

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5764 OF 2025

Chandrashekhar Bhimsen Naik ... Petitioner

V/S

State of Maharashtra & Ors. ... Respondents

Mr.Kushal Mor a/w Tanmay Karmarkar, Vaibhav Hari, Rishab Khot, Ashish Prasad, Anubha Rastogi and Aditya Joshi i/b Tanmay Karmarkar for the Petitioner.

Ms.Supriya Kak, APP for the State.

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

DATE : 3rd DECEMBER, 2025.

JUDGMENT (PER BHARATI DANGRE, J) :-

1 “The quality of a nation’s civilisation can be largely measured by the methods it used in the enforcement of the criminal law.”

The above remark in the Judgment of the Apex Court in *Jogindar Kumar v. State of U.P.*¹ holds good even after three decades and the case before us make us, introspect, where our criminal justice system stands today.

2 FIR No.293/2025 came to be registered with Cyber Police Station West Region, Mumbai on 29/09/2025 at 19.05 hours on the complaint filed by Prakash Gopichand Gaba, a SEBI registered Research Analyst , working as Stock Market Expert.

¹(1994) 4 SCC 260

He made a grievance about he being informed by his friends and relatives that since June 2025 his fake videos (deepfake) of an advertisement about investment in the stock market is going viral on social media and that many people had invested in the stock market after viewing the advertisement. The complainant give advise on stock market on CNBC Awaaz, a Hindi TV Channel, as regards buying and selling of shares and he also has accounts on social media platforms like Facebook, Instagram, X (formerly twitter) Telegram and You Tube and he is also engaged in conduct of OnLine classes on stock trading.

Upon such information being brought to his knowledge, he went to the Facebook Ad Library and on search was shocked to find videos on Ad Library ID and noticed that it was a deepfake app. He collected URL of the said video and on noticing that from June 2005 some unknown persons had used his video on social media related to stock market investments and by circulating it on social media platforms has defrauded people financially, he lodged a complaint.

The aforesaid complaint resulted into registration of the subject FIR, which invoked Section 318(4), 319(2), 336(2), 356(2) of Bhartiya Nyay Sanhita, 2023 (BNS) and Section 66 C and 66 D of Information Technology Act, 2000.

3 The Petitioner is gainfully employed as Senior Vice President (Business Development) at Valueleaf Services (India) Pvt. Ltd., a company incorporated in the year 2009 having its registered office at Bengaluru, Karnataka. The company is engaged in the business of digital technology and provide advance

digital growth solutions, that enable entities to optimize their advertising campaigns for improved lead generation and other metrics.

In FIR No.293/2025, the Petitioner is not arraigned as accused, but on 09/10/2025, the Respondent visited the company's Bengaluru office and as per the Petitioner, its employees were interrogated and three employees of the company were arrested in connection with the subject FIR on 09/10/2025.

The Petitioner did not receive any summons nor was he called for any interrogation, but on 15/10/2025 at around 7.00 to 7.30 p.m. , the officers of Cyber Police Station visited his residence without serving any prior notice/intimation, as required under Section 35(3) of the BNSS, but the Petitioner co-operated with the officials, who interrogated him until late night and according to the Petitioner he provided all responses to the best of his knowledge. The officers asked for his mobile phone and laptop and the Petitioner willingly handed over the devices to them, but no Panchanama of seizure was drawn. Thereafter, the Petitioner was escorted to Cyber Police Station, West Region at Bandra (West) and his arrest was shown at 00.01 a.m. on 16/10/2025, despite his co-operation in the investigation.

According to the Petitioner, one of his relative Mr. Arun Lal was furnished intimation about his arrest as per Section 48 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS), 2023 (for short 'BNSS') and the grounds/reasons of his arrest under Section 47 of the BNSS were furnished to him, but as per the Petitioner they are not compliant with the mandate of law, as the

purported grounds communicated were completely vague and generic.

Upon the arrest of the Petitioner, at an untimely hour, he was produced before the 12th Court, Metropolitan Magistrate, Bandra alongwith co-accused on 16/10/2025 when the Investigating Officer submitted checklist dated 16/10/2025 purportedly containing the reasons for arrest of the Petitioner before the Magistrate. The Respondent also filed Remand Application seeking police custody of the Petitioner for a period of 5 days. The checklist furnished, informed the learned Magistrate that the Petitioner was arrested on 16/10/2025 at 00.01 hours and the reasons for his arrest were also furnished by stating thus :-

- i) The said crime was committed by impersonating using computer tools. The arrested accused should not commit such a crime again.
- ii) In order to properly investigate the crime, it is necessary to collect computer evidence from the police regarding the use of mobile phones and social media in the said crime.
- iii) To prevent the destruction of technical evidence in the crime- the accused are other accomplices. If the accused are not arrested, they can destroy the technical evidence alongwith their accomplices.
- iv) To remain present for investigation and court proceedings.
- v) To deter the witnesses and complainants in the crime from any greed, incitement or threat, they were arrested and produced before Hon. Court.

4 The request for police custody was strongly opposed by the Advocate representing the Petitioner, by pleading that his arrest itself was illegal and bad in law due to failure of Respondent No.2 to provide (i) due notice to the Petitioner under Section 35(3) of the BNSS and (ii) the grounds of arrest in terms of Article 22 (1) of the Constitution of India and Section 47(1) of BNSS. However, according to the Petitioner, without considering the said submissions and in utter ignorance of the law laid down by the

Apex Court in this regard, the learned Magistrate in an entirely mechanical fashion, without application of mind by passing an order on 16/10/2025, remanded him to the custody of Respondent for a period of 4 days i.e. till 20/10/2025. According to the Petitioner the remand order fails to disclose any specific factual grounds/reasons granting remand of police custody, but by erroneously recording that “all the guidelines provided in cited case laws are followed by the I.O.”. Thereafter, on 20/10/2025 when the Petitioner was again produced before the holiday Court of the learned Magistrate, Mumbai, an Application was filed by the Respondent to remand him to judicial custody, keeping their right to obtain further police custody upon the arrest of other wanted accused.

A request to file Bail Application was made on behalf of the Petitioner and the liberty was granted in that regard. In view of the judicial custody order, the Petitioner was transferred from police custody to judicial custody at Taloja Central Jail and is detained there.

5 The Bail Application filed by the Petitioner, apart from the allegation that arrest of the Petitioner was not in compliance with Section 35(1)(b)(ii) and 47 of BNSS also, was based on a pleading that no allegations are levelled against the Petitioner in the FIR and no role is assigned to him and that neither any victim of the purported offence nor any complaint of financial loss on account of purported deepfake video was established. It was also urged that the Petitioner admittedly was not the Creator of the purported deepfake video and had not impersonated the first

informant and, therefore, the relevant provisions of BNSS, 2023 and Information Technology Act, 2000 cannot be invoked against him. The Bail Application, however, came to be rejected by the Magistrate on 31/10/2025 and since then the Petitioner is held in judicial custody at Taloja Central Jail, Navi Mumbai.

6 We have heard the learned counsel Mr.Kushal Mor for the Petitioner who has chosen to restrict his Petition for issuance of writ of habeas corpus, by alleging that his arrest without compliance of the procedural formalities is illegal and, therefore, his detention in the custody cannot be continued. Relying upon the decision of the Apex Court in the case of ***Arnesh Kumar vs. State of Bihar & Anr.***², it is urged by him that it was the duty of the Magistrate to verify the legality of the arrest before granting remand, but on both occasions i.e. on 16/10/2025 and 20/10/2025 the learned Magistrate has shirked the responsibility of ensuring compliance of the mandate of Article 21 and 22 of the Constitution of India as well as the provisions of BNSS 2023.

He would submit that the remanding Court has failed to exercise its duty as the Magistrate authorizing detention under Section 167 of the Code of 1973 or under corresponding provision under BNSS, has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied and if the arrest effected by the Police Officer does not satisfy the requirement of Section 41 of the Code or Section 35 of BNSS, the Magistrate is duty bound not to authorize his further detention and release the accused.

² (2014) 8 SCC 273

According to Mr. Mor, the principle and mandate laid down in *Arnesh Kumar* (supra) is once again reiterated in *Vihaan Kumar vs. State of Haryana & Another*³, where it is held that it is the duty of the Magistrate to ascertain whether the compliance with Article 22(1) and other mandatory safeguards has been made when the arrested person is produced before him for remand.

Urging before us that the act of remanding an accused is fundamentally judicial function, Mr. Mor would submit that while exercising the judicial power it is obligatory on his part to satisfy himself, whether the material placed before him justify such a remand and on perusal of the remand order dated 16/10/2025 and 20/10/2025, it is evident that the Magistrate has failed to adhere to the directions of the Supreme Court regarding verifying the legality and validity of the arrest of the Petitioner, as he had made a cursory mention that the reasons and grounds of the arrest of the Petitioner are justifiable, without having dealt with the contents, validity or information furnished to the Petitioner. According to the learned counsel, the Magistrate has failed to satisfy that the arrest of the petitioner was in compliance of the mandate of the Constitution and more specifically Article 22 or that the mandate under Section 41-A of the Code (now Section 35 of BNSS) have been followed considering the fact that the offence involved in the FIR are punishable with a maximum period of imprisonment of 7 years.

³ (2025)5 SCC 799

7 It is also the contention of Mr. Mor, that in case of cognizable offence punishable with imprisonment upto 7 years, with or without fine, the condition prescribed under Section 35(1) of BNSS , is mandatory and unless such conditions are satisfied and the reasons for arrest are recorded in writing, no person can be arrested and in the present case, no cogent reasons or grounds have been recorded by the Respondent to justify the arrest. It is also urged that the Respondent mechanically reproduced most of the reasons mentioned in Section 35 (1) (b)(ii) of BNSS, as purported reasons, to justify the arrest and this approach is strongly deprecated by the Apex Court in case of Arnesh Kumar (supra) by referring such an act to be complete non application of mind. Thus, according to Mr.Mor, the Magistrate has failed to appreciate that the condition prescribed in Section 35(1)(b)(ii) of the BNSS, are the reasons for arrest, which are not to be produced mechanically, but necessarily are to be the conclusions, which the Investigating Officer may reach based on facts which are specifically to be noted in each case and as per sub-section (1) of Section 35 of BNSS, the conclusion must be supported by reasons in writing, in order to justify the arrest.

But in the present case, neither such reasons or grounds based on the facts of the case and substantiating the conclusions are mentioned in the reasons provided to the Magistrate. The purported reasons Nos.1, 2, 3, 4 according to Mr.Mor mentioned in the checklist forwarded to the Magistrate as compliance of Section 35 of the BNSS, are mechanically copied from the statute, without actually showing as to how they are attracted in the present case, particularly when admittedly the Petitioner was

arrested after almost 6 days of the arrest of the co-accused and the devices like his laptop and mobile was already in custody of the Investigating Officer. Further, submitting that reasons No.5 to 8 as narrated in the checklist are not the reasons which can be invoked in effecting an arrest, when offences are punishable with 7 years or less than 7 years imprisonment. It is submitted that the reasons are generic, vague and not accused centric.

In absence of the reasons to justify arrest of the Petitioner, which according to Mr.Mor are admittedly not provided, the case falls under category of 'cases where the arrest of the Petitioner was not required under Section 35(1) of BNSS, and instead of arresting the Petitioner, the Respondent ought to have followed the procedure prescribed in Section 35(3) of BNSS, analogues to Section 41A of the Code, which was the focus of the decision of the Apex Court in case of ***Arnesh Kumar*** (*supra*) and also in case of ***Satender Kumar Antil vs. Central Bureau of Investigation***⁴, which necessarily contemplate issuance of a notice directing the person against whom either a reasonable complaint has been made or credible information is received or a reasonable suspicion exist, that he has committed a cognizable offence, seeking his appearance before the police at such place and time as specified. But instead of following the said procedure, merely by stating that there is a possibility that the Petitioner will destroy/tamper with the evidence, the Petitioner is arrested and it is justified by expressing an apprehension that he would obstruct investigation if not arrested. But according to Mr.Mor no justification is offered for not following the mandate of Section 35(3) of the

⁴ (2022) 10 SCC 51

BNSS, and instead exercising the power to arrest the Petitioner under sub-section (1) of Section 35 and had the notice been issued to the Petitioner, it was only upon failure to comply with the said notice, the exercise of power of arrest was justified, but in the present case, the Petitioner was directly arrested.

In any case, according to Mr.Mor, the Petitioner had and is ready to render his co-operation and had the notice being issued to him under sub-section (3) he would have produced the necessary documents that were desired for the purpose of investigation, but no such opportunity was afforded to him and straightway he came to be arrested and this arrest is in gross violation of his fundamental rights guaranteed under the Constitution.

8 Mr. Mor has also focused his argument on non compliance of Article 22 of the Constitution of India and Section 47 of the BNSS which has cast an obligation on the Investigating Officer to inform a person the grounds of his arrest before he is arrested. Reliance is placed upon the decision of the Apex Court in case of *Prabir Purkayastha vs. State (NCT of Delhi)*⁵, and the submission is, non compliance with Article 22 of the Constitution amounts to violation of his fundamental rights and the arrest/detention in furtherance, of such non compliance is illegal.

Relying upon the authoritative pronouncements by the Hon'ble Apex Court, Mr.Mor would asseverate that the grounds of arrest communicated to an arrested person are required to contain all such details in the hand of the Investigating Officer,

⁵ 2024 (8) SCC 254

which necessitated his arrest and the grounds of arrest to be communicated in writing must convey to the arrested person, all basic facts on which he is being arrested, so as to provide him an opportunity of defending himself against custodial remand and to seek bail. This effectively mean that the grounds of arrest ought to be personal to the accused and cannot be equated with formal reasons of arrest. However, in the present case, by withholding the information pertaining to the creators of the purported deepfake video, a material fact in relation to the investigation, the Respondent in Section 47 notice have disclosed that Firstbridge digital uploaded the purposed deepfake video, even though this was not its case, in the remand proceedings before the Magistrate and, therefore, it is urged that the grounds of arrest communicated to the Petitioner cannot be formal in nature and definitely not a mere eye wash, only for the sake of formal compliance.

The notice under Section 47 is, therefore, alleged to be not attributing any offence to the Petitioner nor any specific grounds of arrest personal to him are set out which would justify the arrest. Thus, in short, it is urged on behalf of the Petitioner that the notices issued under Section 47 and 48 of the BNSS, are mechanically executed and served no real purpose.

Relying upon the decision of the Apex Court in case of ***Gautam Navlakha vs National Investigation Agency***⁶, where it is held that if remand of an accused is illegal or afflicted with vice of lack of jurisdiction, a Habeas Corpus Petition would lie and the mere fact that charge sheet has been filed in the matter, cannot

6 (2022) 13 SCC 542

validate the illegality and unconstitutionality committed at the time of the arrest of the accused.

9 The reliefs raised in the Petition alongwith the contentions raised are strongly opposed by the learned Additional Public Prosecutor Ms.Supriya Kak. During the course of hearing, he has produced before us the relevant case diaries of Cyber Police Station and the material reflecting the involvement of the Petitioner in form of email communications, are also placed before us. It is submitted by him that the Petitioner deleted certain WhatsApp messages and this raised an apprehension about the possibility of evidence in the case being destroyed. It is submitted by him that from the arrested accused Deepayan Tapan Banerjee, whose arrest was effected on 09/10/2025 from Karnataka, the role attributed to the present Petitioner had surfaced as, at his instructions various BM id Ads were uploaded on the Facebook business account of Valueleaf Company and through this, access was given to the Chinese customer and the Ads were released. Apart from this, from the chatting with Deepayan Banerjee, the Scheme for attracting shareholders in the share trading through the text deepfake video was also revealed and from the account of the petitioner, it was found that he had released certain messages encouraging investments with the use of deepfake videos by advertising that the certified investment experts are guiding the investors.

In this background, it is submitted that the arrest of the petitioner was necessary as it was also revealed that the Petitioner had contacted Firstbridge Hong-kong Company and

there was also mention of representative of the company visiting Hovurguo and it is also stated that Meta Company had issued yellow flag to the company after the fake video was advertised as it was found to be in violation of its policy and this was communicated to the Petitioner by Mr. Deepayan and he had thereafter instructed to create new Ad accounts.

In light of this involvement, the learned APP has justified the arrest of the Petitioner and it is specifically contended before us that in the wake of seriousness of the offence, the Petitioner cannot make a grievance about his arrest being illegal when the Magistrate assured the necessary compliance of the statutory safeguards and remanded him to police custody on 16/10/2025 and thereafter to judicial custody on 20/10/2025.

10 The contentions advanced by Mr.Mor are to be appreciated in light of Article 22 of the Constitution of India , which is fundamental right in form of protection against arrest and detention. The provision 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 h;e 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.”

The liberty of a person being considered to be sacrosanct as per Article 21 of the Constitution of India provide that no person shall be deprived of his Life or Personal Liberty except according to the procedure established by law.

In the wake of this right being conferred by the Constitution, the Criminal Procedure Code of 1973 prescribed the manner in which a Police Officer may arrest a person, against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exist that he has committed a cognizable offence punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years, if certain stipulations are satisfied.

Section 35 of the BNSS, which correspond to Section 41 of the Code, permit the Police Officer to arrest; if he has reason to believe on the basis of such complaint, information or suspicion that the person has committed the offence provided such arrest is necessary. Section 35 of the BNSS, is reproduced below :-

“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; or

(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; or”

The Police Officer shall record while making such arrest his reasons in writing.

A proviso also make it mandatory for the Police Officer, in all cases where arrest of person is not required, also to record the reasons in writing for not making the arrest.

It is only upon a satisfaction being recorded by the Police Officer in case where the offence is punishable with imprisonment upto 7 years or less than 7 years, that the arrest is necessary for any of the contingencies stipulated in clause (a) to (e), the power of arrest is permitted to be exercised.

11 Section 50 of the Code of 1973 (corresponding to Section 47 of BNSS) is another procedural safeguard which has assigned a wider meaning recently by the Apex Court by requiring the grounds of such arrest to be communicated in writing.

The same reads thus :-

“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 50A in the Code now exist in form of Section 48, which cast an obligation on every Police Officer making arrest to forthwith give the information regarding such arrest and the place where the arrested person is being held, to any of his relative, friend or other persons as may be disclosed or mentioned by the arrested person for the purpose of furnishing such information. Similarly, by virtue of sub-section (2), the Police Officer is also under an obligation to inform arrested person of his rights under sub-section (1) as soon as he is brought to the Police Station and by sub-section (3) of Section 48, an entry of the fact as to who has been informed about the arrest of such person shall be made in the book to be kept in the Police Station.

The most relevant provision is sub-section (4) of Section 48, which reads thus :

“48. Obligation of person making arrest to inform about arrests, etc., to relative or friend (1).....

(2)

(3)

(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”.

12 An arrest or the act of taking an individual into custody, denude him of his liberty and it amounts to curtailment of his freedom and therefore in the wake of Article 21 of the Constitution, when a person is deprived of his liberty, it must be strictly in accordance with the procedure prescribed. An arrest, which is an act of apprehending and taking a person into custody/control since the person is suspected or has indulged

himself in commission of a crime, necessarily must adhere to the procedure prescribed, which act as safeguard against the abuse of power and the arrest must therefore be made for a thoroughly justified reason. Under the Code as well as the Sanhita, the arrest can be made by a citizen, a police officer or a Magistrate, but when an arrest is made by a police officer, in terms of Chapter V, he must imperatively follow the procedure prescribed or else such an arrest shall be declared as illegal, entitling the arrestee to be released from custody. The purpose of arrest is not merely for punishment, but at time it may be necessary for the limited purpose of investigation, where a necessity is expressed for a custodial interrogation by the investigating agency.

13 From reading of Section 35 (earlier Section 41 of the Code) it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by a police officer only on his satisfaction, that such person has committed the offence. A police officer before effecting arrest in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or to prevent him from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or police officer or unless the person is arrested, his presence in the

Court shall not be ensured. These are the conclusions, which are to be reached based on facts.

14 In ***Arnesh Kumar vs. State of Bihar***, (supra) the Apex Court dealing with an offence of imprisonment which may extend to seven years and fine with reference to Section 41(1) (b), recorded thus:-

“7.2 The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3 In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisages by sub-clause (a) to (e) of clause (1) of Section 41 CrPC.”

Focusing its attention on Section 41-A of CrPC, aimed to avoid unnecessary arrest or threat of arrest looming large on the accused, which was inserted by the Code of Criminal Procedure (Amendment) Act, 2008, it was held that the provision in form of Section 41-A contemplate that in cases where arrest of a person is not required under Section 41(1), the police officer shall issue notice directing the accused to appear before him and an obligation is cast on an accused to appear and comply with the term of notice and such person shall not be arrested, unless for

reasons to be recorded, the police officer is of the opinion that the arrest is necessary.

15 In ***Arnesh Kumar*** (supra), an endeavour to ensure that the police officers do not arrest the accused unnecessary and the Magistrate do not authorize detention casually and mechanically, the Highest Court of the country observed thus:-

“10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasis that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1 All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2 All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3 The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention;

11.5 The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6 Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7 Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8 Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

16 Despite a clear pronouncement in ***Arnesh Kumar***, the Apex Court was required to reiterate the mandate laid down, in ***Satender Kumar Antil***, by laying emphasis on presumption of innocence being a facet of Article 21 of the Constitution and that it shall inure to the benefit of the accused and by underlining the basis of criminal jurisprudence; that the burden is on the prosecution to prove the charges in the Court of law and there exists a presumption of innocence.

Reiterating the provision of Section 41 and Section 41-A, which mandate the police officer to record reasons in writing while making the arrest, it is reiterated thus:-

“24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

25. The consequence of non-compliance with Section 41 shall certainly inure to the benefits of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

26. Section 41-A deals with the procedure for appearance before the police officer who is required to issue a notice to 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, and arrest is not required under Section 41(1). Section 41-B deals with the procedure of arrest along with mandatory duty on the part of the officer.”

17 Reproducing the observations in ***Arnesh Kumar***, the Apex Court had to observe that despite the dictum in Arnesh Kumar, no concrete steps were taken to comply with the mandate of Section 41-A, though the Court had clearly interpreted Section 41 (1) (b) (i) and (ii) interalia of holding that notwithstanding the existence of reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present and that sub-clause (1) (b) (i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of “reasons to believe” and “satisfaction qua an arrest” are mandated and accordingly are to be recorded by the police officer. In paragraph 28 in ***Satender Kumar Antil***, the Court once again cautioned as under:-

“28. We only reiterated that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the court, which is expected to be reflected in the orders.

32. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41-A. We express our hope that the investigating agencies would keep in mind the law laid down in Arnesh Kumar, the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision under Section 60-A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code.”

18 From the aforesaid pronouncement flowing from the Highest Court of the country, the imperative mandate of Section 41(1)(b)(ii) (a) to (e) need not be underscored, specifically by the Constitutional Court, which must protect personal liberty and

shall not allow the investigating agencies to trample upon the procedure while they take decision to arrest, as personal liberty is the most sacrosanct aspect of our constitutional mandate. Time and again, it is emphasized by the Apex Court that a distinction must be drawn between the existence of a power to arrest and justification for exercise of it, as if arrest are made in routine manner, it could cause incalculable harm to the reputation and self-esteem of a person. A police officials action is expected to be based on a genuine and a reasonable belief that the action, such as taking someone into custody is necessary and legally warranted and this cannot be based on arbitrary rules or external unauthorized instructions. The satisfaction necessarily, must be of the officer, based on evaluation of the situation rather than a mere mechanical execution of a dubious order from a superior or another agency. Adherence to the procedure prescribed, re-enforces the Rule of Law by limiting the power of officials to detain individuals arbitrarily and ensuring that their actions can be justified under laws, specifically while dealing with liberty of individuals.

19 In case of *Prem Shankar Shukla vs Delhi Administration*⁷, the Apex Court ruled that the routine use of handcuffs on under-trial prisoner violates their fundamental rights by specifically holding that every restriction on an individual's liberty must be specifically justified for that person and cannot be applied arbitrarily as a general policy. The Court emphasize the key principle; necessity over routine handcuffing should only be a

⁷ (1980) 3 SCC 526

measure of last resort used exclusively, when there are compelling reasons to believe that the prisoner might escape or pose danger to others or indulge in violence. It also stressed the importance of human dignity, even for those accused of crime, ruling that arbitrary restraint is degrading and dehumanizing.

Another important principle flowing from the judgment is of 'individualized justification' being, general administrative convenience or general rule cannot justify the use handcuffs and the authorities must record specific reasons in writing as to why a particular individual need to be restraint.

In case of *Jogindar Kumar v. State of U.P.*, a land mark decision in Indian Criminal law which has established the principles regarding 'Power of Arrest' particularly concerning the exercise of this power by a police officer, it is held that the police officer is not bound to arrest a person merely because he has a power to do so or a cognizable offence has been alleged instead the decision to arrest must be based on a reasonable suspicion and justifiable necessity, which is distinct than a mere suspicion or routine procedure. There must exists a specific, valid justification for arresting a particular individual, so as to prevent him from committing further crime, or for proper investigation or to prevent him from tampering the evidence or intimidating witnesses or for ensuring his presence in the Court.

Right from the decision of the Apex Court in *Sheela Barse vs State of Maharashtra*⁸ with further guidelines being laid down in

8 (1983) 2 SCC 96

*DK Basu vs State of West Bengal*⁹ to prevent custodial violence, it is mandated that the police must follow the established procedure including informing the arrestee of the grounds for arrest and informing a friend or relative about such arrest with special emphasis on the arrestee's right to be informed, need to create an arrest memo, medical checkup upon arrest and on production, with an avowed purpose of allowing the individual to seek legal recourse, as every arrested individual has fundamental and independent right, which they are entitle to enforce by approaching the Court of law.

20 The principle of procedural fairness is held to be applied individually to each arrestee and the police/ the arresting authority cannot assume that simply informing one person in a group, satisfy the requirement for everyone as each person must be informed personally. The right of the arrestee to avail legal access during interrogation and before he is produced before the Magistrate has been considered to be a facet of Article 21 of the Constitution, and time and again the focus of the Constitutional Courts has been, the fairness in the procedure of arrest and despite the fact that a person arrested may be suspect for an accused, ensuring his fundamental right of he not being deprived of his liberty without adherence to the procedure prescribed by law.

9 (1997)1 SCC 416

21 The FIR invoked offences under Bharatiya Nyaya Sanhita and the said offences involve a punishment less than 7 years and it was therefore imperative on the part of Investigating Officer to issue a notice under Section 35(3) of Sanhita directing the accused to appear before him and upon such a notice being issued, the Petitioner was duty bound to comply with the terms of the notice. As long as the Petitioner complied and continued to comply with the notice, in terms of sub section (5) of Section 35, it was not open for the Investigating Officer to arrest him unless by reasons recorded, he express the opinion that the accused ought to be arrested. It is only if the Petitioner would have failed to comply with the terms of notice or unwilling to identify himself, in such case subject to such orders, as may have been passed by a competent Court, the arrest could have been effected.

The directions issued in *Arnesh Kumar*, were made applicable to all cases where the offence is punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years, with or without fine. Emphasizing upon unnecessary arrest of the accused and his detention by the Magistrate in a casual and mechanical manner, the direction was issued that all State Governments shall instruct its Police Officers not to arrest mechanically, and before effecting an arrest, to be satisfied about the necessity of arrest under the parameters laid down flowing from Section 41 of the Code of 1973. It was, therefore, directed that the Police Officers shall forward a checklist duly filled in furnishing the reasons and material which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.

It is a specific direction in ***Arnesh Kumar*** (supra) that the Magistrate shall also not act mechanically and while authorizing the detention of the accused shall peruse the report furnished by the Police Officer and only after being satisfied, shall authorize the detention.

22 The Magistrate before authorizing detention is also directed to be verified that arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. But if the arrest effected by Police Officer do not satisfy the requirements of Section 41 of Code and Section 35 of Sanhita, then the Magistrate shall refuse his detention and is duty bound to release him.

The following is the direction in ***Arnesh Kumar*** (supra) in Para 8.2,

“When an accused is produced before the Magistrate, the Police Officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and his conclusions for his arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 of Code are being satisfied and it is only thereafter that he will authorize the detention of an accused”.

The aforesaid direction is reiterated in ***Satender Kumar Antil*** (supra) when it is held, that the satisfaction of the Magistrate before authorizing detention must be reflected from his order and it shall never be based upon *ipse dixit* of the Police Officer and the Police Officer shall furnish to the Magistrate the facts, the reasons and material on the basis of which he has reached the conclusion that his detention is necessary. In compliance with the aforesaid directions, in the present case, we find that Sr. PI Cyber Police Station forwarded a checklist to the

learned Magistrate with reference to 'Reasons of Arrest' in connection with CR No.293/2025. The checklist dated 16/10/2025 mention that the Petitioner was arrested at 00.01 hours and the reasons for his arrest are set out as below :

- "a) Since the offence had the use of mobile phone, laptop, social media by allowing police custody the evidence is required to be collected.*
- b) To prevent destruction of technical evidence - the other accomplice of the accused are already arrested and if the Petitioner is not arrested, collectively they will destroy the evidence.*
- c) To ensure presence for the purpose of investigation and court proceedings.*
- d) To prevent the arrested accused from repeating the commission of offence. Magnitude of offence is at international level and accused persons are to be seen in contact with foreign nationals and therefore it is necessary to arrest the accused persons.*
- e) From the device in possession of the arrested accused, the participation of the accused in the offence is evident and investigation is to be carried out to expose the racket of digital deepfake marketing.*
- f) On collecting evidence about participation of the accused persons since they are not co-operating in the investigation so the collective inquiry is necessary to be conducted."*

23 The grounds of arrest which were communicated to the Petitioner under Section 47 contain the Petitioners specific accusation and necessity for investigation in the background of the said accusation. However, Mr. Mor has specifically urged that his Petition is not based upon non communication of the grounds of arrest, but it premised on non existence of the 'Reasons of Arrest' and the satisfaction being reached by the investigating officer justifying the said arrest and the examination of these reasons by Magistrate.

Therefore, what is relevant is the check list which is forwarded to the Magistrate on 16/10/2025 by enlisting the aforesaid reasons and Mr.Mor has raised an objection to the

aforesaid reasons being forwarded, which according to him are general in nature and referring to the accused who were arrested prior to him and since the reasons lacked specification as regards the Petitioner, according to him it is violative of Section 35(1)(b) (ii) [Section 41(1)(b)(ii)].

24 We have given a thoughtful consideration to the aforesaid submission in light of the legal proposition evolved by the Apex Court in ***Arnesh Kumar*** (supra) and ***Satender Kumar Antil*** (supra) which has held that the Police Officer before effecting arrest must mandatorily record reasons in writing while making the arrest particularly when the offence alleged is punishable with imprisonment of 7 years or less than 7 years and the consequence of non compliance must ensure to the benefit of the person suspected of the offence.

In a case like the present one when there are multiple accused, it ought to have been ensured that the reasons of arrest could be discerned qua each of the accused individually by setting out them in specific and distinctly.

Arrest is an individualized act and the decision to arrest cannot be based on the fact that multiple persons are named together as arrest must be justified separately for each accused. Since each of the accused is arrested separately, the Investigating Officer must form independent satisfaction qua each of the accused and it is imperative for him to examine specific role of each accused, and the need for arresting him. Furnishing common or identical reasons for all accused as is sought to be attempted to be done in the checklist furnished to

the Magistrate cannot be countenanced as the reasons for arrest cannot be copied, repeated mechanically or stated in collective terms as each accused require a distinct reason since the act of arrest of each accused is distinct.

Necessity of arrest must be established accused-wise as the Section 35 permit the Police Officer to arrest without warrant on the basis of his belief or suspicion that the person has committed offence and the satisfaction contemplated under Section 35(1)(b) (ii), (a) to (e) has to be accused specific. The Investigating Officer must show why arrest is necessary for each accused individually, considering his flight risk, potential of his tampering with evidence and of influencing witnesses and the need for his custodial interrogation. Definitely all these parameters cannot be common to each of the accused and they must be individualistic.

In any case arrest cannot be justified based on collective conduct even if the offence is jointly committed, as the grounds/reasons of arrest cannot be common as the law require reasons linked to the individual and not to the group.

Arrest being an individual act, therefore, the grounds of arrest as well as reasons of arrest, must reflect the personal role attributed and personal necessity for effecting such arrest and the Investigating Officer is expected to record how an act of particular accused contribute to the offence and why he/she shall not be left out and why the custody is necessary.

Group based reasoning clearly reflect non application of mind as when the Investigating Officer use template reasons, formulating general grounds, for all it legally amounts to a mechanical arrest which cannot be sustained. An arrest would

become illegal if individual grounds qua each accused are missing and if the reasons do not specifically explain why a particular accused is arrested, the arrest shall be violative of the statutory requirement and the safeguard.

25 The checklist which is forwarded to the Magistrate, has merely used the template of reasons as set out in Section 35(1) (b)(ii), but there is abject failure to make the reasons specific qua the Petitioner who is arrested and merely by using the template of clause (a) to (e) by stating that it is necessary to prevent the person from committing offence, for proper investigation of documents or for preventing from causing disappearance of the evidence of the offence or making any inducement, threat cannot be used in from of template.

In *Satender Kumar Antil* (supra), with reference to Chapter V of the Code dealing with arrest of the person, the Apex Court has reiterated that arrest should follow, only on being satisfied, that there exist reason to believe that a person has committed an offence, and therefore there is a necessity of his arrest. Such necessity is drawn either for proper investigation or to prevent from either tampering or disappearing of the evidence or prevent him from making any inducement, threat or promise to any person so as to dissuade him from disclosing the facts to the Court or to the Police Officer or when his/her presence is required after arrest for production before the Court and the same cannot be assured without arrest.

It is quite possible that at times either of aforesaid reason would justify the arrest and it is not necessary that all of the

factors contemplated in Clause (a) to (e) shall be always collectively justify the arrest. The law mandates that the Police Officer shall based on the facts, record the reasons in writing, which lead him to a conclusion covered by any of the clauses being (a) to (e) while making such arrest. The law also requires the Police Officer to record the reasons in writing if he decide not to make the arrest.

In the present case, by referring to the collective reasons for arrest, we find that in absence of individual reasons for arrest being recorded by the Officer, the arrest has become illegal.

26 The mandate of recording reasons by the police officer so as to avoid arresting the accused unnecessarily, also extend to the Magistrate, by providing that he shall not authorize the detention casually and mechanically. Since the accused arrested without warrant by police enjoy the constitutional right under Article 22(2) of the Constitution and Section 57 of the CrPC, to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time of journey, the power of the Magistrate to authorize detention is considered to be a solemn function, as it affects the liberty and freedom of an individual and is expected to be exercised with great care and caution.

Before the Magistrate authorizes a detention of an accused in any form, he has to satisfy himself, that the arrest made is legal and in accordance with the Constitutional and statutory safeguards and the Magistrate before autorizing the detention

shall record his own satisfaction, may be in brief but it must be reflected from his order.

It shall never be based upon the *ipse dixit* of the police officer but the Magistrate must scrutinize the reasons for each accused independently and as the police officer cannot record common reasons for arrest, similarly, the Magistrate cannot accept common remand note and must insist on distinct reasons for arrest qua each accused and scrutinize them separately. A Magistrate who is expected to look into the reasons, which are recorded by the police officer while effecting arrest based on his individual satisfaction that the arrest is necessary on any of the parameter set out in Section 35 (i)(b)(ii) (a) to (c), the Magistrate is duty bound to review those reasons, when a person is produced for remand and he shall not mechanically approve the police request for detention but apply his mind and only on being satisfied that the reasons recorded by the police officer are sufficient enough to detain the accused, grant the custody.

27 An arrest is permitted under the Code of 1973 or the Sanhita of 2023 only upon an Investigating Officer being personally satisfied that it is necessary, based on objective assessment of the facts and evidence before him. Similarly as far as the magistrate is concerned, he has a duty to apply his mind to the justification offered for arrest and cannot simply accept the police report at its face value. When an accused is brought before the Magistrate, he is duty bound to examine the reasons provided by the police for his arrest and ensure that the arrest is not an abuse of the power and the requirements of the law such as

provisions of Section 41 of the Code/ Section 35 of Sanhita have been followed. It is this power of the Magistrate, which safeguard and protect the personal liberty of an accused by preventing unnecessary arrest, as the decision to arrest must be based on reasonable suspicion and justifiable necessity and not by way of a routine procedure. Merely because there is a power to arrest do not justify its exercise unless it is in conformity with the provisions in the statute which are enacted with a view to prevent the arbitrary exercise of such power and therefore when the Code or Sanhita has incorporated necessary safeguards, which are directed at striking a balance, when a person is arrested merely on the basis of suspicion of his involvement in an offence. The reasons for arrest necessarily must be individual specific as on arrest, it is the liberty of the individual which is impaired and when an individual is arrested, the reasons for his arrest must solely relate to him and shall be specific to him and are not to be recorded in a collective fashion.

The safeguard enshrined in the Constitution as well as the Procedural law are aimed at preventing potential coercive practices by the police machinery and to safeguard the individual liberty and to ensure that the detention of an accused during investigation is permitted only in accordance with the procedure prescribed.

28 We deem it appropriate to reproduce pertinent observations of the Apex Court in *Arnesh Kumar* (supra) which has clearly taken note of the need of caution in exercising power of arrest, when the Apex Court observed thus :-

“5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

29 When the Code of Criminal Procedure/Sanhita, direct strict compliance with provisions as regards arrest, which is interpreted and given its full play by the Hon'ble Apex Court in Arnesh Kumar, by making it imperative that the officer must fill the checklist and furnish the reasons and material which necessitated the arrest and when it is forwarded to the Magistrate, he must scrutinize the reasons before authorizing the detention. Mechanically reproducing in the case diary all or most of the conditions contained in Section 41 of Cr.PC is nothing but subversion of law and the Constitutional Courts time and again have strongly deprecated this practice. The tendency to merely copy the template provided in the statute without specifying as to how the stipulation contemplated is attracted, which is normally a copy paste affair and specially when multiple accused are shown the same formula grounds and in the present case we find that the grounds / the reasons recorded for arresting the four accused are more or less identical.

The Investigating Officer by filling the checklist and ‘furnishing the reasons and material which necessitated the arrest’ while producing the accused before the Magistrate, reinforce that the arrest must be founded on necessity, recorded reasons and is not only a formality. This logically demands accused specific reasoning specially when several of them are apprehended in a particular crime.

30 Since, we have noted that the reasons recorded by Investigating Officer and presented before the Magistrate lack any individualized justification and even the Magistrate has failed to discharge his obligation of examining its justiciability.

In our considered view the arrest of the petitioner is illegal as it was the duty of the Respondent to ensure the protection of the Constitutional rights of the Petitioner and the arrest could have been only made on recording the reasonable satisfaction reached, as to the genuineness and bonafide of the complaint and reasonable belief of the Petitioner’s complicity in the offence and even as to the need to arrest.

Denial of liberty of a person is a serious matter and in absence of any reasonable justification, in the opinion of the officer effecting the arrest that such arrest is necessary, and when a person is arrested in flagrant violation of the Constitutional mandate and the statutory protection granted to him, we are left with no other option than to declare the arrest as illegal.

31 On declaration of the arrest of Petitioner on 16/10/2025 in connection with C.R. No. 293 of 2025 to be illegal, the Petitioner is entitled to be set at liberty forthwith by directing his release on bail by furnishing P.R. bond in the sum of Rs. 50,000/- with one or more sureties in the like amount to the satisfaction of the Judicial Magistrate (First Class), 12th Court, Bandra, Mumbai.

Petition is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK,J.)

(BHARATI DANGRE, J.)