

AFR

Neutral Citation No. - 2025:AHC:52089-DB

Court No. - 42**Case :-** CRIMINAL MISC. WRIT PETITION No. - 934 of 2025**Petitioner :-** Manjeet Singh @ Inder @ Manjeet Singh Chana**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Praveen Shrivastav**Counsel for Respondent :-** G.A.**Hon'ble Mahesh Chandra Tripathi,J.****Hon'ble Prashant Kumar,J.**

1. Heard Shri Anupam Verma, learned counsel for the petitioner, Shri Paritosh Malviya, learned AGA-I for the State-respondents, and Shri Vinod Singh, learned counsel for the informant – respondent No. 4.

2. The instant writ petition has been preferred under Article 226 of the Constitution of India for issuance of an appropriate writ, order, or direction in the nature of *certiorari* for quashing the impugned remand order dated 26.12.2024 passed by the learned Magistrate in First Information report dated 15.02.2024 registered as Case Crime No.77 of 2024, under Sections 420, 467, 468, 469, 406, 504, 506 IPC, Police Station Milak, District Rampur, and to direct the release of the petitioner on personal bond as the investigation is still ongoing.

3. **Shri Anupam Verma, learned counsel for the petitioner** submits that the core issue involved in the petition is not the merits of the allegations mentioned in the FIR but the illegality in the process of arrest and procedural lapses during the remand proceedings. He places reliance upon the arrest memo and states that it was a printed proforma which did not contain any column specifying the grounds or reasons for arrest. It is argued that neither the reasons for the arrest nor the grounds were communicated in writing to the petitioner at the time of arrest, as per mandate of Article 22(1) of the

Constitution of India as well as the statutory provisions under Section 50 CrPC.

4. Learned counsel for the petitioner further argues that immediately after the arrest, the petitioner was produced before the learned remand Magistrate on 26.12.2024 and was remanded to judicial custody through a printed remand order, which does not mention whether any opportunity of hearing was granted to the accused to contest his custodial detention. He further submits that the petitioner has confined his relief to the extent that he was not provided with any grounds of arrest or particulars, whereas the arrest memo merely mentions the petitioner's name and place of arrest.

5. In this backdrop, learned counsel for the petitioner submits that the arrest violates Article 22 of the Constitution of India, which guarantees protection against arrest and detention without being informed of the grounds thereof. He also submits that, as per constitutional mandate, the right to consult and be defended by a legal practitioner of one's choice must be ensured. These rights are designed to ensure that no person is arrested or detained without being informed of the reasons for such action. He also refers to Section 50 Cr.P.C. (now Section 47 BNSS), which provides that every police officer or other person arresting any person without a warrant shall forthwith communicate to him the full particulars of the offence or other grounds for such arrest. He places further reliance upon Section 50A Cr.P.C. (now Section 48 BNSS), which imposes an obligation on the arresting officer to inform a nominated person about the arrest and mandates that such information must be recorded in a register maintained at the police station. It is further submitted that the Magistrate, before whom the arrested person is produced, must ensure compliance with sub-sections (2) and (3). It is argued that the remand order is mechanical and does not reflect any judicial satisfaction regarding the necessity of judicial custody.

6. Lastly, learned counsel for the petitioner submits that the arrest of the petitioner and the consequential remand order are liable to be set aside due to

non-communication of the grounds of arrest.

7. Per contra, **Shri Paritosh Malviya, learned AGA-I**, opposed the relief and has placed instructions on record. He submits that considering the FIR dated 15.02.2024 and the alleged complicity of the petitioner, no relief should be accorded to the petitioner in the instant case.

8. The relief is also opposed by **Shri Vinod Singh, learned counsel for the informant**. He vehemently contends that no relief may be accorded and the writ petition deserves to be dismissed as devoid of merit.

9. We have heard the rival submissions and perused the record.

10. The impugned order dated 26.12.2024 was passed by the learned remand Magistrate in FIR dated 15.02.2024 registered as Case Crime No.77 of 2024, under Sections 420, 467, 468, 469, 406, 504, 506 IPC, Police Station Milak, District Rampur based on application by the investigating officer. However, the arrest and remand order are under challenge in the present petition mainly on three grounds grounds, namely "*(a) the reason of arrest and ground of arrest were not communicated to the petitioner; (b) arrest memo does not contain any column on ground of arrest and reason of arrest; and (c) no opportunity of hearing or no opportunity to the petitioner was given for defending his custodial remand.*" The petitioner was not furnished with the grounds of arrest as mandated under Section 50 Cr.P.C. (now Section 47 BNSS), and only an arrest memo lacking such details was provided. Upon examination of the record and instructions, we have no hesitation in holding that neither the reasons nor grounds for arrest were communicated in writing to the petitioner at the time of arrest, thereby violating the constitutional safeguards under Article 22(1) and the statutory mandate under Section 50 Cr.P.C. The arrest memo and remand orders on record (Annexure-1 to the writ petition) reflect that only a printed format memo was provided, without mentioning grounds of arrest. Further, the right to access legal aid is a valuable right of the accused, who must be informed of his right to consult and

be defended by a legal practitioner. In case the accused is unable to engage counsel, the State must provide legal aid. These rights flow from Articles 21, 22(1) and 39A of the Constitution of India. Adequate legal aid to the accused at State expenses is also enshrined in Section 304 Cr.P.C. (now Section 341 BNSS).

11. The importance of the remand Magistrate's duty to apply judicial mind and afford an opportunity to the accused to oppose remand was emphasized by the Supreme Court in *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra*, (2012) 8 S.C.R. 295 (Paras 484–488). Further, the right of an arrested person to be informed in writing of the grounds of arrest and furnishing of such written grounds to the arrested person was made an imperative requirement of law in *Prabir Purkayastha v. State (NCT of Delhi)*, LAWS(SC)-2024-5-46, and *Pankaj Bansal v. Union of India*, LAWS(SC)-2023-10-3.

12. Similarly various protections afforded under the Constitution to a person facing arrest were expounded by the Supreme Court in *Vihaan Kumar v. State of Haryana*, LAWS(SC)-2025-2-20 (Para 21), which is reproduced below:

"(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 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."

13. In a recent judgment of Apex Court **dated 25.03.2025 passed in Criminal Appeal No.1518 of 2025 @ SLP [Crl] No.1662 of 2025) (Ashish Kakkar vs. UT of Chandigarh)** has considered the similar issue. The judgment and order dated 25.03.2025 is reproduced below:

“Leave granted.

2. The appellant was arrested on 30.12.2024 in connection with FIR No. 33/2022 registered under Sections 384, 420, 468, 471, 509 and 120B of the Indian Penal Code, 1860 and remanded to police custody for a period of 3 days.

3. Vide the present appeal, the appellant has challenged both his arrest and the remand order dated 30.12.2024 on three grounds, namely, there is a clear non-compliance of the mandate under Section 41-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'); the appellant was not heard at the time of remand and the grounds of arrest as mandated under Section 50 of the Code have not been furnished to the appellant as against the mere arrest memo.

4. We are inclined to consider only the last issue raised by the appellant with respect to the non- furnishing of the grounds of arrest.

5. Upon perusing annexure P-3, we can see that what has been provided to the appellant is only an arrest memo in the prescribed format, which is meant to be given to the appellant by way of an intimation. It has been filled up with the name of the appellant along with the place of arrest. Additionally, it has been written that he has been arrested based upon the statement of the co- accused.

6. We are in agreement with the submission made by the learned senior counsel appearing for the appellant that the said arrest memo cannot be

construed as grounds of arrest, as no other worthwhile particulars have been furnished to him.

*7. This, being a clear non-compliance of the mandate under Section 50 of the Code which has been introduced to give effect to Article 22(1) of the Constitution of India, 1950 we are inclined to set aside the impugned judgment, particularly, in light of the judgment rendered by this Court reported as **Prabir Purkayastha v. State (NCT of Delhi) (2024) 8 SCC 254**.*

8. In such view of the matter, the impugned judgment stands set aside and the arrest of the appellant followed by the consequential remand order are also set aside.

9. The appellant shall be set at liberty, until and unless he is required in any other case. The appeal stands allowed accordingly.

10. Pending application(s), if any, shall also stand disposed of.”

14. In the instant matter, admittedly, no such effort had been made by the learned Magistrate to ensure adequate legal aid to the accused petitioner and appropriate opportunity of hearing at the time judicial remand. Even the arrest memo does not contain any column regarding grounds of arrest of the petitioner. This very issue is primarily the bone of contention between the parties in the instant matter. Accordingly, this, being a clear non-compliance of the mandate under Section 50 of the Code which has been introduced to give effect to Article 22(1) of the Constitution of India, 1950, we are inclined to set aside the impugned order in view of law laid down by the Apex Court in **Prabir Purkayastha (supra)**, **Pankaj Bansal (supra)** and **Ashish Kakkar (supra)**.

15. In such view of the matter, **the impugned order dated 26.12.2024 is hereby set aside. The arrest of the petitioner is also quashed.**

16. The petitioner shall be set at liberty, unless required in connection with any other case.

17. In light of the above, the **writ petition is allowed.**

18. Let the order be communicated to Director General of Police, Uttar Pradesh through Registrar General of this Court and accordingly, a circular be issued to all the Commissioners of Police/ SSPs/ SPs for necessary

compliance of Section 50 and 50A (now Section 47 and 48 BNSS) in the light of the observations made above.

Order Date :- 9.4.2025

NLY

(Prashant Kumar,J.)

(Mahesh Chandra Tripathi,J.)