NC: 2025:KHC:16018
WP No. 9302 of 2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 9302 OF 2025 (GM-RES)

BETWEEN:

1. HEMANTH DATTA @ HEMANTHA @ BABY
S/O VISHWANATH DATTA @ BISWAJITH DATTA,
AGED ABOUT 20 YEARS,
R/AT, NEAR ANUGRAHA SOCIETY,
LAKSHMIPURA, ARSIKERE,
HASSAN DISTRICT, PERMANENT ADDRESS
NEAR SAMATHA ROAD,
KARIYAMMA TEMPLE ARSIKERE,
HASSAN DISTRICT.

…PETITIONER

(BY SRI. PRATHEEP K.C., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY ARSIKERE TOWN POLICE STATION
HASSAN
REP. BY SPP HIGH COURT
BUILDING BANGALORE-01.

2. MANJA NAIKA,
S/O LATE MURTHY NAIK,
AGED ABOUT 29 YEARS
R/AT HALEKALLANAYAKANAHALLI VILLAGE,
KASABA HOBLI, ARSIKERE TALUK,
HASSAN -01

…RESPONDENTS

(BY SRI. B.N. JAGADEESHA, ADDL. SPP WITH
SRI. RAHUL RAI K., HCGP FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CRPC PRAYING TO QUASH THE IMPUGNED REMAND ORDER DATED 17.02.2023 VIDE ANNEXURE-A IN CRIME NO. 35/2023 PASSED BY THE HONBLE SENIOR CIVIL JUDGE AND JMFC COURT, ARSIKERE FOR THE OFFENCES PUNISHABLE U/S 302 AND 201 BY ARSIKERE TOWN POLICE (ANNEXURE-A) IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

The petitioner is before this Court in its writ jurisdiction under Articles 226 and 227 *read with* Section 482 of Cr.P.C. seeking to quash the impugned remand order dated 17.02.2023 (Annexure A) passed by Snr. Civil Judge and JMFC, Arsikere, in Crime No. 35/2023 registered in Arasikere PS, Arasikere Sub-Division, Hassan District, for offences punishable under Section 302 and 201 of IPC, 1860.

2. The petitioner has been in judicial custody since 17.02.2023 and has preferred the instant petition challenging his arrest on the grounds that no grounds of arrest were communicated to the arrestee-petitioner, prior to the passing of the impugned order of remand.

3. The learned counsel for the petitioner submitted that non-communication of the grounds of arrest to the arrestee at the time of his arrest constitutes a violation of the fundamental right under Article 22(1) and therefore, shall also amount to violation of the right to Protection of life and personal liberty, under Article 21 of the Indian Constitution. The learned counsel drew the attention of this Court to Annexures 'E' and 'F' and submitted that the purported arrest memo dated 17.02.2023 does not contain any 'possible' grounds, which has warranted the arrest of the petitioner herein. Therefore, in light of the apparent error of law resulting in contravention of the entrenched fundamental rights of the petitioner, the instant petition is preferred seeking a writ of certiorari to quash the impugned order of remand and to direct the release of the petitioner forthwith from custody.

In support, he places reliance upon the following:

I. Assistant Commissioner of Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Ltd. (2008) 14 SCC 171
II. Central Bureau of Investigation v. RR Kishore, (2023) 15 SCC 339
III. Manoj Parihar and Ors. v. State of Jammu and Kashmir, (2022) 14 SCC 72
IV. Pankaj Bansal v. Union of India, 2024 (7) SCC 5760
V. Prabir Purkayastha v. State (NCT) of Delhi, 2024 (8) SCC 25
VI. Syed Sajjad Ali v. Senior Intelligence Officer, Directorate of Revenue Intelligence, W.P. No. 5435/2024 : DD 05.07.2024
VII. Praveen Singh v. State of Karnataka, W.P. No. 1390/2025 : DD 17.02.2025
VIII. Harikisan v. State of Maharashtra, - Constitution Bench, AIR 1962 SC 911
IX. Lallubhai Jogibhai Patel v. Union of India and Ors., 1981 (2) SCC 427

X. Vihaan Kumar v. State of Haryana, 2025 SCC OnLine SC 269
XI. Ashish Kakkar v. UT of Chandigarh, Crl A. No. 1518/2025 in SLP Crl. No. 1662/2025 : DD 25.03.2025

4. Per contra, Shri BN Jagadeesha, the Ld. Addl. Special Public Prosecutor submitted that the petitioner admits to having been served with the arrest memo and intimation of arrest, as prescribed under Section 50 and Section 50-A of Cr.P.C.

4.1. As regards the obligation incumbent upon the arresting officer to the communicate the grounds of arrest in writing to the arrestee, the Ld. Addl. Special Public Prosecutor further submitted that the same is in effect only since the date of pronouncement of judgment by the Apex Court in the case of *Pankaj Bansal (supra)* i.e., October 3, 2023, as enunciated by the Apex Court in the case of Ram Kishor Arora v. Directorate of Enforcement, (2024) 7 SCC 599.

4.2. Therefore, the Ld. Addl. Special Public Prosecutor submitted that the instant petition cannot be maintained, in light of the fact that the purported non-communication of grounds of arrest in writing to the petitioner did not fly in the face of law, as it stood on the date of arrest of the petitioner, on 17.02.2023.

4.3. The Ld. Addl. Special Public Prosecutor further submitted that in the event this Court were to permit retrospective application of case-laws enunciated

subsequent to the date of the arrest of the petitioner, the precedentiary value of the same be confined to the case of non-habitual offenders.

In support, reliance is placed upon the following:

I. Ram Kishor Arora v. Directorate of Enforcement, (2024) 7 SCC 599
II. Sharath Kumar K @ Sharu v. State of Karnataka, W.P. No. 3677/2025 : DD 10.02.2025

5. Heard the learned counsels and perused the material on record.

5.1. The issue that arises for consideration is, whether the instant petition seeking a writ of certiorari to quash the impugned order of remand dated 17.02.2023, on grounds of - an error of law apparent on face of record arising from non-service of grounds of arrest in writing upon the arrestee, in light of subsequent judgements mandating service of grounds of arrest in writing upon the arrestee, is maintainable?

6. It is an undisputed fact that the petitioner has been in judicial custody since the date of the passing of the impugned remand order dated 17.02.2023. The petitioner-arrestee was arrested at 7-00 AM on 17.02.2023 and was produced before the jurisdictional Magistrate at 5-00 PM on the same day. Upon his arrest, the petitioner was served with the arrest memo, as extracted hereunder:

"<u>ದಸ್ತಗಿರಿ ತಿಳುವಳಿಕೆ ಪತ್ರ</u>

ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ,
ಅರಸೀಕೆರೆ. ದಿ: 17/02/2023.

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ದಿನಾಂಕ:17/01/2023 ರಂದು ಬೆಳಿಗ್ಗೆ 07–00 ಗಂಟೆಗೆ ಆರೋಪಿ ಹೇಮಂತ ದತ್ತ @ ಹೇಮಂತ @ ಬಾಬಿ ಬಿನ್ ವಿಶ್ವಜಿತ್ ದತ್ತ, 20 ವರ್ಷ, ವಿಶ್ವಕರ್ಮ ಜನಾಂಗ, ಕೊರಿಯರ್ ನಲ್ಲಿ ಡೆಲಿವರಿ ಬಾಯ್ ಕೆಲಸ, ಸಾಯಿನಾಥ ರಸ್ತೆ, ಕರಿಯಮ್ಮ ದೇವಸ್ಥಾನದ ಹತ್ತಿರ ಅರಸೀಕೆರೆ ನಗರ, ಹಾಲಿವಾಸ ಅನುಗ್ರಹ ಸೊಸೈಟಿ ಹತ್ತಿರ ಲಕ್ಷ್ಮಿಪುರ ಅರಸೀಕೆರೆ ಟೌನ್ ರವರನ್ನು ಅರಸೀಕೆರೆ ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ. ನಂ. 35/2023 ಕಲಂ: 302, 201 ಐಪಿಸಿ ಕೇಸಿನಲ್ಲಿ ದಸ್ತಗಿರಿ ಮಾಡಿದ್ದು, ಅರಸೀಕೆರೆ ಹಿರಿಯ ಸಿ.ಜೆ ಮತ್ತು ಜೆ.ಎಂ.ಎಫ್.ಸಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಲಾಗುವುದು. ಇದು ನಿಮ್ಮ ತಿಳುವಳಿಕೆಗಾಗಿ ಹಾಗೂ ನೀವು ದಸ್ತಗಿರಿಯಾಗಿರುವ ವಿಷಯವನ್ನು ನಿಮ್ಮ ಅಪೇಕ್ಷೆಯಂತೆ ನಿಮ್ಮ ಭಾವ ಶ್ರೀ ಶಶಾಂಕ್ ಬಿನ್ ಸಂಪತ್ ಕುಮಾರ್, 30 ವರ್ಷ, ಮಾರುತಿನಗರ, ಅರಸೀಕೆರೆ ರವರಿಗೆ ತಿಳಿಸಿರುತ್ತದೆ.

ತನಿಖಾಧಿಕಾರಿಯ ಸಹಿ

ಸಹಿ/–
ಪೊಲೀಸ್ ನಿರೀಕ್ಷಕರು
ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ
ಅರಸೀಕೆರೆ
17/2/2023

ಆರೋಪಿಯ ಸಹಿ:–
ಸಹಿ/–

ಆರೋಪಿತರ ಪರವಾಗಿ ನೋಟೀಸ್ ಪಡೆದವರ ಸಹಿ
ಸಹಿ/–

ದಸ್ತಗಿರಿ ಪತ್ರ

ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ,
ಅರಸೀಕೆರೆ. ದಿ: 17/02/2023

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ನಿಮಗೆ ಈ ಮೂಲಕ ತಿಳಿಸುವುದೆಂದರೆ ನೀವು ಅರಸೀಕೆರೆ ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ. ನಂ. 35/2023 ಕಲಂ 302, 201 ಐಪಿಸಿ ಕೇಸಿನಲ್ಲಿ ಆರೋಪಿಯಾಗಿರುವುದರಿಂದ ನಿಮ್ಮನ್ನು ದಿನಾಂಕ:–17/02/2023 ರಂದು ಬೆಳಿಗ್ಗೆ 07–00 ಗಂಟೆಗೆ ವಶಕ್ಕೆ ಪಡೆದುಕೊಂಡು ಠಾಣೆಗೆ ಕರೆತಂದು ಈ ಪ್ರಕರಣದ ತನಿಖಾಧಿಕಾರಿಯದ ನಾನು ನಿಮ್ಮನ್ನು ದಸ್ತಗಿರಿ ಮಾಡಿರುತ್ತೇನೆ. ನಿಮ್ಮನ್ನು ದಸ್ತಗಿರಿ ಮಾಡಿರುವ ಮಾಹಿತಿಯನ್ನು ನಿಮ್ಮ ಭಾವ ಶಶಾಂಕ್ ಬಿನ್ ಸಂಪತ್ ಕುಮಾರ್, 30 ವರ್ಷ, ಮಾರುತಿನಗರ, ಅರಸೀಕೆರೆ ರವರಿಗೆ ತಿಳಿಸಿರುತ್ತೇನೆ.

ತನಿಖಾಧಿಕಾರಿಯ ಸಹಿ
ಸಹಿ/–

ಪೊಲೀಸ್ ನರೀಕ್ಷಕರು
ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ
ಅರಸೀಕೆರೆ

17/2/23

ಆರೋಪಿತನ ಹೆಸರು ಸಹಿ & ವಿಳಾಸ
ಸಹಿ/–
ಹೇಮಂತ ದತ್ತ @ ಹೇಮಂತ @ ಬಾಬಿ ಬಿನ್ ಬಿಶ್ವಜಿತ್ ದತ್ತ,
20 ವರ್ಷ, ವಿಶ್ವಕರ್ಮ ಜನಾಂಗ, ಕೊರಿಯರ್ ನಲ್ಲಿ
ಡೆಲಿವರಿ ಬಾಯ್ ಕೆಲಸ, ಸಾಯಿನಾಥ ರಸ್ತೆ,
ಕರಿಯಮ್ಮ ದೇವಸ್ಥಾನದ ಹತ್ತಿರ ಅರಸೀಕೆರೆ ನಗರ,
ಹಾಲಿವಾಸ ಅನುಗ್ರಹ ಸೊಸೈಟಿ ಹತ್ತಿರ ಲಕ್ಷ್ಮಿಪುರ, ಅರಸೀಕೆರೆ ಟೌನ್ "

7. A bare perusal of the above extracts reveals that the grounds of arrest were not communicated to the arrestee-petitioner. However, before proceeding any further, it is pertinent that the authorities adduced by the learned counsels be dealt with. We shall firstly deal with the case-laws on the ‘service of grounds of arrest’ and later proceed to answer the issue of its retrospective applicability.

8. As regards service of grounds of arrest, **in relation to an arrest made under Section 19(1) of PMLA, 2002**, the Apex Court in the case of **Pankaj Bansal v. Union of India, 2024 (7) SCC 576,** has observed, as follows:

> *"**42.** …there is no valid reason as to why a copy of such **written grounds of arrest** should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. **Firstly**, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard … Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1]. Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.*
>
> ***43.** The **second reason** as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the court under Section 45 to seek release on bail, if he/she so chooses. … More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and*

statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) PMLA.

44. *We may also note that the grounds of arrest recorded by the authorised officer, in terms of Section 19(1) PMLA, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorised officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.*

45. *On the above analysis,* ***to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA 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.*** *… In the case on hand, the admitted position is that ED's 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) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA."*

(emphasis supplied)

8.1. It is pertinent to observe that the ratio of the above judgement is encapsulated in paragraph No. 45 thereof, wherein the impugned arrest effected under Section 19(1) of PMLA, 2002 was rendered unsustainable, and the service of grounds of arrest in writing was mandated to be followed as a matter of course from the date of pronouncement of the judgement i.e., 03.10.2023, in any and all arrests which are to be effected under the PMLA, 2002.

9. In **Prabir Purkayastha v. State (NCT) of Delhi, 2024 (8) SCC 254,** the Apex Court dealt with the challenge to the order of remand passed in relation to offences punishable under Unlawful Activities (Prevention) Act, 1967 (UAPA) read with Sections 153-A and 120-B IPC,1860. Upon perusal of the provisions of Section 19(1) of PMLA, 2002 and Section 43-B(1) of UAPA, 1967, it was observed that since there is no significant difference in the language employed between the two statutes, the ratio enunciated in the case of *Pankaj Bansal (supra)* could be held applicable *pari passu,* to a case entailing a challenge to an arrest made under the provisions of UAPA, 1967. Hence, the Court in *Prabir Purkaystha* opined at paragraph No. 19 thereof, as follows:

> "**19.** … *there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or* ***for that***

> ***matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest.*** *The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India."*
>
> ***(emphasis supplied)***

9.1. As regards the satisfaction of communication of grounds of arrest, the Court in *Prabir Purkaystha* further placed reliance on its earlier decision in the case of **Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117,** wherein the Constitution Bench therein dealt with an appeal against the dismissal of a habeas corpus, impugning an arrest made under Preventive Detention Act, 1950, on the grounds of non-communication of grounds of arrest in a language known to the petitioner, in contravention of the guarantee under Article 22(5) of the Constitution. The Constitution Bench opined that communication, in such circumstances, meant imparting to the dentenue sufficient knowledge of all the grounds on which such impugned order of detention is passed. Furthermore, it opined that a *"person who is not conversant*

with the English language, in order to satisfy the requirements of the Constitution, the detenue must be given reasonable grounds in a language which he can understand, and in a script which he can read, if he is a literate person". The Court further concluded that communication of the grounds of the order of detention in English, with its oral translation or explanation by the police officer serving them, to a detenue who is not conversant in English, shall not meet the requirements of affording such detention, an earliest opportunity of representation against such detention. Further reference was made to yet another decision of **Lallubhai Jogibhai Patel v. Union of India (1981) 2 SCC 427**, which reiterated the import of communication to mean a *"purposeful and effective representation",* in writing, and in a language which the dentenue understood.

9.2. In conclusion, the Apex Court in *Prabir Purkaystha* opined that where the language of Clause (1) *(which guarantees communication of grounds of arrest to the arrestee as soon as may be)* and Clause (5) of Article 22 of the Constitution *(which guarantees communication of arrest made under preventive detention to the arrestee as soon as may be and the right to be afforded an earliest possible opportunity of making a` representation to challenge the order of detention)* features identical words, and judicial

precedents in the cases of *Hariskisan (supra) and Lallubhai (supra)* have read into Clause (5) of Article 22 of the Constitution, the right to be communicated the grounds of arrest in writing, would *ipso facto* apply to Clause (1) thereof. Hence, expanding the ratio enunciated in the case of *Pankaj Bansal (supra),* the Apex Court in *Prabir Purkaystha* opined at paragraph No. 29 thereof, as follows:

> *"**29.** Hence, we have no hesitation in reiterating 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 a person placed under preventive detention as provided under **Articles 22(1)** and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be."*
>
> ***(emphasis supplied)***

9.3. Thus, the Hon'ble Supreme Court in *Prabir Purkayastha* postulated in no uncertain terms that an arrest in terms of Article 22(1) of the Constitution must be followed by communication of grounds of arrest as soon as may be, to enable an effective challenge to the fetters imposed on his natural right to liberty.

10. The above ratios enunciated in Pan*kaj Bansal (supra)* and *Prabir Purkayastha (supra)* have been further affirmed by the Apex Court in the case of **Vihaan Kumar v.**

State of Haryana, 2025 SCC OnLine SC 269, wherein a challenge to an arrest made against the alleged offences punishable under Section 420, 467 and 468, *inter alia* of IPC, 1860, was successfully made, and it was observed at paragraph No. 21 thereof, as follows:

> *"a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);*
>
> *b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;*
>
> *c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);*
>
> *d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);*
>
> *e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and*

> *f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established."*

10.1. In light of the ratio enunciated in *Prabir Purkayastha (supra),* the Apex Court in **Ashish Kakkar v. UT of Chandigarh, in Crl A. No. 1518/2025 in SLP (Crl) No. 1662/2025,** quashed the impugned order of remand passed in alleged offences punishable under Section 420, *inter alia, o*f IPC, 1860, on grounds of non-service of grounds of arrest in violation of Article 22(1) and Section 50 of Cr.P.C, 1973.

11. Therefore, in view of the above concurring expositions by the Apex Court, it is settled law that an arrest by an officer authorised in law, must be followed by service of grounds of arrest, so as to enable the arrestee to be in a position to lay a comprehensive challenge to the arrest. A review of the discussion in *Vihaan Kumar,* more particularly, at paragraph Nos. 15 and 18 thereof, indicates that the Apex Court had taken into consideration the practical impediments to serve the grounds of arrest in writing in all circumstances, and the obligation cast onto the law enforcement agencies to balance the rights of the arrestee with the interests of the society. The Court

however, observed that grounds of arrest must be formed before their communication to the arrestee.

11.1. In other words, grave and compelling circumstances necessitating the arrest of a person must precede the commission of arrest, and that the latter must be followed by communication of the said grounds, so as to afford the arrestee a representation to lay a challenge to the arrest. The Apex Court in *Vihaan Kumar* further observed, at paragraph No. 19 as follows:

> *"if the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document…Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the Constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were."*

11.2. Therefore, it may be reasonably understood that the above ratio opines that service of grounds of arrest may fall short of written mode of communication, subject to the satisfaction of the Magistrate to the extent of their existence in fact, and a record of the same in the case diary.

12. The learned counsel for the petitioner has further adduced the decision of this Court in the case of **Mr. Syed Sajjad Ali v. The Senior Intelligence Officer, in Crl. P.**

No. 5435/2024 : DD 05.07.2024 wherein the co-ordinate Bench observed in a matter where a recovery of undisclosed foreign currency and diamonds were made from the possession of the petitioner therein, and an arrest was effected under Section 108 of the Customs Act, that despite the existence of a prima facie case against the arrestee-petitioner, the arrest stood vitiated for want of service of grounds of arrest in writing, in a language understood by the arrestee, in light of the ratio expounded by the Apex Court in the case of *Prabir Purkayastha (supra).* The same ratio was reiterated by this Court in **Praveen Singh v. State of Karnataka,** in **W.P. No. 1390/2025 : DD 17.02.2025**.

13. The learned counsel for the petitioner relies on the below precedents in advance of his arguments that service of grounds of arrest upon the arrestee, as soon as may be, is merely an element of procedural law, enunciated in furtherance of the constitutional guarantee of processual fairness, and therefore, carries a retrospective effect, as in the instant case, where the arrest and the impugned remand order was made on 17.02.2023.

14. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **Assistant Commissioner of Income Tax, Rajkot v. Saurashtra**

Kutch Stock Exchange Ltd., (2008) 14 SCC 171, wherein the Court dealt with the issue of the authority of the Income Tax Tribunal to recall its orders on the grounds of mistake apparent from record in terms of Section 254(2) of the IT Act, 1961. The Apex Court opined the term 'error of law apparent on the face of record' to mean such an error which NO Court would permit it to be on record and one which strikes as an error of law at the first glance, and which does not need a long drawn out process of reasoning on points where there may conceivably be two opinions. The Apex Court further concluded that a writ of certiorari would always be maintainable against decisions of inferior courts where error of law writ large on the face of it.

14.1. Furthermore, the Court in *Saurashtra Kutch* also dealt with the issue of whether non-consideration of a decision of a jurisdictional court, rendered prior to or even subsequent to the order of rectification could be an error of law on the face of it. The Apex Court, referring to the Blackstonian theory of law, observed, *"it is not the function of the Court to pronounce a "new rule" but to maintain and expound the "old one"".* It further clarified that *"even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood".*

14.2. The Court further reiterated its earlier decision rendered in the case of *S. Nagaraj v. State of Karnataka, 1993 Supp (4) SCC 595,* wherein it was observed that *"justice is a virtue which transcends all barriers…Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness…Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its"* earlier order, which had resulted in miscarriage of justice. In its conclusion, the Apex Court affirmed the order of the High Court confirming the impugned recall of its earlier order by the Income Tax Tribunal, on the grounds that an earlier precedent on point in issue declared prior to the recalled order was not brought to the attention of the Tribunal at the time of adjudication.

15. In **Central Bureau of Investigation v. RR Kishore, (2023) 15 SCC 339**, the Constitution Bench of the Hon'ble Supreme Court dealt with the issue of whether the decision enunciated in the case of *Subramanian Swamy v. CBI (2014) 8 SCC 682,* which struck down Section 6-A of the Delhi Special Police Establishment Act, 1946 as unconstitutional, could be applied retrospectively in context with Article 20 of the Constitution. *(Section 6-A of the said Act precluded any inquiry or investigation against*

employees of the Central Government of the level of Joint Secretary or above into offences punishable under the Prevention of Corruption Act, 1988, and was struck down as violative of Article 14 of the Constitution).

15.1. The Court in *RR Kishore* opined that where an element of procedural law did not introduce any new offence or enhanced any punishment or sentence, it has been settled law, since the pronouncement of decision in the case of *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, (1953) 2 SCC 111,* insofar as, a change in procedure post the commission of offence is not adequate grounds to invoke the protection in respect of conviction for offences, guaranteed under Article 20(1) of the Constitution.

15.2. In conclusion, the Constitution Bench observed that once a law is declared to be unconstitutional and inconsistent with Part III of the Constitution - Fundamental Rights, then it would under Article 13(2) be *void ab initio* and unenforceable, and therefore, any like declaration of unconstitutionality shall have a retrospective operation, i.e, deeming to render the unconstitutional statute to be unenforceable from the date of its inception.

16. Rebutting the retrospective application of the ratio enunciated in *Pankaj Bansal (supra)* to arrests made prior to 03.10.2023, *(the arrest in the instant case was effected on 17.02.2023)*, the Ld. Addl. Special Public Prosecutor placed reliance on the judgment in the case of **Ram Kishor Arora v. Directorate of Enforcement (2024) 7 SCC 599,** wherein a Division Bench of the Apex Court opined that the ratio enunciated in paragraph No. 45 of the aforementioned decision in the case of *Pankaj Bansal (supra)* shall not have a retrospective effect and that non-furnishing of the grounds of arrest in writing prior to the date of judgment in *Pankaj Bansal (supra)* could not be faulted with, in light of the word *"henceforth",* as featured in paragraph No. 45 thereof.

16.1. The argument of the Ld. Addl. Special Public Prosecutor however, cannot be countenanced in light of the fact that the operative portion of the judgment and order in *Pankaj Bansal (supra)* at paragraph No. 45 thereof was limited to any arrest effected under PMLA, 2002, as referred to above, at paragraph No. 8.1 herein. As such, the decision in *Ram Kishor Arora (supra)* is distinguishable on facts, as the case at hand involves a challenge to an arrest effected under the provisions of IPC, 1860.

17. The constitutional guarantee of communication of grounds of arrest as soon as may be, enshrined in Article 22(1) of the Constitution was further expanded to include communication of the same in writing and in a language, which the arrestee is conversant in, more recently, in the Division Bench judgment of the Apex Court in *Prabir Purkayastha (supra),* as elaborated above in paragraph Nos. 9.2. and 9.3. herein.

18. As such, it is apposite to reiterate that the judgment of the Apex Court in *Ram Kishor Arora (supra),* which further emphasised the prospective application of the law laid down in *Pankaj Bansal (supra),* has no bearing on the law laid down in *Prabir Purkayastha (supra)* insofar as, the requirement of serving the grounds of arrest in writing, upon the arrestee.

19. The retroactive application of procedural laws is further warranted by the substance of Article 20 of the Constitution, which stipulates that a person can be subject to only such penalties prescribed under the law at the time when the offence for which he is charged with was committed; it however, *"does not prohibit substitution of the penalty or sentence which is not higher or greater than the previous one or modification of the rigours of criminal law" (See, paragraph No. 40 of RR Kishore, (2023) 15 SCC*

339). The Apex Court in the case of **T. Barai v. Henry Ah Hoe, (1983) 1 SCC 177,** observed that *"rule of beneficial construction requires that even ex post facto penal laws "should be applied to mitigate the rigour of the law".*

19.1. The Apex Court in the case of *T. Barai* placed reliance on Craines on Statute Law, 7th Edn, at pp. 387-88, wherein it was observed as follows:

> *"...it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or pardon…But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction…There is great and apparent difference between making an unlawful act lawful and the making of an innocent action criminal and punishing it as a crime."*

19.2 It is thus reasonably clear that the rule of beneficial construction gives the benefit of a diminished punishment in light of a post facto mollification of the penal provisions contained in the substantive law. Hence, in light of the decision rendered by the Constitution Bench in *RR Kishore (2023) 15 SCC 339,* the argument against retrospective application of the principle of procedural justice enunciated in the case of *Prabir Purkayastha (supra)* does not hold good, more so, when the rule of beneficial construction goes beyond the realm of procedural

law, and prescribes mitigation or modification of penalty in light of post facto change in substantive law.

20. The Ld. Addl. Special Public Prosecutor has further placed reliance on the decision of this Court in the case of **Sharath Kumar @ Sharu v. State of Karnataka and Anr. in W.P. 3677/2025 : DD 10.02.2025,** wherein the coordinate Bench in similar circumstances had disposed of the petition, reserving liberty with the arrestee-petitioner therein, to prefer a fresh bail application before the Trial Court, on the grounds of violation of Article 22(1) of the Constitution.

20.1. The facts of the case at hand stand distinctly at variance with that of the above. The petitioner herein has been in continued custody since the date of arrest on 17.02.2023, and continues to remain further prejudiced for want of service of grounds of his arrest, so as to lay an effective challenge to the lawfulness of his arrest. It is felt prudent to observe here that Writ Courts under Articles 226 and 227 of the Constitution are Courts of equity and justice. Furthermore, Section 482 of Cr.P.C. reserves this Court with expansive discretion to exercise interference in the interests of justice, depending upon the facts and circumstances of individual cases. Therefore, it is deemed

proper that the instant petition be allowed and the petitioner be released from custody forthwith.

21. It was strenuously submitted by the Ld. Addl. Special Public Prosecutor that this Court may not be prevailed upon to deem non-service of grounds of arrest in the case at hand, and in similar cases prior to the pronouncement of the judgment in *Pankaj Bansal (supra),* to vitiate arrest in all cases, lest it open a Pandora' box of similar claims, leading to serious concerns in the administration of law and order. However, the Ld. Prosecutor, in his usual fairness, conceded that the benefit of retrospective application of change in the procedural law, leading to vitiation of arrest against non-service of grounds of arrest, be limited to non-habitual offenders.

21.1. The same is taken on record. However, it is hereby clarified that non-service of grounds of arrest against any alleged offence, in writing, upon similarly situated arrestees as the petitioner herein, who is admittedly a non-habitual offender, shall be adequate grounds to contest the lawfulness of any arrest effected even prior to the pronouncement of the judgment in the case of *Prabir Purkayastha (supra) (D.D. 15.05.2024).* At the risk of repetition, it may be observed that the ratio enunciated in *Prabir Purkayastha (supra)* has merely expounded the pre-existing constitutional guarantee

enshrined in Article 22(1) of the Constitution, which has been in effect since 26.01.1950.

21.2. Therefore, any violation of the right to be afforded an opportunity to make an effective representation against the arrest or an order of remand in relation to any offence, shall constitute a contravention of the constitutional guarantee under Article 22(1) of the Constitution and the statutory safeguard under Section 50 of Cr.P.C.

21.3. It is needless to observe that any views expressed herein have no bearing on any challenge to the lawfulness of arrest effected under Section 19 of PMLA, 2002, prior to the pronouncement of the decision of *Pankaj Bansal (supra) (DD 03.10.2023)* in light of the decision of the Apex Court in *Ram Kishor Arora (supra).*

22. In conclusion, a bare perusal of the arrest memo at Annexures E and F, reveals that the arrestee-petitioner herein was not disclosed with any worthwhile particulars, as soon as may be, upon his arrest, much less the satisfaction of the requirement of communication in writing, of the grounds of arrest, as postulated in subsequent judgments pronounced since the date of the impugned arrest. Although, non-service of grounds of arrest is construed to be mere procedural aberration, the same is now, more recently, in light of *Vihaan Kumar (supra),* interpreted to be

a material irregularity, which cannot be made good at a later stage by filing of the chargesheet. Any violation of procedural fairness, more particularly, the entrenched Fundamental Rights, vitiates the arrest, thereby rendering continued incarceration of the petitioner to be in contravention of Articles 13(2), 21 and 22(1) of the Constitution.

In view of the above, I order the following:

ORDER

I. The instant petition is ***allowed***.

II. The impugned order of remand dated 17.02.2023 (Annexure A) passed by Snr. Civil Judge and JMFC, Arsikere, in Crime No. 35/2023 registered in Arsikere PS, Arsikere Sub-Division, Hassan District, for offences punishable under Section 302 and 201 of IPC, 1860, is hereby ***quashed and set aside.***

III. The respondent is hereby directed to release the petitioner from custody forthwith, subject to the following conditions:

a) The petitioner-accused shall execute a personal bond for a sum of Rs.1,00,000/- with one

surety for the like sum to the satisfaction of the Trial Court within a period of two weeks from the date of his release;

b) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;

c) The petitioner shall appear before the investigating officer as and when required;

d) The petitioner shall not involve in similar offences in the future;

e) The petitioner shall not leave the territorial limits without prior permission of the Investigating Officer.

f) The concerned Jail Authorities are hereby directed to release the petitioner forthwith without any delay and immediately upon a receipt of copy of this order, if he is not required for any other cases, if any.

g) The Registry is directed to communicate this order to the Jail Authorities concerned forthwith without any delay through e-mail and telephonically.

IV. It is hereby directed that Trial Courts shall consider applications for bail made by those in remand and prejudiced on account of non-service of grounds of arrest, if any, in accordance with the observations made in this order.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE

BKM
List No.: 1 Sl No.: 325