

Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 461 OF 2025**

Amrina Mathew Fernandes	...Applicant
Versus	
Rhythm Arvind Goyal and Anr.	...Respondents

Mr. Bahraiz Irani *a/w Shane Santos, Anosh Irani and Amit Padwal, for the Applicant.*

Mr. Shivamsinh Deshmukh, for Respondent No.1.

Ms. Anamika Malhotra, *APP for the State-Respondent No.2.*

Mr. Vasant Devkate, *Police Inspector, Amboli Police Station, is present.*

CORAM	DR. NEELA GOKHALE, J.
RESERVED ON:	12th DECEMBER 2025
PRONOUNCED ON:	18th DECEMBER 2025

JUDGMENT: -

1. By way of this Application, the Applicant seeks setting aside of order dated 8th December 2025 passed by the Sessions Court at Dindoshi, Borivali Division, Goregaon, Mumbai, whereby the Respondent No.1 is enlarged on bail.

2. The facts of the case, in brief, are that the Complainant, is a woman, working as a Guest Relation Manager in ‘Shayalo

Club' for the past one year. Her work timings are from 6:00 pm. to 2:30 am. The Complainant/First Informant was in the 8th week of pregnancy. On 15th November 2025, after completing her shift, at around 1:30 am., she took the lift from the third floor to come to the ground floor. The Respondent No.1 herein, was also in the lift, accompanied by two men and one woman. The lift-man was manning the lift. The Respondent No.1 and his friends, boarded the lift in an inebriated condition. The Respondent No.1 had a laser torch in his hand and was pointing the light on the Complainant's body, especially on her breast and private parts. Being annoyed with the said act, she requested the Respondent No.1 to stop doing so. The Respondent No.1 abused her with the words that *"It's women like you who leave home to work at night"*. The Complainant, requested the woman accompanying the Respondent No.1 to prevail upon the Respondent No.1 and restrain him from abusing her. However, he continued pointing the laser torch on her body. When the Complainant tried to take away the torch from him, he hit her with the said

same on her head. The other men with Respondent No.1 joined him and one of them punched her on the nose. The lift-man tried to intervene and requested the men to stop hitting her. The Complainant pleaded with them to stop hitting her as she was pregnant. The men paid no heed to her request and in fact, one of them attempted to hit her on her head with a bottle of liquor. The Respondent No.1 punched her on her stomach. The Complainant was shouting for help and when the lift reached the ground floor, the bouncers who were stationed there, hearing her cries for help, intervened. By then, the Applicant was bleeding from her head and from her private parts.

3. The police were called and the Complainant was admitted in the hospital. Unfortunately, on the next day, she learned that she had suffered a miscarriage. Accordingly, the FIR was registered and the Applicant was arrested on 20th November 2025.

4. The Respondent No.1 made an application seeking bail before the Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai on the grounds mentioned in the bail application. The Sessions Court, by the order, impugned herein, allowed the bail application and released the Applicant. It is this order that is assailed in the present Application.

5. The Sessions Court allowed the bail application, solely on the basis of non-compliance of Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'). Similarly, the Sessions Court also held non-compliance of Section 48 of the BNSS, 2023. The Sessions Court has not considered the bail application on merits and allowed the bail application on the alleged procedural lapses by the Investigation Agency.

6. Mr. Bahraiz Irani, learned Counsel appeared for the Applicant, Mr. Shivamsinh Deshmukh, learned Advocate represented the Respondent No.1 and Ms. Anamika Malhotra, learned APP represented the State.

7. Mr. Irani submitted that the Trial Court erroneously held that the Respondent was entitled to bail 'without going into the merits of the case'. He submitted that the Trial Court also failed to appreciate the gravity of the offence as invoked against the Respondent under Section 89 of the BNS. The Trial Court also failed to appreciate the gravity of the Respondent's father in calling the Applicant on her phone and issuing threats to her. Most importantly, Mr. Irani submitted that the provisions of Section 35(3) of the BNSS are not applicable to the facts of the present case since, the offence is punishable with a life sentence which is beyond seven years. Furthermore, the Court erred in giving undue significance to the notice sent by the Investigating Officer to the Respondent No.1, under Section 35(3) of the BNSS, when the said provision is not applicable at all. Thus, Mr. Irani submitted that releasing the Respondent on a super technicality, the Court has severely undermined the safety of the Applicant, who has already suffered devastating loss of a child due to the

Respondent's actions. He thus, prays that the bail granted to the Respondent be canceled.

8. Mr. Deshmukh defended the bail order by saying that the requirement of informing a person arrested of grounds of arrest is a mandatory requirement under Article 22 (1) of the Constitution and non-compliance is a violation of the fundamental rights of the Accused. Furthermore, he submitted that once a notice is given to the Accused under Section 35 of the BNSS, the police officer must record reasons in writing for making such an arrest. Mr. Deshmukh submitted that the Respondent was issued a notice under Section 35(3) of the BNSS on the same date on which he received the grounds of his arrest. Thus, the Investigating Agency has contravened the provisions of Section 35(3) of the Act, on which basis the Sessions Court has correctly granted bail to the Respondent.

9. Mr. Deshmukh further defended the Bail Order by saying that the grounds of arrest were not furnished to the Respondent's father. He placed reliance on the judgments of

the Supreme Court in the matter of *Vihan Kumar Vs. State of Haryana and Anr.*¹, *Mihir Rajesh Shah Vs. State of Maharashtra and Anr.*², *Kasireddy Upender Reddy Vs. State of Andhra Pradesh and Ors.*³ to buttress his arguments. He thus, prayed that the present Application for cancellation of bail be dismissed.

10. Ms. Anamika Malhotra tendered certain documents from the Investigation report, since the final report is not yet filed in the Trial Court. The same are taken on record. The documents include the notice dated 20th November 2025 issued to the Respondent under Section 47 of the BNSS; notice dated 20th November 2025 issued under Section 35(3) of the BNSS to the Respondent; an intimation of arrest dated 20th November 2025 issued to the Respondent No.1's father under Section 48 of the BNSS; statement of the six witnesses recorded by the police and another eyewitness recorded under Section 183 of the BNSS.

1 2024 SCC OnLine SC 4702
2 2025 SCC OnLine SC 2356
3 2025 SCC OnLine SC 1228

11. Ms. Malhotra, relying on the notices issued to the Respondent No.1 and his father, submitted that the Investigating Officer complied with all the provisions of the BNSS and hence, there is an infirmity in the bail order. Considering the grave and serious nature of the act of the Respondent No.1 and his friends, the bail order in its present form, is untenable. She supports the arguments of Mr. Irani.

12. I have heard the learned counsel appeared for the respective parties and perused the record with their assistance.

13. The two grounds on which the Trial Court has granted bail to the Respondent No.1 is (i) compliance under Section 35(3) is not complied by the police and (ii) the grounds of arrest are not communicated to the Respondent No.1's father as required under Section 48 of the BNSS. The Trial Court has held that there is violation of the fundamental right of the Respondent No.1 guaranteed under Article 22 (2) of the Constitution of India.

14. Before dealing with the conflicting submissions, it would be appropriate to reproduce the relevant provisions of the BNSS.

"35. When police may arrest without warrant.— (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any 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 police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest;

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of the officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for less than three years and such person is infirm or is above sixty years of age.

48. Obligation of person making arrest to inform about arrest, etc., to relative or friend.—*(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district.*

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person."

15. From the bare provision of Section 35, it is clear that the same applies only to cases, where the offence is punishable

with imprisonment for a term that may be less than seven years or may extend to seven years. The Respondent No.1, in the present case, is charged with the offence punishable under Section 89 which is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. In these circumstances, Section 35(3) and Section 35(5) is not applicable in the facts of the present case. Only because an unaware or abundantly cautious police official issues notice under Section 35(3) of the BNSS does not invoke applicability of the said section. Hence, there is no contravention of Section 35(3) of the BNSS. The finding of the Trial Court that, in spite of compliance of notice under Section 35(3) of the BNSS, 2023 by the Respondent No.1, the Investigating Officer has failed to note the reasons of arrest of the Applicant before his arrest as required under Section 35(5) of the BNSS, entitling the Applicant for bail on this ground, is not sustainable.

16. I have perused the documents tendered by Ms. Malhotra. There is a notice issued by the Police Inspector, Amboli Police Station to the Respondent No.1 dated 20th November 2025. The same is received by the Applicant, as is seen to be acknowledged by the Respondent No.1 on 20th November 2025 at 19.50 hours. Thus, by way of the said notice, the Respondent No.1 has received the full particulars of the offence for which he is arrested and the grounds for such arrest. There is no contravention of Section 47 of the BNSS.

17. Section 48 of the Act casts an obligation on the police officer or other person making arrest to forthwith give information regarding such arrest and place where the arrested person is held to his relative. Ms. Malhotra has tendered copy of the notice dated 20th November 2025 issued to Arvind Babulal Goyal, the father of the Respondent No.1 intimating him regarding his son's arrest. The said intimation is acknowledged by the Respondent No.1's father on 20th

November 2025 at 19.50 hours. It is thus, evident that both the notices under Sections 47 and 48 of the BNSS are issued to the Respondent No.1 and his father simultaneously and are acknowledged by both, also at the same time. It is evident that the Respondent No.1 and his father were together at the time of arrest and the father was made well aware of the reasons of arrest of his son.

18. The Supreme Court in *Kasireddy* (Supra), has adumbrated the principles of law in this regard. In paragraph 27 of the said decision, the Supreme Court has well explained the object underlying the provision of communicating the grounds of arrest to the person so arrested. On learning about the ground of arrest, the person concerned will be in a position to make an application for bail or move the High Court for a Writ of Habeas Corpus. Further, the information will enable the arrested person to prepare his defence in time, for the purposes of his trial. In fact, the Supreme Court has further held that for the purposes of Article 22(1) of the

Constitution, it is not necessary for the authorities to furnish full details of the offence, however, the information should be sufficient to enable the arrested person to understand why he has been arrested.

19. In the facts of the present matter, the grounds of arrest are sufficiently informed to the Respondent No.1 and his father. A copy of the grounds of arrest is issued and received by the Respondent No.1 at the same time and place where the notice of intimation of arrest is given to the father. The object of the provision, as explained in *Kasireddy (Supra)* is achieved. Moreover, a careful reading of the bail application made by the Respondent No.1 before the Trial Court reveals that, these grounds are not taken by the Respondent No.1 at all, since the Respondent No.1 and his father were already informed and well aware of the grounds of arrest. The Respondent No.1 sought bail only on the merits of the case, being fully aware of the reasons of arrest. Even the Trial Court at the time of remanding the Respondent No.1, first to police

custody and thereafter, to judicial custody, has not dealt with nor recorded the purported non-compliance by the police of Section 48 of the BNSS.

20. In *State of Karnataka v. Sri Darshan Etc⁴*, the Supreme Court has clarified that while Section 50 CrPC is mandatory, the consistent judicial approach has been to adopt a prejudice oriented test when examining alleged procedural lapses. The mere absence of written grounds does not *ipso facto* render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend. In the present case, the Respondent No.1 has filed a detailed bail application before the Trial Court raising as many as 21 grounds for grant of bail. Not in a single ground, has the Respondent No.1 alleged prejudice to him, for want of lack of knowledge of the grounds of arrest to his father. There is no other material placed on record even before this Court to establish any prejudice caused to the Respondent No.1 due to alleged procedural lapse. In the absence of demonstrable prejudice,

4 2025 SCC OnLine SC 1702

such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail.

21. The Respondent No.1 has also relied upon the decision of the Supreme Court in the case of ***Mihir Shah*** (Supra). The Supreme Court has in paragraph 56 held as under:

“56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under Penal Code, 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.”

The Investigating officer, in the present case, has sufficiently apprised the Respondent No.1's father regarding the arrest of his son in addition to the grounds of arrest being given in writing to the Respondent No.1 himself. Hence there is no procedural lapse on the part of the investigating officer.

22. It is settled law that while considering grant of bail in serious criminal offence such as the one in the present case, the Courts must consider the relevant factors such as the nature of accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the act of the accused and also possibility of tampering witnesses and repeating the offence if released bail. Undoubtedly, it is also equally settled that bail once granted, ought not to be canceled in a mechanical manner.

23. Despite the grounds on which the Respondent No.1 has sought bail are on the merits of the case, the Trial Court has limited its findings on the alleged procedural lapses. There are

statements of eyewitnesses recorded by the police. Mr. Rajan Chandrika, the promoter of Team Innovation LLP has stated that he saw the Applicant coming out of the lift with blood oozing from her head. The lift-man informed him that the Respondent No.1 along with two other men and one woman hit her with a laser light on her head. He also stated that the Respondent No.1 and his friends were appeared to be drunk. The bouncers and other persons in the lobby then intervened. Similarly, Mr. Aniket Dubey, Ms. Rehana Ansari, Ms. Rubina Gazi, Mr. Sawankumar Dineshkumar have given statements the police which are consistent with the story of the Applicant. Further, Mr. Habibur Haider Ali Vishwas, the lift-man himself, has recorded his statement under Section 183 of the BNSS narrating the entire events in the lift. Thus, the Respondent No.1 and his friends assaulted the Applicant to such an extent that she suffered a miscarriage. The order passed by the Trial Court enlarging the Respondent No.1 on bail does not record any justification for grant of bail, save and except that there are alleged procedural lapses on the part of the police

regarding failing to give written grounds of arrest to the Respondent No.1's father. Admittedly, the Respondent No.1 himself has been given and has acknowledged receipt of the written grounds of arrest. His father has also received the intimation regarding his son's arrest, in writing, simultaneously.

24. In the facts and circumstances of the present case, the Applicant has lost her child on account of the assault on her by the Respondent No.1. The offence is serious and the prescribed sentence is life imprisonment. Considering the totality of the circumstances, I am satisfied that the Trial Court has ignored the relevant material on record, failed to consider the gravity of offence and has misconstrued the provisions of Section 35(3) of the BNSS.

25. In these circumstances, bail granted to Respondent No.1 by order dated 8th December 2025 passed by the Sessions Court at Dindoshi (Borivali Division), Goregaon, Mumbai passed in Bail Application No. 1213 of 2025 is canceled.

26. The Respondent No.1 is directed to surrender before the Trial Court within a period of two days from today, failing which the police concerned are directed to arrest the Respondent No.1 and produce him before the Trial Court, whereupon the Trial Court shall pass necessary orders.

27. The Criminal Application is allowed and is accordingly, disposed off.

(Dr. Neela Gokhale, J)

28. At this stage, Mr. Deshmukh, learned Counsel appearing for the Respondent No.1, sought stay to the present judgment and order for a period of three weeks. Considering the findings and observations as discussed herein above, the request is denied.

(Dr. Neela Gokhale, J)