



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.212/2025

Vishal s/o Bharatrao Hiware

..VS..

State of Maharashtra, through its PSO PS Akot, Tahsil Akot, District
Akola and anr

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A.S.Mardikar, Senior Counsel assisted by Shri Ved Deshpande,
Advocate for the Applicant.
Shri A.Ghongre, Additional Public Prosecutor for the State.

CORAM : **URMILA JOSHI-PHALKE, J.**
CLOSED ON : **07/04/2025**
PRONOUNCED ON : **17/04/2025**

1. By this application, being moved under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023, the applicant seeks regular bail in connection with Crime No.169/2024 registered with the non-applicant/police station for offence punishable under Section 302 read with Section 34 of the IPC.

2. The applicant came to be arrested on 16.10.2024 and since then he is in jail.

3. Heard learned Senior Counsel Shri A.S.Mardikar for the applicant and learned Additional Public Prosecutor Shri A.Ghongre for the State.

4. Learned counsel for the applicant submitted that the crime is registered on the basis of report lodged by Sukhdeo Mahadev Haramkar, who is uncle of Gowardhan Ganesh Haramkar (the deceased), alleging that on 15.1.2024 the deceased was arrested by PSI Rajesh Jaware, the co-accused, and taken to the Akot Police Station. Subsequently, co-accused PSI Rajesh Jaware and Police Constable Chandraprakash Solanke had brought the deceased to the house of the complainant as well as the house of the deceased and their houses were searched. During the search, nothing was found and on being asked, as to why their houses were searched, the deceased as well as the complainant was beaten and the deceased was taken to the Akot Police Station. The deceased, who was beaten brutally, was taken to the Vighnaharta Hospital at Akola. During course of the treatment, he succumbed to the injuries. On the basis of the said report, the police registered the crime against the co-accused and the

present applicant. After registration of the crime, the applicant approached this court for grant of anticipatory bail. The same was rejected. Thereafter, he approached the Hon'ble Apex Court against rejection of the anticipatory bail by filing an application which was also rejected and, therefore, he surrendered and hence the present application is filed.

5. In the meantime, the complainant moved an application for investigation by the CBI before the Commissioner of Police at Amravati, which is not decided by the Commissioner of Police and now investigation is completed and chargesheet is filed.

6. Learned Senior Counsel for the applicant further submitted that the applicant is not named in the FIR. The documents collected show that the applicant was on night duty on 15.1.2024 and 16.1.2024. There is no evidence to show that the applicant has accompanied the co-accused and was involved in beating the deceased. The Internal Enquiry Report of the Sub Divisional Officer at Akot also nowhere discloses the involvement of the applicant in the alleged offence. Now,

considering the investigation is completed, chargesheet is filed, and there is no material collected during investigation to show that the applicant was involved in the actual incident of the assault on deceased, the applicant be released on bail.

7. In addition to the above said grounds, learned Senior Counsel for the applicant also raised a ground that there is no compliance of Section 50 of the CrPC and mandate of Article 22(1) of the Constitution of India and, therefore, arrest itself is invalid. In view of that, the application deserves to be allowed.

8. In support of his contentions, learned Senior Counsel for the applicant placed reliance on following decisions:

1. Directorate of Enforcement vs. Subhash Sharma, reported in 2025 SCC OnLine SC 240;

2. Criminal Appeal No.1518/2025 (Ashish Kakkar vs. UT of Chandigarh decided by the Hon'ble Apex Court on 25.3.2025;

3. Vihaan Kumar vs. State of Haryana and anr, reported in 2025 SCC OnLine SC 269, and

4. Kavita Manikikar of Mumbai vs. Central Bureau of Investigation BS and FC, thr. its Standing Counsel of Bombay and anr, reported in 2018 SCC OnLine Bom 1095.

9. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on the ground that during investigation, involvement of the applicant revealed. The statements of the witnesses specifically show that along with the other co-accused the applicant has visited the house of the deceased and the deceased was taken in the police station and, thereafter, he was assaulted and death of the deceased is caused. Thus, as far as involvement of the applicant is concerned, there is sufficient material to connect the applicant with the alleged offence. As to compliance of Section 50 of the CrPC, he placed reliance on notice issued to the applicant on 16.10.2024 wherein the grounds of arrest were informed to the applicant. The arrest panchanama also shows the said compliance and station diary entry No.27 dated 16.10.2024 discloses about the said compliance and extract of the register which is maintained in the police station in view of guidelines issued by the Hon'ble Apex Court wherein also the entry as to

the said compliance is taken. Therefore, there is substantial compliance of Section 50 of the CrPC and, therefore, there is no violation of Article 22(1) of the Constitution of India.

10. After hearing learned Senior Counsel for the applicant and learned Additional Public Prosecutor for the State and perusing investigation papers on record, it reveals that the crime was registered against the applicant who is police constable and co-accused PSI Rajesh Jaware and Police Constable Chandraprakash Solanke other co-accused on the basis of report lodged by uncle of the deceased on 16.4.2024. Initially, the report was lodged against co-accused PSI Rajesh Jaware and Police Constable Chandraprakash Solanke wherein the allegation was made that both the accused persons were searching the deceased as they suspected involvement of the deceased in crime committed under Section 392 of the IPC and the deceased was taken into custody and brutally beaten. The complainant was also assaulted by them. During investigation, involvement of the applicant was also revealed. Initially, the deceased was taken to the Government Hospital and from the Government Hospital, he was referred to the higher centre and,

thereafter, he was admitted in Vighnaharta Hospital at Akola wherein he died. Admittedly, prior to the registration of the crime, statement of the complainant and other witnesses were recorded wherein they have stated that the deceased met with an accident and the death of the deceased occurred on 17.1.2024 and on his death accidental death was registered.

11. During enquiry of the accidental death, the police officials received an anonymous letter and on the basis of the said report, the enquiry was conducted. During the said enquiry, the statement of the complainant was recorded and it revealed that co-accused PSI Rajesh Jaware took the deceased along with him on 16.1.2024 and assaulted him in presence of villagers. The deceased was also taken to the police station wherein also he was assaulted. As he sustained grievous injuries, he was taken to the hospital and subsequently shifted to Vighnaharta Hospital.

12. Statement of Dr.Vishal Ingole shows that he was working in Akot Critical Care and Multispeciality Hospital and also attached to Borkhede Hospital and knows PSI Jaware as

Police Officer. On 17.1.2024, at about 3:00 to 3:40 pm, he received a phone call of said Jaware who disclosed to him that he has sent one patient in hospital and he has to look after him. On seeing patient, the doctor observed that the patient was unconscious and having breathing problem. The deceased was admitted in the hospital and his condition was critical. Thereafter, he informed said Jaware that the deceased was referred to the higher centre at Vighnaharta Hospital at Akola wherein he succumbed to the injuries.

13. The postmortem report shows that 25 injuries on the person of the deceased were witnessed. The MLC issued by the Vighnaharta Hospital also shows that the deceased sustained injuries on chest, abdomen, and back. Considering the earlier statement, an opinion of expert was sought as to the nature of injuries and it was opined that the injuries are not possible due to the accident. The said opinion is part of investigation papers.

14. During investigation, the investigating officer recorded various statements of the witnesses including the

complainant and other family members, independent witness Salim Khan Tahrir Khan, Tilkak KKabliye and it revealed that the deceased was assaulted prior to his death. The statements revealed that witnesses were assaulted by co-accused PSI Rajesh Jaware and Police Constable Chandraprakash Solanke. They also with other raiding party members visited the houses of the deceased and the complainant and searched their houses. The statement of Deepak Pawar discloses that co-accused PSI Rajesh Jaware and other co-accused including the applicant came on two-wheeler and enquired about the deceased and the complainant. The deceased was assaulted by suspecting that he is involved in a robbery case.

15. As observed earlier, there is a statement of Dr.Ingole, which substantiates the fact as to the assault on the deceased due to which he was admitted. The general diary entry on 9.1.2024 also shows that the crime was registered under Section 392 of the IPC. Co-accused PSI Rajesh Jaware and Police Constable of the crime detection branch visited bus stand and checked CCTV Footage. After checking the CCTV Footage, they were searching the deceased, but they could not

trace him. Thus, general diary entry also shows that co-accused PSI Rajesh Jaware and other co-accused including the applicant, who is the part of crime detection squad, searched the deceased. Various statements recorded during investigation show that the deceased was brought to the police station and assaulted. A preliminary enquiry was conducted wherein involvement of co-accused PSI Rajesh Jaware was revealed.

16. Learned Senior Counsel for the applicant, though pointed out that the applicant was on night duty at the relevant time, the station diary entries dated 15.1.2024 to 17.1.2024 show that though the applicant was on night duty on 15.1.2024, as per the duty chart, he was present in the police station at about 3:18 pm and lodged a report against Shrikant Kashinath Rupnarayan and others under Section 12 of the Gambling Act. This entry sufficiently shows his presence at the police station though the duty chart shows he was on night duty. Thus, merely because his duty was shown during night hours, the same is not sufficient to show his non-involvement in the crime. The chart prepared in the police station further shows that he was part of crime detection squad. The

statements of various witnesses disclose his involvement in visiting the house of the deceased and taking the deceased along with them. The statements of Deepak Pawar and Salim Khan Tahrir Khan show involvement of the applicant in the alleged offence. Thus, prima facie material sufficiently shows involvement of the applicant in the alleged offence.

17. The another ground raised by learned Senior Counsel for the applicant is as to non-compliance of Section 50 of the CrPC and violation of Article 22(1) of the Constitution. In support of his contentions, he placed reliance on the decision in the case **Directorate of Enforcement vs. Subhash Sharma** *supra* wherein the Hon'ble Apex Court observed that once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

18. Considering the submissions made by both the parties, it is necessary to refer the relevant provisions.

19. Section 41 of the Code deals with when police may arrest without warrant. Sub section (1) of Section 41 of the Code (Clause (c) of sub-section (1) of Section 35 of the BNSS Act) states about when police officer may without an order from a Magistrate and without a warrant, arrest any person subject to conditions enumerated therein.

Thus, it states that a police officer can arrest a person after satisfying himself when an offence punishable with imprisonment for more than 7 years is alleged. The police officer can arrest subject to condition mentioned in Section 35(1)(b) of the BNSS Act are satisfied.

20. Article 22(1) of the Constitution reads as under:

“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.”

21. Thus clause (1) of Article 22 of the Constitution states that no person shall be detained in custody without being informed as to the grounds of such arrest.

22. Section 50 of the Code (Section 47 of the BNSS Act) deals with persons arrested to be informed of grounds of arrest and of right to bail which reads as under:

“Section 50. 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.

23. Thus, Section 41 of the Code (Section 35 of the

BNSS Act), Section 50 of the Code (Section 47 of the BNSS Act) and Article 22 of the Constitution are relevant provisions.

24. In the case of **Prabir Purkayastha vs. State (NCT of Delhi)**, reported in (2024)8 SCC 254 wherein the Hon'ble Apex Court by referring the relevant provisions and relying upon the decision in the case of **Harikisan vs. State of Maharashtra and ors**, reported in 1962 SCC OnLine SC 117 held that the communication of the grounds of detention to the detainee in writing and in a language which he understands is imperative and essential to provide an opportunity to detainee of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated.

By referring the decision in the case of **Lallubhai Jogobhai Patel vs. Union of India and ors**, reported in (1981)2 SCC 427, the Hon'ble Apex Court observed that “.... ‘Communicate’ is a strong word. It means that sufficient knowledge of the basic facts constituting the “grounds” should

be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the “ground” to the detenu is to enable him to make a purposeful and effective representation. If the “grounds” are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.....”

The Hon’ble Apex Court further held that, “from a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in *Harikisan supra* , wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

It is further held that the language used in Article 22(1) and Article 22(5) of the Constitution of India regarding

the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the 'grounds' of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned.

25. The decision in the case of **Prabir Purkayastha vs. State (NCT of Delhi)** *supra* further shows that the provisions of Article 22(1) have already been interpreted by this Court in **Pankaj Bansal vs. Union of India and ors, reported in 2023 SCC OnLine SC 1244** laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.

In paragraph No.48 in the decision in the case **Prabir Purkayastha vs. State (NCT of Delhi)** *supra* it is specifically observed that there is a significant difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest’. The ‘reasons for arrest’ as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making 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 Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending

himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

26. The Hon'ble Apex Court in the case of **Vihaan Kumar vs. State of Haryana and anr** *supra* also while considering Section 50 of the Code and Article 22(1) of the Constitution held that view taken in the cases of **Pankaj Bansal** *supra* was reiterated by this Court in the case of **Prabir Purkayastha** *supra*. The Hon'ble Apex Court further referred the decision in the case of **Lallubhai Jogobhai Patel** *supra*. The Hon'ble Apex Court by referring various decision observed that, "compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in the case of **Pankaj Bansal** *supra*, this Court held that the mode of conveying the grounds

of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.”

In paragraph No.14 it is further held “thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the

Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22 (1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 22, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 22, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the

arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.”

The Hon’ble Apex Court, therefore, concludes as follows:

a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency

to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has

been made; and

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

27. Thus, in view of the judgment in the case of **Vihaan Kumar vs. State of Haryana and anr** *supra*, statutory compliance under Section 50 as well as Article 22(1) of the Constitution is mandatory.

28. These aspects are further dealt with by the Three Judge Bench of the Hon'ble Apex Court while considering Section 19 of the Prevention of Money Laundering Act, 2002 in the case of **Vijay Madanlal Choudhary & ors vs. Union of India and ors**, reported in 2022 SCC Online SC 929 wherein it is observed that, "so long as the person has been informed about

grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering.”

29. In the case of **Ram Kishor Arora vs. Directorate of Enforcement**, reported in AIR 2024 SC 220, while considering the decisions in **Vijay Madanlal Choudhary & ors** *supra* **Pankaj Bansal**, highlighting the utmost importance of doctrine of binding precedent in the administration of judicial system, it is observed that, “in view of the aforestated proposition of law propounded by the Constitution Benches, there remains no shadow of doubt that the law laid down by the Three-Judge bench in **Vijay Madanlal Choudhary** case (*supra*) that Section 19(1) of the PMLA has a reasonable nexus with the purposes and objects sought to be achieved by the PML Act and that the said provision is also compliance with the mandate of Article 21(1) of the Constitution of India, any observation made or any

finding recorded by the Division Bench of lesser number of Judges contrary to the said ratio laid down in **Vijay Madanlal Choudhary** (supra) would be not in consonance with the jurisprudential wisdom expounded by the Constitution Benches in cases referred above. The Three-Judge Bench in **Vijay Madanlal Choudhary** case (supra) having already examined in detail the constitutional validity of Section 19 of PMLA on the touchstone of Article 22(1) and upheld the same, it holds the field as on the date.

The Hon'ble Apex Court in **Ram Kishor Arora** *supra* in paragraph No.22 further observed that **Vijay Madanlal Choudhary** case (supra), it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance of mandate of Article 22(1) of the Constitution. It is also observed that the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering. Therefore, in our opinion the

person asserted, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 of PMLA but also of Article 22(1) of the Constitution of India.

30. While concluding, the Hon'ble Apex Court in the case of **Ram Kishor Arora** *supra* held that since the appellant was indisputably informed about the grounds of arrest and he having also put his signature and the endorsement on the said document of having been informed, there was due compliance of the provisions contained in Section 19 of PMLA and his arrest could neither be said to be violative of the said provision nor of Article 22(1) of the Constitution of India.

31. In the light of the above observations, if the facts of the present case are taken into consideration, notice given under section 50-A of the CrPC to the present applicant discloses the name of the police station, crime number, and the

grounds of arrest, which is signed by the applicant the station diary entry taken by the investigating officer sufficiently shows the compliance of Section 50 of the CrPC.

32. Thus, in view of the observations of the Hon'ble Apex Court in the case of **Vihaan Kumar vs. State of Haryana and anr** *supra* wherein it is observed that if the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.

33. In view of the above observations, in the present case, the station diary entry specifically shows reasons as to the arrest of the applicant and the notice was given to the applicant informing the crime number, the provisions of law which are applied against him, the information that his relatives are informed and Clause-8 of arrest panchanama mentioning that grounds of arrest are communicated to the applicant and station diary entry to that extent is sufficient compliance of Section 50 of the Code. Since the applicant was informed about

the grounds of arrest and he also puts his signature on the said notice, there is a due compliance of the provisions contained in Section 50 of the Code and Article 22(1) of the Constitution.

34. In view of the requirement of informing the person arrested, which is held by the Hon'ble Apex Court in the case of **Vihaan Kumar vs. State of Haryana and anr** *supra*, the same is not a formality, but a mandatory constitutional requirements. It further states that the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. The Hon'ble Apex Court further clarified that under Article 22(1) of the Constitution, there is no requirement of communicating the grounds of arrest in writing. The purpose of Article 22(1) of the Constitution is that the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. The said purpose appears to be fulfilled as sufficient information by giving the notice to the applicant. There is a sufficient compliance by taking entry in the station diary also.

35. In the light of the well settled legal position if facts

of the present case are taken into consideration, it reveals that he committed grievous offence like causing death of a person. There is no dispute that grant or refusal of bail is discretion and the said discretion must be exercised judiciously. It is also well settled that the bail is a rule and jail is an exception, but at the same time, considerations for grant of bail are to be taken into consideration. The considerations are, gravity of offence, nature of offence, and punishment provided for the said offence.

36. Here, in the present case, the applicant, co-accused PSI Rajesh Jaware and Chandraprakash Solanke are police officials. They are protectors of public in the society.

37. In the case of **Ajay Kumar Yadav vs. State of Uttar Pradesh and ors**, reported in 2024 SCC OnLine SC 467, by referring its earlier decision in the case of **Jharkhand vs. Sandeep Kumar**, reported in 2024 INSC 179, it is observed that, “in the light of serious allegations made against no less than a senior police officer, an essential cog in the machinery of law

enforcement, the High Court ought not to have taken a liberal view in the matter for the mere asking. Considering the position held by the respondent, even if he was suspended from service and the chargesheet had already been filed against him, the possibility of his tampering with the witnesses and the evidence was sufficiently high. That apart, grant of such relief to a police officer facing allegations of manipulating the investigation so as to favour an accused would send out a wrong signal in society. It would be against public interest”.

It is further observed that, “no doubt, none of the provisions under which the respondent is alleged to have committed offences entail imprisonment in excess of seven years and most of them were bailable offences. Ordinarily, an accused facing the prospect of incarceration, if proved guilty of such offences, would be entitled to the relief of pre-arrest bail. However, the same standard would not be applicable when the accused is the Investigating Officer, a police officer charged with the fiduciary duty of carrying forward the investigation to its rightful conclusion so as to punish the guilty. The 6 respondent is alleged to have failed in this fundamental duty as

a police officer. This consideration must necessarily weigh in with the nature of the offences and the possible punishment therefor. Presumptions and other considerations applicable to a layperson facing criminal charges may not carry the same weight while dealing with a police officer who is alleged to have abused his office”.

38. The aspect of custodial death is also considered in the case of **Parvat Chandra Mohanty vs. State of Odisha, reported in (2021)3 SCC 529** wherein it is observed by the Hon’ble Apex Court that in event people holding public office abuse their position, it becomes a matter of great public concern. When the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society.

39. In this case, as the applicant, co-accused PSI Rajesh Jaware and Police Constable Chandraprakash Solanke are violators of law, who had the primary responsibility to protect and uphold law, thereby mandating the punishment for such

violation to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. It may not be out of context to remind that the motto of Maharashtra State Police is "सद्रक्षणाय खलनिग्रहणाय" (Sanskrit: "To protect good and to punish evil"), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. I must additionally consider this aspect while considering the present application.

40. In the light of above observations, if facts of the present case are taken into consideration, the deceased was detained by suspecting that he is involved in the crime under Section 392 of the Indian Penal Code and, thereafter, he was mercilessly bitten and caused his death. The investigation is in progress. Considering the role of the applicant, co-accused PSI Rajesh Jaware and Police Constable Chandraprakash Solanke

and statements of various witnesses as well as opinion of the expert, it shows that the applicant is involved in the crime.

41. In the light of the above discussion, the application deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!