



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

CRIMINAL WRIT PETITION NO. 892 OF 2024

Sangeeta Parth Patel alias Sangeeta Shivaji Gamit

Vs.

State of Maharashtra, Thru. PSO. Buldhana Cyber P.S. District – Buldhana and anr.

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

Court's or Judge's Orders.

Mr. Vikas Tiwari, Advocate a/w Mr. V.D. Ruparelia and
Mr. Bhavin Suchak, Advocate for petitioner.
Ms. Kavita Bhondge, APP for respondent Nos.1 & 2.

**CORAM : NITIN W. SAMBRE AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 23.04.2025.

Heard.

2. The prayer of the petitioner is as under :

“(a) That this Hon’ble Court be pleased to call for records and proceedings of the C.R. No.57/2024 dated 10.10.2024 registered with Cyber Police Station, Buldhana from the Ld. Magistrate at Chikhali, Buldhana and declare the arrest of the detenu as illegal and gross violation of the fundamental rights of the detenu guaranteed under 21 and 22 in relation to C.R. No.57/2024 dated 10.10.2024 registered with Cyber Police Station, Buldhana.

“(b) That this Hon’ble Court be pleased to declare and set-remand order dated 25.10.2024 passed by

the Ld. Magistrate at Chikhali, Buldhana, null and void and further all the subsequent remands as the same being passed in complete violation of all the constitutional mandates i.e. failure to comply with Section 41A and 50 of the Code of Criminal Procedure being violative of the fundamental rights of the detenu guaranteed under the Constitution of India.

(c) That pending the final hearing and disposal of the petition, this Hon'ble Court be pleased to direct the release of the detenu on regular bail in C.R. No.57/2024 dated 10.10.2024 registered with Cyber Police Station, Buldhana.

(d) That this Hon'ble Court be pleased to issue writ of habeas corpus granting interim bail to the petitioner pending the final hearing of the writ petition.

(e) Interim and/or ad-interim reliefs in terms of prayer clause (c) & (d) above be granted.

(f) Cost of the petition and compensatory cost of Rupees One Crore be awarded to the detenu by saddling the same upon the respondents.

(g) To order for such further and other reliefs orders and directives as the nature and circumstances of the case may require or justify or as this Honorable Court may deem fit and proper in the aforesaid facts and circumstances of the case."

3. The facts necessary for deciding the petition are as under :

4. Against the husband of the petitioner (herein after referred to as 'detenu'), Crime No.57/2024 came to be registered on 10.10.2024 for offences punishable under Section 66(D) of the Information and Technology Act, 2000 and under Sections 420 so also 406 of the Indian Penal Code. The allegations of criminal breach of trust and cheating are based on acceptance of the amount from the complainant under the false promise of employment given by the detenu.

5. We are informed that the detenu is already charge-sheeted and in view of no objection extended by the complainant, the detenu has agitated his claim for regular bail and the complainant has already extended no objection for grant of bail to the detenu/husband of the petitioner who is an accused. However, the bail of detenu is already rejected.

6. In support of the prayer clause for release, the learned counsel for the petitioner has invited our attention to the mandate provided under Article 22(5) of the Constitution of India read with Section 50 of the Criminal Procedure Code so as to claim that it is mandatory for the arresting authority to communicate the grounds for arrest. According to

him, the failure to communicate the grounds of arrest to the detenu not only results in the detention being illegal but also entitles the detenu to bail on the ground of non-compliance of the constitutional and statutory mandate referred above.

7. So as to substantiate the aforesaid contention, the learned counsel for the petitioner has drawn support from the judgment of the Hon'ble Apex Court in the matter of *Vihaan Kumar Vs. State of Haryana and Ors., reported in MANU/SC/0161/2025* so as to assert that it is mandatory to follow the statutory provision viz. Section 50 of the Code of Criminal Procedure and the constitutional rights guaranteed under Article 22(5) of the Constitution of India.

8. According to the learned counsel for the petitioner, on the same ground this Court has also allowed the Criminal Writ Petition No.3604/2024 decided on 25.10.2024 in the matter of *Bharat Pukhraj Chaudhary Vs. The State of Maharashtra and Others* while sitting at the Principal Seat.

9. As against above, the learned Assistant Government Pleader would urge that the petitioner is not entitled to be released as the first part of the

provisions of Section 50 of the Cr.P.C. is already complied with as the intimation of arrest and the details of the crime in which the petitioner is arrested is already communicated. The word “or” referred in Section 50 of the Code of Criminal Procedure cannot be read as “and” and thereby interpreting that it is mandatory to communicate the grounds of arrest and as such, the detention cannot be said to be rendering illegal. It is further claimed that considering strong *prima facie* evidence available against the detenu who has accepted the amount in his bank account, the petitioner’s petition is liable to be rejected as this Court should be slow in exercising the extra-ordinary jurisdiction guaranteed under Article 226 of the Constitution of India, particularly, when the detenu *prima facie* has a criminal conduct.

10. We have considered the rival claims.

11. A categorical statement is made by the learned counsel appearing for the petitioner that an amount of Rs.2,10,000/- is already returned to the complainant which has led to the complainant extending no objection for the release of the detenu or for being admitted to regular bail in the offences in question. According to him, so as to demonstrate

bonafides, the father of the detenu has furnished an affidavit, which is taken on record stating that forthwith cash amount of Rs.1,00,000/- shall be deposited in this Court and the balance amount shall be deposited with the Investigating Officer within a period of one month from today, in case if the detenu is released on bail.

12. The affidavit is duly sworn by the father of the detenu namely Hemant Shankarbhai Patel, aged 61 years, resident of Mumbai and the same is treated as an undertaking to this Court.

13. The fact remains that though under Section 41 of the Code of Criminal Procedure an intimation is given to the wife i.e. present petitioner about the arrest of the detenu, the fact remains that there is not an *iota* of evidence or any form of communication issued by the Investigating Officer or any such Officer thereby intimating the grounds of arrest as contemplated under Section 50 of the Code of Criminal Procedure which has been communicated to the detenu who happens to be the husband of the petitioner. Such communication of grounds of arrest is already held to be mandatory and non-compliance thereof results into the arrest/detention being rendered illegal.

14. The aforesaid contentions are duly endorsed by the authoritative pronouncement of the Apex Court in the matter of Vihaan Kumar (*supra*) and an identical view is already taken by this Court in the matter of *Bharat Pukhraj Chaudhary (supra)* which is also referred to herein above.

15. As a sequel of above, since the mandate provided under Section 50 of the Code of Criminal Procedure is not followed by the Investigating Officer, it has to be held that such conduct of the respondent-Investigating Officer is contrary to the constitutional mandate provided under Article 22(5), which violates the fundamental rights of the detenu. Such conduct of the respondent of non-communication of grounds of arrest will lead to the arrest of the detenu viz. the husband of the petitioner being rendered illegal.

16. We are sensitive to the submissions made by the learned counsel for the petitioner, wherein an affidavit duly sworn by the father of the detenu namely Hemant Shankarbhai Patel is placed on record and the same is accepted as an undertaking to this Court. As such, by accepting the said affidavit as an undertaking we permit the father of the petitioner, who is physically present in the

Court to deposit an amount of Rs.1,00,000/-(in cash) as has been undertaken by him today itself with the Registrar (Judicial) of this Court who in turn shall transfer the same to the Investigating Officer. The learned Assistant Government Pleader assures that the Investigating Officer shall attend the office of the Registrar (Judicial) of this Court in the next week i.e. week commencing from 28.04.2025 for the purpose of taking custody of the said amount. We, further accept the undertaking given by the father of the detenu namely Hemant referred above that the balance amount shall be deposited with the Investigating Officer within a period of one month from today.

17. For the reasons recorded herein, we deem it appropriate to declare that for non-communication of grounds of arrest to the detenu i.e. accused in Crime No.57 of 2024 and his blood relation as provided under Section 50 of the Code of Criminal Procedure, the petitioner/detenu namely accused Parth s/o Hemant Patel in Crime No.57 of 2024 is entitled to be released on bail. The said detenu/accused be admitted to bail on such terms and conditions, which shall be fixed by the learned trial Court.

18. The petition, accordingly, stands allowed in above terms.

(Mrs. Vrushali V. Joshi, J.)

(Nitin W. Sambre, J.)