

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4692 OF 2025

Kapil Vinodpal Singh Choudhari

Aged 30 years, Indian inhabitant

R/o H-214, Gali No.5, DDP School

Govindpuram, Ghaziabad, Uttar

Pradesh-201013

...Petitioner

Versus

State of Maharashtra

Through Shahupuri Police Station

...Respondent

.....

Rishikesh A. Mohite i/b. Krish Karla (Through VC), Advocate for
Petitioner.

Mrs. S. N. Deshmukh, APP for respondent-State.

.....

**CORAM : R.G. AVACHAT AND
AJIT B. KADETHANKAR, JJ.**
RESERVED ON : 29th JANUARY, 2026.
PRONOUNCED ON : 5th FEBRUARY 2026

JUDGMENT (PER R.G. AVACHAT, J.)

. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. This writ petition has been filed for the following reliefs:

“B. To declare the arrest of the petitioner on 16.03.2025 at Ghaziabad, Uttar Pradesh, by the Investigating Agency in FIR No. 140 of 2025, for offences punishable under Sections 318(4), 336(3), 336(2), 338, 340(2) and 3(5) of the Bharatiya Nyaya Sanhita, 2023, as illegal, unconstitutional and void ab initio, being in violation of Articles 21 and 22(1) of the Constitution of India read with Sections 47 and 48 of the BNSS.

C. To declare and set aside the remand order dated 20.03.2025 passed by the learned Remand Court and all subsequent remand orders as illegal, unconstitutional and void ab initio, having been passed in violation of

Articles 21 and 22(1) of the Constitution of India read with Sections 47 and 48 of the BNSS, thereby infringing the fundamental rights of the petitioner.

D. To issue a writ of habeas corpus directing the release of the petitioner on bail in FIR No. 140 of 2025 dated 24.02.2025, registered with Shahupuri Police Station, Kolhapur, on such terms and conditions as this Court may deem fit and proper.”

Prayer for compensation was not pressed.

3. **FACTS**

Crime No. 140 of 2025 was registered on 24th February 2025 at Shahupuri Police Station, Kolhapur, for offences punishable under Sections 318(4), 336(3), 336(2), 338 and 340(2) of the Bharatiya Nyaya Sanhita, 2023.

4. The First Information Report (for short, “FIR”) was lodged by the Accounts Officer, Zilla Parishad, Kolhapur. The substance of the allegations in the FIR is that certain cheques amounting to Rs. 57,04,40,786/- were forged for the purpose of transferring funds

from the account of the Zilla Parishad to a particular bank account. Out of the said amount, a sum of Rs. 18,04,30,641/- was sought to be transferred. Upon detection of the said transaction, the crime came to be registered against unknown persons. The bank account to which the amount was transferred was subsequently identified and, fortunately, the same was frozen, as a result of which the amount could not be misappropriated.

5. During the course of investigation, it was revealed that mobile phone No. 9871840842 was used for opening and operating the said bank account. The location of the person operating the said mobile phone was traced and found to be that of the petitioner. Police officials of Shahupuri Police Station, with the assistance of the local police in Uttar Pradesh, arrested the petitioner, at Ghaziabad at about 11:00 p.m. on 16th March 2025. The petitioner was produced before the learned Magistrate at Ghaziabad, who granted transit remand for four days. Thereafter, the petitioner was produced before the learned Chief Judicial Magistrate, Kolhapur, and after availing police custody, was remanded to magisterial custody.

6. The petitioner initially applied for bail during investigation.

The application was rejected by the learned Chief Judicial Magistrate. The petitioner thereafter unsuccessfully approached the Sessions Court. Even after filing of the charge-sheet, the petitioner again approached both Courts, but without success. Subsequently, the petitioner approached this Court but withdrew the said application.

The present writ petition has been filed primarily on the ground that the petitioner was not informed of the grounds of arrest in writing within a reasonable time.

7. According to the learned Advocate for the petitioner, failure to provide the grounds of arrest in writing amounts to violation of the petitioner's fundamental right under Article 22(1) of the Constitution of India and also constitutes breach of the statutory mandate under Section 47 of the BNSS. Reliance is placed on the following judgments: (i) *Pankaj Bansal v. Union of India & Ors.*, (2024) 7 SCC 576, (ii) *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254 (iii) *Mahesh Pandurang Naik v. State of Maharashtra & Anr.*, 2024 SCC OnLine Bom 3918, (iv) *Mihir Rajesh Shah v. State of Maharashtra & Anr.*, 2025 SCC OnLine SC 2356. He, therefore, prays for allowing the writ petition.

8. Per contra, the learned APP submits that the directions issued by the Apex Court in *Mihir Rajesh Shah* (supra) have prospective effect, and as the petitioner's arrest having been effected prior to the said judgment, no benefit can be claimed. In her support, reliance is placed on the judgment in case of *Prabir Purkayastha* (supra). It is submitted that the petitioner was informed of the grounds of arrest immediately upon being taken into custody. An affidavit has been filed stating that the petitioner availed the services of a legal practitioner of his choice when he was first produced before the learned Magistrate at Ghaziabad. It is further contended that the grounds of arrest were also communicated to the petitioner in writing, and a copy thereof is placed on record.

9. It is further submitted that in none of the bail applications preferred by the petitioner raised this ground, which itself indicates compliance with the mandate. It is also pointed out that after filing of the charge-sheet, the trial has commenced and three/four witnesses have already been examined, and the trial can be concluded within a reasonable time frame. Considering the seriousness of the offence and the material on record, it is urged that the writ petition be dismissed.

10. We have considered the submissions advanced and perused the record. Article 22(1) of the Constitution of India reads thus:

“(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.”

11. Sections 47 and 48 of the BNSS reads thus:

“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.”

11. In *Pankaj Bansal* (supra), which pertained to arrest under

the Prevention of Money Laundering Act, 2002, the Apex Court in paragraph 35 observed as under:

“35. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the EDs Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the

appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.”

12. In *Prabir Purkayastha* (supra), the Apex Court observed as follows:

“A. Unlawful Activities (Prevention) Act, 1967 (UAPA) Grounds of Arrest Section Communication 43A, 43B(1), 43C Arrest in writing Requirement to inform person arrested under UAPA of the grounds for such arrest under Section 43B(1) is mandatory - Interpretation of this requirement aligns with interpretation of similar provision in Section 19(1) of Prevention of Money Laundering Act, 2002 (PMLA) in Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244 Both provisions draw from the fundamental right under Article 22(1) of the Constitution Grounds must be communicated in writing and provided to the arrested person as a matter of course and without exception at the earliest opportunity This is essential for the arrested person to consult a lawyer, oppose police custody, and seek bail - Mere oral communication of grounds or inclusion in a

formal arrest memo stating general "reasons for arrest" is insufficient. (Paras 15, 17, 18, 19, 20, 22, 24, 25, 26, 27, 28, 29, 30, 31, 38, 48, 49)

B. Constitution of India This right is a Articles 22(1), 22(5) Right to be informed of grounds of arrest/detention fundamental safeguard against arbitrary deprivation of liberty Whether under Article 22(1) (arrest) or Article 22(5) (preventive detention), the grounds must be communicated in writing to enable the person to seek legal remedies -- Communication must be meaningful and effectively convey the facts underlying the arrest/detention Historical interpretation of Artic Article 22(5) confirming requirement of written communication applies equally to Article 22(1) Non-compliance with this requirement vitiates the arrest and subsequent custody/detention. (Paras 20, 21, 22, 24, 25, 26, 27, 28, 29, 30"

13. In *Mihir Rajesh Shah* (supra), the Apex Court observed as follows:

“56. In conclusion, it is held that:

(i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

(ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

(iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for

remand proceedings before the magistrate.

(iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.”

14. It is true that the judgment of the Delhi High Court in the case of *Karan Singh v State NCT of Delhi* has held that the directions issued in *Mihir Rajesh Shah* are prospective in nature. The same can also be inferred from a reading of the said judgment. However, this Court had an occasion to consider a similar issue in *Mahesh Pandurang Naik (supra)*, wherein the Division Bench observed as under:

“24. The decisions of the Apex Court in Pankaj Bansal v. Union of India and in Prabir Purkayastha v. State (NCT of Delhi), which now is the law declared by the Apex Court, in the wake of Article 141 of the Constitution of India, bind all the Courts within the territory of India. Similarly, in terms of Article 144, since all the authorities, civil and judicial, in

the territory of shall act in aid of the Supreme Court, the law shall be followed by all concerned, including the Courts as well as the authorities exercising the power of arrest.

In light of the elucidation of law in the above manner, the focus being clause (1) of Article 22 of the Constitution of India, when we have examined the present case, it is evident that the grounds of arrest were not furnished to the Petitioner in writing and the arrest/surrender form/panchnama produced before us, column 8 is an unfilled column, which in fact expected the arresting authority to ensure, "whether the arrested person, after being informed of the grounds of arrest and his legal rights, was duly taken into custody on --- (date)-(hours) (place)". The form only indicate that the intimation of arrest was given to Laxmi Pandurang Naik, mother of the Petitioner. The station diary entry record that note of his arrest has been taken in the

concerned

Register and he was apprised of the reasons of arrest (अटकेची कारणे) and, thereafter, he was arrested.

The procedure followed by Respondent No. 2 is evidently in violation of sub-clause (1) of Article 22 of the Constitution of India and, since, this provision now stands interpreted by the Apex Court in Pankaj Bansal (supra) and in the wake of the declaration, coming into effect from 03/10/2023, any arrest made thereafter must ensure compliance, by indicating the 'ground(s) of arrest in writing' expeditiously.

“The ratio laid down by the Apex Court having been declared to be law of land, binding on all courts of the country, by virtue of Article 141 of the Constitution of India, needless to state, must be followed by each and every one, including any

officer/person/magistrate, before effecting arrest of a person, in any case, where his arrest is deemed necessary and this ground shall contain all such details in the hand of the Investigating Officer, which necessitated the arrest of the accused.”

15. In paragraph 27 of the said judgment, this Court further observed as follows:

“27. We request the learned Public Prosecutor Mr. Venegavkar to furnish the copy of this judgment to the Director General of Police (DGP), who shall circulate the same to all the Additional Director General of Police and (ADGP) and Inspector General of Police (IGP), so that it is circulated through the Commissioner of Police/Superintendent of Police to all the officers exercising the power of arrest within their jurisdiction and if it is deemed appropriate, the copy of the judgment shall also be uploaded on the website of the

*Police Department of the State of
Maharashtra.”*

16. As such, the observations and directions issued in *Mahesh Pandurang Naik's* case were already holding the field on the date on which the petitioner herein was arrested. It was, therefore, obligatory on the part of the police/investigating officer to communicate to the arrestee the grounds of arrest in writing.

17. Let us now turn to the factual matrix of the case to ascertain whether the said directions and the law so declared have been duly complied with and implemented. In support of its claim, the investigating officer, in his affidavit in reply, has contended that the petitioner was orally communicated the grounds of arrest at the first instance and was immediately thereafter served with the same in writing. Certain station diary entries have also been relied upon. However, none of the said station diary entries state, in so many words, that the petitioner was communicated the grounds of his arrest in writing.

18. The so-called communication in writing is dated 16th March 2025, i.e. the very day on which the petitioner was arrested. It bears the petitioner's signature acknowledging receipt thereof. For

better appreciation, the same is scanned and reproduced
hereinbelow:-

	शाहपुरी पोलीस ठाणे, कोल्हापूर कार्यालय:- रेल्वे स्टेशन जवळ, कोल्हापूर- 416001 संपर्क :- 0231-2661733 ई मेल- shahupurips.kop@mahapolice.gov.in	
जावक क्रमांक :-	/2025	कोल्हापूर दि. 31/03/2025

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[भारतीय नागरीक सुरक्षा संहिता 2023 चे कलम 47]

प्रति,

1] कपील चौधरी वय 28 वर्ष सन ऑफ विनोद पाल सिंग रा.एच.214 गोविंद पुरम गल्ली नंबर 5 गाजीयाबाद इनके खिलाफ शाहपुरी पोलीस स्टेशन कोल्हापूर राज्य महाराष्ट्रा यहाँ क्राइम र नं -140/2025 बी एन एस 318(4),336(3),336(2),338,340(2), के तहत मामला दर्ज हुवा है।

यह केस तारीख 24/02/2025 रोजी 23.22 के समय मामला दर्ज है सदर मामलेकी तहकीकात हम कर रहे है. आपको सूचीत किया जाता है की दि. 16/03/2025 के दिन 12.00 के दरमीयान आपके को तहकीकातके सीलसीले में गिरफ्तार किया गया है इस बारेमें आप को सूचीत किया जाता है।

स्थळ :-कविनगर पोलीस थाना
दिनांक :16/03/2025

Kabi!

[Signature]

[Circular Stamp]

19. There is a clear distinction between grounds of arrest and reasons for arrest. A perusal of the aforesaid communication, by no stretch of imagination, can be said to contain either the grounds or even the reasons for the petitioner's arrest.

20. In *Prabis Purkayastha* (supra), the Apex Court in paragraph No.48 observed thus :

“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.”

21. For the aforesaid reasons that we have no hesitation in holding that the investigating officer has failed to comply with the directions of this Court. The judgment in Mahesh Pandurang Naik was delivered on 18th July 2024, whereas the arrest of the petitioner in the present case was effected on 16th March 2025, i.e. after the judgment in Mihir Rajesh Shah was pronounced. The same constitutes a violation of the petitioner’s fundamental rights under Article 22(1) of the Constitution of India, as well as his statutory rights under Sections 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

22. The learned APP submitted that upon completion of investigation, a charge-sheet has been filed, the trial has commenced, and even three to four witnesses have been examined. It was further submitted that the trial could be concluded at the earliest and that any timeline fixed by this Court would be adhered to. The learned APP may be right on the factual aspects of the matter. However, in Mihir Rajesh Shah (supra), the Apex Court has observed in paragraph 16 as under:

“16. An attempt was made by the learned

Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.”

23. For the reasons stated hereinabove, the arrest of the petitioner and the consequential orders of remand are unsustainable and are liable to be set aside. We accordingly set aside the same. Since the trial is underway, it would be desirable to direct the petitioner to furnish a PR bond and sureties to the satisfaction of the Trial Judge. The direction to furnish bail bonds shall be complied with immediately upon the petitioner being released on bail.

24. The Writ Petition stands disposed of with a direction to the concerned authorities to release the petitioner forthwith, if he is not required in any other case.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT J.]