



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

CRIMINAL APPLICATION (BA) NO. 433 OF 2025

Shamrao s/o Shiluji Bhoyar Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.P. Ladhe, counsel for applicant.

Mr. C.A. Lokhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/06/2025.

1. By this application, being moved under Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023, the applicant seeks regular bail in connection with Crime No. 629/2024 registered with Gadchiroli Police Station for offences punishable under Sections 103, 118(1) of the Bhartiya Nyaya Sanhita, 2023. The applicant came to be arrested on 29/08/2024.

2. The crime is registered on the basis of report lodged by Gita Vilas Naitam i.e. wife of the deceased, on an allegation that on 28/08/2024, after a meal, her husband had been out of the house at some distance, and she was in the house at the relevant time, she heard the shouts. Therefore, she went outside the house and witnessed that her husband was assaulted with a stick by the present applicant for no reason. Her husband has received grievous injuries, immediately she has taken him to the hospital, but

subsequently, he has succumbed to death due to the head injury. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant, who submitted that as far as the merit of the matter is concerned, there are inconsistent statements of the witnesses. Thus, prima-facie case has not made out against the present applicant. The second ground raised by him is that the grounds of arrest are not informed to the present applicant, and therefore, there is non-compliance of Section 47 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (Section 50 of the Code of Criminal Procedure), and thus there is a contravention of Article 22 of the Constitution of India. He further submitted that the applicant was also not medically examined before his arrest. Thus, there is non-compliance of relevant provisions, in view of that, the applicant is released on bail.

4. In support of his contention he placed reliance on the decision of *(1) Vihan Kumar vs. State of Haryana and anr [2025 SCC OnLine SC 269]* and *(2) Prabir Purkayastha Vs State of (NCT of Delhi) [2024 8 SCC 254]*. On the basis of the said submissions, the learned counsel prays for releasing the present applicant/accused on bail.

5. Learned APP strongly opposed the said application and invited my attention towards the communication issued by the investigating officer to the

present applicant, showing that there is compliance of Section 47 of BNSS (Section 50 of the Code of Criminal Procedure). He also invited my attention towards a communication, which shows that the daughter of the present applicant was informed as to his arrest. The reference letter addressed to the medical officer also shows that the present applicant was referred for the medical examination before this arrest. Thus, the learned APP submitted that there is compliance of Section 47 of BNSS, as well as the applicant was medically examined before his arrest. He also invited my attention towards the post mortem report and submitted that from the post mortem report, it can be ascertained that death of the deceased was due to head injury, and the internal injury shows that deceased sustained the injuries on the parietal and temporal regions, which resulted in his death. Thus, injuries sustained are on a vital part of the body. Thus, intention can be gathered from the said circumstances. In view of that, the application deserves to be rejected.

6. After hearing both sides and on perusal of the investigation papers, it reveals that deceased was assaulted by the present applicant under the influence of liquor, and the eye witnesses to the incident have disclosed the same. As far as compliance of Section 47 of BNSS (Section 50 of the Cr.P.C.) is concerned, the communication which was addressed and given to the present applicant shows that grounds of arrest are informed to him as well as the

intimation is also given to the relatives of the present applicant as to his arrest.

7. Now, the another ground raised in the application is that there is non-compliance of Section 47 of the BNSS and Article 22 (1) of the Constitution.

8. 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 Sub-Section 35(1)(b) of the BNSS Act are satisfied.

9. 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.”

10. This 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.

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

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

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

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

12. 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.

13. Learned counsel for the applicant vehemently submitted that there is non-compliance of Section 47 as well as Article 22 of the Constitution and, therefore, arrest of the applicant is invalid. Whereas, the prosecution placed reliance on the communication issued under Section 47-A as well as the arrest memo. Wherein also it is mentioned that, the grounds of arrest are supplied to the present applicant.

14. Learned counsel for the applicant placed his reliance on the decision in the case of *Prabir Purkayastha vs. State (NCT of Delhi)* *supra* 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 detenu in writing and in a language which he understands is imperative and essential to provide an opportunity to detenu 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.

15. 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.....”

16. 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.

17. 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.

18. 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.

19. In paragraph No.48 in the decision in the case ***Prabir Purkayastha vs. State (NCT of Delhi)*** *supra* wherein 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.

20. The Hon'ble Apex Court in the case of ***Vihan 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 reported in (1981) 2 SCC 427***. Thus 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.

21. 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.

22. Thus, 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 ground 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.

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

24. 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."

25. 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**, *supra* 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 PMLA 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 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.

26. The Hon’ble Apex Court in **Ram Kishor Arora** *supra* in paragraph No.22 further observed that **Vijay Madanlal Choudhary** *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.

27. 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.

28. In the light of the above observations, if the facts of the present case are taken into consideration, notice given under Section 47-A of the BNSS in the present applicant discloses the name of the police station, crime number and other details. The arrest panchanama also shows that he was informed about his grounds of arrest and

his legal rights before the arrest and at the time of arrest. Thus, the above said compliance is sufficient compliance.

29. In view of the requirement of informing the person arrested, the investigating officer has complied with the same, and in view of that, grounds raised in the application are not available to the present applicant.

In this view of the matter, the ground of non-compliance of Section 47 of the BNSS and Article 22(1) of the Constitution is not available to the present applicant, and, therefore, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

Criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]