



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.770 OF 2025

Santosh s/o Madhavrao More
U.T. No.03/25
Age: 38 years, Occu.: Nil,
R/o. At present :
Old Circle, Central Prison, Harsool,
Chhatrapati Sambhajinagar.

.. Petitioner

Versus

The State of Maharashtra
Through Police Inspector,
Police Station Gangapur,
Tq. Gangapur,
District Chhatrapati Sambhajinagar.

.. Respondent

...

Ms. Savita G. Mapari, Advocate for the petitioner.

Mr. Vilas Sawant, Advocate for the petitioner (Appointed).

Mr. A. B. Girase, Public Prosecutor for the respondent/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 04 AUGUST 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present writ petition has been filed by the accused from jail. Thereafter, by our order dated 16.06.2025, we gave him the legal aid by appointing learned Advocate Mr. Vilas Sawant to represent him, however, thereafter, the petitioner has engaged learned Advocate Ms. Savita G. Mapari to represent him.

2. By the present petition, the petitioner seeks declaration that his arrest dated 20.01.2016 at 20.52 hours in connection with the offence vide Crime No.27 of 2016 by Gangapur Police Station, District Chhatrapati Sambhajinagar, as gross violation of fundamental rights under Articles 21 and 22 of the Constitution of Indian. He also prays for setting aside the remand order dated 30.01.2016 passed by learned Judicial Magistrate First Class, Gangapur, District Chhatrapati Sambhajinagar as null and void, as the learned Magistrate failed to see that there is compliance in respect of Section 50 of the Code of Criminal Procedure. He also seeks direction for for his release from the jail on the above grounds and also that his detention for more than nine years was illegal and to compensate him. The prayer clause D-1 has been amended in view of our order dated 15.07.2025.

3. Heard learned Advocate Mr. Vilas Sawant, to whom we had appointed to represent the petitioner as well as learned Advocate Ms. Savita G. Mapari, to whom the petitioner had appointed and the learned Public Prosecutor for the respondent/State.

4. Learned Advocates for the petitioner have stated that the grounds of arrest were not communicated to the petitioner. When he was produced before the learned Magistrate on 25.01.2016, the learned Magistrate has also not considered that the grounds of arrest were not

disclosed to the petitioner in writing. Therefore, when these mandatory provisions are not adhered to, then his arrest and further detention becomes illegal and, therefore, he is liable to be compensated. Reliance has been placed on the decisions in ***Prabir Purkayastha vs. State (NCT of Delhi), (2024) 8 SCC 254, Kasireddy Upender Reddy vs. State of Andhra Pradesh and Ors, [Criminal Appeal NO.2808 of 2025 (@SLP (Crl.) NO.7746 of 2025) decided by the Hon'ble Supreme Court on 23.05.2025]*** and ***Ashish Kakkar vs. UT of Chandigarh, [Criminal Appeal No.1518 of 2025 (@ SLP (Crl.) NO.1662 of 2025 decided by Hon'ble Supreme Court on 25.03.2025]***.

5. Learned Public Prosecutor relies on the affidavit-in-reply of Mr. Kumarsingh Ramchandra Rathod, the Police Inspector at Gangapur Police Station, District Chhatrapati Sambhajinagar and submits that upon the arrest of the petitioner, entry was taken in the Station Diary with the Police Station and the grounds of arrest were intimated to the petitioner. Even note to that effect has been taken in the Station Diary. The arrest of the petitioner was also communicated to his close relatives as per the procedure. The petitioner had not raised any grievance regarding non furnishing of grounds of arrest and violation of Section 50 of the Code of Criminal Procedure before the learned Magistrate. The petitioner had also went upto the Hon'ble Supreme Court seeking bail and even at that stage, he had not raised such point which was vital. As

per the recent judgment of the Hon'ble Supreme Court, the intimation of the arrest was given and the grounds of arrest were given to the petitioner and the relative. The learned Public Prosecutor submits that twice the petitioner was before this Court, on which the respondent is relying, one is Bail Application No.1444 of 2023 which was decided by this Court on 23.10.2023 and thereby though the case was part heard, this Court had rejected the application. That order was challenged by the petitioner before the Hon'ble Supreme Court in petitions for Special Leave to Appeal (Cri.) No.5134 of 2024 decided on 07.05.2024, wherein the Hon'ble Supreme Court has clearly observed that the trial is at fag end and only two witnesses are remaining to be examined. Under the circumstances, we are not inclined to interfere with the impugned order passed by the High Court. The trial was made time bound to be disposed of within three months. The trial could not be completed within three months and once again the petitioner approached this Court by filing Bail Application No.1889 of 2024, which has been decided on 28.04.2025, whereby the petitioner has been released on bail. In all these orders, there is absolutely no mention about the point raised by the petitioner that there was violation of his fundamental rights. The petitioner cannot get advantage of the decisions cited.

6. We fully agree to the stand taken by the State in the present case. At the same time, of course it is the duty of each Court to consider

whether there is any violation of fundamental right of a citizen and especially, when it comes to accused persons, the rights given to the accused under the Constitution of India as well as the Code of Criminal Procedure and various decisions by the Hon'ble Apex Court, should be followed. The petitioner was arrested on 20.01.2016 and was produced before the learned Magistrate on 21.01.2016. His arrest was at 20.52 hours and he was produced at 4.45 p.m. Therefore, his production before the learned Judicial Magistrate First Class was within 24 hours. Now, as regards the grounds of arrest not communicated to the petitioner is concerned, it can be seen from the remand order that though the accused appears to be represented by Advocate Mr. S. P. Sartale, no such point was raised. The difference between the grounds of arrest and reason for arrest was explained in ***Prabir Purkayastha (Supra)*** which came to be decided on 05.05.2024. Of course, even prior to that the law was there, but such discretion was not made in the legal fraternity. The oral communication was taken as sufficient compliance. Now also the Hon'ble Supreme Court in ***Vimal Kishore Mehrotra vs. State of Uttar Pradesh, [AIR 1956 ALL 56]*** and ***Vihaan Kumar vs. State of Haryana, [2025 SCC OnLine SC 269]*** have explained as to how the grounds can be communicated to the arrested person. We are also taking note of the decision this Court in ***Vicky Bharat Kalyani vs. State of Maharashtra and another, [MANU/MH/0575/2025]***, wherein

the point as to whether the grounds of arrest should be communicated in writing to the accused and other such points have been referred to the larger Bench. We need not go much into those details in view of the fact that in the present case the petitioner has come to this Court several times, but still had not raised the present point that his arrest was illegal and he has been illegally detained for more than nine years. He had approached before the Hon'ble Supreme Court also and it can be seen that he was represented by Advocates. Therefore, when those points were available, still they were not raised and, therefore, this cannot be taken as a petition, where this Court can exercise its powers for granting any such declaration as prayed. For nine years the matter is before the learned Sessions Judge and in spite of legal representation by the petitioner such point was never raised, but the petitioner on his own from jail files the petition is a surprising fact.

7. The writ petition stands rejected.

8. Fees of learned Advocate, who is appointed to represent the petitioner, is quantified at Rs.7,000/- to be paid by the High Court Legal Service Sub Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm