



2025:DHC:672



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*** IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 4th February, 2025**

+ CRL.M.C. 4391/2024 & CRL.M.A. 19329/2024
MARFING TAMANG @ MAAINA TAMANGPetitioner
Through: Mr. Adit S. Pujari and Ms. Shaurya
Mittal, Advocates.
versus
STATE (NCT OF DELHI)Respondent
Through: Mr. Utkarsh, APP for the State.
SI Virender and SI Devi Prasad, P.S.:
Kamla Market.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**J U D G M E N T****ANUP JAIRAM BHAMBHANI J.**

This case concerns an analysis of the precise definition of the word “*forthwith*” as used in section 50 of the Code of Criminal Procedure Code, 1973 (‘Cr.P.C.’) and the scope of the legal obligation it imposes on the State to supply the ‘grounds of arrest’ to an arrestee.

2. By way of the present petition filed under section 482 Cr.P.C., the petitioner impugns order dated 18.05.2024 passed by the learned Metropolitan Magistrate, Tis Hazari District Courts, Delhi whereby the learned Magistrate remanded the petitioner to police custody for 02 days in case FIR No. 157/2024 dated 17.05.2024 registered under sections 342/344/365/368/370/370(A)/372/373/376/120B/34 of the Indian Penal Code, 1860 (‘IPC’) and sections 3/4/5/6 of the Immoral

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Traffic (Prevention) Act 1956 ('ITP Act') at P.S.: Kamla Market, Delhi.

FACTUAL BACKGROUND

3. Briefly, the allegation against the petitioner is that he was the 'Manager' of an establishment which was *inter alia* engaged in the sexual abuse and exploitation of victims and was living-off the gains of such activity, based on which allegation the subject FIR came to be registered against the petitioner.
4. Subsequently, the Investigating Officer ('I.O.') moved an application seeking the petitioner's custody; and *vide* order dated 18.05.2024 passed by the learned Magistrate, the petitioner was remanded to police custody for 02 days. The petitioner was thereafter remanded to judicial custody for 14 days *vide* order dated 20.05.2024 passed by the learned Magistrate.
5. Pursuant to notice being issued on the present petition on 28.05.2024, the State has filed Status Report dated 08.06.2024 in the matter.

PETITIONER'S SUBMISSIONS

6. Mr. Adit S. Pujari, learned counsel appearing on behalf of the petitioner, has premised his challenge to the impugned order on the following 03 principal grounds :
 - 6.1 *Firstly*, it is contended that admittedly the grounds of arrest were never communicated to the petitioner *until after* the filing of the remand application by the I.O. before the learned Magistrate; and that therefore, the petitioner's arrest and remand were both illegal in light of the rulings of Co-ordinate



Benches of this court in *Pranav Kuckreja vs. State (NCT of Delhi)*¹ and *Kshitij Ghildiyal vs. Director General of GST Intelligence, Delhi*;²

6.2 *Secondly*, it is submitted that in any case the petitioner was not produced before the learned Magistrate within 24 hours of his arrest, and the petitioner must be taken to have been arrested *at 11:30 a.m. on 17.05.2024* when he was *detained* at P.S.: Kamla Market, Delhi by the I.O.; and

6.3 *Lastly*, it is argued that the grounds of arrest mentioned in the remand application filed by the I.O. before the learned Magistrate are *completely different* from the grounds of arrest purportedly served on the petitioner during the course of the remand hearing; and this distinction vitiates the requirement of serving the grounds of arrest on the arrestee.

7. Elaborating on the aforesaid grounds, Mr. Pujari has drawn the attention of this court to the decision of a Co-ordinate Bench in *Pranav Kuckreja* (supra), to argue that the Co-ordinate Bench has held that the word “*forthwith*” appearing in section 50 Cr.P.C. implies that the grounds of arrest have to be communicated to an arrestee *at the time of his arrest* (and not later).

8. It is further argued that the decision of the Supreme Court in *Ram Kishor Arora vs. Directorate of Enforcement*³ was rendered in the

¹ 2024 SCC OnLine Del 9549

² 2024 SCC OnLine Del 8949

³ (2024) 7 SCC 599



context of section 19 of the Prevention of Money-Laundering Act, 2002 ('PMLA'), and it is arising from the text of section 19 of the PMLA that the Supreme Court has held that the said provision requires that the grounds for arrest have to be supplied "*as soon as may be*"; however the phrasing of section 50 Cr.P.C. requires that the grounds of arrest be communicated to an arrestee "*forthwith*". It is accordingly argued that *Ram Kishor Arora* (supra) has no application to an arrest made under section 50 Cr.P.C.; and it is the decisions of the Co-ordinate Benches of this court in *Pranav Kuckreja* (supra) and *Kshitij Ghildiyal* (supra) which address the issue, which judgments proceed on the law laid down by the Supreme Court in ***Prabir Purkayastha vs. State (NCT of Delhi)***.⁴

9. In support of his submissions, Mr. Pujari has drawn attention to the following paras of *Pranav Kuckreja* (supra) :

"9. The short question involved in the present case is whether the grounds for the petitioner's arrest were duly communicated in compliance with Section 50 of the Cr.P.C. and the Supreme Court's judgment in Prabir Purkayastha (supra).

"12. Section 50 of the Cr.P.C. provides as under;

"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.*⁵

⁴ (2024) 8 SCC 254

⁵ *Underscoring in extraction*



(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.”

“13. The bare perusal of it makes it clear that the law mandates the police officer to inform the arrested individual of the full particulars of the offence or the grounds for arrest. The requirement to convey these details is not a mere formality but a fundamental safeguard to uphold the individual's right to liberty under the Constitution of India. The Courts have time and again deprecated the practice of filling up columns in proforma indicating the formal “reasons” for which the accused was being arrested. It is also pertinent to note that Section 50 Cr.P.C. uses the word “forthwith.” which implies that “grounds for such arrest” have to be communicated at the time of the arrest. This requirement is designed to ensure that the arrested individual is promptly made aware of the reasons for their detention, thereby safeguarding their legal rights.

“14. There are numerous instances where arrested persons alleged serious violation of procedures enshrined in the Cr.P.C. (new BNSS, 2023) and the Courts have to carefully examine the same. It is relevant to note that the constitutional safeguards are incorporated in the procedural law as procedural safeguards and the Court have to be very careful and must keep in mind the constitutional frame work. It is pertinent to note that in the criminal trial, an individual is pitted against the might of the State and thus the Court have to interpret such provisions in the perspective of personal liberty enshrined in part-III of the Constitution.

“20. It is a settled proposition that the absence of specific grounds of arrest violates statutory and constitutional rights under Section 50 of Cr.P.C. and Article 22(1) of the Constitution. Any person has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of



course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Reliance may be placed upon Pankaj Bansal v. Union of India (2023 SCC OnLine 1244)

“24. It is no longer res integra that grounds of arrest must be communicated in writing to the arrested individual expeditiously. Providing the grounds of arrest to the person being arrested is of utmost sanctity and significance. This information serves as the fundamental basis for the arrested individual to seek legal advice, challenge the remand, and apply for bail.

“25. In the context of present case, it is pertinent to mention that Section 50 Cr. P.C. uses the word “forthwith”. The dictionary meaning of the word “forthwith” as defined in the Shorter Oxford English dictionary on historical principles, fifth edition, volume - 01 A-M is (1) Along with, at the same time; and (2) Immediately, at one, without delay.

“26. The term ‘forthwith’ in legal parlance also generally implies an action that must be taken without unreasonable delay. It suggests promptness and urgency. The expression ‘forthwith’ has also been defined in Black’s Law Dictionary, 10th Edition as “forthwith, adv. (14c) 1. Immediately; without delay. 2. Directly; promptly; within a reasonable time under the circumstances; with all convenient dispatch”. This implies that the “grounds for such arrest” have to be communicated at the earliest. Reading this otherwise may not justify the requirement of Section 50 Cr.P.C.

“27. The Courts, while examining the implementation of procedural safeguards emanating out of the constitutional rights, have to give strict interpretation. Thus, there is no doubt in the mind of this Court that the “grounds of arrest” in compliance of Section 50 Cr.P.C. has to be supplied “forthwith” as discussed above.

“30. The Court considers that the arrest of the present petitioner in case FIR No.4/2023 dated 12.01.2023 registered under



Sections 498A/406/328/376/109/34 IPC at PS Tuglak Road is illegal and is required to be set aside. Let the petitioner be released forthwith if not required in any other case on furnishing a bail bond of Rs.50,000/- with two sureties of the like amount subject to the conditions to be imposed by the learned Trial Court.”

10. Furthermore, it has been argued that the petitioner’s arrest and remand in the present case is also in the teeth of the view taken by another Co-ordinate Bench in *Kshitij Ghildiyal* (supra) which was a case under the Central Goods and Services Tax Act, 2017 (‘CGST Act’), and in which the court has held that furnishing the grounds of arrest to an arrestee *at the time of filing of the remand application* is only *subsequent* to the arrest and is therefore not sufficient compliance of the requirements of section 50 Cr.P.C. In this behalf, attention of the court has been drawn to the following extracts of *Kshitij Ghildiyal* (supra) :

“33. It is evident from the principles as enunciated by the Supreme Court that the requirement to communicate the grounds of arrest in writing is sacrosanct. It was further stated that a copy of such written grounds was to be furnished to the arrestee as a matter of course, without exception, and at the earliest.

“35. Applying these to the facts of the case, it is quite clear, as noted above, that grounds of arrest were not available in writing, were not furnished at the time of arrest to the arrestee, nor at the stage of furnishing the remand application.

“36. The argument offered by respondent agency, that remand application itself subsumed the grounds of arrest, is only a post-facto interpretation/explanation, and in the opinion of the Court, is unmerited.



“38. Despite such categorical enunciations by the Supreme Court, there is no explanation offered by the respondent agency as to why they chose to omit compliance of this essential requirement. To contend that arrestee had been “effectively”⁶ informed about the grounds of arrest, which would be enough for the arrestee to formulate their arguments during the remand, is a specious argument.

“40. A constitutional mandate must be understood and implemented in its right and rational perspective, and not cursorily and casually. Even if assuming, in favour of the prosecution, that the narrative in the remand application amounted to grounds of arrest⁷, furnishing the said application just before the remand hearing would effectively negate and nullify the duty to inform meaningfully⁸ and at the earliest.”

11. In this legal backdrop, it is the petitioner’s argument that a perusal of the arrest memo would show that the arrest memo is completely silent about, and contains no reference to, the grounds of arrest. This submission is borne-out on a perusal of the arrest memo, which has been shown to the court from the police file.
12. It is further the argument of the petitioner, that a reading of Status Report dated 08.06.2024 would show that the petitioner, alongwith other co-accused persons, was called to the police station where he reached at around 11:30 a.m. on 17.05.2024,⁹ but he was produced before the learned Magistrate only at around 4:00 p.m. on 18.05.2024 as recorded in the impugned order.

⁶ Word ‘*effectively*’ italicised in original

⁷ Words ‘*grounds of arrest*’ italicised in original

⁸ Word ‘*meaningfully*’ italicised in original

⁹ Para 3 of Status Report dated 08.06.2024



13. Furthermore Mr. Pujari points-out, that the observations of the learned Magistrate in remand order dated 18.05.2024 are also relevant in the above respect, which order reads as follows:

“IO moved an application seeking PC remand of accused for two days. Case diaries perused.

It is submitted by the IO that the accused has been arrested in this case. IO further submits that arrest of the accused was necessary for proper investigation of this case. It is further submitted by the IO that information regarding arrest of accused has been given to his wife. IO submits that co-accused is yet to be arrested from Nepal and Dehradun, hence, PC remand of the accused is necessary.

Upon enquiry, IO has submitted that he had orally communicated the grounds of arrest to the accused at the time of his arrest. Grounds of arrest of the accused communicated to the accused in writing through his legal counsel by the IO at 4.40 pm. The acknowledgment has been taken on the grounds of arrest supplied to the accused.

Ld. Counsel for accused submits that he has objection to PC remand of the accused stating that accused was illegally arrested and was not communicated the written grounds of his arrest in time. Ld. Counsel has placed reliance on the judgement of Hon'ble Supreme Court titled Prabir Purkayastha Vs. State NCT Delhi D No. 42896 of 2023 wherein it was held by the Hon'ble Supreme Court, the grounds of arrest must be supplied in writing so that he can ensure his legal representation and object the remand.

Arrest memo perused. Reasons of arrest have been duly mentioned. Accused has been arrested at 6.30 pm on 17.05.2024.

MLC perused. No fresh external injury is seen.

Record perused.

Heard. Case diary perused.

In the judgment of Prabir Purkayastha Vs. State NCT Delhi, the case of the accused was that the remand order was passed at 6.30 am and the order was communicated to his counsel at 7.07 am, hence, the order was passed without supplying the copy of grounds



of arrest to the accused or his Advocate. Hon'ble Supreme Court has also cited the judgment titled as Pankaj Bansal Vs. Union of India and Others, 2023 SCC Online 1244, according to which the mode of conveying information of grounds of arrest must be meaningful. The purpose behind the same is to apprise the arrested person as to why he was arrested so as to enable the person to seek a legal counsel who can present his case before the court and oppose his remand. In the present case, the IO had orally informed the grounds of arrest at the time of his arrest. The accused had adequately ensured his legal representation since his counsel had opposed his remand by filing of appropriate application.

Moreover, the written grounds of arrest were also communicated to the accused and his counsel at 4.40 pm i.e., within 24 hours of arrest. This remand order is being passed at 5.30 pm, after giving adequate opportunity to the counsel for accused to present his case. The allegations against the accused are serious in nature. He has been accused u/s 342/344/368/370/370A/372/373/376/120B/34 IPC and 3/4/5/6 ITP Act. As per the disclosure statement and grounds of PC cited by the IO, it is necessary to remand the accused for two days so that co-accused persons Maya and Meena can be arrested from Nepal and Dehradun respectively.

In order to ensure fair investigation and for arresting of co-accused persons, sufficiency of grounds is being made out for granting PC remand of accused for two days. Accordingly, accused is remanded to two days PC. Medical examination be done as per rules, to be conducted after every 24 hours. All the guidelines of Hon'ble Apex Court and Hon'ble High Court of Delhi be complied with.

Accused be produced on 20.05.2024.

Copy of FIR be provided to the accused.

Copy of the order be given dasti to the IO as well as counsel for accused.”

(emphasis supplied)

14. It is submitted however, that what is recorded in the impugned order, namely that the petitioner was arrested at 06:30 p.m. on 17.05.2024 is



clearly incorrect and contrary to what the I.O. has admitted in the status report filed in the matter, where the I.O. expressly says that on the instructions of the police officials, the petitioner had reached the police station *at about 11:30 a.m. on 17.05.2024*.

15. Upon being queried as to how the fact that the petitioner had reached the police station at around 11:30 a.m. on 17.05.2024 amounts to the petitioner *having been put under arrest at that time*, Mr. Pujari argues, that a perusal of the status report would further show that once the petitioner reached the police station, alongwith 03 co-accused persons at about 11:30 a.m., *he was not allowed to leave the police station*; and the petitioner therefore *stood deprived of his liberty* from the time he reached the police station at around 11:30 a.m. on 17.05.2024.
16. Mr. Pujari has clarified, that as a matter of fact, regardless of what has come to be stated in para 3 of the status report, the petitioner alongwith the co-accused persons *were escorted* to the police station and not merely “*asked to come to the Police Station*”.
17. Furthermore, Mr. Pujari has also argued that a perusal of the remand application dated 17.05.2024 filed by the I.O., which claims to set-out the grounds of arrest, would show that the grounds of arrest purportedly contained in that application *are different* from the grounds purported to have been served upon the petitioner during the course of the hearing on the remand application on 18.05.2024. A copy of the grounds of arrest served upon the petitioner during the remand application hearing has been appended to the petition.



Learned counsel submits, that such discrepancy vitiates the sanctity of the grounds of arrest.

18. Mr. Pujari also submits, that the grounds of arrest mentioned in the remand application do not specify the exact offences alleged against the petitioner, which is also a requirement of section 50 Cr.P.C.
19. In the circumstances, it is argued that the petitioner's arrest and remand are both illegal; and the petitioner deserves to be released from custody *forthwith*.

STATE'S SUBMISSIONS

20. Arguing on behalf of the State, Mr. Utkarsh, learned APP appearing on behalf of the State has sought to draw a distinction between the terms *detention* and *arrest*, submitting that '*detention*' of a person is not the same as '*arrest*' since arrest means formally taking a person into custody. Learned APP submits, that in the present case, once the petitioner reached the police station at around 11:30 a.m. on 17.05.2024, he was questioned and remained within the police station in the sense of *being bound-down or detained* but he was not *arrested* till 6:30 p.m.
21. Learned APP submits, that the petitioner was arrested once the I.O. was satisfied that there was sufficient material on record to arrest him *i.e.*, after the statement of the victim was recorded under section 164 Cr.P.C. and the victim had identified the petitioner as the 'Manager' of the establishment which was engaging in activities punishable *inter alia* under the ITP Act. Accordingly, Mr. Utkarsh has argued, that it was subsequent to the petitioner being identified by the victim that the



petitioner was arrested; Arrest Memo dated 17.05.2024 was drawn-up, which clearly recorded the date and time of arrest as 17.05.2024 at 06:30 p.m.; and thereafter, in compliance of the provisions of section 57 Cr.P.C., the petitioner was produced before the learned Magistrate within 24 hours of his arrest. Thereafter, the learned Magistrate considered the I.O.'s remand application and passed the impugned order at 05:30 p.m. on 18.05.2024.

22. Furthermore, to rebut the contention that the petitioner was not served with the grounds of arrest '*forthwith*' as required under section 50 Cr.P.C., it is argued on behalf of the State, that the grounds of arrest were duly served upon the petitioner at 04:40 p.m. on 18.05.2024 *through his counsel*, in witness whereof counsel signed the document containing the grounds of arrest, on which counsel also noted the time and date on which he received the grounds of arrest against his signature, viz. 04:40 p.m. on 18.05.2024. Learned APP submits, that this position has also been admitted by the petitioner in ground (F) of the present petition.
23. Responding to the argument that the word '*forthwith*' appearing in section 50 Cr.P.C. has been interpreted by a Co-ordinate Bench of this court in *Pranav Kuckreja* (supra) to mean "*immediately, at one, without delay*"; and that in legal parlance, this must be taken to mean without unreasonable delay, learned APP seeks to distinguish the judgment in *Pranav Kuckreja* (supra) by pointing-out that in the said



case the grounds of arrest were *never communicated* to the arrestee, neither before nor alongwith the remand application.¹⁰

24. Learned APP argues that the decision of the Supreme Court in *Ram Kishor Arora* (supra) applies to the present case, inasmuch as that judgment is premised on the fundamental right of a detainee or arrestee as embedded in Article 22(1) of the Constitution of India; and it is in that context that in *Ram Kishor Arora* (supra) the Supreme Court has interpreted the phrase “*as soon as may be*” appearing in section 19 PMLA to mean “*as early as possible without avoidable delay*” or “*within reasonably convenient*” or “*reasonably requisite*” period of time. It is pointed-out that in *Ram Kishor Arora* (supra) the Supreme Court has further elaborated that since a person is to be produced before the court within 24 hours of his arrest, the reasonably convenient or reasonably requisite time to inform the arrestee of the grounds of arrest *would be within 24 hours of arrest*.
25. Furthermore, Mr. Utkarsh has sought to refute the contention raised on behalf of the petitioner as regards the discrepancy in the grounds of arrest supplied to the petitioner and those mentioned in the remand application, by submitting that there is no legal obligation that the grounds of arrest must be specifically set-out in a remand application. It is submitted that the law permits that the grounds of arrest *maybe* detailed in a remand application which is served upon an accused; however, there is no mandatory requirement that every remand application must contain the grounds of arrest. It is accordingly

¹⁰ Para 28 of *Pranav Kuckreja* (supra)



submitted that the discrepancy referred to by the petitioner is irrelevant.

PETITIONER'S SUBMISSION IN REJOINDER

26. Rebutting Mr. Utkarsh's contentions, Mr. Pujari points-out that even though the petitioner in *Pranav Kuckreja* (supra) was never served with the grounds of arrest at all, in that judgment, the Co-ordinate Bench has categorically expressed its view as to the requirement of furnishing grounds of arrest '*forthwith*' to an arrestee under section 50 Cr.P.C. In this regard, Mr. Pujari has drawn attention to paras 26 and 27 of *Pranav Kuckreja* (supra) extracted above.
27. In support of the petitioner's case, Mr. Pujari has also cited a judgment of a Co-ordinate Bench of the Bombay High Court in *Ashak Hussain Allah Detha vs. Assistant Collector of Customs (P) Bombay*,¹¹ to submit that the distinction being sought to be drawn by the State between '*detention*' and '*arrest*' of the petitioner is purely facetious. To buttress his submission, learned counsel has relied on the following paragraph of the said judgment of the Bombay High Court :

"9. Admittedly, the applicants were detained without any authority, from the midnight of 20th July 1989 to 5.20 p.m. of 21st July 1989 — for 17 hours. Their arrest has been so recorded that their production before the Magistrate falls within 24 hours stipulated by Article 22(2) of the Constitution of India and section 57 of the Code of Criminal Procedure. The prosecution urges that after the "arrest" they were not detained beyond 24 hours. This submission is a distortion of the true meaning of the constitutional

¹¹ 1990 SCC OnLine Bom 3



guarantee against detention without the sanction of judicial tribunal. They (sic) word “arrest”, has not been defined in the Code of Criminal Procedure or in any other law. The true meaning needs to be understood. The word “arrest” is a term – of art. It starts with the arrester taking a person into his custody by action or words restraining him from moving anywhere beyond the arrester's control and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate is judicial Act. (sic)..... In substance, “arrest” is the restraint on a man's personal liberty by the power or colour of lawful authority. [The Law Lexicon—P. Ramanath Aiyar Reprint Edition 1987, page 85.] In its natural sense also “arrest” means the restraint on or deprivation of one's personal liberty. [The Law Lexicon—T.P. Mukherjee (1989) page 177-178.]”

(emphasis supplied)

28. Mr. Pujari points-out that the question whether a person must be taken to have been ‘arrested’ from the moment his liberty is curtailed, whether or not he is formally under arrest, is also pending consideration before the Supreme Court in ***Directorate of Enforcement vs. Pranav Gupta and Anr.***¹²

ANALYSIS & CONCLUSIONS

29. The requirement of serving upon an arrestee the ‘*grounds of arrest*’ (or *grounds for arrest* as it is alternatively phrased) as distinct from citing the ‘*reasons for arrest*’ for seeking remand has gained much significance in light of the recent decisions of the Supreme Court. In its verdict in *Prabir Purkayastha* (supra), the Supreme Court has

¹² Order dated 18.03.2024 passed in SLP (Crl.) Nos. 3214-3215/2024



drawn a clear distinction between the ‘grounds of arrest’ and ‘reasons for arrest’, observing as follows:

“48. It may be reiterated at the cost of repetition 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.”

(emphasis supplied)

30. An I.O. can therefore no longer treat the matter of serving the grounds of arrest upon an arrestee with any levity. It is in this context that this court has carefully analysed the submissions made on behalf of the petitioner and the State in the present case; and the following position has emerged from the analysis :

30.1 The phrase “grounds for such arrest” appears both in section 50 Cr.P.C. as well as in section 19 of the PMLA. However, there



is a significant difference between the words that precede the phrase “grounds for such arrest” in the said two provisions.

30.2 In section 50 Cr.P.C., the phrase *grounds for such arrest* is preceded by the word “*forthwith*”. The relevant portion of section 50 Cr.P.C. reads as follows :

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.

(emphasis supplied)

30.3 On the other hand, section 19 PMLA qualifies the requirement of informing an accused of the *grounds for such arrest* with the phrase “*as soon as may be*”. The relevant portion of section 19 PMLA has been extracted below:

19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(emphasis supplied)

30.4 In its decision in *Ram Kishor Arora* (supra), the Supreme Court has dealt with phraseology of section 19 PMLA, and in that context, it has been held as under:



“19. In view of the above, the interpretation of the expression “as soon as may be” assumes significance. In our opinion, the interpretation of the said expression should not detain us more in view of the Constitution Bench judgment in Abdul Jabbar Butt v. State of J&K [Abdul Jabbar Butt v. State of J&K, 1956 SCC OnLine SC 6 : AIR 1957 SC 281]. In the said case, the Constitution Bench while interpreting Section 8 of the Jammu & Kashmir Preventive Detention Act, 2011, had an occasion to interpret the expression “as soon as may be” and it observed thus : (SCC OnLine SC para 6)

“6. Sub-section (1) imposes on the Government two duties, namely, (i) the duty of communicating to the detenu the grounds on which the order has been made, and (ii) the duty of affording him the earliest opportunity of making representation against the order to the Government. The first duty is to be performed “as soon as may be”. Quite clearly the period of time predicated by the phrase “as soon as may be” begins to run from the time the detention in pursuance of the detention order begins. The question is — what is the span of time, which is designated by the words “as soon as may be”? The observations of Dysant, J. in King's Old Country Ltd. v. Liquid Carbonic Can. Corp'n. Ltd. [King's Old Country Ltd. v. Liquid Carbonic Can. Corp'n. Ltd., (1942) 2 WWR 603] , WWR at p. 606 quoted in Stroud's Judicial Dictionary, 3rd Edn., Vol. 1, p. 200 are apposite. Said the learned Judge, ‘to do a thing “as soon as possible” means to do it within a reasonable time, with an understanding to do it within the shortest possible time’. Likewise to communicate the grounds “as soon as may be” may well be said to mean to do so within a reasonable time with an understanding to do it within the shortest possible time. What, however, is to be regarded as a reasonable time or the shortest possible time? The words “as soon as may be” came for consideration before this Court in Ujagar Singh v. State of Punjab [Ujagar Singh v. State of Punjab, 1951 SCC 170 : 1952 SCR 756] . At SCC p. 175, para 9 this Court observed that the expression meant



with a “reasonable dispatch” and then went on to say that ‘what was reasonable must depend on the facts of each case and no arbitrary time-limit could be set down’. In *Keshav Nilkanth Joglekar v. State of Bombay* [*Keshav Nilkanth Joglekar v. State of Bombay*, 1956 SCC OnLine SC 49 : AIR 1957 SC 28] the word “forthwith” occurring in Section 3(3) of the Preventive Detention Act (4 of 1950) came up for consideration. After observing that the word “forthwith” occurring in Section 3(3) of that Act did not mean the same thing as “as soon as may be” used in Section 7 of the same Act and that the former was more peremptory than the latter, this Court observed that the time that was allowed to the authority to communicate the grounds to the detenu and was predicated by the expression “as soon as may be” was what was “reasonably convenient” or “reasonably requisite”.”

* * * * *

“21. In view of the above, the expression “as soon as may be” contained in Section 19 PMLA is required to be construed as — “as early as possible without avoidable delay” or “within reasonably convenient” or “reasonably requisite” period of time. Since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.

“22. In *Vijay Madanlal Choudhary* [*Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929], it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance with 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 arrested, 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 PMLA but also of Article 22(1) of the Constitution of India.”

(emphasis supplied)

- 30.5 While interpreting the phrase “*as soon as may be*” appearing in section 19 of the PMLA therefore, the Supreme Court has held that since an arrestee is to be produced before the Magistrate within 24 hours of his arrest, the *reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest*. It is important to note however, that in *Ram Kishor Arora* (supra) there is *no reference whatsoever to the provisions of section 50 Cr.P.C.*
- 30.6 On the other hand however, a Co-ordinate Bench of this court has discussed the significance and meaning of the word “*forthwith*” appearing in section 50 of the Cr.P.C. with reference to serving the *grounds of arrest* (or grounds for



arrest) upon an arrestee.¹³ The Co-ordinate Bench has opined, that in the light of the constitutional safeguards available against curtailment of liberty, the word “*forthwith*” appearing in section 50 Cr.P.C. must be interpreted strictly, meaning thereby that the grounds of arrest or the grounds for arrest must be communicated to an arrestee *immediately and without delay*.

30.7 If any ambiguity were to remain regarding the interpretation given by the Co-ordinate Bench in *Pranav Kuckereja* (supra), this court would further hold that the word “*forthwith*” appearing in section 50 Cr.P.C. mandates the Arresting Officer (‘A.O.’) to serve upon an arrestee the grounds of arrest *simultaneously with the issuance, or as part, of the arrest memo*.

30.8 There is a reason why the above interpretation of the word “*forthwith*” is the only interpretation that is in consonance with the constitutional mandate that a person cannot be deprived of his liberty mechanically or needlessly. And the reason is that though a person may be *detained* for enquiry or interrogation, it is only when an I.O. forms an opinion that there are some justifiable grounds to arrest a person that he would place the person *under arrest*. Once the grounds for requiring a person’s arrest have been formulated in the investigating officer’s mind, there can possibly be no reason why those grounds cannot be

¹³ *Pranav Kuckereja* (supra)



reduced into writing and communicated to the person *simultaneously at the time of arrest*.

30.9 Therefore, in the opinion of this court, any other connotation of the word “*forthwith*” would not only dilute the plain meaning of that word but would also erode the fundamental right of a person not to be deprived of his liberty, without being expressly and formally informed as to why he was being arrested, so also to enable him to seek legal recourse against such arrest.

30.10 It must also be observed that in its decision in *Pranav Kuckereja* (supra) the Co-ordinate Bench has in fact suggested that a column be incorporated in the format of an ‘Arrest Memo’ requiring the I.O./A.O. to pen-down the grounds of arrest then-and-there, which would streamline and ensure that such grounds are communicated to the arrestee *forthwith* at the time of issuing the arrest memo.

31. In light of the above, without addressing the controversy as to whether the petitioner stood deprived of his liberty once he reached the police station at *11:30 a.m. on 17.05.2024*, there can be no contest that the petitioner was formally arrested when the arrest memo was issued to him *i.e., at 06:30 p.m. on 17.05.2024*. In compliance of section 50 of the Cr.P.C., as interpreted above, the I.O. was required to serve the grounds of arrest upon the petitioner *simultaneously* with the issuance of the arrest memo. This was admittedly not done.



32. Accordingly, in the opinion of this court, the arrest of the petitioner is vitiated for non-compliance with the mandate of section 50 of the Cr.P.C. and Article 22(1) of the Constitution.
33. Furthermore, a perusal of order dated 18.05.2024, whereby the learned Magistrate was pleased to grant a 02-day police custody remand of the petitioner, shows that the learned Magistrate proceeded on the basis that communication of the grounds of arrest by the I.O. in writing to the petitioner at 04:40 p.m. on 18.05.2024 (through the petitioner's legal counsel) within 24 hours of his arrest, though *after* the remand application had been filed, was sufficient compliance with the requirements of section 50 Cr.P.C. since the remand order was passed *later* at 05:30 p.m., which afforded to the petitioner adequate time and opportunity to know the grounds for his arrest, to be able to resist the remand order.
34. This was clearly an erroneous interpretation and application of the law by the learned Magistrate, since furnishing the grounds of arrest in writing just about an hour before the remand hearing in the present case, cannot possibly be due or adequate compliance of the requirements of section 50 Cr.P.C., which mandates that grounds of arrest must be communicated to an arrestee *forthwith* that is to say simultaneously and immediately upon the arrest of such person.
35. This court is constrained to observe that the *via media* adopted by the learned Magistrate, whereby the learned Magistrate directed the I.O. to serve the grounds of arrest in writing upon the petitioner *after* the petitioner had already been produced in court; and then observing that



since the remand hearing took-place about an hour later, it was sufficient compliance of the law, reduced the petitioner's right under section 50 Cr.P.C. to a farce.

36. In order to bring abundant clarity in the matter, this court would also observe that sufficient time must given to an arrestee *after* the grounds of arrest have been served upon him in writing, to enable the arrestee to engage and confer with legal counsel, the test being that the arrestee must have meaningful opportunity to resist his remand to police custody or judicial custody.
37. Accordingly, remand order dated 18.05.2024 also stands vitiated and is set-aside.
38. As a sequitur to the above, the petitioner is directed to be released from custody, unless required in any other case.
39. However, since the petitioner's arrest is being set-aside on the ground of non-compliance of the mandatory requirements of section 50 of the Cr.P.C. and Article 22(1) of the Constitution, but the petitioner must continue to participate in the proceedings arising from the subject FIR in which chargesheet has been filed, this court deems it appropriate to direct that the petitioner – ***Marfing Tamang s/o Karnal @ Karan Bahadur Tamang*** – shall be released from judicial custody, subject to furnishing a personal bond of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 local sureties in the like amount, to the satisfaction of the learned trial court.
40. Needless to add, nothing in this judgment is an expression on the merits of the pending case.



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41. As a result, the present petition is allowed, in the above terms.
42. Pending applications, if any, also stand disposed-of.
43. A copy of this judgment be forwarded to the Jail Superintendent for information and compliance *expeditiously*.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 04, 2025

ds/ak