

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4750 OF 2025

Ashok Sahadev Patil

.... Petitioner

V/s.

The State of Maharashtra

.... Respondent

Mr. A.N. Mishra i/b. SAVJ Law Solutions for the Petitioner.

Ms. Supriya Kak, APP for the Respondent – State.

Mr. Ghadage, PSI, Meghawadi Police Station, Mumbai, present.

**CORAM : SARANG V. KOTWAL AND
SHYAM C. CHANDAK, JJ.**

DATED : 07th OCTOBER, 2025

JUDGMENT : PER (SARANG V. KOTWAL, J.) :-

1) This is a Petition for issuance of a Writ of Habeas Corpus in connection with the detention of the Petitioner in C.R.No.449/2022 registered at Meghawadi Police Station, Mumbai on 26/07/2022 under Section 376 of IPC; Sections 4, 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and; under Sections 5 and 9 of the Immoral Traffic (Prevention) Act, 1956.

2) Heard Mr. A.N. Mishra, learned Counsel for the Petitioner and Ms. Supriya Kak, learned APP for the Respondent – State.

3) The main contention raised by the learned Counsel for the Petitioner is that, there is violation of Article 22 of the Constitution of India and there is also violation of Sections 47 and 48 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

4) Before referring to the contentions raised by the learned Counsel for the Petitioner in that behalf, it is necessary to mention under what circumstances and allegations, the Petitioner is arrested. The affidavit-in-reply filed by the Assistant Police Inspector attached to Meghwadi Police Station gives details of the offence as follows :-

On 19/07/2022, the first informant – Varsha Vitthal Pawar who was working as a Member of Committed Community Development Trust, an NGO, was informed by one Ms. Minal Pathare who was a co-worker at Prayas Sanstha, that, during her work at Byculla Jail, she came in contact with a lady who was the mother of the two minor victim girls. Those victims were staying with one person in Hari Nagar, Jogeshwari (E), Mumbai. That person sexually assaulted those two minor girls. The girls were in danger. Upon instructions from Child Development Committee, Ms. Pathare went to the residence of both those minor girls on 12/07/2022.

On 13/07/2022, both the victim girls were produced before the Child Welfare Committee, Matunga, Mumbai. The said Committee directed the Community Development Trust, Child Helpline, Dahisar Division, Mumbai to take further legal action. The victim girls were staying with one Raghu who was known to their mother. He was sexually exploiting those victims. The victim girls further disclosed that one Prakash Jagtap used to frequently take both of them in his car and he also sexually assaulted both of them. Upon this complaint, the FIR was lodged by the first informant –

Smt. Varsha Pawar *vide* C.R.No.449/2022 at Meghwadi Police Station against Prakash Rupchand Jagtap and Raghuvir Yadav @ Raghu.

During the investigation, the role of the Petitioner was revealed. Statements of both the victims were recorded before a woman Police Sub-Inspector. During the course of investigation, Test Identification Parade was held. The Petitioner was placed in that Parade on 15/09/2022 and both the victim girls had identified the present Petitioner who was shown as Accused No.2 in the said offence. The statements of both these victim girls were recorded under Section 164 of Cr.P.C., wherein they had revealed the role of the present Petitioner. The age of one victim girl was about 14 years and the age of the other victim girl was around 11 years. Their birth dates were 29/07/2008 and 20/06/2011. According to the prosecution case, they were taken to a resort. Though in their statements, the Petitioner was not named, but paragraph 12 of the said affidavit-in-reply mentions that during the course of the investigation, Test Identification Parade of the Petitioner was conducted before the concerned Magistrate on 15/09/2022 and both the victims had identified the Petitioner. The incident had taken place in one resort. According to the prosecution case mentioned in the Remand Report, the victim girls were taken to the resort in the Petitioner's vehicle and there they were subjected to sexual assault. This is the background in which the Petitioner came to be arrested.

5) The affidavit-in-reply further mentions that the Petitioner was arrested on 28/07/2022 at 23:46 hours (11:46 p.m.). The affidavit further mentions that, as per the information given by the Petitioner, the requisite information of his arrest was given to his wife Asha on 28/07/2022. A Station Diary entry No.59/2022 in this regard was also taken. The Petitioner was produced before the learned Special Judge on 29/07/2022 at 03:00 p.m. for obtaining police custody and the Petitioner was remanded to the police custody till 03/08/2022. The Petitioner never raised the ground of his illegal detention before the learned Special Judge during his Remand Applications. The case is pending before the learned Special Judge, Dindoshi *vide* Special Case No.450/2022. The Petitioner had preferred Bail Application before the learned trial Judge. It was rejected. Then he had approached this Court *vide* Criminal Bail Application No.3334/2024. *Vide* the Order dated 13/06/2025, a Single Judge Bench of this Court dismissed the Bail Application as withdrawn with liberty to revive his request after one year. In this background, the present Petition is filed much belatedly on 09/09/2025 raising the issue of non-compliance of the above provisions.

6) Learned Counsel for the Petitioner submitted that the grounds of arrest were not supplied to the Petitioner in writing. Similarly, there is nothing to show that his wife was informed as per the requirements of Section 48 of BNSS.

7) Learned APP, on the other hand, relied on the affidavit-in-reply

and invited our attention to the Diary details dated 28/07/2022 taken at 23:46 hours which clearly mentions that the three accused including the present Petitioner were arrested after informing them about the grounds of arrest. Similarly, it is further mentioned that the Petitioner's wife – Asha Patil was informed about his arrest. All the accused were informed about their rights and all the guidelines were followed.

8) We have considered these submissions.

9) Before discussing further, it is necessary to refer to the provisions which according to the learned Counsel for the Petitioner, are violated. Article 22(2) of the Constitution of India and Sections 47 and 48 of BNSS, 2023 read thus :-

“ 22. Protection against arrest and detention in certain cases. -

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any

class or classes of cases be detained under any law providing for preventive detention; and
(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4). ”

10) Sections 47 and 48 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 read thus :-

“ Section 47. Person arrested to be informed of grounds of arrest and of right to bail.-

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Section 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 nominated 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. ”

In this context, the contention of the learned Counsel for the Petitioner is that the grounds of arrest were not furnished to the Petitioner in writing and his wife was not informed about his arrest. The learned APP invited our attention to the Arrest Memo annexed by the Petitioner himself to this Petition. Page 54 of this Petition which is the Arrest Memo of the Petitioner mentions that he was arrested at 23:46 hours on 28/07/2022. Column No.8 specifically mentions the name of the Petitioner's wife to whom the information was given about his arrest. The Arrest Memo bears signature of the Petitioner himself in Column No.14. The Arrest Memo ends with the remark as '*Place – Meghwadi Date : 28/07/2022*'.

11) In this context, the Hon'ble Supreme Court has considered similar arguments regarding violation of these provisions in the case of ***State of Karnataka v/s. Sri Darshan, etc.*** reported in ***2025 SCC OnLine SC 1702***. This Judgment is the authority on this very subject and is binding on all the Courts, the Police and the Petitioner as well. Relevant paragraphs from that Judgment are paragraph No.20.1 onwards. Paragraph 20.1.1 and paragraph 20.1.2 refer to Section 47 of BNSS, 2023 and Article 22(1) of the Constitution of India. These are the very issues raised before us in this Petition. Paragraph 20.1.3 has an important observation which is binding.

The said paragraph reads thus :-

“ 20.1.3. The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest – but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown. ”

12) The Hon’ble Supreme Court in this Judgment has also considered the Judgment of the Hon’ble Supreme Court in the case of ***Vihaan Kumar v/s. State of Haryana*** reported in ***2025 SCC Online SC 456***. The Hon’ble Supreme Court in paragraph 20.1.4 of **Sri Darshan’s** Judgment has observed thus :-

*“ 20.1.4. In **Vihaan Kumar v. State of Haryana**, it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in **Kasireddy Upender Reddy v. State of Andhra Pradesh**, it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post- Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.*

13) Thus, the observations of the Hon’ble Supreme Court in **Vihaan Kumar** were further explained in the Judgment of **Sri Darshan**. Paragraph 20.1.5 further elaborates that 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. The said paragraph reads thus :-

“ 20.1.5. While Section 50 Cr.PC 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. ”

14) In paragraph 20.1.6, there was a reference to the gravity of the offence as an important factor. In paragraph 20.1.7, it was further observed that in the absence of demonstrable prejudice, such irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. It was observed that the approach of the High Court in that case for treating the procedural lapse as a determinative factor while overlooking the gravity of the charge was against the settled principle. Paragraph 20.1.7 is important in that context which reads thus :-

“ 20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High

Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail. ”

15) Thus, in the present case, these observations of the Hon’ble Supreme Court in the case of **Sri Darshan** are extremely important. In the present case, no such prejudice is shown by the Petitioner. The offence undoubtedly is quite grave. There is strong material against the present Petitioner which cannot be overlooked. Therefore, applying the ratio laid down by the Hon’ble Supreme Court in the case of **Sri Darshan**, we are not inclined to grant any relief to the present Petitioner. Accordingly, the Petition is dismissed.

16) Before parting with the Order, it is necessary to mention that some clarity is necessary before the learned Magistrates, the learned Session Judges and the Investigating Officers regarding this particular issue. In this connection, the observations of the Hon’ble Supreme Court in the case of **Sri Darshan** are very important and all of them are required to be made aware of this position of law laid down by the Hon’ble Supreme Court. Therefore, the Registry is directed to circulate the Judgment of the

Hon'ble Supreme Court in the case of *State of Karnataka v/s. Sri Darshan, etc.* reported in *2025 SCC OnLine SC 1702* by highlighting the paragraph Nos. 20.1 including 20.1.1 upto 20.1.7 to all the learned Judges under the jurisdiction of this Court.

17) The Petition is disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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