Neutral Citation No:=2025:PHHC:036906

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRWP No.2396 of 2025 (O&M)
Date of decision: 11.03.2025

Gurkaran Singh Dhaliwal

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Rai, Senior Advocate (through Video Conferencing),
Mr. Vinod Ghai, Senior Advocate
Mr. Amit Jhanji, Senior Advocate
with Mr. Gautam Dutt, Advocate,
Mr. Harlove Singh Randhawa, Advocate,
Mr. Shiv Kumar Sharma, Advocate,
Mr. Satinder Pal Singh, Advocate,
Mr. Jashan Bains, Advocate,
Mr. Arjun S. Rai, Advocate,
Mr. Gursher Singh, Advocate,
Mr. G.S. Dhillon, Advocate,
Mr. Arnav Ghai, Advocate,
Mr. Dhruv Trehan, Advocate
and Mr. Shashank Shekhar Sharma, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab
and Mr. Deeepender Singh, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present criminal writ petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking the following reliefs:

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(i) issuance of a writ in the nature of Habeas Corpus, for release of detenu – Pushpinder Pal Singh Dhaliwal, father of the petitioner.

(ii) declaration of the arrest of the detenu – Pushpinder Pal Singh Dhaliwal, father of the petiti oner, as illegal.

FACTUAL MATRIX

2. Briefly, the facts, as per pleadings, are that in a social media post (Annexure P-1), one Sunanda Sharma, a professional artist, had leveled false allegations against the detenu qua criminal breach of trust, cheating, criminal misappropriation of property, wrongful restraint, defamation, intimidation and harassment. Consequently, on 08.03.2025, at about 7:30 PM, the detenu, a music producer, was picked up from his house in Mohali in a police car. Neither was an FIR registered against the detenu nor an arrest memo or a notice under Section 41-A, Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') were served on him. The detenu is currently being detained at Police Station Mataur, S.A.S. Nagar.

CONTENTIONS

3. Learned senior counsel for the petitioner, *inter alia*, contends that pursuant to the appointment of the Warrant Officer by this Court, he reached the concerned Police Station at 12:40 AM on 09.03.2025. At that time, no arrest memo had been prepared or issued in compliance with the mandatory provisions of Section 50 of Cr.P.C (now Section 47 of BNSS, 2023). Admittedly, FIR No.39 dated 08.03.2025,

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registered under Sections 406, 420, 465, 467, 468, 341, 500, and 506 of the Indian Penal Code (hereinafter 'IPC'), was lodged only after the order passed by this Court. As per the order dated 08.03.2025, it was directed that in the event the alleged detenu was found in the illegal custody of respondent No.2, he should be released forthwith. However, it was only at 02:26 AM on 09.03.2025 that a copy of the FIR along with the arrest memo was handed over to the Warrant Officer. It is vehemently argued that the FIR was registered merely as an afterthought to justify the illegal detention. Further, there is no mention in the FIR of any DDR entry, thereby rendering the entire process contrary to the order of this Court.

4. Moreover, the proceedings also stand vitiated as no notice under Section 35(3) of BNSS was issued, which has been held to be mandatory by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, and Satender Kumar Antil v. CBI, (2022) 10 SCC 51.*** Additionally, the grounds of arrest were not supplied to the father of the petitioner, demonstrating an attempt by the jurisdictional police authorities to overreach the process of law. Even the Warrant Officer was not provided with the relevant DDRs. Learned senior counsel also placed reliance upon the judgment rendered by the Hon'ble Supreme Court in ***Vihaan Kumar vs. State of Haryana and another 2025 SCC OnLine SC 269***, wherein it has been categorically held that not communicating the grounds of arrest nullifies the entire proceedings carried out by the jurisdictional police authorities. Therefore, all

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subsequent proceedings, including the order of the jurisdictional Court granting police remand, would be rendered *void ab initio*, as they suffer from incurable illegality. Lastly, it is submitted that as per the FIR, the date of occurrence is recorded as 10.03.2017, while the time of receipt of information at the Police Station is noted as 22:23 hrs. In light of this discrepancy, the detention of the petitioner's father is wholly unsustainable. Rather, it is a clear case of police high-handedness and illegal custody, warranting strict action. Resultantly, such actions necessitate appropriate proceedings for contempt of this Court.

5. *Per contra*, learned State counsel submits that the arguments advanced by learned senior counsel appearing on behalf of the petitioner are devoid of merit. It is neither a case of illegal detention nor one of custodial torture. It is submitted that DDR, bearing No.28 was recorded on 08.03.2025 at 19:09 hrs upon receipt of secret information indicating the complicity of the father of the petitioner in the alleged offence. Subsequently, vide DDR No. 29, recorded at 19:21 hrs, the departure of the police party for investigation into the matter was duly noted. Thereafter, the arrival of the police party along with the father of the petitioner at the police station was recorded vide GD No. 32 at 19:48 hrs for the purpose of interrogation. During the course of interrogation, an e-mail was received from the Senior Superintendent of Police, forwarding a detailed complaint submitted by one Sunanda Sharma at 09:57 PM. Based on this complaint, FIR No. 0039 (supra) was registered on 08.03.2025 at 23:23 hrs. Accordingly, the arrest of the

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petitioner's father was effected strictly in compliance with the prescribed legal procedure. It is further contended that there is nothing on record to remotely suggest that the father of the petitioner was kept in illegal custody at any point in time. Lastly, learned State counsel submits that the petitioner's reliance on ***Vihaan Kumar's case (supra)*** is wholly misplaced, as all these contentions were duly raised before the jurisdictional Court, which, after considering the submissions in detail, granted police remand.

WARRANT OFFICER'S REPORT

6. The report of the Warrant Officer, received in a sealed cover, has been opened in Court. A perusal of the same reveals that upon reaching the police station, the Warrant Officer, after disclosing his identity and the purpose of his visit, sought a copy of the FIR. In response, the police officials submitted that due to a technical fault, the FIR could not be downloaded at that moment. The statement of the SHO concerned was recorded, and he also handed over a copy of a complaint submitted by Sunanda Sharma, addressed to the Senior Superintendent of Police, Mohali. Subsequently, on 09.03.2025 at 02:26 AM, SHO Kulwant Singh provided a copy of the FIR and also supplied a copy of DDR No. 32, along with the memo of personal search and the memo of grounds of arrest. These documents were signed by the father of the petitioner at 02:30 AM in the presence of the Warrant Officer, who duly signed and endorsed the same. The Warrant Officer has

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further concluded in his report that the father of the petitioner is in custody in connection with the aforementioned case.

OBSERVATIONS AND ANALYSIS

7. Having heard learned counsel for the parties and after perusing the record with their able assistance, at the very outset, it is indispensable to mention that in order to prevent the misuse of police power and to safeguard human rights during arrest and detention, the Hon'ble Supreme Court, in the landmark case of ***D.K. Basu v. State of West Bengal(1997) 1 SCC 416,*** laid down essential guidelines to protect the rights of individuals in police custody and to ensure the accountability of law enforcement agencies. The Court emphasized the right of the accused to seek legal recourse and the corresponding duty of the State to uphold the rule of law. Recognizing the inherent risks of custodial misconduct, the Constitutional Courts have, time and again, issued directions to reinforce the principles of human dignity and justice. These guidelines were formulated to enhance transparency, prevent police abuse, and hold law enforcement authorities accountable for their actions. The consistent reiteration of these safeguards underscores the unwavering commitment to protecting fundamental rights and upholding the principles of justice. By setting forth clear norms for police conduct during detention and custody, the judiciary has continuously strived to balance the imperatives of law enforcement with the inviolable rights of individuals, thereby fortifying the constitutional guarantee of justice and human dignity. Reference in this regard can also

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be made to the guidelines issued by the Hon'ble Supreme Court in cases of ***Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273, Satender Kumar Antil Vs. CBI (2022) 10 SCC 51 and Md. Asfak Alam vs. The State of Jharkhand and another (2023) 8 SCC 632***.

8. Before proceeding further, it appears that a proper adjudication of the matter requires a study of the following provisions:

> ***Article 21, Constitution of India***
> *No person shall be deprived of his life or personal liberty except according to procedure established by law.*
>
> ***Article 22, Constitution of India***
>
> *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
> *(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*
> *(3) Nothing in clauses (1) and (2) shall apply—*
> *(a) to any person who for the time being is an enemy alien; or*
> *(b) to any person who is arrested or detained under any law providing for preventive detention.*
> *(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—*
> *(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or*
> *(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).*

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

BNSS, 2023

Section 2. Definitions.—

(1) *In this Sanhita, unless the context otherwise requires, —*

(g) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

Section 35. When police may arrest without warrant. (erstwhile Section 41 and 41-A of Cr.P.C.) —

(1) *Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*

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

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or

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without fine, if the following conditions are satisfied, namely:—

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

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

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

(b) for proper investigation of the offence; or

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

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

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

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

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

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been

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concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

***(2)** Subject to the provisions of section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.*

***(3)** The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

***(4)** Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.*

***(5)** Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.*

***(6)** Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.*

***(7)** No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.*

Section 47. (erstwhile Section 50 of Cr.P.C.) Person arrested to be informed of grounds of arrest and of right to bail.—

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Section 176 (erstwhile Section 157 of Cr.P.C.).
Procedure for investigation.—
(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:
Provided that—
(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:
Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the localityand such statement may also be recorded through any audio-video electronic means including mobile phone.
(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by rules made by the State Government.
(3) On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause

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> *videography of the process on mobile phone or any other electronic device:*
> *Provided that where forensic facility is not available in respect of any such offence, the State Government shall, until the facility in respect of that matter is developed or made in the State, notify the utilisation of such facility of any other State.*

9. Time and again, the Hon'ble Supreme Court has reiterated that arrest is not mandatory in every case pertaining to commission of a cognizable offence. This interpretation is also reinforced by the use of the word *'may'* in Section 35 of BNSS. Further still, Section 176(1) of BNSS stipulates that a police officer can take measures to arrest the offender after investigating the case, if found necessary. As such, it is abundantly clear that registration of an FIR *qua* a cognizable offence does not lead to an automatic arrest. Reliance in this regard can also be placed upon the judgment rendered by a Full Bench of the Allahabad High Court in ***Smt. Amarawati and another vs. State of U.P. 2005(2) R.C.R. (Criminal) 159.***

10. Reputation is a valuable personal asset and a facet of an individual's right to life as enshrined in Article 21 of the Constitution, as noted by the Hon'ble Supreme Court in ***Sukhwant Singh vs. State of Punjab, 2009(4) R.C.R(Criminal) 868***. Events like arrest and detention, even for a short duration, can leave an indelible stain on a person's reputation, often outweighing the actual legal consequences. In the eyes of the society, the mere act of being taken into custody is equated with guilt, regardless of the eventual outcome of the case. The stigma lingers, which severely affects the person's social standing. Unlike a legal

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acquittal, which is confined to the court records, public perception is shaped by the spectacle of arrest itself, fueling suspicion and causing irreversible damage to one's dignity. In this way, even a fleeting moment in custody can cast a lifelong shadow.

11. A three Judge bench of the Hon'ble Supreme Court in ***Joginder Kumar vs. State of U.P., (1994) 4 SCC 260*** has held that the rights enshrined in Article 21 and 22(1) of the Constitution of India are required to be recognized and scrupulously protected. Speaking through the then Chief Justice M.N. Venkatachaliah, the following observations were made:

> "*24. The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.* ***The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.*** *The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police Officer issues notice to person to attend the Station House and not to leave Station without permission would do."*(emphasis added)

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Reliance in this regard can also be placed on the judgment rendered by the Hon'ble Supreme Court in ***Som Mittal vs Government of Karnataka, 2008(1) RCR (Criminal) 880***.

12. It is no longer *res integra* that no person shall be detained without being informed of the grounds of his arrest as soon as maybe. This requirement is not merely a procedural formality but a constitutional safeguard enshrined in Article 22(1) of the Constitution of India, which not only serves as the first line of protection against arbitrary State action but also upholds an individual's fundamental right to personal liberty. This provision ensures that every arrested person is informed, '*as soon as may be,*' of the reasons for their detention, allowing them to challenge the legality of their arrest. Additionally, the use of the word '*forthwith*' in Section 47 of BNSS also begs the inference that the grounds of arrest must be communicated at the earliest. The right to seek legal consultation and representation, also guaranteed under Article 22(1) of the Constitution of India, would be rendered meaningless if the arrestee remains unaware of the reason of his arrest. Significantly, this requirement acts as a check on the misuse of power by the law enforcement agencies, as it causes them to produce a lawful justification for any arrest made by them, especially in cases where no warrant is issued.

13. Article 21 of the Constitution of India bestows the precious and most cherished fundamental right to liberty on individuals, which is directly curtailed when one is placed under arrest. Given the gravity of

the same, the duty to communicate the grounds of arrest in a meaningful and comprehensible manner becomes all the more imperative. In order to realize the constitutional mandate and ensure it is not reduced to a hollow formality, such information must be conveyed in a manner that enables the arrestee to effectively respond. Merely conveying the grounds in technical or mechanical terms, without ensuring his comprehension, would defeat the overarching goal which is to protect the individual from unlawful detention, prevent misuse of power and reinforce the rule of law.

14. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Vihaan Kumar vs. State of Haryana and another, 2025 SCC OnLine SC 269***, delved into the purpose and object of Article 22 of the Constitution of India and speaking through Justice Abhay S. Oka, opined as follows:

> "*11. The view taken in the case of **Pankaj Bansal** was reiterated by this Court in the case of **Prabir Purkayastha**. In paragraphs nos. 28 and 29, this Court held thus:*
>
> > *"28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.*
> >
> > *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 added)*

12. This Court held that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical, and therefore, this Court held that interpretation of Article 22(5) made by the Constitution Bench in the case of ***Harikisan v. State of Maharashtra, 1962 SCC Online SC 117****, shall ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the ground of arrest is concerned. We may also note here that in paragraph 21, in the case of* ***Prabir Purkayastha***[2]*, this Court also dealt with the effect of violation of Article 22(1) by holding that any infringement of this fundamental right would vitiate the process of arrest and remand. Paragraph 21 reads thus:*

> *"21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused."*
>
> *(emphasis added)*

xxx *xxx* *xxx*

14. …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 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****. 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*

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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 Bansal*** *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 1st respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a chargesheet 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.***"

(emphasis added)

A perusal of ***Vihaan Kumar's case (supra)*** would indicate that the grounds of arrest must now be communicated in writing to the arrestee. As such, the failure to adequately inform the arrestee of the grounds of his arrest equates to deprivation of his personal liberty in contravention of the procedure established by law, which is in direct violation of Article 22 as well as Article 21 of the Constitution of India. Consequently, any action taken post an unlawful arrest is automatically rendered *void ab initio*, be it obtaining a remand order from the jurisdictional Magistrate.

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15. In order to combat the malady of unnecessary arrest, Section 41-A was added to the Cr.P.C. (*now Section 35 of BNSS)* by the Code of Criminal Procedure (Amendment) Act, 2008. A scrutiny of the said provision makes it clear that in all cases where the arrest of a person is not required under Section 41 of Cr.P.C. *(now Section of 35 BNSS)*, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. It is obligatory for the accused to appear before the police officer once such notice is served. Moreover, if the accused complies with the terms of notice, he shall not be arrested, unless the police officer is of the opinion that the arrest is necessary and the reasons for the same are recorded in writing.

16. Adverting to the facts of the case, on 08.03.2025 at 7:30 PM, the detenu was picked up from his residence by the police on the pretext of questioning and upon his arrival at Police Station Mataur, a DDR, bearing No. 32 was recorded at 07:48 PM. At this point, undisputedly, no FIR or complaint had been registered against him. This is reinforced by the fact that the Warrant Officer was not provided with a copy of the FIR or the memo of arrest of the detenu when he arrived at the Police Station Mataur. It was only at 02:26 AM on 09.03.2025 that the SHO handed over a copy of the FIR(supra) registered against the detenu along with a copy of DDR No. 32, the memo of personal search, and the memo of arrest. A perusal of the Warrant Officer's report further reveals that both the memo of personal search and the memo of arrest

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were signed by the Warrant Officer, along with the witnesses and the detenu, at 02:30 AM. One need not look any further than the entries in DDR No.29 and DDR No.32 to clearly discern the intent of the jurisdictional police authorities to arrest the detenu. Consequently, in view of the admitted facts on record, this Court has no qualms in holding that the detenu was subjected to custodial interrogation prior to the registration of the FIR(supra). Such procedural lapses are in direct contravention of Article 21 of the Constitution of India, thereby rendering his custody illegal in the eyes of law. Furthermore, there was a total non-compliance with Section 47 of BNSS as well as violation of Article 22 of the Constitution, as it was only after a lapse of seven hours from the detenu's initial custody that he was informed of the grounds of his arrest vide memo of arrest, that too in the presence of the Warrant Officer. It is in clear contravention of the principles laid down in ***Vihaan Kumar's case (supra)***. This alone is an incurable illegality that would be sufficient to vitiate the proceedings and declare the detention of the detenu as illegal. Moreover, the subsequent registration of the FIR and the issuance of the arrest memo only after the arrival of the Warrant Officer appear to be a deliberate attempt by police officials to obscure procedural irregularities and justify their illegal actions.

17. *In arguendo,* even if the arrest was made post registration of the FIR(supra), no notice under Section 35(3) of BNSS *(erstwhile Section 41-A of Cr.P.C.)* was served upon the detenu. The police have directly proceeded to arrest the detenu, which is violative of Section

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35(1)(c) of BNSS (*erstwhile Section 41(1)(ba) of Cr.P.C.*), which lays down the twin conditions for making an arrest in cases punishable with imprisonment for a term which may extend to more than 07 years. The same are as follows:

> (i) There is credible information that the accused has committed a cognizable offence punishable with imprisonment of more than 07 years.
>
> (ii) The police officer has a reason to believe, on the basis of this credible information, that the accused has committed the offence.

A perusal of the record indicates that no reasons were recorded by the police, after conducting some investigation as to the genuineness of the allegations, that the information received is credible and arrest of the detenu is necessary.

18. Judicial and procedural justice are essential components of administration of justice. The bypassing of procedural justice often prejudices the trial and impedes the constitutional right of the parties to free and fair trial. While it is true that procedure is the hands maid of justice, pragmatic judicial practice requires that only when it is expedient in the interest of justice and does not cause prejudice to the prosecution or the defence, that deviation from the procedure may be made. However, when the fundamental rights of an individual are at stake, adherence to procedural safeguards is not merely desirable but a constitutional mandate, admitting of no deviation whatsoever.

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Otherwise, any such deviation from the procedural safeguards would be impermissible and would defeat the ends of justice. Additionally, it is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to the judgment of the Hon'ble Apex Court in ***Dharani Sugars and Chemicals Ltd. v. Union of India, (2019) 5 SCC 480.***

19. Before parting with this order, the conduct on the part of the Warrant Officer in drawing a conclusion and returning a finding with regard to the legality of the arrest of the detenu has drawn the attention of this Court. Thus, this Court would also like to clarify that the role of a Warrant Officer is '*ministerial'* in nature since his duty is confined to conducting a search for the person of the detenu at the said premises and examine all the material available, including contemporaneous record of the police station which may justify the custody. However, the Warrant Officer has no adjudicatory power to either comment or draw a conclusion with respect to the legality or illegality of the said custody.

20. In the present case, the Warrant Officer has erroneously made certain remarks in the last para of his report, recording a finding on the legality of detention. As such, this Court has no hesitation in deprecating the conduct of the Warrant Officer and in holding that the Warrant Officer exceeded his jurisdiction in commenting on the merits of the case. A Full Bench of this Court has authoritatively laid this controversy to rest in the judgment rendered in ***Court on its own***

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motion vs. Sukhvinder Singh and others 1981 PLR 536, wherein, speaking through Justice S.S. Kang, the following was held:

> "*11. The Warrant Officer examines the rozenamcha only to find out if there is any report regarding the custody of the detenu.* ***He does not investigate any matter and he does not go into the question as to whether the detenu is being detained illegally, validly and under the authority of law. He does not do such thing. He can at best report to the Court that the detenu was present in the premises, but there was no report regarding his custody in the Daily Diary. It is for the Court to draw any conclusion from that****. But, while appointing the Warrant Officer to search the premises for the presence of the detenu and to serve a notice on the detaining authority, this Court does not abdicate its powers.* ***The Warrant Officer performs only the ministerial function in connection with proceedings pending in this Court****. In fact, Shri Karampal Singh Sandhu, learned counsel did not argue that this Court should not authorise the Warrant Officer to go and examine and take into possession the daily diary. He only argued that by his very appointment as Warrant Officer, the Warrant Officer does not get the authority to inspect the daily diary."* (emphasis added).

21. In view of the discussion above, the present petition is allowed and the detenu namely Pushpinder Pal Singh Dhaliwal @ Pinky Dhaliwal, father of the petitioner, detained at Police Station Mataur, S.A.S. Nagar, is ordered to be released immediately, if his custody is not required in connection with any other case. Consequently, the arrest of the detenu in connection with FIR(supra) stands vitiated and is declared illegal.

22. However, nothing observed hereinabove shall be construed as expression of an opinion by this Court on the merits of this case, lest it may prejudice the investigation. The jurisdictional police authority is at liberty to proceed against the father of the petitioner in the FIR(supra) in accordance with law.

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23. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

11.03.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No