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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3357/2024**

SHIRAZ FAROOQUI

.....Petitioner

Through: Mr. Ashwin Vaish, Mr.
Vinod Pandey, Mr. Rajat
Pahwa, Mr. Himanshu
Pandey and Mr. Rohan
Nair, Advs.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Anand V. Khatri, ASC
for the State with Ms.
Neelu, Mr. Ashish Ruhil
and Ms. Razzena, Advs.
with SI Ankita Singh, PS
Safdarjung Enclave.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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10.12.2024

CRL.M.A. 36209/2024 (*exemption from filing certified copies of
the annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(CRL) 3357/2024 & CRL.M.A. 36208/2024

3. The present petition is filed under Articles 226/ 227 of the Constitution of India read with Section 528 of the Bharatiya Nyaya Suraksha Sanhita, 2023 ('BNSS') seeking declaration of the arrest of the petitioner on 14.10.2024 in FIR No. 233/2024, registered at Police Station Safdarjung Enclave as illegal.
4. The petitioner has also challenged the remand order dated 15.10.2024 (hereafter '**impugned remand order**'), passed by the learned 1st Link Judicial Magistrate First Class, South District, New Delhi, and sought his release.



5. It is the case of the prosecution that FIR No. 233/2024 was registered at Police Station Safdarjung Enclave on 14.10.2024, for offence under Section 376 of the Indian Penal Code, 1860 ('IPC'), on a complaint made by the prosecutrix alleging that the petitioner had established sexual relations with her on the false pretext of marriage.

6. The petitioner was arrested in relation to the FIR on 14.10.2024 itself. Thereafter, on 15.10.2024, a remand application was filed before the learned Magistrate seeking 14 days of judicial custody of the petitioner. The grounds as mentioned in the application are reproduced hereunder:

- "1.) Investigation of said case is in progress, but yet to be completed.*
- 2.) He may threaten the complainant and witness.*
- 3.) He is already convicted in same type case.*
- 4.) He is previously involved in same type case.*
- 5.) He may again get involve in same type of case.*
- 6.) He has no permanent/ temporary address in Delhi."*

7. The application was allowed by the impugned remand order with the observation that the grounds of arrest were found to be justified.

8. The learned counsel for the petitioner submits that the petitioner was arrested without cause and the consequent remand order has been passed in a mechanical manner.

9. He submits that the arrest of the petitioner is illegal as the prosecution failed to inform the petitioner of the grounds of his arrest and detention. He submits that the grounds of arrest were never served upon the petitioner in writing which is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and Section 47 of the BNSS.

10. He submits that the impugned remand order also suffers from non-application of mind as the same is based on the wrong



ground that the petitioner is an ex-convict and he is involved in a similar case. He further submits that it is wrongly claimed by the prosecution that the petitioner has no address in Delhi even though the address of the petitioner falls within the jurisdiction of Delhi NCR.

11. He further submits that the petitioner was arrested only to pacify the complainant and in any case, the reasons of arrest are inadequate and do not constitute grounds of arrest so as to warrant either arrest or remand of the petitioner.

12. He submits that the FIR has been registered in an unmindful manner for offence under Section 376 of the IPC, which is repealed with effect from 01.07.2024 with the Bharatiya Nyaya Sanhita, 2023 coming into force.

13. *Per contra*, the learned Additional Standing Counsel ('ASC') for the State submits that the petitioner was interrogated in relation to the concerned case on 14.10.2024 and informed about his grounds of arrest, that is, he committed rape repeatedly and to prevent him from committing similar offences. He submits that a copy of the arrest memo was also provided to the petitioner as per the inner case diary.

14. He submits that pursuant to the same, the petitioner was arrested in the present case and on 15.10.2024, the learned Magistrate allowed the remand application seeking 14 days of judicial custody as it was found that the grounds of arrest were justified. He submits that the remand application also clearly mentions the grounds of arrest of the petitioner.

15. He submits that a few of the grounds mentioned in the remand application, that is, that the petitioner is already convicted in a same type of case and that he is previously involved in a similar case, were merely clerical mistakes,



however, they were not considered by the learned Magistrate while granting judicial remand of the petitioner.

16. He submits that the petitioner was duly informed of the reasons at the time of his arrest as well as by the learned Magistrate in the impugned remand order.

17. He further submits that as per the allegations, the petitioner had established physical relations with the prosecutrix in the month of March, 2024, due to which, Section 376 of the IPC was made out.

18. The learned counsel for the petitioner has controverted the submissions of the learned ASC and submitted that while the petitioner was made to sign his arrest memo, however, a copy of the same was not supplied to him. He submits that there is no acknowledgment of receipt of a copy of the arrest memo by the petitioner which endorses his contention. He submits that even otherwise, the arrest memo also does not disclose any grounds of arrest.

19. I have heard the counsel and perused the record.

20. The main thrust of the petitioner in the present case is on the fact that he was not supplied with any grounds of arrest which renders his arrest as illegal.

21. It is argued on behalf of the State that the grounds of arrest were furnished to the petitioner in his arrest memo as well as his remand application.

22. The petitioner has disputed that a copy of the arrest memo was supplied to him. It is also submitted that the remand application does not disclose any grounds of arrest.

23. At the outset, this Court considers it apposite to discuss the law in relation to communication of grounds of arrest to the accused.



24. Article 22(1) of the Constitution of India provides that no person shall be detained after arrest without being informed of the grounds of arrest as soon as possible. Section 47(1) of the BNSS also obligates every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested as well as the grounds of arrest.

25. It is now well settled that mere information of the grounds of arrest is insufficient and the accused has a fundamental and statutory right to be informed about the grounds of arrest in writing at the earliest. Non-compliance of the said requirement renders the arrest of the accused to be illegal. The Hon'ble Apex Court, in the case of ***Prabir Purkayastha v. State (NCT of Delhi): (2024) 8 SCC 254***, had observed that any infringement of the right to be informed about the grounds of arrest would vitiate the process of arrest and held as under:

“19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult 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.

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21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand...

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29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and



22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

*30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in **Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576]** laying down beyond the pale of doubt that **the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest**. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellants is noted to be rejected.”*

(emphasis supplied)

26. In the present case, the petitioner has disputed that he did not receive any copy of the arrest memo. Admittedly, no noting or acknowledgment is present to evidence that the same was provided to the petitioner either. As noted above, mere information of the grounds is insufficient unless the same are provided to the accused in writing.

27. Insofar as the remand application is concerned, it is argued that the ‘grounds’ mentioned therein are inadequate and rather constitute reasons of arrest instead. The Hon’ble Apex Court, in the case of **Prabir Purkayastha v. State (NCT of Delhi)** (*supra*), had also succinctly discussed the distinction between ‘grounds of arrest’ and ‘reasons of arrest’. The relevant portion of the judgment is reproduced hereunder:

“48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase “reasons for arrest” and “grounds of arrest”. The “reasons for arrest” as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These



reasons 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 necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the “grounds of arrest” would invariably be personal to the accused and cannot be equated with the “reasons of arrest” which are general in nature.”

(emphasis supplied)

28. Recently, a Coordinate Bench of this Court, in the case of ***Pranav Kuckreja (in police custody) v. State (NCT of Delhi) : W.P.(CRL) 3476/2024***, has observed that absence of specific grounds of arrest violates the statutory and constitutional rights under Section 50 of the Code of Criminal Procedure, 1973 (analogous to Section 47 of BNSS) and Article 22(1) of the Constitution of India respectively.

29. It is stated that the reasons of the petitioner being convicted and involved in a case of similar nature are mere clerical errors and the same were added inadvertently. While it is stated that the learned Magistrate did not take the same into consideration, however, a bare perusal of the impugned remand order shows that the same merely records that the grounds of arrest are found to be justified.

30. Evidently, the other reasons as provided in the remand application are generic and purely formal in nature as the same would apply to any arrested person.

31. The reasons/grounds of arrest as mentioned in the arrest memo are stated as under:



10. Reasons/Grounds of arrest गिरफ्तारी का कारण	Committed rape, repeated by & threatened Prevent commission of same offence Prevent from threatening victim as charges.
a. Prevent Accused person from committing any further offence.	Yes
b. For proper investigation of the offence	Yes
c. To prevent the Accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.	Yes
d. To prevent such person from making any inducement threat or promise to any person acquainted the facts of the case so as to dissuade him from disclosing such facts to the court or to the Police officer.	Yes
e. As unless such person is arrested, his presence in the court whenever required cannot be ensured.	Address of the accused yet to be verified.

32. The reasons as stated in the arrest memo are also generic and formal in nature which rather classify as reasons of arrest. The same merely contains a cyclostyle table containing factors that are reasons of arrest.

33. As noted in *Prabir Purkayastha v. State (NCT of Delhi)* (*supra*), the grounds of arrest need to convey to the accused *all* the facts for which he is being arrested. No such grounds have been stipulated in the remand application or the arrest memo which are personal in nature so as to satisfy the requirement under Section 47 of the BNSS and Article 22(1) of the Constitution of India. All basic facts on the basis of which the accused is being arrested are to be intimated to him to enable him to defend against the same.

34. In the impugned order, the learned Magistrate has given a generic finding that the grounds of arrest are justified without appreciating that the petitioner was not duly informed of the grounds of arrest and no such reasons in the nature of grounds have been given mentioned in the remand application or the arrest memo. This Court finds merit in the argument of the



petitioner that the remand application was allowed by the learned Magistrate without due application of mind.

35. On being asked, the learned ASC submits that such cyclostyle remand applications are prepared in advance where police custody is not sought.

36. The benefit of the prosecution's lethargy in preferring such frivolous remand applications only acts to the benefit of the accused.

37. While the same is unfortunate, in such circumstances, the petitioner cannot be allowed to remain in custody when he was not informed of the grounds of arrest in writing as the same has deprived him of an opportunity of effectively defending himself against custodial remand.

38. In view of the aforesaid discussion, the arrest of the petitioner on 14.10.2024 is declared to be invalid and the impugned remand order is quashed and set aside. The petitioner is directed to be released forthwith on furnishing a bail bond in the sum of ₹20,000/- with two securities of the like amount, subject to the satisfaction of the concerned Jail Superintendent.

39. The lackadaisical attitude of the State can also not be to the detriment of the prosecutrix and her interest cannot be ignored. Considering the same, this Court considers it apposite to direct the petitioner to not contact the prosecutrix and cooperate with the investigation.

40. The present petition is allowed in the aforesaid terms. Pending application stands disposed of.

AMIT MAHAJAN, J

DECEMBER 10, 2024