speak of the necessity to arrest the accused and such grounds must be conveyed in writing to the arrested person so as to make him aware about all the basic facts on which he was being arrested so that he gets an opportunity of defending himself against the custodial remand and to seek bail.

9. While following the aforesaid principle, the Division Bench of this Court in *Mahesh Pandurang Naik* (supra) has held that an attempt to encroach upon the fundamental rights guaranteed under Articles 20, 21 and 22 of the Constitution of India would be looked at with all seriousness and to be dealt with strictly as the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of such fundamental right would vitiate the process of arrest and remand.

10. The petitioner who is shown to be accused no.5 was in the custody of Uttarakhand Police. He was arrested on February 11, 2024, before which the production warrant was prayed by the Court of Judicial Magistrate First Class, 11th Court, Bhiwandi on January 30, 2024. Said production warrant was consequentially endorsed by the Court of Additional Sessions Judge, Haridwar *vide* order dated February 07, 2024.

11. The General Diary Entry dated February 11, 2024, i.e. after the petitioner's custody was obtained from Haridwar jail on February 11, 2024 mentions about the communication of the reasons of arrest and his right to claim bail. However such unilateral entry does not confirm acknowledgment in writing from the accused to that effect. 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.

12. Though the learned Additional Public Prosecutor has tried to justified the claim of communication of grounds of arrest to the accused so also the reasons based on the contents of the production warrant which are issued by the Court of Judicial Magistrate First Class, 11th Court, Bhiwandi

and also the production warrant granted by the Additional Sessions Court, Haridwar, there is no iota of material to infer that the petitioner at any point of time was communicated in writing about the grounds of his likely arrest or post arrest the grounds for which he was arrested. Merely because the respondents have mentioned in its record that the grounds of arrest or reasons of arrest were communicated to the petitioner or any of his blood relations, that by itself cannot be said to be in conformity with the mandate provided under Article 22(1) of the Constitution of India. In support of the aforesaid observations, reliance can be placed on the findings recorded by the Apex Court in *Pankaj Biswas* (supra), which are already discussed hereinabove.

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.

13. As such, the contentions canvassed by the counsel for the petitioner that there was a failure on the part of the respondents to communicate the grounds of arrest to the petitioner can be inferred in view of the respondents being unable to produce on record the written communication of grounds of arrest to the petitioner. In that view of the matter, the petitioner in our opinion, is entitled to be admitted to bail.

14. As such, the criminal writ petition stands allowed. We hereby direct that the petitioner be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount in Crime No.221 of 2023 registered with Bhoiwada Police Station, Thane. While releasing the petitioner in Crime No.221 of 2023 punishable under Sections 8(K), 22(K) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 18(K), 18(A) punishable under Section 27(B) and 28(A) of the Drugs and Cosmetics Act, 1940, the respondents shall be sensitive to the conditions of the production warrant issued by the Special N.D.P.S. Judge, Haridwar *vide* order dated February 07, 2024.

(MANJUSHA DESHPANDE, J.)

(NITIN W. SAMBRE, J.)