

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5933 OF 2025
ALONGWITH
INTERIM APPLICATION (ST) NO.25111 OF 2025
IN
WRIT PETITION NO.5933 OF 2025**

Gaurav Shahajirao Kakade

....Petitioner

V/S

State of Maharashtra & Anr.

....Respondents

Mr.Aabad Ponda, Senior Advocate a/w Ranjeet Pawar, Bhargav Pataskar and Amar Gadhave for the Petitioner.

Mr.Tanveer Khan, APP for the State.

Mr.Manoj Mohite, Senior Advocate a/w Shailesh Chawan, Hrishikesh Awhad and Amar Kale for the Intervenor.

**CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ**

**RESERVED ON : 10th DECEMBER, 2025
PRONOUNCED ON : 4th FEBRUARY, 2026**

JUDGMENT (PER BHARATI DANGRE, J) :

1 On being arraigned as an accused in CR No.283/2024 registered by Wadgaon Nimbalkar Police Station invoking Section 302, 307, 143, 147, 352, 504, 50 and 201 of the Indian Penal Code read with Section 3, 25 and 29 of the Arms Act, 1959, the

Petitioner came to be arrested on 28/06/2024 and since then he is in judicial custody and lodged in Yerwada central jail.

The Petitioner seek issuance of writ of Habeas Corups or any other appropriate writ or direction under Article 226 of the Constitution of India alongwith Section 482 of the Criminal Procedure Code, 1973 (Section 528 of the BNSS), thereby declaring arrest of the Petitioner as illegal and violation of his right guaranteed under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973.

The Petitioner, therefore, seek his release from custody, upon a declaration that the arrest was not in accordance with law.

2 We have heard the learned senior counsel Mr.Aabad Ponda for the Petitioner. The senior counsel Mr.Manoj Mohite has marked appearance for the intervenor, who is complainant, at whose insistence the subject CR was registered at Wadgaon Nimbalkar Police Station, in which the Petitioner was arraigned as an accused. She is also wife of the deceased Ranjit Eknath Nimbalkar, who seek intervention with an intention to bring on record the true and correct facts and to point out to the Court, the involvement of the accused and as to why he is not entitled to the reliefs sought in the Petition.

3 We have also heard Mr. Tanveer Khan, the learned APP for the State, who would placed reliance on the Affidavit filed by Assistant Police Inspector on 01/12/2025 and who has strongly opposed the reliefs in the Petition.

4 On hearing the respective counsel, we deem it appropriate to issue Rule, which is made returnable forthwith.

5 Before we appreciate the contentions revolving around the arrest of the Petitioner, we must briefly refer to the case of the prosecution which is now pending before the Sessions Court, Baramati, in form of Sessions Case No.190/2024, arising out of the FIR lodged by the complainant on 28.06.2024.

The complainant alleged that the deceased Ranjeet Nimbalkar, her husband was fond of bullock cart racing and was a proud owner of two bullocks viz. Sarja and Sundar who were kept in the custody of Vitthal Chavan for catering to them, he being located in Taluka Khatav, District Satara. Sarja was purchased one year ago from Gautam Kakade of Nimbut (Accused No.1), for a sum of Rs.61,00,000/-. Both the bullocks had participated in the racing and had won the races.

As per the case of the prosecution, on 24/06/2024, Gautam Kakade visited Ranjeet with an intention to purchase his Bull (Sundar) and conveyed to him that he alongwith Santosh Todkar wanted to strike a deal. The transaction was settled for Rs.37,00,000/- and an amount of Rs.5,00,000/- was handed over as earnest money and the balance was agreed to be paid on 27/06/2024. It was also agreed that the transaction would be reduced into writing on a stamp paper.

The bull was carried with him by Accused No.1 and the complainant was a witness to the said act.

6 On 27/06/2024 at about 8.00 a.m. Ranjeet and Santosh

Todkar went to approach Gautam Kakade at Nimbut to finalise the transaction and he returned home at 2.00 p.m. and the complainant was informed by her husband that without making payment of balance amount Gautam Kakade had asked him to put signature on a stamp paper and which he refused and he had called him in the evening.

As per the version of the complainant, on 27/06/2024 at around 9.00 p.m. she alongwith her husband, her daughter aged 10 months alongwith one relative Vaibhav Kadam and his friend proceeded to village Nimbut in a vehicle. Santosh Todkar was waiting at Village Lonand, who questioned the deceased as to why he did not sign the papers despite receiving the whole amount and he was told that he had received only Rs.5,00,000/- and the balance amount is not received.

Thereupon, Santosh Todkar narrated that Accused No.1 had told him that the entire amount was paid and the transaction was completed.

Since Accused No.1 had called the deceased to receive the balance consideration, she accompanied her husband and they reached the house of Accused No.1 at 11.00 p.m.; and while they were sitting in the courtyard, he asked her husband as to why he had told Santosh Todkar that the balance amount was not paid and he said that he would pay the balance amount in the next morning, but asked her husband to put his signature on some papers, which he refused **and he also warned him that if he was not desirous of completing the transaction, he should refund the sum of Rs.5,00,000/- and return the bullock** and thereafter she alongwith her husband and the persons accompanying them

proceeded towards their vehicle. At this moment, the accused made a phone call and called his brother on the spot, which is the Petitioner. As per the case of the prosecution, the Petitioner (Accused No.2) and three unknown boys arrived at the spot and they threatened the deceased that he should not make any dispute about the transaction and the present Petitioner is alleged to have uttered that he would kill him, but will not permit him to carry the bull and he fired a shot by a pistol in his hand by pointing it on the head of Ranjeet, who fell down.

As per the complainant, with the help of persons present there, she carried her husband at Sai-Seva Hospital, Waglewadi and thereafter in an ambulance to Baramati. This resulted in registration of offence against the accused persons by invoking Section 307 of the IPC, but since during the course treatment her husband succumbed to the gunshot injuries, Section 302 of the IPC was added in the subject FIR.

7 In connection with the aforesaid accusations, the Petitioner who was arraigned as accused No.2 was arrested on 28/06/2024 at 6.32 p.m. and produced before the Magistrate and he was remanded to police custody till 01/07/2024 and, thereafter, to judicial custody. On completion of investigation the charge sheet was filed on 24/09/2024 which was submitted in Sessions Case No.190/2024.

8 It is the claim of the Petitioner that his arrest is in gross violation of fundamental rights and violation of constitutional protection guaranteed under Article 22(1) of the Constitution of

India and Section 50(1) read with Section 50A(1) of the Code of Criminal Procedure, 1973. He, therefore, approached the Sessions Court securing his release on the said ground, but by order dated 17/05/2025 his application was rejected.

9 The learned senior counsel Mr. Aabad Ponda, representing the Petitioner urged before us that the arrest of the Petitioner is in violation of the constitutional mandate under the Constitution of India and he would submit that it is mandatory for the investigating agency to communicate the grounds of arrest to the accused and it is his fundamental and constitutional right to know on what ground he has been arrested. It is specifically urged by the learned senior counsel that the Petitioner was not informed about the grounds of arrest in writing or orally by the officer who arrested him, at the time of his arrest or thereafter.

Reliance is placed by Mr.Ponda on the decision of the Apex Court in the case of ***Mihir Rajesh Shah vs. State of Maharashtra & Anr. (Criminal Appeal No.2195/2025)***, where it is held that it is the constitutional mandate to inform the arrestee of the grounds of arrest and it is mandatory in all offences under all statutes including the offences under Indian Penal Code, 1860 (now BNS, 2023).

By inviting our attention to the directions contained in Para 56 of the law report, Mr. Ponda would submit that it is held by the Apex Court in the latest decision that in case(s) where the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it shall be so done orally and grounds of arrest be communicated in writing within a

reasonable time and in any case at least two hours prior to production of the arrestee in remand proceedings before the Magistrate. According to Mr.Ponda, it is reiterated by the Apex Court that failure to comply with the requirement in law, the arrest and subsequent remand would be rendered illegal and the person will be entitled to be set at liberty.

10 Reliance is also placed by Mr.Ponda on the decision in ***Vihaan Kumar vs. State of Haryana & Anr.***¹ which has underscored the **judicial commitment** in upholding constitutional protection against arbitrary arrest and intention and according to him, the said decision has set a precedent to the effect that the investigating agency/police officer effecting arrest of any person in connection with any cognizable offence without the warrant, must provide specific and actionable reasons for an individual arrest, beyond citing broad provisions of law and according to him, a clear dictum flows from the said decision, which make it imperative for the law enforcement agencies to exercise greater diligence in communicating the precise grounds of arrest in order to avoid unlawful detention claims. According to him, the decision in ***Vihaan Kumar*** (*supra*) further reinforces the right to legal recourse through Habeas Corpus Petitions, empowering individuals to challenge legality of their detention effectively.

Mr. Ponda would draw benefit from the observations of their Lordships in ***Vihaan Kumar*** (*supra*), which has clearly held that the mode of conveying information of the grounds must be meaningful so as to serve the objects of he being in a position to

1 (2025)5 SCC 799

effectively exercise the right to consult an Advocate and defend the remand proceedings.

Apart from relying upon the decision in case of *Pankaj Bansal vs. Union of India & Ors.*² and *Prabir Purkayastha vs. State (NCT of Delhi)*³, the principle laid down in *Kasireddy Upender Reddy vs. State of Andhra Pradesh & Ors.*⁴ is also invoked by Mr. Ponda and in particular the observations in **Para 26 and 27** of the said decision.

According to Mr. Ponda, the Respondent has not produced any single document to submit that the grounds of arrest were communicated or informed to him in any manner at the time of his arrest or even as per the latest position two hours prior to his production in remand proceedings. He would submit that the requirement of informing the person arrested of the grounds of arrest is not an empty formality, but a mandatory constitutional requirement.

Inviting our attention to the Arrest Form and in specific column No.8 he would submit that there is no mention of any time when the grounds of arrest are communicated to the Petitioner, there is only mention of date which is clearly reflective of non application of mind at the time of filling of Arrest/Surrender Form and the casual approach adopted by the arresting officer. Further, according to him, there is no written communication regarding the grounds of arrest anywhere being placed in the entire charge sheet and, therefore, before remanding him to custody without adhering to the constitutional

2 (2024) 7 SCC 576

3 (2024) 8 SCC 254

4 2025 SCC OnLine SC 1228

and statutory mandate , the custody of the Petitioner and its continuation, according to the learned senior counsel is illegal.

Mr.Ponda has also urged that there is significant different in the 'grounds of arrest and reasons for arrest'. The reasons of arrest according to him are formal parameters, viz. to prevent an accused from committing any further offence or that his arrest is necessary for proper investigation or to prevent the accused from causing the evidence of the offence to disappear or tampering with such evidence in any manner or to prevent the arrested person from 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. According to him, these reasons would commonly apply to any person arrested on the accusation of commission of a crime, whereas, the 'grounds of arrest' on the other hand would contain all such details in the hands of the Investigating Officer which necessitated the arrest and the grounds informed in writing must convey to the arrested accused all basic facts, on which he is arrested, so as to provide him an opportunity of defending himself against custodial remand and to seek bail and these grounds would invariably **be personal** to the accused and cannot be equated with 'reasons of arrest' which are general in nature.

The Petitioner has also placed reliance upon the Judgment delivered by this Court when Ajit Kisan More, the co-accused arrested in the same FIR and who had approached this Court by filing a Writ Petition No.3119/2025, *Ajit Kisan More vs. State of Maharashtra*, raised a ground that the reasons of arrest were

not communicated to him in writing when he was arrested on 01/07/2024. It is the case of the Petitioner that by relying upon the decision of the Apex Court in ***Kasireddy Upender Reddy*** (*supra*) and also the decision in case of ***Vihaan Kumar*** (*supra*) the Writ Petition was allowed and arrest of the Petitioner was declared as illegal.

11 The learned APP Mr.Tanveer Khan has opposed the reliefs sought in the Petition and as regards the contention of the Petitioner that grounds of arrest were not communicated, it is his submission that the investigating officer arrested the present Petitioner on 28/06/2024 at 6.32 hours and one more accused Shahaji Kakade on the same day at 13.33 hours. He would rely upon the following assertion in the Affidavit, affirmed by the Assistant Police Inspector, Wadgaon Nimbalkar Police Station.

“6. I say that during the course of investigation, the investigating agency arrested the Petitioner on 28.06.2024 at 06.32 hrs. and personally informed him grounds of his arrest, and the said fact mentioned in Station Diary dated 28.06.2024 at 06.32 hrs. mentioned at Wadgaon Nimbalkar Police Station, Pune Rural, Dist.: Pune and accordingly, Case Diary to that effect was made on 28.06.2024 vide Case Diary No.1. Annexed herewith and marked as Exhibit A Colly are the copy of the Station Dairy dated 28.06.2024 and the Case Diary No.1 dated 28.06.2024. His arrest was immediately informed to his Father namely Shahaji Mugutrao Kakade and Arrest Panchnama to that effect was made and the said Arrest Panchanama was also signed by Panchas namely Dadasaheb Suresh Kumbhar and Dilip Shankar Hirve. The fact that the accused was informed about of arrest was also mentioned in the Arrest Panchanama, after the arrest of the Petitioner was intimated to Sub Divisional Police Officer, Baramati Division, Dist.: Pune by the investigating agency immediately. The name of the Petitioner was entered into Arrest Register. Apart from that, prior to Petitioner's arrest, the necessary medical examination was also conducted in accordance with law. I further say that even during the course of his arrest, the basic necessities were also provided to him i.e. Food, Clothing and Shelter. I further say that even the Petitioner was

also produced within 'statutory period of 24 hours, before the Learned Judicial Magistrate, First Class, Baramati, Dist.: Pune on 28.06.2024 alongwith the copy of the Remand Report dated 28.06.2024. I further say that even the copy of the Remand Report dated 28.06.2024 was also given to the Petitioner who acknowledged the same.

According to Mr.Khan the Petitioner was produced before the JMFC Baramati on 28/06/2024 and in the first remand the Petitioner did not raise an issue regarding compliance of any of the provision and the Remand Application was opposed on merits, leading to assumption that the Petitioner was aware of the grounds of his arrest and the accused was remanded to Police custody. Thereafter, he was produced before the JMFC, Baramati, on 01/07/2024, and then on 02/07/2024 when he was granted magisterial custody. According to Mr. Khan on completion of investigation the charge sheet has been filed and the case of the Petitioner is pending for trial.

The Affidavit filed by the Investigating Officer is responded to by the Petitioner by filing a rejoinder affidavit where he reiterated his earlier stand when he deposed thus :-

“10. I further say that, the station dairy dated 28.06.2024 and Arrest Form dated 28.06.2024 are contemporary documents which are shown to be prepared by the Investigating Agency during the alleged arrest. When there is absolutely no whisper about the communication of grounds of arrest to me either orally or in writing in the said two documents, there is no question of the same appearing in Case Dairy which is prepared by Mr. Rahul Ghuge at the end of that day, and which is a narration of investigation alleged to be conducted by the officer for that day. Therefore, when the alleged real time documents itself do not contain anything about communication of grounds of arrest in oral or in writing, it is quite surprising as to how same appears in the case dairy. Thus it is apparent that an afterthought document is created and fabricated merely to create illegal evidence against the Petitioner. The Hon'ble Supreme Court in Vihan Kumar has held that entries in case dairies cannot be relied upon unless there is any contemporary record supporting the entries in Case Dairy.

11. I say that, I was also not served with copy of Remand Report as is contented in the Affidavit in Reply and thus, it is incorrect to say that I have acknowledged the supply of the said Remand Report. It is not correct to say that I was aware about the grounds for arrest at the time of my remand proceedings.

12. It is a matter of record that nowhere in the Remand Report it is even written that, the grounds of arrest have been communicated to me orally or in writing. Nor is it informed to the court about the same. On perusal of the Remand order it can be seen that, there is no mention about the Ld. Magistrate, Baramati, ascertaining about the grounds of arrest being provided to me orally or in writing, it has only ascertained whether there was ill treatment or not. Thus the contention that during my remand I was aware about the grounds of arrest is factually incorrect and a misleading statement.”

12 The learned senior counsel Mr. Manoj Mohite representing the intervenor would join hands with Mr. Khan in opposing the reliefs sought in the Petition and he would place reliance upon the decision of this Court in ***Tirupati Vilas Podalwar vs. State of Maharashtra & Anr.*** (Criminal Appeal No. 761/2024) as well as the decision in case of ***Naushad Ahmed Shaikh vs. State of Maharashtra & Anr.*** (Cr. Writ Petition No. 6057/2025) where the Petitioners were held entitled for the benefit of non compliance of the statutory mandate. He would also place reliance upon the decision of the Apex Court in case of ***State of Karnataka vs. Sri Darshan etc.***⁵, where it is held that though communication of grounds of arrest is guaranteed and constitutional and statutory framework mandated that arrested person must be informed of the grounds of arrest, but according to him, it do not prescribe a specific form or insist upon written communication in every case and in this decision it is held as below :-

“20.1.4. In *Vihaan Kumar v. State of Haryana*, it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest

⁵ 2025 Livelaw SC 801

grounds in substance, even if not conveyed in writing. Similarly, in *Kasireddy Upender Reddy v. State of Andhra Pradesh*, it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post- *Pankaj Bansal* decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.

20.1.5. While Section 50 Cr.P.C is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.”

13 The learned senior counsel Mr. Ponda representing the Petitioner has invoked the principles laid down by the Apex Court in case of *Prabir Purkayastha* (*supra*) and *Pankaj Bansal* (*supra*) and the subsequent authoritative pronouncements from the highest court of this country, where it has recognized the significance of communication of the ‘grounds of arrest’ to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted to him in the language he understands.

Though in *Pankaj Bansal* (*supra*), the offence involved was under the Prevention of Money Laundering Act, 2002 (PMLA Act) and the question arose in regard to the compliance of the mandate of communicating the ‘grounds of arrest’, with reference to Section 19(1) of the PMLA Act, in order to give true meaning and purpose to the constitutional and statutory mandate of Section 19(1) of the PMLA, of informing the arrested person of the ‘grounds of arrest’, the Apex Court directed that it would be necessary that a copy of the written ‘grounds of arrest’ is furnished to the arrested person as a matter of course and without exception. In the facts of the case, holding that the

Investigating Officer of the Enforcement Directorate, merely reading out or permitted reading of the ‘grounds of arrest’ of the Appellant and leaving it at that, which was also disputed by the Appellant, was held to be not adequate compliance of the mandate of Article 22(1) of the Constitution of India and Section 19(1) of the PMLA Act, as a result of which the arrest was held to be illegal and as a consequence thereof his remand to the custody of Enforcement Directorate and thereafter to judicial custody was also found to be not sustainable.

In *Prabir Purkayastha* (*supra*), a decision by the Supreme Court followed by the decision in *Pankaj Bansal* (*supra*), the Apex Court, offered a wider scope with reference to its earlier decision in case of *Harikisan vs. State of Maharashtra*⁶, which held that communication of the ‘grounds of detention’ to the detinue in writing and in the language he/she understands is imperative and essential to provide an opportunity to the detinue to make an effective representation against detention and in case, such communication is not made the order of detention would stand vitiated, as the guarantee under Article 22(5) of the Constitution of India would stand violated.

Drawing the analogy from the aforesaid decision, it is held that the language used in Article 22(1) and Article 22(5) of the Constitution of India regarding communication of the grounds is exactly identical and neither of the constitutional provisions require that ‘grounds of arrest’ or ‘detention’ as the case may be, must be communicated in writing. The interpretation to this important facet of fundamental right, while

6 1962 SCC OnLine SC 117

examining the scope of Article 22(5) of the Constitution of India, was, therefore, held to *ipso facto* apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the 'grounds of arrest' is concerned. With no hesitancy, their Lordships of the Apex Court have reiterated that the requirement to communicate the 'grounds of arrest' or the 'grounds of detention' in writing to a person arrested in connection with an offence or to a person placed in detention as provided under Article 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached in any situation and non compliance of the constitutional requirement and statutory mandate would lead to the custody or detention being rendered illegal.

Highlighting a thin line of distinction between the 'reasons of arrest' and 'grounds of arrest', it was spelt out that the 'reasons of arrest' in the Arrest Memo are purely formal parameters viz. to prevent accused from committing any further offence, for proper investigation of offence, to prevent the accused from causing the evidence to disappear or tampering of such evidence, or preventing the arrested person in making inducement, threat or promise, so as to dissuade him from disclosing the facts to the Court or Investigating Officer. However, the 'grounds of arrest' would be required to contain all such details in the hand of Investigating Officer which necessitated the arrest of an accused.

It was informed that the 'grounds of arrest' shall be informed in writing to the arrested accused as it would apprise him of the basic facts on which he/she was being arrested, which would provide him/her an opportunity of defending himself/

herself against custodial remand and to seek bail.

14 The two decisions received a further expansion with clarity in **Vihaan Kumar** (*supra*), when the right guaranteed to an arrested person not to be detained in custody without being informed, as soon as may be the grounds of such arrest in terms of Article 22(1) of the Constitution of India, was held to be a mandate flowing from the constitutional provision. It was, therefore, held that any infringement of this fundamental right would vitiate the process of arrest and remand. However, holding that once a person is arrested, his right to liberty under Article 21 of the Constitution of India is curtailed and, therefore, he is entitled to avail the benefit of the provision in form of Sub-clause (1) of Article 22 of the Constitution which give him a right on his arrest, to consult an Advocate of his choice and right to be defended and if the grounds of arrest are not communicated to him, he will not be able to effectively exercise the right to consult an Advocate. On failure to comply with the requirement of informing the grounds of arrest as may be after the arrest, it is held that the arrest is vitiated and the person arrested, cannot remain in custody even for a second. However, it was clarified that the mode and method of communication must be such that the object of the constitutional safeguard is achieved as the communication of the grounds to the arrestee effectively in the language which he understands, will facilitate his production in the Court and defend of the remand.

In **Vihaan Kumar** (*supra*) though the requirement of informing the person arrested of the 'grounds of arrest' is held as

mandatory requirement under Article 22(1) of the Constitution of India and non compliance with the same was held to be violation of the fundamental rights, resulting into the orders of remand passed by the criminal court being vitiated, it is held that it is not the mandate of Article 22(1) to communicate the grounds in writing, but the mode of conveying the 'grounds of arrest' must necessarily be meaningful so that it serve the intended purpose.

When a person is arrested without a warrant and the 'grounds of arrest' are not informed to him, as soon as may be, after the arrest, it was held that it will amount to violation of his fundamental right guaranteed under Article 21 as well and when the mandate of Article 22 is not followed while arresting a person or after arresting him, it will also violate fundamental right to liberty under Article 21 and the arrest is liable to be rendered illegal.

15 In the facts of the case, in absence of communication of grounds to the Appellant ***Vihaan Kumar*** (*supra*), at the time of his arrest he was directed to be released and set at liberty though it was held that his release shall not affect the merits of the charge-sheet and the pending case.

16 In ***Kasireddy Upender Reddy*** (*supra*), the question which deserve consideration of their Lordships was, whether arrest of the Appellant's son could be said to be *per se* illegal for want of supply of appropriate and meaningful grounds of arrest and the question was answered in the backdrop of the provisions in form

of Article 21 and 22 of the Constitution of India as well as the relevant provisions relating to arrest in form of Section 41 of the Code of Criminal Procedure and Section 47 of the BNSS, casting a responsibility of informing the person arrested of the grounds of his arrest and his right of bail.

With heavy reliance being placed upon the path breaking judgment of this Court in case of ***Vihaan Kumar*** (*supra*) with its profound implications for implementation of Article 22 of the Constitution of India, the principles flowing from the said decision were culled out by emphasizing that informing the person arrested of the grounds of arrest is not a formality, but a constitutional mandate and failure to comply with the requirement of informing the 'grounds of arrest' as soon as may be after the arrest, will vitiate the arrest and entitle the arrestee for his release. The principle that when an arrestee pleads before a Court that the 'grounds of arrest' were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities, was also highlighted. However, in the light of this legal position, the point for consideration on facts was, whether the 'grounds of arrest' supplied to the Appellant's son at the time of his arrest could be said to be meaningful and sufficient enough to give a broad idea to the person arrested of the accusations levelled and as to why he was being taken in custody and in the facts of the case, it was found that at the time of arrest the 'grounds of arrest' were supplied to the arrestee and were later served on his father and the argument canvassed that the grounds were not sufficient compliance of the constitutional mandate, was found to be

without merit and substance as it was held that, it was difficult to take a view that the grounds did not make any sense or are not meaningful or are just an eye-wash in contrast to the actual aspect involved in *Vihaan Kumar* (*supra*), where there was absolute failure on part of the police to prove the 'grounds of arrest' and reliance was placed upon an entry in case diary which merely recorded that on arrest the arrest were informed.

In these particular facts, it was held as below :-

"36. We must refer to the reasons recorded by the High Court. SCC OnLine P&H para 7 of the judgment notes the contention regarding failure to serve grounds of arrest. Para 9 of the impugned judgment reads thus :

9. In the above said para, it has been explicitly mentioned that petitioner was informed regarding his arrest and after that he was produced before the Judicial Magistrate, who had given the seven days police custody for conducting investigation. The allegations about non-supply of arrest, is simply bald. The analysis of above, would clearly point out that there is no violation of Article 22(1) of Constitution of India because there is nothing to disbelieve that petitioner was not informed about ground of arrest."

The Appeal filed was, therefore, dismissed as it was held that the arrestee in the case in hand was informed as to the grounds for which he was arrested in the subject CR though he was granted liberty to file an application for bail.

17 In the facts before us, we have noted the specific contention of the Petitioner that there is abject failure to follow the mandate of law which reiterated through the decision of the Apex Court as the Petitioner was not communicated the 'grounds of arrest' or nor was he informed in any manner as to why he was arrested. In the arrest form in Column No.8 there is no mention about the 'grounds of arrest' and the **date on the arrest form is mentioned**

as 01/07/2024 which is reflective of complete non application of mind. With a specific contention being advanced that the grounds of arrest were not communicated to the Petitioner in any manner, either at the time of his arrest or after the arrest, it is pleaded that there is non compliance of Section 50A of Cr.P.C. apart from the fact a ground is raised that there is no written communication regarding the 'ground of arrest' available anywhere on record in the entire charge-sheet. Since the grounds of arrest were not furnished to the Petitioner, either at the time of arrest or before remanding him to custody, it is pleaded case of the Petitioner that continuing custody of the Petitioner is grossly illegal and invalid in the eyes of law, because it is hit by the imperative mandate of Article 22(1) of the Constitution of India.

This particular plea advanced in the Petition has received response from the Respondent and we have already reproduced Para 6 of the Affidavit, where a stand of the Investigating Officer is, the investigating agency arrested the Petitioner on 28/06/2024 at 6.32 hours and personally informed him the 'grounds of arrest' and this fact is mentioned in station diary dated 28/06/2024 at 6.32 hours. The copy of the station diary dated 28/06/2024 and case diary No.014 are annexed alongwith the Reply Affidavit at Exh.A Colly.

We have perused the station diary entry (General Diary) of Police Station Wadgaon Nimbalkar and in specific the station diary entry No.014 recorded on 28/06/2024 at 06.32 hours with respect to arrest entry. The recording of the arrest in the diary is to the following effect :-

“API Shri Rahul Ghuge informed that, in connection with CR

No.283/2024 registered with Wadgaon Nimbalkar Police Station under Section 307, 143, 147, 149, 504, 506, 352 of the Indian Penal Code and 3/25 of the Arms Act, the accused Gaurav Shahaji Kakade, aged 42 years, resident of Nimbut, Taluka - Baramati, District- Pune, was searched in Mauje Nimbut and in connection with the said crime, he is taken into custody and he is subjected to pre arrest medical examination by the Medical Officer, Primary Health Centre, Hol, and thereafter, by strictly following the directions issued by the Apex Court in connection with the arrest, the information about his arrest on 28/06/2024 has been communicated to his relatives. Noted as above."

A perusal of the station diary No.1 dated 28/06/2024 which is also placed on record, refer to the case of the prosecution resulting into the registration of the subject CR with specific reference to the present Petitioner being arraigned as Accused No.2. It record that he was subjected to medical examination before arrest and on search a mobile phone recovered from him is seized. It also record that while arresting him, the CR Number and the 'grounds of arrest' were made known to him in accordance with the directives of the Apex Court and the compliance of these directives was ensured in strict sense. It also record that in presence of the two Panchas the Arrest Form is filled in and it is recorded that the intimation about arrest is communicated to the father of the arrestee, Shahaji Mugutrao Kakade and a noting to that effect is taken in the station diary. The entry also record that the Arrestee is given a notice under Section 41(1), 50A of Cr.P.C. orally and in writing and in Column No.8 of the Arrest Form it is noted that the reasons for arrest and his rights were communicated to him and in presence of the two panchas the Arrestee signed the Arrest Form. Upon following the procedure entry to that effect is taken in station diary.

18 A perusal of station diary produced before us only record that there is compliance of the directives of the Apex Court, but the 'grounds of arrest' are not at all mentioned nor the deponent of the Affidavit has deposed about the grounds that have been communicated orally to the Petitioner, as admittedly they are not communicated in writing.

In the station diary dated 28/06/2024, there is no whisper about the 'grounds of arrest' to be communicated to the Petitioner either orally or in writing and in fact as per the Petitioner, in the Arrest Panchanama in Column No.8 there is mention of date as 02/06/2024, whereas, the date of arrest of the Petitioner is 28/06/2024 at 6.32 hours.

The station diary entry as well as the Arrest Form has no mention about the communication of 'grounds of arrest', either orally or in writing and, therefore, there is no question of the same appearing in the case diary prepared by Mr. Rahul Ghuge, the Investigating Officer, which contain a narration of the investigation conducted for that day. When the entry do not specify the communication of 'grounds of arrest' to the Arrestee in the station diary, the assertion that the 'grounds of arrest' were orally communicated, in the case diary, definitely do not inspire confidence.

Surprisingly, the Magistrate, Baramati, before whom the Petitioner was produced, did not inquire whether the grounds of arrest are furnished to him prior to his production, before his arrest or after his arrest, but before his production, either orally or in writing, but what was only ascertained was, whether the Arrestee was subjected to any ill-treatment.

19 Mr. Ponda has placed heavy reliance upon the decision of the Division Bench in case of ***Ajit Kisan More*** (*supra*), a co-accused in the same CR in which the Petitioner is arraigned as an accused and in the Writ Petition, he made a grievance about his arrest by contending that the grounds of arrest were not communicated to him. The contention raised was opposed by filing an Affidavit and the Division Bench recorded thus :-

“14. In the backdrop of the above submission, we have analyzed the entire documents placed before us in this proceeding. We have perused the Arrest/Court Surrender Form at page no.133, dated 1st July, 2024, more specifically Clause No.8, where in the reasons of arresting a person are always required to be mentioned alongwith the date, time and place, with a narration of the reasons. The entire clause in the said form is left blank in this case. Not a single word has been typed in the Arrest Form to indicate that the Petitioner was made aware of the grounds for his arrest.”

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“17. In the backdrop of the contention put forth by the Petitioner, we are referring to the view taken by the Hon’ble Supreme Court in *Vihaan Kumar versus State of Haryana & Anr.* The Hon’ble Supreme Court has concluded that the requirement of communicating the grounds of arrest in writing is not only significant 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.”

It is further recorded thus :-

“25. The police authorities are not in a position to show us any such document which would substantiate their stand, notwithstanding paragraph No.13 of the affidavit of the Investigating Officer, adverted to herein above. IT is a clear case that the reasons for arrest were not conveyed to the Petitioner in writing.”

As a result of above, the Writ Petition was allowed and the arrest of the Petitioner dated 01/07/2024 was declared illegal.

We are informed that this decision is subjected to challenge in a Special Leave Petition where the Apex Court has issued notice.

20. The learned senior counsel Mr. Mohite has placed reliance upon the decision of Co-ordinate Bench in case of *Tirupati Vilas Podalwar* (*supra*) at Nagpur Bench and also decision in case of *Rohan Mohan Shinde vs. State of Maharashtra & Ors.*⁷ at Aurangabad Bench, which has considered the law laid down in **Vihaan Kumar** that written individualised grounds are not an inflexible requirement, but if the Arrest Memo and remand record reflect that the Respondents were aware of the reasons for the arrest and they were sufficiently represented, they cannot make a grievance.

The aforesaid decisions are distinguishable as in the present case there is no iota of evidence produced before us by the Respondent that the 'grounds of arrest' were communicated to the Petitioner either orally or in writing and even oral communication was sufficient compliance of the constitutional mandate as Clause (1) of Article 22 do not contemplate communication of grounds in writing, but we have noted that in the case before us there is a conspicuous absence of an assertion in the station diary that the 'grounds of arrest' are communicated to the Petitioner, but an attempt is made to rely upon the case diary No.1 dated 28/06/2024 which according to us do not satisfy the requirement of the 'reasons of arrest' being communicated to the Petitioner, either before his arrest or after his arrest, but

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before his production and this according to us has definitely caused prejudice to the Petitioner as in the words of the Apex Court, the right to be appraised of the 'reasons of arrest' cannot be at all compromised as it is considered to be a fundamental right available to the arrestee, so that he is aware of the material with the Investigating Officer justifying his arrest and with these reasons being offered to him he can sufficiently defend the remand proceedings.

22 In ***Vihaan Kumar*** (*supra*) the contention advanced that the investigation being complete, the charge-sheet being filed and the custody of the Appellant was pursuant to an order taking cognizance passed on the charge-sheet, it is held that such argument shall amount to completely nullifying Article 21 and 22 (2) of the Constitution of India, and it is categorically held that once it is held that the arrest is unconstitutional due to violation of Article 22(1) that itself is vitiated and the continued custody of such person based on orders of remand is also vitiated and filing of charge sheet and order of cognizance will not validate an arrest which is *per se* unconstitutional.

The argument came to be rejected with the specific comment from the Apex Court, " We cannot incur with the most important safeguard provided under Article 22."

Since we feel ourselves guided by the law laid down by the Apex Court from time to time which has recognized the fundamental right available to the arrestee for being made available the 'grounds of arrest' and though not necessarily in writing, but being communicated with the grounds of arrest, in

form of such details in the hand of Investigating Officer, which necessitated his arrest, so as to provide him an opportunity of defending himself against custodial remand and to seek bail, these grounds being invariable pursuant to the accused and distinguished from reasons of arrest, which are general in nature, according to us, failure to adhere to the mandate and resulting into its violation, must result in release of the Petitioner.

The Writ Petition is, therefore, made absolute.

We direct that the Petitioner shall be released from custody as we declare the arrest of the Petitioner, followed by the remand orders to be invalid in eyes of law and we quash and set aside the same.

Since we are informed that the charge sheet is already filed, we direct release of the Petitioner on furnishing bail bond to the satisfaction of the trial Court.

[SHYAM C. CHANDAK, J.]

[BHARATI DANGRE, J.]