



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

CRIMINAL APPEAL NO. 761 OF 2024

APPELLANT

Tirupati Vilas Podalwar

ACCUSED NO.2.

Aged about 24 years, Occupation: Labour
Work, R/o At Village Nagulwahi,
Tahsil – Mulchera, District Gadchiroli.

-VERSUS-

RESPONDENTS

COMPLAINANTS

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Ballarpur,
District Chandrapur.
2. XYZ (Crime No. 659/2023)
Through Police Station Officer,
Police Station, Ballarpur, District
Chandrapur.

Mr. Sunil Kulkarni, counsel for appellant.
Mr. N.B. Jawade, APP for respondent/State.
Mrs. Shubhada Phaltankar, counsel (appointed) for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE OF RESERVED : 05/08/2025
DATE OF DECISION : 21/08/2025

JUDGMENT :

1. Heard. **Admit.** Heard finally with the consent of learned counsels appearing for the parties.

2. The present appeal is preferred under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order passed by the Special Judge (POCSO), Chandrapur, dated 24/09/2024, rejecting the application of the present appellant for grant of bail.

3. The present appellant came to be arrested on 07/07/2023 in connection with Crime No. 164/2023 registered at Police Station Ballarpur, District Chandrapur for the offences punishable under Sections 323, 376(1), 376(d), 354(d), 363, 506 of the Indian Penal Code, 1860; Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'); and Sections 3(1)(w)(i)(ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act'). The FIR is lodged by the victim girl on an allegation that she was born on 17/09/2025 and was studying in 12th Standard, at the relevant time on 06/07/2023, she, along with her sister and cousin, at about 2.30

p.m., went to Rujara, at the relevant time, the co-accused and two other persons followed them. At the Rajura Bus Stand, the co-accused, along with his two friends, approached her and asked her to come along with him and the present appellant on his motorcycle, and the other person, namely Manoj Madavi, will come along with her sisters. Therefore, she went along with the present appellant and the other co-accused on a motorcycle. They arrived at 6.00 p.m. at Bambani, where she met her sisters also. They have to proceed at Kothari and therefore, they were waiting for Auto and thereafter, the present appellant and other co-accused again came on their motorcycle and present appellant told her that, he will drop her at her house and she can save the fair also. Therefore, she travelled along with the present appellant and the other co-accused on their motorcycle, but they have not taken the motorcycle at village Kothari, but they took her in a forest and subjected her for the forceful sexual assault. On the basis of the said report, police have registered the crime against the present appellant. During investigation, victim was referred for medical examination and injuries are found on her person. Thereafter, the appellant came to be arrested.

4. After the appellant was arrested, he approached the Special Court for grant of bail, but considering the nature of the offence, the Special Court has rejected the application. Hence, this appeal.

5. The present appeal is preferred on the ground that now the investigation is completed and charge-sheet is already filed, and further incarceration of the present appellant is not required. It is further alleged that the entire story narrated by the victim itself is a baseless and false one to implicate the present appellant falsely. The appellant is behind the bar for 16 months, and he cannot be incarcerated for an indefinite period. The trial will take its own time. In view of that, prays for grant of bail.

6. Learned APP strongly opposed the said contention on the ground that a minor victim girl was subjected for the sexual assault by taking her in a forest area. This fact is substantiated by the medical certificate, as injuries are found on her person. No reason came forward before the Court to show that there is any other reason to implicate the present appellant in the alleged offence. Considering the statement of the victim substantiated by the medical certificate, the application deserves to be rejected.

7. In support of the contention, learned counsel for the appellant has also filed a written submission on record, and for the first time in a written submission, it is submitted that the grounds of arrest are not communicated to the present appellant, and on that ground, he is entitled to be released on bail.

8. After hearing both sides and on perusal of the investigation papers, it reveals that a minor victim girl aged about 17 years was taken by the present appellant of the other co-accused and subjected for the forceful sexual assault. It is further alleged that the co-accused has also obtained the video shooting of the alleged incident. After registration of the crime, the victim was referred for medical examination. During her medical examination, she has narrated the history to the medical officer in a similar manner. Two injuries in the nature of abrasion are found on her right knee, which were irregular and reddish brown in colour. On internal examination, the bleeding was found present, and the hymen was also found torn fresh. Thus, the contention of the victim that she was subjected for the forceful sexual assault is substantiated by the medical evidence. During the investigation, the clothes of the victim were also seized, wherein the stains of

mud and one red coloured spot were also found. The police seized the same and forwarded it to the Chemical Analyzer. The chemical analyzer reports are yet to be received. During the spot panchanama, one broken button was found at the spot of incidence. When the clothes of the present appellant were seized, it was found that one shirt button was missing, which matches with the button that was found at the spot of the incident. The mobile phone of the present appellant and other co-accused was also seized, and during mobile verification panchanama, some obscene videos were seen in the memory card of the said mobile phone. Thus, as far as the allegation levelled by the victim is concerned, it is not only supported by the statement but also by the medical evidence, as well as the circumstantial evidence in the nature of the finding of the broken button, which is matching with the button of the shirt of the present appellant, the obscene video in the mobile phone of the co-accused, and the injury certificate in which the fresh injuries are found on the person of the victim. Thus, as far as the merit of the matter is concerned, which is substantiated by the circumstantial evidence against the present appellant.

9. Coming to the ground raised for the first time during the submission, the grounds of arrest are not communicated to the present appellant. In view of the directions issued by the Hon'ble Apex Court, a register is maintained in every police station, and the extract of the register was placed before the Court, showing that the relatives of the appellant are informed. The station diary entry No. 82 dated 07/07/2023, records that the appellant was taken into custody, his personal search was carried out, he was medically examined, his brother-in-law was informed about his arrest by written notice, and the entry was taken in the concerned register.

10. The learned counsel for the appellant placed reliance in the case of *Pankaj Bansal Vs Union of India and others*¹ and *Vihaan Kumar vs The State Of Haryana*² and submitted that in *Pankaj Bansal* (supra) issue before the Hon'ble Apex Court was whether Section 19 of PMLA Act and 50 of Cr.P.C. arrest/ summoning by ED arbitrary and it was held by the Hon'ble Apex Court that the language of Section 19 Prevention of Money Laundering Act, 2002 (PMLA Act) puts it beyond doubt that the

1.(2024) 7 SCC 576

2. (2025) 5 SCC 799

authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the PMLA Act. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession. It is also observed that Section 19 does not specific in clear terms as to how the arrested person is to be informed of the grounds of arrest and the aspect has not been dealt with or delineated in *Vijay Mandanlal Chaudhary Vs Union of India*³. Similarly in *V. Senthil Balaji v. State*⁴, this Court merely noted that the information of grounds of the arrest should be served on the arrest, but did not elaborated on that issue. Pertinent to note the grounds of arrest were furnished in writing to the arrested person in that case.

11. The grounds raised in the application is there is non-compliance of Section 50-(1) and Article 22(1) of the Constitution. The 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

3.(2023) 12 SCC 1

4 (2024) 3 SCC 51

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.”

12. 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.

13. Section 50 of the Code of Criminal Procedure (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.

14. In the case of *Prabir Purkayastha Vs State of (NCT of Delhi)*⁵, wherein held that provisions of Article 22(1) have already been interpreted by this Court in *Pankaj Bansal* referred (supra), laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the arrested person 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.

15. In paragraph No.48 in the decision in the case *Prabir Purkayastha* (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

5 (2024) 8 SCC 254

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 the person to be accused and cannot be equated with the reasons for arrest which are general in nature.

16. The Hon’ble Apex Court in the case of ***Vihan Kumar Vs State of Haryana and Anr.***⁶ 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***

⁶ (2025) 5 SCC 799.

Jogobhai Patel Vs Uniono of India and Ors.,⁷. Wherein 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

7 (1981) 2 SCC 427.

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.

17. In para-14, it is further held, thus the requirement of informing the person arrested of the grounds of the 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 21, 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 21, 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 charge-sheet 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.

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

19. Admittedly, in the present appeal memo, there is no pleading as to the non-compliance of Section 50 as well as Article 22(1) of the Constitution of India.

20. In the ***State of Karnataka Vs Sri Darshan Etc,***

in Criminal Appeal Nos. 3528-3534 of 2025 (Arising from SLP (Crl.) Nos. 516-522 of 2025) decided on 14/08/2025, wherein also, this aspect was considered and it is held that the constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest – but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.

21. By referring the decision in *Vihan Kumar* referred (supra) and *Kasireddy Upender Reddy v. State of Andhra Pradesh*⁸ it was observed that when arrest is made pursuant a warrant, reading of the warrant amounts to sufficient compliance. Both these post- *Pankaj Bansal* decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances. While concluding this issue, the Hon'ble Apex Court held that arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding

of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on *Pankaj Bansal* and *Prabir Purkayastha* is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail.

22. Here in the present case also, it is not demonstrated that how the prejudice is caused to the accused due to the non-supply of the grounds of arrest. It further reveals that the appellant was legally represented and applied for bail after arrest, which shows that he was aware about the grounds of arrest and no material was placed on record to establish that any prejudice was caused due to the alleged procedural lapses.

23. Learned counsel for the appellant placed reliance on the case of ***Pankaj Bansal*** (supra), wherein the challenge was to the orders dated 20/07/2023 and 26/07/2023 passed by the Division Bench of the Punjab and Haryana High Court dismissing the Criminal Writ Petition No. 14536 of 2023 filed by Pankaj Bansal and Criminal Writ Petition No. 14539 of 2023 filed by the father, Vasant Bansal. In the said writ petitions, the arrest without communicating the grounds itself was challenged. Thus, it was the specific case of the father and son in the writ petition before the High Court that their arrest under the provisions of the PMLA Act was a wanton abuse of power/authority and an abuse of process by the ED, apart from being blatantly illegal and unconstitutional. They also asserted that the ED acted in violation of the safeguards provided in Section 19 of the PMLA Act.

24. In the case of ***Vihan Kumar*** (supra), the challenge was also based on the failure to communicate the grounds of arrest to the appellant. Admittedly, in the present case, the appellant has not raised any ground as to the non-communication of grounds of arrest to him, either at the time of his first remand, or at the time of filing of the application for grant of bail, or while preferring the

appeal. Subsequently, during the submission, that ground was raised. Moreover, the issue regarding whether 'Pankaj Bansal' can apply retrospectively is now referred in the case of Mihir Shaha to the larger bench, and now the issue is pending before the Hon'ble Apex Court.

25. In view of the above discussions, as there was no pleading from the date of arrest till making the final submissions in the present appeal as to the non-compliance of Section 50 or Article 22(1) of the constitution, and the issue is already pending before the Hon'ble Apex Court, at this stage, I am not inclined to accept the said submissions.

Considering the gravity of the offence, it is evident that the victim was not only subjected for sexual assault, but the appellant, along with other co-accused, also recorded a video of the said incident. The prima-facie case is made out, and therefore, the appeal deserves to be dismissed. In view of that, I proceed to pass the following order.

- a] The criminal appeal is hereby **dismissed**.
- b] The fees of the appointed counsel be quantified as per Rule.

[URMILA JOSHI-PHALKE, J.]