IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.A. No. 9324 of 2025

Kamala Chakraborty
-Versus-
The State of West Bengal & Ors.

For the Petitioner : Mr. Sourav Bhattacharyya, Adv.,
Mr. Debmalya Banerjee, Adv,
Ms. Anoushka Das, Adv,

For the State : Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Swapan Banerjee, AGP
Mr. Sirsanya Bandopadhyay, Sr. St. Counsel
Mrs. Sabnam De Bardhan, Jr. Govt. Adv.
Mr. Arka Kumar Nag, Adv,
Mr. Diptendu Narayan Bandopadhyay, Adv,
Mrs. Kakali Naskar, Adv.

Heard On : 22.05.2025

Judgement On : 09.06.2025

Tirthankar Ghosh, J. :

The present writ petition has been preferred by the mother of one Abhijit Chakroborty who was arrested in connection with Bidhannagar (North) Police Station Case No. 21 dated 12.02.2025 under Section 69 of the BNS, 2023. The petitioner's main contention is that the accused was

arrested on 19th April, 2025 by the Officers of Bidhannagar (North) Police Station in front of Kasba Police Station. After being arrested accused was handed over with an arrest-inspection memo, however, none of his relatives were informed regarding his arrest and the grounds of arrest which was handed over to him were in gross violation of the settled proposition of law as has been held by the Hon'ble Supreme Court.

It was further complained that the accused was subjected to physical assault in custody which resulted in his injuries and in spite of furnishing all the information by way of a petition before the Learned ACJM, Bidhannagar on 28th April, 2025 the Learned Magistrate ignored the same and rejected the application for bail of the accused Abhijit Chakroborty. Petitioner therefore prayed that the arrest of the accused be considered as illegal and in violation of the established law. Further a prayer was advanced for issuing show cause against the Respondent No. 6, being the Investigating Officer of the case relating to the custodial torture inflicted by him which is in violation of the constitutional mandate.

In order to substantiate his contention, Learned Advocate for the petitioner relied upon the judgment of Pankaj Bansal -versus- Union of India and Others reported in (2024) 7 SCC 576 and referred to paragraphs 20, 38, 42, 43, 45 which reads as follows:

> ***"20.*** *Dealing with the interplay between Section 19 PMLA and Section 167CrPC, this Court observed in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] that the Magistrate is expected to do a balancing act as the investigation is*

to be completed within 24 hours as a matter of rule and, therefore, it is for the investigating agency to satisfy the Magistrate with adequate material on the need for custody of the accused. It was pointed out that this important factor is to be kept in mind by the Magistrate while passing the judicial order. This Court reiterated that Section 19 PMLA, supplemented by Section 167CrPC, provided adequate safeguards to an arrested person as the Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the 2002 Act. It was held that the Magistrate is under a bounden duty to see to it that Section 19 PMLA is duly complied with and any failure would entitle the arrestee to get released. It was pointed out that Section 167CrPC is meant to give effect to Section 19 PMLA and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) PMLA and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 PMLA. In conclusion, this Court summed up that any non-compliance with the mandate of Section 19 PMLA, would enure to the benefit of the person arrested and the court would have power to initiate action under Section 62 PMLA, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorised officer.

38. *In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45*

PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's "reason to believe" that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

42. *That being so, 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. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though ED claims that witnesses were present and certified that the*

grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. 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. In this regard, the grounds of arrest in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. 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.

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. The decisions of the Delhi High Court in Moin Akhtar Qureshi [Moin Akhtar Qureshi v. Union of India, 2017 SCC OnLine Del 12108] and the Bombay High Court in Chhagan Chandrakant Bhujbal [Chhagan Chandrakant Bhujbal v. Union of India, 2016 SCC OnLine Bom 9938 : (2017) 1 AIR Bom R (Cri) 929] , which hold to the contrary, do not lay down the correct law. 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. Further, as already noted supra, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and, thereafter, to judicial custody, cannot be sustained."*

Reference was also made to the judgment of the Hon'ble Supreme Court in Prabir Purkayastha -versus- State (NCT of Delhi), reported in (2024) 8 SCC 254 and attention of the Court was drawn to paragraphs 33,37,45,48 and 49 which held as follows:

> ***"33.*** *The accused was arrested on 3-10-2023 at 5.45 p.m. as per the arrest memo (Annexure P-7). As per Section 43-C UAPA, the provisions of CrPC shall apply to all arrests, search and seizures made under the UAPA insofar as they are not inconsistent with the provisions of this Act. As per Section 57CrPC read with Section 167(1)CrPC, the appellant was required to be produced before the Magistrate concerned within twenty-four hours of his arrest. The investigating officer, therefore, had a clear window till 5.44 p.m. on 4-10-2023 for producing the appellant before the Magistrate concerned and to seek his police custody remand, if so required. There is no dispute that Shri Arshdeep Khurana, learned advocate, engaged on behalf of the appellant had presented himself at the police station on 3-10-2023 after the appellant was arrested and the mobile number of the advocate was available with the investigating officer. In spite thereof, the appellant was presented before the learned Remand Judge at his residence sometime before 6.00 a.m. on 4-10-2023. A remand Advocate, namely, Shri Umakant Kataria was kept present in the court purportedly to provide legal assistance to the appellant as required under Article 22(1) of the Constitution of India. Apparently, this entire exercise was done in a clandestine manner and was nothing but a blatant attempt to circumvent the due process of law; to confine the accused to police custody without informing him the grounds on which he has been arrested; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice so as to oppose the prayer for police custody remand, seek bail and also to mislead the court. The accused having engaged an advocate to defend himself, there was*

no rhyme or reason as to why, information about the proposed remand application was not sent in advance to the advocate engaged by the appellant.

37. *The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the "reasons for arrest" which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the "grounds of arrest" would be personal in nature and specific to the person arrested.*

> *"**9. Reason for arrest***
>
> *(a) Prevent the accused person from committing any further offence.*
>
> *(b) For proper investigation of the offence.*
>
> *(c) To prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.*
>
> *(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.*
>
> *(e) As unless such person is arrested, his presence in the court whenever required cannot be ensured."*

45. *We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law*

of the land binding on all the courts in the country by virtue of Article 141 of the Constitution of India.

48. *It may be reiterated at the cost of repetition that there is a significant difference in the phrase "reasons for arrest" and "grounds of arrest". The "reasons for arrest" as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the "grounds of arrest" would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the "grounds of arrest" would invariably be personal to the accused and cannot be equated with the "reasons of arrest" which are general in nature.*

49. *From the detailed analysis made above, there is no hesitation in the mind of the court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the appellant-accused or his counsel before passing of the order of remand dated 4-10-2023 which vitiates the arrest and subsequent remand of the appellant.*

Learned Counsel for petitioner has further placed reliance on the judgment rendered in Vihaan Kumar v. State of Haryana and Another, (2025) SCC Online SC 269, submitting that the Hon'ble Supreme Court therein has reiterated and affirmed the legal principles enunciated in Pankaj Bansal (supra) and Prabir Purkayastha (supra), particularly in the context of offences under the Indian Penal Code. The Learned Advocate has drawn attention to paragraphs 19 and 20 of the said judgment, which holds that:

> ***"19.*** *An argument was sought to be canvassed that in view of sub-Section (1) of Section 50 of CrPC, there is an option to communicate to the person arrested full particulars of the offence for which he is arrested or the other grounds for the arrest. Section 50 cannot have the effect of diluting the requirement of Article 22(1). If held so, Section 50 will attract the vice of unconstitutionality. Section 50 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him. The 'other grounds for such arrest' referred to in Section 50(1) have nothing to do with the grounds of arrest referred to in Article 22(1). The requirement of Section 50 is in addition to what is provided in Article 22(1). Section 47 of the BNSS is the corresponding provision. Therefore, what we have held about Section 50 will apply to Section 47 of the BNSS.*
>
> ***20.*** *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) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the Courts to uphold the fundamental rights."*

Learned Advocate thereafter submitted that in view of the documents which have been submitted under the garb of inspection memo, as well as

the intimation of grounds of arrest, the same are in clear non-compliance of the settled propositions of law as laid down by the Hon'ble Supreme Court. Resultantly, the arrest of the petitioner should be considered as illegal and therefore the petitioner may be released on bail as it was brought to the notice of the Learned ACJM, Bidhannagar who refused to consider the same and rejected the prayer for bail of the petitioner.

Mr. Kalyan Bandopadhyay, learned Senior Advocate, appearing on behalf of the State, on the other hand, submitted that the contention advanced by the petitioner is not acceptable on the ground that the issues which are being canvassed by the petitioner are still under consideration of the Hon'ble Supreme Court, particularly in the background of the circumstances of each and every case. Mr. Bandopadhyay also referred to a number of judgments to fortify his argument.

Attention of the Court was drawn to V. Senthil Balaji -versus- State represented by Deputy Director and others, (2024) 3 SCC 51. Emphasis was made on paragraphs 28, 29, 30, 57 and 58 which are as follows:

> ***"28.*** *A writ of habeas corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of habeas corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of habeas corpus and that too by way of a challenge.*

29. *In a case where the mandate of Section 167CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of habeas corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of habeas corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the court as mandated under sub-section (3), since it becomes a judicial custody thereafter and the court concerned would be in a better position to consider due compliance.*

30. *Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. State of Maharashtra v. Tasneem Rizwan Siddiquee [State of Maharashtra v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386] : (SCC p. 751, para 10)*

> *"10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail [Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and Manubhai Ratilal*

Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/ 19-3-2018 and decided by the High Court on 21-3-2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued."

57. *While authorising the detention of an accused, the Magistrate has got a very wide discretion. Such an act is a judicial function and, therefore, a reasoned order indicating application of mind is certainly warranted. He may or may not authorise the detention while exercising his judicial discretion. Investigation is a process which might require an accused's custody from time to time as authorised by the competent court. Generally, no other court is expected to act as a supervisory authority in that process. An act of authorisation pre-supposes the need for custody. Such a need for a police custody has to be by an order of a Magistrate rendering his authorisation.*

58. *The words "**such custody as such Magistrate thinks fit**" would reiterate the extent of discretion available to him. It is for the Magistrate concerned to decide the question of custody, either be it*

judicial or to an investigating agency or to any other entity in a given case.

Learned Senior Advocate also relied upon the judgment of Municipal Corporation of Greater Mumbai and others -versus- Vivek V. Gawde etc. 2024 SCC Online SC 3722 and referred to paragraphs 19, 20, 22 of the said judgment, thereby emphasizing that the reasons and contents of the present writ petition which are subject matter of challenge before the Court is outside the ambit of Article 226 as well as under Article 227 of the Constitution of India. The paragraphs referred by the Learned Senior Advocate, reads as follows:

> ***"19.*** *We now proceed to consider the second relief claimed in the writ petition of the respondents, i.e., the challenge laid to the order passed by the Inquiry Officer. It is well settled that decisions rendered by administrative authorities can be interfered with by high courts in exercise of Article 226 powers, however, sparingly. Recently, this Court in W.B. Central School Service Commission v. Abdul Halim[7] while considering the scope of interference under Article 226 in an administrative action held that:*
>
> > *"31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun*

Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137]. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect.'

20. *The decision was approved by a further decision of this Court in Municipal Council, Neemuch v. Mahadeo Real Estate*[8]*, wherein it was held that:*

*"**14.** It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court*

comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of 'Wednesbury unreasonableness' or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

16. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice."

22. *In view of the discussion aforesaid, it is held that the High Court in the present case exceeded the ambit of both, its writ and supervisory, jurisdiction insofar as it proceeded to frame points for determination in a summary proceeding, more so when the proceedings were at the embryonic stage of notice having been issued to the respondents. Having directed that the proceedings be conducted in consonance with the principles of natural justice, the High Court overstepped its limits and took unto itself a duty which the Act entrusts the statutory authority to exercise. The High Court*

could, at best, have moulded relief as deemed fit and proper, but in framing issues for the Inquiry Officer to determine, the High Court went far beyond its domain by substituting its own wisdom for that of the civil court.

On behalf of the State, reliance was placed upon Principal Director of Income Tax (Investigation) and others -versus- Laljibhai Kanjibhai Mandalia reported in (2022) 16 SCC 139 and emphasis was made on paragraph 29 for illustrating the phrase "reasons to believe". The said paragraph referred to by the learned Advocate states as follows:

"29*.....The expression "reason to believe" has been explained in various decisions by the Apex Court and High Courts while dealing with Sections 132 and 148 of the Act. It has been held that the words "reason to believe" mean that a reasonable man, under the circumstances, would form a belief which will impel him to take action under the law. The formation of opinion has to be in good faith and not on mere pretence. For the purpose of Section 132 of the Act, there has to be a rational connection between the information or material and the belief about undisclosed income, which has not been and is not likely to be disclosed by the person concerned."*

Learned Senior Advocate also relied upon the judgment of the Calcutta High Court in Indrani Chakraborty -versus- State of West Bengal and others reported in 2014 SCC Online Cal 17573, reference was made to paragraphs 13, 14 and 17 and it was submitted that a writ petition is not maintainable against a judicial order passed by the Criminal Court. The aforesaid paragraphs relied upon by the State are as follows:

*"**13**. It was also noted there that the Supreme Court in its decision reported in Surya Dev Rai (supra) had interfered in exercise of writ jurisdiction with an order passed by the civil court and that subsequently the Supreme Court in its decision in Radhey Shyam (supra) disagreed with the view expressed in Surya Dev Rai (supra), whereupon a reference to a larger bench was made. I have not come across a decision on the reference till date. The position that emerges is Surya Dev Rai (supra) cannot yet be accepted as an authority laying down a law that is binding on me as a precedent in view of the observations made in Radhey Shyam (supra) to the effect that the ratio decidendi of the larger bench decisions noticed therein still hold the field. In fact, before Surya Dev Rai (supra), there seems to be no reported decision of the Supreme Court where in exercise of writ powers, an order of the civil court was made the subject of judicial review. The confusion seems to have surfaced because of reading of the decisions of the Supreme Court in the fifties and the sixties of the earlier century in Surya Dev Rai (supra), as if certiorari jurisdiction could be exercised against orders passed by civil courts. I doubt whether the Supreme Court at all meant 'courts' as inclusive of 'civil courts' and observe that 'courts' as referred to in those decisions were not meant to include civil courts and criminal courts discharging the judicial powers of the State. It is settled law that although all civil courts and criminal courts are courts but all courts are not necessarily civil courts and criminal courts.*

***14**. Existence of 'courts' created under different statutes, which are not 'courts' stricto sensu is not unknown. The writ powers are available to be exercised by a High Court for the enforcement of any of the rights conferred by Part III of the Constitution or any other purpose i.e. for the enforcement of legal rights, which could be non-fundamental constitutional rights or statutory rights, is well known. Orders passed by courts, other than civil or criminal courts, could be*

challenged in writ proceedings. However, an order of a civil court passed in respect of a dispute between two parties or an order passed by a criminal court regarding complaints, investigations, search and seizure, trials, etc. in exercise of judicial functions although might affect the right of a party, enforcement thereof cannot be asked for taking recourse to Article 226. If such order could be questioned in appeal or revision by the aggrieved party in terms of the relevant general law i.e. the Civil Procedure Code, or the Cr.P.C., the writ court ought to stay at a distance and grant liberty to the party aggrieved to pursue his remedy in terms thereof or to seek other constitutional remedy, if available, meaning thereby the High Court's superintending jurisdiction under Article 227.

***17**. Assuming that Surya Dev Rai (supra) lays down correct law, the petitioner is still not entitled to an order for admission of the writ petition. The order of the CJM impugned in this writ petition does not suffer from absence of jurisdiction although it could be challenged on the ground that the CJM in the exercise of his jurisdiction has committed an error. One might in this connection profitably refer to the decision of the Supreme Court in Official Trustee, West Bengal v. Sachindranath Chatterjee, AIR 1969 SC 823. The Supreme Court was considering what is meant by "jurisdiction" and observed that it could do no better than quote the words of Hon'ble Asutosh Mookerjee, ACJ (as His Lordship then was) speaking for the Full Bench of this Court, in Hirday Nath Roy v. Ram Chandra Barna Sharma, AIR 1921 Cal 34. The guiding principle to bear in mind is the distinction between existence of jurisdiction and exercise of jurisdiction; the former relating to assumption of jurisdiction, when there is none, is different from the latter where, despite being conferred with jurisdiction, an error or a defect is committed.*

Learned Senior Advocate also referred to the Order of the Hon'ble Supreme Court dated 22nd April, 2025 in Special Leave to Appeal (Crl.) No. 17132 of 2024, wherein on the following two issues, the Hon'ble Supreme Court has been pleased to reserve its judgment:

> *"**3.** The question that we are called upon for consideration in the present proceedings is: whether in each and every case, even arising out of an offence under Indian Penal Code, would it be necessary to furnish grounds of arrest to an accused either before arrest or forthwith after arrest. Another question that this Court is required to consider is: whether, even in exceptional cases, where on account of certain exigencies it will not be possible to furnish the grounds of arrest either before arrest or immediately after arrest, the arrest would be vitiated on the ground of non-compliance with the provisions of Section 50 of the Code of Criminal Procedure.*
>
> ***4**. Hearing concluded.*
>
> ***5**. Judgment reserved."*

It was also contended on behalf of the State that the word 'Ground' and 'Reason' explained in the Blacks Law Dictionary, reads as follows:

Ground: "A foundation or basis; points relied on; e.g. "ground" for bringing civil action, or charging criminal defendant, or foundation for admissibility of evidence. See also Ground of action."

Reason: "A faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions. Also an inducement, motive, or ground for action, as in the phrase "reasons for an appeal."

It was contended that the writ petition is not maintainable, since a Learned Magistrate is in seisin of the issue, and the petitioner has circumvented the statutory provisions, thereby invoking the provisions of Article 226 of the Constitution of India, which is not permissible in the eye of law, as has been held in Indrani Chakraborty (supra) and Principal Director of Income Tax (supra). It was contended that the remedy of the accused for bail should be preferred before the appropriate statutory Forum and in case the accused is aggrieved by the Order of the Learned Magistrate, the accused ought to canvass such issues before the Higher Forum of the Learned Magistrate, who is assigned the duty to adjudicate the issue under the statute.

Learned advocate for the petitioner although in reply has referred to two decisions of the Hon'ble Supreme Court i.e. Additional Secretary to the Government of India and others -versus- Alka Subhash Gadia and Another, 1992 Supp. (1) SCC 496 and Deepak Bajaj -versus- State of Maharashtra and Another, (2008) 16 SCC 14. The judgments relied upon by the petitioner exclusively relate to preventive detention, so the same is not considered by this Court having regard to the issues that petitioner was arrested in connection with the Penal Code offences and was produced before the learned Magistrate within 24 hours of his arrest.

I have considered the submission advanced by the learned Advocate appearing on behalf of the petitioner as well as the State, while on behalf of the petitioner reliance was placed upon Pankaj Bansal (supra), Prabir Purkayastha (supra), Vihaan Kumar (supra), on the other hand on behalf of

the State emphasis was made on V. Senthil Balaji (supra), Municipal Corporation of Greater Mumbai (supra), Municipal Council, Neemuch (supra), Principal Director of Income Tax (Investigation) (supra), Indrani Chakraborty (supra), as well as the judgment reserved by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 17132 of 2024. The petitioner thus intended to impress the Court that there has been a violation in the grounds which has been assigned while arresting the accused and as the memo of arrest was not served upon any relation of the accused, so the accused is entitled to the benefit of being released pursuant to the decision referred to above.

On behalf of the State, it was canvassed by referring to the aforesaid two judgments that a Habeas Corpus petition is not maintainable when the Magistrate authorizes detention of an accused in custody as the Magistrate exercises his discretion available to him and it is for the Magistrate to decide the question of custody; there is no scope of interference under Article 226 of the Constitution of India particularly with regard to the power of the High Court to examine correctness of the order/decision on merits passed by a Criminal/ Civil Court; power of the High Court to interfere under Article 226 would be warranted only when the decision is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The order of the Criminal Court even if it is suffering from infirmity cannot be challenged by way of an application under Article 226 of the Constitution of India when an alternative remedy is available under the statue.

The reliance placed by the learned advocate for the petitioner, so far as the other two judgments which have been placed being Alka Subhas Gadia (supra) and Deepak Bajaj (supra) are concerned, both relate to preventive detention and has nothing to do with an arrest being effected by an Investigating Officer in course of investigation. It would be pertinent to quote a recent judgement of the Hon'ble Supreme Court in Kasireddy Upender Reddy –versus- State of Andhra Pradesh and others, 2025 INSC 768, wherein the Hon'ble Apex Court in paragraphs 15, 16 and 19 has arrived at the following conclusions while dealing with a case relating to issuance of warrant of arrest in connection with a case registered under sections 420, 409 read with 120-B of the Indian Penal Code (Now Sections 318, 316(5) read with Section 61(2) of the BNS, 2023). The relevant paragraphs are quoted below:

> ***"15.*** *The pathbreaking judgment of this Court in the case of Vihaan Kumar v. State of Haryana and another reported in 2025 SCC OnLine SC 269 serves as a pivotal reference point in Indian jurisprudence regarding the rights of individuals upon arrest. The judgment in Vihan Kumar (supra) has profound implications for the enforcement of Article 22 of the Constitution across the country. It underscores the judiciary's commitment to upholding constitutional protections against arbitrary arrest and detention. This decision sets a clear precedent that the investigating agency/ police officer/ authorities effecting arrest of any person in connection with any cognizable offence without a warrant must provide specific, actionable reasons for an individual's arrest, beyond citing broad provisions of law. A clear dictum has been laid in Vihaan Kumar*

(supra) that the law enforcement agencies must exercise greater diligence in communicating the precise grounds of arrest in order to avoid unlawful detention claims. The decision further reinforces the right to legal recourse through habeas corpus petitions, empowering individuals to challenge the legality of their detention effectively.

16. *In Vihaan Kumar (supra), this Court eruditely speaking through Justice Abhay S. Oka made some very important observations which we must reproduce as under:*

> *"Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the 21 arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in the case of Pankaj Bansal v. Union of India reported in (2024) 7 SCC 576, this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has*

been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

14. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, 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 will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as 22 may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

15. We have already referred to what is held in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal

(supra). This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal1 are suggestions that merit consideration. We are aware that in every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the noncompliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

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

tinker with the most important safeguards provided under Article 22.

17. Another argument canvassed on behalf of the respondents is that even if the appellant is released on the grounds of violating Article 22, the first respondent can arrest him again. At this stage, it is not necessary to decide the issue.

18. In the present case, 1st respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10th June 2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the 1st respondent. 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. The grounds of arrest must exist before the same are informed. 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. When an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.

19. An argument was sought to be canvassed that in view of sub Section (1) of Section 50 of CrPC, there is an option to communicate to the person arrested full particulars of the offence for which he is arrested or the other grounds for the arrest. Section 50 cannot have the effect of diluting the requirement of Article 22(1). If held so, Section 50 will attract

the vice of unconstitutionality. Section 50 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him. The 'other grounds for such arrest' referred to in Section 50(1) have nothing to do with the grounds of arrest referred to in Article 22(1). The requirement of Section 50 is in addition to what is provided in Article 22(1). Section 47 of the BNSS is the corresponding provision. Therefore, what we have held about Section 50 will apply to Section 47 of the BNSS.

20. 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) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the Courts to uphold the fundamental rights.

CONCLUSIONS

21. Therefore, we conclude:

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 charge sheet 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."

19. *We must clarify one important aspect of Vihaan Kumar (supra). In Vihaan Kumar (supra) the case was that there was an absolute failure on the part of the police to provide the grounds of arrest. In Vihaan Kumar (supra) reliance was placed upon the entry in the case diary which recorded that the appellant therein was arrested after informing him of the grounds of arrest. In the case at hand, it is not in dispute that the grounds of arrest were supplied to the*

arrestee, however, the case put up is that those grounds are not meaningful and are bereft of necessary essential information."

Having duly considered the pleadings, submissions of counsel, and the legal position emerging from precedents cited before this Court, I am not inclined to entertain the reliefs claimed under writs of Mandamus and Certiorari. The Hon'ble Apex Court in Kasireddy Upender Reddy -versus- State of Hrayana and Another, 2025 INSC 768, has authoritatively clarified that the appropriate recourse for challenging arrest and detention is through a writ of Habeas Corpus. Consequently, the present prayers stand misconceived in law.

The Rules of the High Court at Calcutta prescribes that a Habeas Corpus petition is to be preferred before a Division Bench. As such, the Writ Petition in its present form is not maintainable.

Accordingly, W.P.A. No. 9324 of 2025 is dismissed.

Pending connected application(s), if any, are also disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)