

Salgaonkar

MANDIRA MILIND
SALGAONKAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5748 OF 2025

Mangesh Pandurang Kadam .. Petitioner

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Rushi Bhuta with Mr.Jatin P. Karia (Shah), Ms.Snehankita Munj, Ms.Shradha Kamble, Mr.Vijay Andhle, Ms.Neha Patil, Ms.Ankita Bambole, Ms.Saakshi Jha, Ms.Bhavi Kapoor, Ms.Vaishnavi Zavheri and Ms.Karishma Rajesh for the Petitioner.

Mr.Tanveer Khan, Additional Public Prosecutor for the State/Respondent.

Mr.Jatin Sehgal with Kunal Vaishnav, Ashish Garg, D. Soni, Shivanshish Dwivedi and Yash B. for the Intervenor.

PI Jitendra Bharati and API Sachin Jadhav, attached to Property Cell, Crime Branch, present.

**CORAM: BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.**

DATE : 02nd DECEMBER, 2025

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ORAL JUDGMENT :- (Per Bharati Dangre, J.)

1. Rule. Rule made returnable forthwith by consent of the respective counsel.

2. The Petitioner came to be arrested by Senior Inspector of Police, EOW, Unit-7, Mumbai on 10/09/2025 in connection with C.R.No.51of 2025 registered with EOW, Unit-7, Mumbai (previously registered as MECR No.1 of 2021 by Bandra Police

Station). Pursuant to his arrest, on 11/09/2025, he was produced before the Remand Court and remanded to police custody, whereas on 16/09/2025, he was remanded to judicial custody.

The present Petition is filed seeking a declaration that his arrest is illegal, being in gross violation of fundamental rights available to him under Article 21 and Article 22 of the Constitution of India. Relief is also sought to set aside the Remand Order dated 11/09/2025 passed by the Additional Chief Judicial Magistrate First Class, 47th Court at Esplanade and all the subsequent orders, being issued in violation of the statutory mandate i.e. failure to comply with Section 47 of the Bharatiya Nagrik Suraksha Sanhita (for short, “BNSS”). Ultimately, the Petitioner seek his release on bail in C.R.No.51 of 2025 registered with E.O.W. Unit 7, Mumbai and now transferred to Crime Branch, Property Cell, Mumbai, being registered as C.R.No.105 of 2025.

3. Heard Advocate Rishi Bhuta appearing for the Petitioner, who relying upon the pleadings in the Petition, has pressed into service the following three grounds, while he seek relief for the Petitioner to declare his arrest as illegal.

The three grounds include; (i) No intimation of his arrest being forwarded to the relatives of the arrestee, (ii) No written communication of grounds of arrest to the relatives in terms of the decision in the case of *Vihaan Kumar Vs. State of Haryana & Anr.*¹, and (iii) No necessity for arresting the Petitioner.

Mr.Bhuta has urged that the Petitioner was illegally arrested in sheer violation of the criminal jurisprudence and

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without any regard being shown to the constitutional safeguard and this include the requirement of Sections 47 and 48 of the BNSS and with no heed being paid to Section 35(3) of BNSS. According to him, when the Petitioner was arrested, a notice under Section 48 of BNSS was served upon his colleague Mr.Hardik Pawar, who is definitely not his friend or family member and, therefore, there is no compliance of Article 22 as well as Section 48(1) of the BNSS. According to him, the information provided to Mr.Hardik Pawar do not make any reference to the grounds of arrest, but it is merely an intimation of arrest.

4. Emphasizing upon the 'grounds of arrest', which are distinct from intimation of arrest, Mr.Bhuta has submitted that non-communication of the grounds of arrest to the family members and/or friends or relatives and/or person nominated by the accused after his arrest, has rendered his arrest illegal. He would place reliance upon the observations of the Apex Court in the case of ***Vihaan Kumar*** (supra), which has held that the grounds of arrest should not only be provided to the arrestee, but also to his family members and relatives, so that necessary arrangement are made to secure the release of the person arrested at the earliest possible opportunity, so as to make the mandate of Article 22(1) meaningful and effective, failing which his arrest would render illegal.

5. In response to the aforesaid grounds raised in the Petition, Mr.Tanveer Khan, learned Additional Public Prosecutor, has urged that the Petitioner had already filed a

bail application, when the learned ACJM had an opportunity to consider the law laid down by the Apex Court in the case of *Vihaan Kumar* (supra) as well as in the case *Kasireddy Upendra Reddy Vs. State of Andhra Pradesh & Ors.*², where it is recorded that there is compliance of the constitutional mandate and also the statutory mandate, as the information of arrest was given to Hardik Hemant Pawar and one Mr. Vijay Pratap Singh was informed when accused-Mamta Singh was arrested. The Magistrate, therefore, has arrived at the conclusion that the relative was given information about the reasons for arrest and it was concluded that there is no requirement of communicating the grounds of arrest to the relatives/friends, as this is not the purport of Article 22 and for that matter of the BNSS or the Code of Criminal Procedure.

6. We have given our anxious consideration to the counter arguments advanced before us. Article 22 of the Constitution, which offers protection against the arrest and detention, contemplate that no person, who is arrested shall be detained in custody, without being informed, as soon as may be of the grounds of arrest and he shall have a right to consult and to be defended by the legal practitioner of his choice. Another constitutional safeguard, is the direction to produce the person arrested and detained in custody before the Magistrate within a period of twenty-four hours of such arrest and no such person shall be detained in custody beyond the said period, without authority of the Magistrate.

The essence of the aforesaid right, conferred on every person, is, that the person arrested shall be produced before

the Magistrate and when he is arrested, he has a right to be informed of the grounds on which he is arrested, so that he can avail his right to defend the remand proceedings. Similarly, Section 48 of the BNSS also make it imperative for every police officer or the other person arresting, to give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other person as may be disclosed or mentioned by the arrested person for the purpose of giving such information.

It is not disputed by the Petitioner that the intimation of his arrest was given to Hardik Pawar, an employee of the Petitioner and the notice titled as 'Suchna Patra', informed that in connection with C.R.No.51/25 registered with EOW, on the basis of the material collected during investigation, the participation of accused Mangesh Kadam has surfaced on record and for the purpose of further investigation, he is arrested on 10/09/2025 at 17.00 hrs. and he is to be produced in the Court of Additional Chief Judicial Magistrate, Esplanade, Mumbai. Therefore, the contention that no information regarding his arrest is communicated to his relative/friend and, therefore, the arrest is vitiated, do not hold good.

7. As far as the 'information' is concerned, it is to be understood as a knowledge gained of particular fact/situation or event. The mandate of Section 48 being to forthwith give the information regarding the arrest to any of his relatives, friends or such other persons mentioned by the arrested person for the purpose of giving information, serve as a

sufficient safeguard, so that necessary steps can be taken by them, when he is produced before the Court for opposing the remand, either in police custody or judicial custody. This being the prominent aspect of the provision, being gaining of knowledge about the arrest, and Mr.Hardik Pawar being intimated about the fact that the Petitioner was arrested, in our considered opinion, there is no violation of the said right.

8. Mr.Bhuta has also urged before us that there is no communication of the 'grounds of arrest' to the relatives and we find that neither Section 48 of the BNSS nor the Constitution make it imperative to communicate the grounds of arrest to the relatives/friends or a person, who is mentioned by the arrestee and it is sufficient to communicate the 'grounds of arrest' to the arrestee, so that when he has consultation with his lawyer, these grounds of arrest can be put to use for defending the remand.

Another argument which Mr.Bhuta has advanced is the necessity of arrest and it is his submission that unless and until there was sufficient material against him, he ought not to be arrested.

We do not agree with the said submission, as we find that the Investigating Officer sufficiently communicated the grounds of arrest reflecting his involvement in the crime, in which he is arrested and, since, it was expressed that there are reasonable grounds of question to ascertain the facts and circumstances in relation to the present investigation, the arrest is necessary.

9. Perusal of the Remand Application reveal that sufficient justification existed for his arrest and that is a reason why upon his production, he was remanded to police custody and, thereafter, to judicial custody, we do not intend to enter in sufficiency of the reasons for his arrest and finding no merit and substance in the said submission of Mr.Bhuta, we dismiss the Writ Petition.

Rule is discharged.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)