



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5552 OF 2025**

Mimit Ajit Bhuta ...Petitioner

**Versus**

The State of Maharashtra through DC CID ...Respondent

**WITH**

**WRIT PETITION NO. 5553 OF 2025**

Anil Ramesh Parerao ...Petitioner

**Versus**

The State of Maharashtra through DCB CID ...Respondent

Mr. Pranav Badheka, Senior Advocate, a/w Bhomesh Bellam, Isha Singh and Neel Paralikar, for the Petitioner in WP/5552/2025.

Mr. Rutvij Solanki, a/w Atharva Utekar, for the Petitioner in WP/5553/2025.

Mr. P. P. Malshe, APP for the State.

**CORAM: N. J. JAMADAR, J.**

**Reserved On: 29<sup>th</sup> JANUARY, 2026**

**Pronounced On: 10<sup>th</sup> MARCH, 2026**

**JUDGMENT:-**

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By these petitions under Articles 226 and 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, ("BNSS, 2023"), the petitioners assail the legality and validity of their arrest, remand and further detention on the grounds of non-compliance of the provisions contained in Section 35(1), 35(3) and Section 48 of the BNSS, 2023 and the violation of the fundamental

rights of the petitioners guaranteed under Articles 21 and 22 of the Constitution of India.

**3.** The background facts necessary for the determination of these petitions can be stated as under:

**3.1** There was a financial transaction between Mimit Bhuta (A3), the petitioner in Criminal WP/5552/2025 and Mr. Puthe Sing (the first informant). Disputes arose in connection with the said transaction.

**3.2** On 10<sup>th</sup> October, 2025, the first informant lodged report with Chembur Police Station with the allegations that he became acquainted with Mimit Bhuta (A3), through one Mohammed Khalil. During the period 2017 to 2018 he had advanced a sum of Rs.1,25,00,000/- to Mimit Bhuta (A3). After initial repayment of small amounts, Mimit Bhuta (A3) avoided to repay the amount alongwith agreed profit thereon.

**3.3** On 23<sup>rd</sup> August, 2024, the first informant was called at Hotel Maharana, Chembur, for a meeting in connection with the said transaction. The first informant was informed that Ravi @ Akash Bora @ D.K. Rao (A1) a dreaded gangster would also attend the said meeting.

**3.4** While the first informant and Mohammed Khalil were discussing the matter with Mimit Bhuta (A3), one person known as Tambi slapped the first informant. The other persons, who were present, threatened the first informant and Mohammed Khalil by exhorting that they shall

not speak in a loud tone in front of D. K. Rao (A1), *“bhai ke samne kum awaj mein baat karne ka”*. D. K. Rao (A1) also threatened the first informant and witness Mohammed Khalil to forget the interest component on the said amount lest they may pay with their life. *“muddal ka paisa milega baki rakkam bhool jane ki, jyada paise ka awaj kiya to samj jana, paisa jan se pyara nahi hota.”*

**3.5** The first informant initially filed a compliant on 12<sup>th</sup> August, 2025. Enquiry was conducted by CIU-DCB-CID, Mumbai. As enquiry revealed commission of cognizable offences, on 10 October 2025, vide C.R.No.596 of 2025, FIR came to be registered at Chembur Police Station against Ravi @ Akash Bora @ D. K. Rao (A1), Mimit Bhuta (A3) and Anil Parerao (A2), the petitioner in WP/5553/2025, Tambi and their associates for the offences punishable under Sections 308(4), 61(2) and 3(5) of the BNSS, 2023. The investigation came to be transferred to DCB CID and crime was re-registered at CR No.92/2025.

**3.6** Ravi @ Akash Bora @ D. K. Rao (A1) was arrested on 10<sup>th</sup> October, 2025. The petitioners were also arrested between 11.15 to 11.30 pm. on 10<sup>th</sup> October, 2025. The petitioners were produced before the learned Magistrate on 11<sup>th</sup> October, 2025. After initial police custody remand, the petitioners have been remanded to judicial custody.

**3.7** The petitioners have filed these petitions assailing the arrest, remand and detention on account of the alleged breach of the

constitutional safe-guard and statutory requirements. First and foremost, the arrest of the petitioners was wholly unwarranted and illegal as none of the offences with which the petitioners were initially charged entailed punishment exceeding seven years. It was, therefore, necessary for the Investigating Officer to give a notice to the petitioners under Section 35(3) of the BNSS, 2023. In the light of the delay in lodging the FIR, when the incident had occurred on 23<sup>rd</sup> August, 2024, there was no necessity of arrest. Secondly, the purported reasons, which were furnished to the petitioners demonstrated clear non-application of mind. Those reasons furnished to the petitioners do not constitute, "reasons" which would justify the arrest under sub-clauses (a) to (e) of sub-clause (b)(ii) of sub-section (1) of Section 35. At any rate, the element of necessity of arrest is conspicuous by its absence. Thirdly, the purported reasons are general in nature and appear to be copy paste of the template of sub-clauses (a) to (e) of Section 35(1)(b)(ii). Fourthly, there was infraction of the mandate contained in Section 48 of BNSS, 2023, in two ways. One, the intimation of arrest given to the relatives did not disclose the place where the petitioners were being detained. Two, the grounds of arrest were not communicated to the friends/relatives of the petitioners. Cumulatively, the fundamental rights of the petitioners have been grossly violated.

**3.8** The petitioners contends all these grounds were urged before the learned Magistrate at the time of the remand. However, the learned Magistrate unjustifiably discarded those grounds.

It would be contextually relevant to note that during the pendency of the petition, the Competent Authority has granted prior approval under Section 23(1) of the Maharashtra Control of Organized Crime Act, 1999 ("MCOCA, 1999") and the provisions of MCOCA, 1999 have been invoked against the petitioners and the co-accused. The petitioners were produced before the Special Court, MCOCA, on 18<sup>th</sup> November, 2025 and orders of remand and detention have been passed by the Special Court, MCOCA. The petitioners assert since the initial arrest and detention of the petitioners was not in consonance with law, all subsequent and consequential proceedings would fall through. The petitioners have, thus, assailed the further orders of remand and detention as well.

**3.9** An affidavit-in-reply is filed on behalf of the respondent State. It is contended that the arrest of the petitioners was in complete adherence to the statutory provisions. The petitioners were promptly informed the grounds of their arrest. The Investigating Officer has satisfied himself and recorded the reasons which spelled out the necessity of arrest. Intimation of arrest was given to the relatives of the accused. They were produced before the learned Magistrate in conformity with the constitutional and statutory mandate. The petitioners were effectively represented before the learned Magistrate by their Advocates. Thus,

the petitioners have not suffered any prejudice. Since the petitioners had hired the services of a dreaded gangsters (A1) the arrest of the petitioners was absolutely necessary for proper investigation, prevent further harm to the first informant and the witnesses and also to prevent the accused from tampering with the evidence.

4. In the wake of the aforesaid facts and pleadings, I have heard Mr. Pranav Badheka, the learned Senior Advocate for the petitioner in WP/5552/2025, Mr. Rutvij Solanki, the learned Counsel for the petitioner in WP/5553/2025 and Mr. P. P. Malshe, the learned APP for the State, at some length. The learned Counsel took the Court through the material on record.

5. Mr. Badheka, the learned Senior Advocate for the petitioner, would urge that, the the facts of the case would hardly justify the arrest of the petitioner. The incident, in question, has allegedly occurred on 23<sup>rd</sup> August, 2024. After almost one year, a written complaint was allegedly filed by the first informant on 12<sup>th</sup> August, 2025. FIR came to be registered two months later for the offences which did not entail punishment exceeding seven years. In such circumstances, it was incumbent upon the Investigating Officer to give notice to the petitioner under Section 35(3) of the BNSS, 2023. By no stretch of imagination, could it be said that immediate arrest of the petitioners was warranted. The breach of the mandate contained in Section 35(3) of the BNSS, 2023, thus, vitiated the action of arrest. To this end, a very strong reliance was placed by Mr. Badheka on the decisions in the cases of

***Arnesh Kumar vs. State of Bihar and anr.<sup>1</sup> and Satyendra Kumar Antil vs. CBI<sup>2</sup>.***

6. Secondly, Mr. Badheka would urge, the prosecution has singularly failed to establish the necessity of arrest. The conditions which would justify the arrest under sub-clauses (a) to (e) of Section 35(1)(b)(ii) of BNSS, 2023 have been copiously reproduced as the grounds of arrest. The underlying facts that would sustain the formation of opinion envisaged by those sub-clauses are completely absent. Mere reproduction of the template of aforesaid sub-clauses (a) to (e) can never be the satisfactory compliance of the statutory mandate. It was further urged that, the checklist containing the purported reasons is almost identical for A2 and A3 and, thus, betrays a complete non-application of mind as the reasons for arrest ought to be individual qua each of the accused. To buttress this submission, Mr. Badheka placed a strong reliance on a Division Bench judgment of this Court in the case of ***Chandrashekhar Bhimsen Naik vs. State of Maharashtra and ors.*<sup>3</sup>**. Reliance was also placed on a decision of another Division Bench judgment of this Court in the case of ***Chanda Deepak Kochar vs. Central Bureau of Investigation*<sup>4</sup>.**

7. Mr. Badheka would submit that the provisions contained in Section 48 of the BNSS, 2023 were also observed in breach. Grounds

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1 2014 (8) SCC 273

2 (2022) 10 SC 51.

3 WP/5764/2025, decided on 3<sup>rd</sup> December, 2025.

4 2023 Online Bom 72.

of arrest were not communicated to the relatives of the petitioner. A mere intimation of arrest that too without disclosing the place where the petitioners were detained was given to the relatives. It was submitted that in view of the decision of the Supreme Court in the case of ***Vihaan Kumar vs. State of Harayana***<sup>5</sup>, it was incumbent upon the Investigating Officer to also communicate the grounds of arrest to the relatives of the accused. Banking upon the judgment in the case of ***Ahmed Mansoor and ors. vs. The State rep. By Assistant Commissioner of Police and Anr.***<sup>6</sup>, Mr. Badheka would urge that the law laid down in ***Vihaan Kumar*** (supra) has been approved in subsequent decisions.

8. In opposition to this, Mr. Malshe, the learned APP, countered the submissions on behalf of the petitioners. It was urged that none of the grounds sought to be canvassed on behalf of the petitioners rendered the arrest, remand and detention of the petitioner illegal. Mr. Malshe submitted with tenacity that, the arrest of the petitioners, in the context of the grave indictment against the petitioners, was in conformity with the statutory requirements. The grounds of arrest were immediately furnished to the petitioners. Intimation was given to their relatives. The mere fact that few of the grounds of arrest are similar does not imply that the Investigating Officer has not recorded satisfaction about the necessity of arrest.

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<sup>5</sup> 2025 SCC OnLine SC 269.

<sup>6</sup> Cri.Appeal/4505/2025 (SLP (Cri.)/198/2025), dtd.14/10/2025.

9. Mr. Malshe laid emphasis on the fact that from the perusal of the material on record, an inference cannot be drawn that the petitioners suffered any prejudice. In the absence of demonstrable prejudice, the petitioners cannot be permitted to draw mileage of technicalities. Mr. Malshe placed a very strong reliance on the judgment of the Supreme Court in the case of ***State of Karnataka vs. Sri Darshan Etc.***<sup>7</sup> Reliance was also placed on the judgment of the Supreme Court in the case of ***Mihir Rajesh Shah vs. State of Maharashtra and another***<sup>8</sup>

10. Moreover in view of the invocation of the provisions contained in MCOCA, 1999, at this stage, the grounds sought to be urged on behalf of the petitioners cannot be countenanced, submitted Mr. Malshe.

11. To begin with, it may be apposite to consider the ground of non-compliance of the provisions contained in Section 35(3) of the BNSS, 2023. There could be no duality of opinion that arrest has grave consequences. There is a significant distinction between the power to arrest and necessity of arrest. The fact that, under the statute, the Police Officer has power to arrest does not necessarily imply that the arrest must be effected in every case. The constitutional guarantee of personal liberty has been construed in a dynamic manner to strike at unjustified arrest and detention. The decisions in the cases of ***Joginder Kumar vs. State of U.P. and others***<sup>9</sup>, ***Anresh Kumar*** (supra)

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7 2025 SCC OnLine SC 1702.

8 Cri.Appeal/2195/2025 decided on 6/11/2025.

9 (1994) 4 SCC 260.

emphasies the value of cherished personal liberty and cast a duty on the investigating agency as well as the magistracy to guard against unwarranted and unjustified arrest.

12. In the case of **Arnesh Kumar** (supra), the Supreme Court emphasised the consequences which entail an arrest of a person in the following words:

“5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

13. The Supreme Court observed that its endeavour in the said judgment was to ensure that Police Officers do not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure the scrupulous compliance of the mandate contained in Sections 41 and 41A of the Code of Criminal Procedure, 1973 (“the Code”) the Supreme Court issued directions.

14. In the case of **Satyendra Kumar Antil** (supra) the Supreme Court again reiterated the principles enunciated in the case of **Arnesh Kumar** (supra). It was, *inter alia*, observed that the provisions contained in Sections 41 and 41A of the Code are facets of right to life and personal liberty guaranteed under Article 21 of the Constitution. The observations of the Supreme Court in paragraphs 24, 25, 26, 28, 29 and 100 read as under:

"24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing, Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

25. The consequence of non-compliance with Section 41 shall certainly enure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

26. Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41B deals with the procedure of arrest along with mandatory duty on the part of the officer.

.....

28. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the Court, which is expected to be reflected in the orders.

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100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which maybe subject to State amendments.:

100.1.....

100.2 The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

100.3 The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail." (emphasis supplied)

15. The aforesaid enunciation of law makes it abundantly clear that, arrest is not mandatory. If the Investigating Officer is satisfied that a person has committed a cognizable offence punishable with an imprisonment for a term which may be less than seven years or which may extend to seven years, he can resort to arrest the accused only when there is a reason to believe that such person has committed an offence and there is necessity for an arrest. The conditions or justification of the necessity for the arrest are stipulated in sub-clauses

(a) to (e) of Section 35(1)(b)(ii). I shall advert to that aspect of the matter a little later.

16. At this stage, it has to be seen, whether the arrest of the petitioners without issuing a notice under Section 35(3) of the BNSS, 2023 was warranted. As noted above, the incident had allegedly occurred on 23<sup>rd</sup> August, 2024. The written complaint about the said incident was lodged after almost one year of the alleged occurrence. Preliminary enquiry was stated to be conducted for over two months. Yet, under few hours of the registration of the FIR on 10<sup>th</sup> October, 2025, the petitioners were straightaway arrested. The major offence with which the petitioners were then charged was that of putting the first informant and the witness in the fear of life or of grievous hurt in order to the committing of extortion, which entailed punishment which may extend to seven years. The element of delay in reporting the matter to police and the time that was consumed in the purported enquiry after the complaint was lodged by the first informant, leads to an inexorable inference that neither gravity of the offence nor the exigency of the situation was such that, the immediate arrest of the petitioners, without complying with the mandate contained in Section 35(3) of BNSS, 2023, was warranted.

17. This propels me to the pivotal question, whether in the facts of the case at hand, the grounds of arrest communicated to the Petitioners, and the reasons for arrest recorded by the IO, justify the arrest. The relevant part of Section 35(1) which authorises a Police

Officer to arrest a person without an order from a Magistrate and without a warrant, reads as under :

“35. When Police may arrest without warrant. - (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a)who commits, in the presence of a police officer, a cognizable offence; or

(b)against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) the police officer has reason to believe on the basis of such complaint, information or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any 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 police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

.....”

18. Before examining the issue of sufficiency of the reasons for

arrest, to sustain the legality of arrest, the constitutional perspective which finds the statutory framework in the form of the provisions of the BNSS 2023 (the Code of Criminal Procedure, 1973), deserves to be kept in view. The guarantee of right to life and personal liberty enshrined under Article 21 has received a wide and encompassing connotation. One of the facets of the personal liberty is procedural safeguards from the abuse of the power by the instrumentality of the State and judicial scrutiny of the State action, where the personal liberty is sought to be deprived under the mandate of law. The right to be informed of the grounds of arrest, thus, flows from the overarching guarantee of right to life and personal liberty.

**19.** Under Article 22(1), no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. Article 22 further fortifies the guarantee of personal liberty by casting positive obligations to furnish the grounds of arrest.

**20.** The aforesaid constitutional safeguards find resonance in the legislative prescription. Section 47 of the BNSS, 2023 (Section 50 of CrPC, 1973), thus, casts duty on the police officer or other person arresting any person without warrant to forthwith communicate the arrestee the grounds of arrest. Section 48 of BNSS 2023 (Section 50-A of CrPC, 1973) enlarges the scope of the right by enjoining the person who effects the arrest to inform the grounds of arrest to the

relative, friend, or such other person, as may be disclosed or nominated by the arrestee.

**21.** The obligation to communicate the grounds of arrest has a salutary purpose. It is not conceived of as a mere formality of communicating some grounds of arrest howsoever irrelevant, flimsy or unsustainable those grounds may be. Those grounds ought to reflect sufficient material or information to equip the accused to effectively defend himself.

**22.** The purpose of informing to the arrested person the grounds of his arrest is salutary and sacrosanct, in as much as this information would be only effective means for the arrested person to consult his advocate, oppose the police custody remand and to seek bail (***Prabir Purkayastha v/s. State (NCT of Delhi)***)<sup>10</sup>.

**23.** In the case of ***Mihir Rajesh Shah V/s. State of Maharashtra and Anr.***<sup>11</sup>, the Supreme Court after adverting to the previous pronouncements, expounded in clear and explicit terms that the legal position which emerges is that, the constitutional mandate provided in Article 22(1) of the Constitution, is not a mere procedural formality, but the constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the

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**10** (2024) 8 SCC 254

**11** Cri. Appeal No.2195 of 2025 dt. 6 Nov. 2025

arrested person effectively in a language which he/she understands.

The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard.

**24.** In the light of the aforesaid position in law, reverting to the facts of the case at hand, it is necessary to note the grounds of arrest which were communicated to the Petitioners and the reasons for arrest which were recorded in the checklist furnished to the Magistrate. Qua Mimit Ajit Bhuta (A3), the following reasons for arrest were recorded :

“(1) the accused has committed cognizable and non-bailable offences;

(2) to prevent the accused from commission of similar offence in future;

(3) to prevent the accused from causing disappearance of evidence and tampering with the evidence;

(4) the accused with a view to cause wrongful loss to the first informant entered into a criminal conspiracy with the gangster to commit criminal intimidation; Intensive investigation was, thus, required.

(5) The wanted accused were yet to be traced, and, thus, information about the wanted accused was to be collected from the accused. To investigate how the accused came in contact with the gangster Ravi @ D.K.Rao (A1) and through whom.

(6) To conduct proper investigation of the offence.

**25.** Qua Anil (A2), the aforesaid reasons for arrest were reproduced verbatim.

**26.** In the grounds of arrest furnished to both the Petitioners with reference to the involvement of the gangster and the Petitioners in the alleged conspiracy and their presence at the place of the incident in question, it was added that the accused could not offer satisfactory explanation. Common grounds of arrest were furnished to both the Petitioners.

**27.** In the light of the above, a two-pronged submission was canvassed on behalf of the Petitioners. First, the reasons for arrest are general in nature and mere reiteration of the template of sub-clauses (a) to (e) of Section 35(1)(b)(ii). Second, recording of verbatim grounds of arrest and reasons for arrest qua Mimit (A3) and Anil (A2) reflects complete non-application of mind. The element of individuality of the necessity of arrest, which ought to be evincible from the grounds of arrest, is completely lost.

**28.** Mr. Solanki, learned Counsel for Anil (A2) would submit that the reasons for arrest qua Anil (A2) which are identical to that of Mimit (A3) are wholly irrelevant. Inviting attention of the Court to the FIR, Mr. Solanki would urge that, when the report was lodged, Anil (A2) was neither the accused nor even a suspect. Anil (A2) had admittedly no financial transactions with the first informant. The only role attributed to

Anil (A3) is that he is an associate of Mimit (A3) and on the instructions of Ravi @ D.K.Rao (A1), Anil (A2) had written the amount and names on a chit.

**29.** Mr. Malshe, learned APP, made a valiant effort to support the legality of the arrest on the basis of the aforesaid reasons for arrest and the grounds of arrest furnished to the Petitioners.

**30.** The constitutional safeguards and the statutory mandate contained in the provisions of BNSS 2023 would be rendered illusory if the communication of the very conditions which are mentioned in sub-clauses (a) to (e) of Section 35(1)(b)(ii) is construed to be sufficient compliance. Mere reproduction of the statutory language without communicating as to how those reasons were borne out from the facts and circumstances of the case in which the arrest is made, would not be sufficient compliance of the mandate of law. If the afore-extracted reasons are perused, it becomes abundantly clear that reason Nos.1 to 3 and 6 are mere reproduction of the text of the statutory provisions. On what basis and in what circumstances and for which reasons the Investigating officer found the arrest of the Petitioners necessary is not spelled out by the aforesaid checklist.

**31.** So far as the reason No.4, this Court finds substance in the submission of Mr. Solanki that, from the material on record, the ground of causing wrongful loss to the first informant in a financial transaction by entering into a criminal conspiracy, appears to be inapposite qua Anil (A2). The attribution of identical reasons to justify the arrest of

Mimit (A3) and Anil (A2) thus, prima facie, betrays non-application of mind.

32. In the case of **Chandrashekhar Bhimsen Naik** (supra), on which strong reliance was placed by Mr. Badheka, a Division Bench of this Court emphasised that, the arrest being an individual act, the ground of arrest as well as the reasons for arrest must reflect the personal role attributed to the particular accused. The observations in paragraphs 24 to 26 read as under :

“24. We have given a thoughtful consideration to the aforesaid submission in light of the legal proposition evolved by the Apex Court in Arnesh Kumar (supra) and Satender Kumar Antil (supra) which has held that the Police Officer before effecting arrest must mandatorily record reasons in writing while making the arrest particularly when the offence alleged is punishable with imprisonment of 7 years or less than 7 years and the consequence of non compliance must ensure to the benefit of the person suspected of the offence.

In a case like the present one when there are multiple accused, it ought to have been ensured that the reasons of arrest could be discerned qua each of the accused individually by setting out them in specific and distinctly.

Arrest is an individualized act and the decision to arrest cannot be based on the fact that multiple persons are named together as arrest must be justified separately for each accused. Since each of the accused is arrested separately, the Investigating Officer must form independent satisfaction qua each of the accused and it is imperative for him to examine specific role of each accused, and the need for arresting him. Furnishing common or identical reasons for all accused as is sought to be attempted to be done in the checklist furnished to the Magistrate cannot be countenanced as the reasons for arrest cannot be copied, repeated mechanically or stated in collective terms as each accused require a distinct reason since the act of arrest of each accused is distinct.

Necessity of arrest must be established accused-wise as the Section 35 permit the Police Officer to arrest without warrant on the basis of his belief or suspicion that the person has committed offence and the satisfaction contemplated under Section 35(1) b) (ii), (a) to (e) has to be accused specific. The Investigating Officer must show why arrest is necessary for each accused individually, considering his flight risk, potential of his tampering with evidence and of influencing witnesses and the need for his custodial interrogation. Definitely all these parameters

cannot be common to each of the accused and they must be individualistic.

In any case arrest cannot be justified based on collective conduct even if the offence is jointly committed, as the grounds/ reasons of arrest cannot be common as the law require reasons linked to the individual and not to the group.

Arrest being an individual act, therefore, the grounds of arrest as well as reasons of arrest, must reflect the personal role attributed and personal necessity for effecting such arrest and the Investigating Officer is expected to record how an act of particular accused contribute to the offence and why he/she shall not be left out and why the custody is necessary.

Group based reasoning clearly reflect non application of mind as when the Investigating Officer use template reasons, formulating general grounds, for all it legally amounts to a mechanical arrest which cannot be sustained. An arrest would become illegal if individual grounds qua each accused are missing and if the reasons do not specifically explain why a particular accused is arrested, the arrest shall be violative of the statutory requirement and the safeguard.

25. The checklist which is forwarded to the Magistrate, has merely used the template of reasons as set out in Section 35(1) (b)(ii), but there is abject failure to make the reasons specific qua the Petitioner who is arrested and merely by using the template of clause (a) to (e) by stating that it is necessary to prevent the person from committing offence, for proper investigation of documents or for preventing from causing disappearance of the evidence of the offence or making any inducement, threat cannot be used in from of template.....

26. The mandate of recording reasons by the police officer so as to avoid arresting the accused unnecessarily, also extend to the Magistrate, by providing that he shall not authorize the detention casually and mechanically. Since the accused arrested without warrant by police enjoy the constitutional right under Article 22(2) of the Constitution and Section 57 of the CrPC, to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time of journey, the power of the Magistrate to authorize detention is considered to be a solemn function, as it affects the liberty and freedom of an individual and is expected to be exercised with great care and caution.

Before the Magistrate authorizes a detention of an accused in any form, he has to satisfy himself, that the arrest made is legal and in accordance with the Constitutional and statutory safeguards and the Magistrate before authorizing the detention shall record his own satisfaction, may be in brief but it must be reflected from his order.

It shall never be based upon the ipse dixit of the police officer but the Magistrate must scrutinize the reasons for each accused independently and as the police officer cannot record common reasons for arrest, similarly, the Magistrate cannot accept common remand note and must

insist on distinct reasons for arrest qua each accused and scrutinize them separately. A Magistrate who is expected to look into the reasons, which are recorded by the police officer while effecting arrest based on his individual satisfaction that the arrest is necessary on any of the parameter set out in Section 35 (i)(b)(ii) (a) to (c), the Magistrate is duty bound to review those reasons, when a person is produced for remand and he shall not mechanically approve the police request for detention but apply his mind and only on being satisfied that the reasons recorded by the police officer are sufficient enough to detain the accused, grant the custody.” (emphasis supplied)

**33.** In the case at hand, this Court is of the view that the arrest is vitiated on three counts. Firstly, the grounds of arrest and the reasons for arrest, are general in nature and mere reproduction of the conditions envisaged by sub-clauses (a) to (e) of Section 35(1)(b)(ii) of BNSS, 2023. Secondly, identical grounds of arrest and reasons for arrest have been attributed to Mimit (A3) and Anil (A2), though their roles in the alleged occurrence are completely dissimilar. Thirdly, common and general grounds and reasons without any effort at correlating the grounds with the fact-situation qua accused individually, betray non-application of mind.

**34.** The learned Magistrate while authorizing the detention of the Petitioners does not seem to have applied his mind and satisfied himself about the sufficiency of the reasons for arrest, as placed before him in the form of checklist. It was simply recorded that the IO has given reasons and grounds of arrest for his satisfaction that the arrest of the accused was necessary. In fact, the learned Magistrate went on to observe that the grounds of arrest were also communicated to the

relatives of all the accused, which does not seem to be borne out by the record.

35. The learned Magistrate, in the considered view of this Court, did not review the justifiability of the reasons for arrest on the touchstone of the constitutional safeguards and statutory prescriptions and the duty cast on the Magistrate by the authoritative precedents.

36. The third count of infraction pressed into service on behalf of the Petitioners that the grounds of arrest were not communicated to the relatives of the Petitioners, is borne out by the intimation of arrest given to the relatives of the Petitioners. It records that the Petitioners were arrested on 10 October 2025, and, they would be produced before the learned Magistrate on 11 October 2025. The grounds of arrest were evidently not communicated to the relatives. Nor the prosecution claims that such grounds were indeed communicated to the relatives.

37. In the case of ***Vihaan Kumar (supra)***, in the supplementing judgment, Hon'ble Justice N. Kotiswar Singh, observed that the requirement of *communicating the grounds of arrest, to be purposeful*, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50-A of the CrPC. The purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained

person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. It was further observed that the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.

38. Reliance placed by Mr. Malshe on the judgment in the case of ***State of Karnataka vs. Sri Darshan Etc. (supra)***, to drive home the point that, in the absence of demonstrable prejudice, irregularity in this regard, is the curable defect and cannot by itself warrant release on bail, does not assist the case of the prosecution in the facts and circumstances of the instant case.

39. As noted above, vitiation began with the failure to give notice under Section 35(3) of BNSS 2023, especially in the light of the inordinate delay in lodging the FIR. The infirmity continued in furnishing the common and general grounds of arrest to the Petitioners. Had it been a case of mere failure to furnish the grounds of arrest to the relatives and friends, probably the element of absence of prejudice to the Petitioners could have been urged by the prosecution.

40. It would be contextually relevant to note that, in the case of **Ahmed Mansoor and ors. (supra)**, the Supreme Court clarified that, in the case of **State of Karnataka vs. Sri Darshan Etc. (supra)**, the facts were different. It was dealing with the cancellation of bail where chargesheet had been filed and the grounds of detention were served immediately. The Supreme Court has, in fact, given its approval to the decision in the case of **Vihaan Kumar (supra)**.

41. The conspectus of aforesaid consideration is that, once the very arrest and remand of the Petitioners is found to be illegal, the subsequent orders of remand do not infuse legality into initial orders. Resultantly, the Petitioners deserve to be set at liberty.

42. Hence, the following order :

ORDER

- (i) The Writ Petitions stand allowed.
- (ii) The arrest of the Petitioners dated 10 October 2025 and order of remand dated 11 October 2025 are declared illegal.
- (iii) Consequentially, all the subsequent orders of remand and detention are also declared illegal.
- (iv) The Petitioners are set at liberty if not required to be detained in any other case, upon furnishing PR bond in the sum of Rs.50,000/- each, with one or more sureties in the like amount to the satisfaction of the learned Special Judge, MCOCA.

(v) The Petitioners shall not contact the first informant, victim, any of the relatives of the first informant in any manner and for any purpose whatsoever and shall not tamper with the prosecution evidence. The Petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(vi) The Petitioners shall regularly attend the proceedings before the jurisdictional Court.

(vii) Rule made absolute to the aforesaid extent.

(viii) No costs.

**[N. J. JAMADAR, J.]**