2025:DHC:1078

$~J-

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20th February, 2025

\+ W.P.(CRL) 1929/2024 & CRL.M.A. 18784/2024

THOKCHOM SHYAMJAI SINGH & ORS. .....Petitioners

Through: Mr. Siddhartha Borgohain, Mr. Aditya Giri and Mr. Hemant Kalra, Advocates.

versus

UNION OF INDIA THROUGH HOME SECRETARY & ORS. .....Respondents

Through: Mr. Amit Tiwari, CGSC with Mr. Vedansh Anand, G.P., Ms. Chetanya Puri, Mr. A. Tanwar, Mr. Rahul Bhaskar and Mr. Soumyadip Chakraborty, Advocates for UOI.
Mr. Rahul Tyagi, SPP with Mr. Sangeet Sibou, Mr. Jatin, Mr. Mathew M. Philip, Ms. Priya Rai and Mr. Abhishek Tomar, Advocates with DSP Neeraj Mishra, CIO for NIA.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

Does the constitutional mandate of serving *grounds of arrest in writing* to an arrestee under the Unlawful Activities (Prevention) Act, 1967 ('UAPA') come into effect from the date of the Supreme Court

verdict in ***Pankaj Bansal vs. Union of India & Ors.***[1]or in ***Prabir Purkayastha vs. State (NCT of Delhi)***[2] ? That is the question that presents itself for decision in the present matter.

PETITIONERS' CHALLENGE

2. By way of the present petition filed under Article 226 read with Article 227 of the Constitution, the petitioners, who are ordinarily residents of the State of Manipur, seek to challenge their arrest by the respondent No.2/National Investigation Agency ('NIA') on 13.03.2024 in case FIR No. RC-23/2023/NIA/DLI dated 19.07.2023 registered under sections 120-B/121-A/122 of the Indian Penal Code, 1860 ('IPC') and sections 18/18-B/39 of the UAPA at P.S.: NIA, New Delhi.

3. The petitioners also challenge remand order dated 14.03.2024 whereby the petitioners were initially remanded to NIA custody; and the subsequent orders passed by the learned Special Court in the subject FIR, extending their custody from time-to-time, including the orders remanding them to judicial custody, where they are presently lodged.

4. The principal ground raised by the petitioners challenging their arrest on 13.03.2024 is that the arrests were made in contravention of the requirements of section 50 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') read with section 43-B of the UAPA. It is the petitioners' contention that since they were not served with the grounds of arrest

[1] (2024) 7 SCC 576
[2] (2024) 8 SCC 254

in writing as mandated by the interpretation of the aforesaid statutory provisions in line with Article 22(1) of the Constitution, their arrest was illegal and unconstitutional, and deserves to be set-aside.

5. The petitioners further allege, that since their arrest on 13.03.2024 is illegal, the consequent remand order dated 14.03.2024 and other orders passed by the learned Special Court are also illegal and deserve to be quashed.

RESPONDENTS' ALLEGATIONS

6. Briefly, the NIA's case against the petitioners is that petitioner No.1 is the Chief of Army of the United National Liberation Front ('UNLF'), a designated terrorist organization listed at Entry No.14 of the First Schedule to the UAPA; petitioner No.2 is the Chief of Intelligence of the UNLF; and petitioner No.3 is an active member of the UNLF and a close associate of petitioners Nos.1 and 2.

7. It is the NIA's allegation that the petitioners have been spearheading terrorist activities of the UNLF *inter-alia* by raising funds for that organization by resorting to extortion; and have also been recruiting the cadres and procuring weapons to foment violence in the State of Manipur, by fanning ethnic strife.

8. The NIA alleges that the petitioners are part of a trans-national conspiracy hatched by Myanmar-based terror outfits, to exploit the ethnic unrest in the State of Manipur and to wage war against the Government of India.

9. The NIA alleges that at the time of their arrest in Imphal, Manipur, the petitioners were moving in an un-numbered car, carrying weapons and ammunition alongwith foreign currency and foreign SIM-cards.

The NIA says that the petitioners were flown to Delhi and were produced before the learned Special Court at Patiala House, New Delhi within 24 hours of their arrest for seeking their police custody remand.

10. Chargesheet has since been filed against the petitioners alleging offences under sections 120-B/121-B and 122 of the IPC and sections 18/18-B and 39 of the UAPA.

UNDISPUTED FACTUAL POSITION

11. The undisputed factual matrix that is relevant for deciding the rival contentions is the following :

11.1. Admittedly at the time of their arrest on 13.03.2024, the petitioners were served with 03 separate arrest memos, all dated 13.03.2024, containing their respective names and other particulars, which arrest memos were also signed by 02 witnesses in each case, and also bore the signatures of the respective arrestees (petitioners);

11.2. The arrest memos also contained the date, time and place of arrest, *viz.* 13.03.2024 at 11:45 a.m. at Bir Tikendrajit International Airport, Imphal, Manipur;

11.3. The arrest memos served upon the petitioners *inter-alia* contained the following entry :

6.	Whether the grounds of arrest have been explained (If possible, in his mother tongue) to the accused-	Yes

(extracted from the record)

11.4. It is also not disputed that after being brought to Delhi the petitioners were produced before the learned Special Court at 10:15 a.m. on 14.03.2024, at which point the court recorded the following order :

> "*14.3.2024*
>
> *Present:- Ms. Kanchan, Ld. Sr. PP for NIA.*
> *Sh. Neeraj Mishra, DSP, NIA.*
> *Sh. Sunil Kumar Singh, Ld. Legal Aid counsel for accused persons.*
>
> *Accused persons, namely, Ibomcha Meitei @ Landaba, Laimayum Anand Sharma @ Ingba and Thokchom Shyamjai Singh @ Thokchom Gyaneshor @ Thoiba @ Zatawn @ Zaw Tun @ Shidabamapu @ Sidabamapu @ Zaw Tun are produced after fresh arrest.*
>
> *Three accused persons are produced through before this court at 10.15 am. All the accused are not represented by any counsel. Therefore, Legal Aid was extended to them. Legal Aid Remand Advocate was called and was directed to speak to the accused persons so that effective legal representation may be given to accused persons.*"

11.5. Thereafter the matter was taken-up again on the same date *i.e.*, 14.03.2024 *after* about 35 minutes of the first round and the court passed the following order :

> "*At 10.50am, application is taken up again. Alongwith application, copy of arrest memo is placed on record. It is noticed that in the arrest memo of Thokchom Shyamjai Singh @ Thokchom Gyaneshor @ Thoiba @ Zatawn @ Zaw Tun @ Shidabamapu @ Sidabamapu @ Zaw Tun, it is recorded that fact of his arrest has been notified to SP Imphal. Arrest memo does not mention as to whether any family member of the accused is informed about the arrest or not. On query, it is submitted that the accused was asked about the phone number at which information of his arrest*

may be given but accused told that he did not remember the phone number. Further query was made whether the accused was questioned about his address. At this stage, it is submitted on behalf of NIA that they shall ensure that the information is given to the family members of accused today itself.

Heard. Request allowed.

Compliance report be filed regarding informing to family members of the accused Thokchom Shyamjai Singh @ Thokchom Gyaneshor @ Thoiba @ Zatawn @ Zaw Tun @ Shidabamapu @ Sidabamapu @ Zaw Tun.

Further, in the application under consideration, police custody of ten days has been sought qua all the accused persons are produced after fresh arrest. Case diary is also produced which is perused and signed qua the proceedings in respect of investigation in respect of accused persons produced today. It is submitted on behalf of applicant/NIA that ten days police custody is required so as to unearth the controversy and to look into the source of arms and ammunitions as well as Foreign currency and foreign Sim Cards.

Application is opposed on behalf of accused persons by Legal Aid Counsel submitting that application is without basis. It is submitted that no cogent ground is laid down to warrant grant of Police Custody.

Heard. Record perused.

It is contended in the application that credible information was received in respect of accused Thokchom Shyamjai Singh @ Thokchom Gyaneshor @ Thoiba @ Zatawn @ Zaw Tun @ Shidabamapu @ Sidabamapu @ Zaw Tun was due to move to hold meeting with leaders and cadres of underground outfits. It is contended and argued that accused Thokchom Shyamjai Singh @ Thokchom Gyaneshor @Thoiba @ Zatawn @ Zaw Tun @ Shidabamapu @ Sidabamapu @ Zaw Tun claims himself to

be Army Chief of Proscribed organization UNLF. That other two accused are members of proscribed organization associaste of accused Thokchom Shyamjai Singh @ Thokchom Gyaneshor @ Thoiba @ Zatawn @ Zaw Tun @ Shidabamapu @ Sidabamapu @ Zaw Tun. It is contended that recovery of arms, ammunition, foreign currency and foreign Sim has been made from accused. There are allegations of fuelling the unrest in the State of Manipur. Police custody is stated to be required to unearth the conspiracy. The recovery of arms, unaccounted and unexplained foreign currency as well as foreign sims does indicate cogent ground regarding which investigating agency should get a chance to interrogate the accused so as to find the sources of some and also the role of accused, if any, in the conspiracy. The material on record has overtones to support the allegations that conspiracy might extend beyond border of India. Further investigating agency should get a fair chance to investigate the matter so that material is produced before the Court so as to enable the court to reach at the truth in the matter. Hence, in the facts and circumstances of the case, to reach at the root of the matter, custodial interrogation of accused seems necessary. Thus, application is allowed and 10 days of police custody of all three accused is granted. Medical examination of all three accused shall be conducted every 24 hours. Application stands disposed of accordingly. Copy dasti."

11.6. After the police custody remand expired, *vide* order dated 23.03.2024 the learned Special Court was pleased to remand the petitioners to judicial custody, with the following essential observations :

> "*5. As far as the issue of submitting or forwarding the copy of FIR dated 19.07.2023 is concerned, it is submitted by the NIA that due compliance was made in this regard. It is further submitted that if some peace talks are going on, as claimed on behalf of accused, it does not entitle*

the accused to carry on unlawful activities. At the time of arrest, certain recoveries were made from the accused which include arms, foreign currencies and Sim cards of foreign countries. Therefore, in view of the facts and circumstances of the case and the material produced before this court in the form of case diary, the aforesaid accused are remanded to judicial custody till ***20.04.2024****. Details of investigation conducted till date are not noted as investigation is still underway and mentioning the detail may hamper the investigation. They be produced before this court through video-conferencing on the next date of hearing.*"

(bold in original)

11.7. For completeness it may also be observed that subsequently the NIA again sought the police custody of the petitioners, stating that they need to confront the accused persons with the forensic report relating to certain digital devices that the NIA claims were seized from them. *Vide* order dated 10.04.2024 the NIA's request was again allowed and they were granted police custody of the petitioners for 03 days, the details of which order are however not relevant for purposes of the present proceedings; and

11.8. After expiration of the 03-day additional police custody, the petitioners were remanded back to judicial custody from time-to-time by orders dated 12.04.2024, 20.04.2024, 20.05.2024 and 07.06.2024; and the petitioners have been in judicial custody ever-since.

SUBMISSIONS OF PARTIES

12. Though prolix arguments have been advanced by learned counsel appearing on both sides, the essential contestation is whether or not

the petitioners were *served with the grounds of arrest in writing*, as required in law; and consequently, whether their arrest on 13.03.2024 is valid and legal. Stemming from that issue it would also need to be considered whether remand order dated 14.03.2024 and all subsequent orders passed by the learned Special Court, by which the petitioners' custody has been continuing, are sustainable in law.

13. As recorded above, the principal argument advanced on behalf of the petitioners is that they were not served with the 'grounds of arrest' 'in writing'; and that therefore, their arrest is illegal and unconstitutional, especially in view of the recent pronouncements of the Supreme Court in the cases referred-to hereinafter.

14. The petitioners also state that they do not understand the English language; and since they were not assigned legal-aid counsel who was conversant with their native language, their statutory and constitutional rights have been violated. The petitioners contend that their arrest is accordingly illegal, as is their subsequent police custody remand and judicial custody remand; and that therefore, they deserve to be released from custody.

15. On the other hand, the NIA's principal contentions are :

15.1. That since the petitioners were arrested on 13.03.2024, there was no legal requirement for the NIA to have served upon the petitioners the grounds of arrest *in writing*; but that in any event, at the time of their arrest the grounds of arrest were *explained* to the petitioners orally; and that later the grounds of arrest were served upon the petitioners in writing as part of the remand applications;

15.2. That at the stage of their arrest, the petitioners were in custody in terms of section 167 of the Cr.P.C. for the purposes of investigation for a limited period; and subsequently, they were remanded to judicial custody by the learned Special Court after chargesheet was filed; and the nature of their custody now is under section 309 of the Cr.P.C.;

15.3. That on 13.03.2024, the petitioners were arrested by the Deputy Superintendent of the Police ('DSP') of the NIA, who is a 'police officer' within the meaning of section 3 of the National Investigation Agency Act, 2008 and such arrest is governed by the procedure set-out in section 41(1)(ba) of the Cr.P.C. (since the offences alleged are punishable with more than 07 years); and those offences do not require a police officer to record any grounds of arrest, nor is there any requirement to serve the grounds of arrest in writing upon an arrestee;

15.4. That the ratio of the Supreme Court decisions, as discussed hereinafter, does not apply to the petitioners since they were not arrested either under section 43-A or section 43-B of the UAPA. It is pointed-out that the Supreme Court decisions apply to arrests made under section 19 of the Prevention of Money Laundering Act, 2002 ('PMLA') and under section 43-A of the UAPA but not to arrests made under section 41(1)(ba) of the Cr.P.C.; and

15.5. It is also pointed-out on behalf of the NIA that by way of the present proceedings the petitioners have only challenged their

arrest and remand; but they have not sought bail from this court.

16. The relevant contentions raised on behalf of both sides have been considered and analysed as part of the discussion that follows.

DISCUSSION & CONCLUSIONS

17. The legal proposition, on which the rival contentions of the parties are based, arises from the following judicial precedents, the relevant portions of which have been extracted below :

17.1. The first judgment cited in which the Supreme court dwelt upon the issue of whether the 'grounds of arrest' are required to be communicated to an arrestee in writing was *Pankaj Bansal*. Interpreting the provisions of section 19 of the PMLA in light of Article 22(1) of the Constitution, in *Pankaj Bansal* the Supreme Court made the following essential observations :

> "*23. Viewed in this context, the remand order dated 15-6-2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, reflects total failure on his part in discharging his duty as per the expected standard. The learned Judge did not even record a finding that he perused the grounds of arrest to ascertain whether ED had recorded reasons to believe that the appellants were guilty of an offence under the 2002 Act and that there was proper compliance with the mandate of Section 19 PMLA. He merely stated that, keeping in view the seriousness of the offences and the stage of the investigation, he was convinced that custodial interrogation of the accused persons was required in the present case and remanded them to the custody of ED ! The sentence — "It is further (sic) that all the necessary mandates of law have been complied with" follows — "It is the case of the prosecution ...." and appears to be a continuation thereof, as indicated by the word*

"further", and is not a recording by the learned Judge of his own satisfaction to that effect.

* * * * *

"*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****. ... ... 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****. ... ... 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."

(emphasis supplied)

17.2. The aforesaid view in *Pankaj Bansal* was followed by the Supreme Court in ***Ram Kishor Arora vs. Directorate of Enforcement***,[3] which was yet again a case under section 19 of the PMLA, in which the Supreme Court further dilated upon the legal necessity of furnishing *a copy of the grounds of arrest* to an arrestee, in the following words:

> "*2. Dehors the facts, a neat question of law that has been raised before this Court is whether the action of the respondent ED in handing over the document containing the grounds of the arrest to arrestee and taking it back after obtaining the endorsement and his signature thereon, as a token of he having read the same, and in* ***not furnishing a copy thereof to the arrestee at the time of arrest*** *would render the arrest illegal under Section 19 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA")?*
>
> * * * * *
>
> "*21. In view of the above, the expression "as soon as may be" contained in Section 19 PMLA is required to be construed as — "as early as possible without avoidable delay" or "within reasonably convenient" or "reasonably requisite" period of time. Since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform*

[3] (2024) 7 SCC 599

the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.

"*22. In Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929], it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance with mandate of Article 22(1) of the Constitution. It is also observed that the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money-laundering. Therefore, in our opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest* ***and*** *is furnished a written communication about the grounds of arrest as soon as may be i.e. as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 PMLA but also of Article 22(1) of the Constitution of India.*

"*23. As discernible from the judgment in Pankaj Bansal case [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 PMLA,* ***directed to furnish the grounds of arrest in writing as a matter of course, "henceforth", meaning thereby from the date of the pronouncement of the judgment. The very use of the word "henceforth" implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or obligatory till the date of the said judgment****. The submission of the learned Senior Counsel Mr Singhvi for the appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states 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. Hence, non-furnishing of grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal case [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] could neither be held to be illegal nor the action of the officer concerned in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 PMLA as also Article 22(1) of the Constitution of India, as held in Vijay Madanlal [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929]."

(emphasis supplied)

17.3. The afore-noted judgments were followed by another celebrated decision of the Supreme Court in *Prabir Purkayastha*, which however was a case under section 43-B of the UAPA; and in that case the Supreme Court articulated the parity as between section 19 of the PMLA and section 43-B of the UAPA insofar as the necessity of furnishing grounds of arrest in writing is concerned, with the following significant observations :

> "*16. Upon a careful perusal of the statutory provisions (reproduced supra), we find that* ***there is no significant difference in the language employed in Section 19(1) PMLA and Section 43-B(1) UAPA which can persuade us to take a view that the interpretation of the phrase "inform him of the grounds for such arrest" made by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] should not be applied to an accused arrested under the provisions of the UAPA****.*
>
> "*17. We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43-B(1) UAPA is verbatim the same as*

that in Section 19(1) PMLA. The contention advanced by the learned ASG that there are some variations in the overall provisions contained in Section 19 PMLA and Sections 43-A and 43-B UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43-B(1) UAPA at the earliest because as stated above, ***the requirement to communicate the grounds of arrest is the same in both the statutes****.* ***As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied****.*

"*18. We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus,* ***we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] on the aspect of informing the arrested person the grounds of arrest in writing has to be applied pari passu to a person arrested in a case registered under the provisions of the UAPA****.*

"*19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA* ***or for that matter any other offence(s)*** *has a fundamental and a statutory right to be informed about the* ***grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception*** *at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek*

bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

* * * * *

"*30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.*

* * * * *

"*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. … …*

* * * * *

"*44. It was the fervent contention of the learned ASG that in Ram Kishor Arora [Ram Kishor Arora v. Enforcement Directorate, (2024) 7 SCC 599], a two-Judge Bench of this Court interpreted the judgment in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] to be having a prospective effect and thus the ratio of Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] cannot come to the appellant's aid. Indisputably, the appellant herein was remanded to police custody on 4-10-2023 whereas the judgment in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] was delivered*

on 3-10-2023. Merely on a conjectural submission regarding the late uploading of the judgment, the learned ASG cannot be permitted to argue that the ratio of Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] would not apply to the present case. Hence, the plea of Shri Raju, learned ASG that the judgment in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] would not apply to the proceedings of remand made on 4-10-2023 is misconceived.

"*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.*
>
> * * * * *
>
> "*50. As a result, the* ***appellant is entitled to a direction for release from custody by applying the ratio of the judgment rendered by this Court in Pankaj Bansal*** *[Pankaj Bansal v. Union of India, (2024) 7 SCC 576]*."

(emphasis supplied)

18. Pertinently, in *Pankaj Bansal* and *Prabir Purkayastha* the arrest was held to be illegal and was quashed; and the arrestee was directed to be released from custody (in the case of *Prabir Purkayastha*, by directing the arrestee to furnish a bail bond).

19. If there was to remain any doubt about the sacrosanctity attached to furnishing the grounds of arrest in writing to an arrestee, in its recent judgment in ***Vihaan Kumar vs. State of Haryana & Anr.***,[4] the Supreme Court has minced no words in holding that :

> "*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;*

[4] 2025 SCC OnLine SC 269

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.*"

(*per* Abhay S. Oka, J.)

In his concurring opinion, the other Hon'ble Judge in the case has in fact expanded on the necessity to communicate the grounds of arrest in writing, not only to the arrestee, but *in addition* also to his relatives and such other persons as may be nominated by the arrestee, so as to enable the arrestee to avail his legal remedies and secure his release from custody. These are the words of the Supreme Court :

> "*3. The purpose of inserting Section 50A of the CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detenue, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence,* ***the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal***."

(*per* N. Kotiswar Singh, J.)

20. It must be observed that as per the well settled constitutional canon of interpretation, *unless* the Supreme Court specifically indicates that a decision it renders *will operate prospectively*, the law declared by the Supreme Court is presumed to have been the law at all times.[5]

21. In light of the above, it must be appreciated that the law in relation to arrests (in the context of the PMLA) declared by the Supreme Court in *Pankaj Bansal* was held by them to specifically apply

[5] ***M.A. Murthy vs. State of Karnataka & Ors.***, (2003) 7 SCC 517, para 8

"*henceforth*",[6] meaning thereby that the interpretation of the law in that case was to be applied *prospectively*. But in *Prabir Purkayastha* the Supreme Court has made no such observation in relation to arrests under the UAPA and other criminal offences. As a result, the ratio of *Pankaj Bansal* would apply to arrests under the UAPA and other criminal offences from the date of pronouncement of *Pankaj Bansal* (*i.e.*, 03.10.2023) and not from the date of *Prabir Purkayastha* (*i.e.*, 15.05.2024).[7]

22. For completeness it may be mentioned that a contrary view taken by a Co-ordinate Bench of this court in ***Amit Chakraborty vs. State (NCT of Delhi*** and ***Prabir Purkayastha vs. State (NCT of Delhi)***[8] has been set-aside by the Supreme Court in *Prabir Purkayastha* itself.

23. At the risk of repetition, it may be said that the NIA has argued most strenuously, that the requirement for furnishing grounds of arrest in writing was laid-down in *Pankaj Bansal* and *Ram Kishor Arora only* in the context of *section 19 of the PMLA*; and that it was only subsequently in *Prabir Purkayastha* that the Supreme Court held that there is no significant difference in the language employed in section 19(1) of the PMLA and section 43-B(1) of the UAPA; and *only thereafter* did the requirement of furnishing the grounds of arrest in writing to an arrestee come into effect under the UAPA.

---

[6] Para 45 of *Pankaj Bansal*
[7] Para 50 of *Prabir Purkayastha*
[8] 2023 SCC OnLine Del 6413

24. The NIA laments that they could not have complied with such requirement in relation to an arrest made under the UAPA before the decision was rendered in *Prabir Purkayastha*.

25. However, in view of the foregoing discussion, this contention raised by the NIA cannot be accepted, since that contention stands answered in *Prabir Purkayastha*.[9] Therefore, there cannot be any two views, that the mandate of *Pankaj Bansal* would apply to the arrest of the petitioners in the present case, even though they were arrested on 13.03.2024.

26. As noted above, in the present case it is not disputed that the only 'manner' in which the grounds of arrest were purportedly communicated to the petitioners was by *explaining the grounds* to them, as noted in Entry No.6 of the arrest memos, which can only mean *orally*. The NIA has nowhere even contended that the grounds of arrest were furnished to the petitioners *in writing*.

27. Another point raised on behalf of the NIA is that even if the grounds of arrest were not communicated to the petitioners in writing in the arrest memo, such grounds were duly communicated to them in the remand applications filed before the learned Special Court.

28. This ground is again without merit, inasmuch as a perusal of the remand applications would show that what was stated there was only the gamut of allegations against the petitioners collectively, without any *specificity* or *particularisation* as to what was alleged against each of the individual petitioners. As held by the Supreme Court in

[9] Paras 44 & 45 of *Prabir Purkayastha*

Prabir Purkayastha the difference between 'reasons for arrest' and 'grounds of arrest' is that while reasons for arrest may be generic, the grounds of arrest comprise the basis that impelled an investigating agency to arrest a *particular person*.

29. Clearly therefore, what is contained in the remand applications also does not meet the requirement of communicating the grounds of arrest to each of the petitioners in writing.

30. The NIA has also placed a purportedly nuanced contention in relation to the *nature* of the petitioners' custody, arguing that the arrest in Imphal, Manipur was made by a police officer (namely, the DSP of NIA) under section 167 Cr.P.C. for purposes of investigation; and there is no obligation on a police officer to record the reasons for arrest or to serve any grounds of arrest upon an arrestee in writing. Furthermore, the NIA says that the subsequent remand of the petitioners to judicial custody was made by the learned Special Court under section 309 Cr.P.C., which custody has not been challenged in the present case. Yet again however, the NIA omits to notice the express observations of the Supreme Court in *Prabir Purkayastha*, where the court has observed that the mere fact that a chargesheet has been filed would not validate the illegality and unconstitutionality committed by the investigating officer at the time of arresting an accused.[10] Clearly therefore, any change in the nature of the custody or the stage of the matter, would not validate an arrest that is *ab-initio*

[10] Para 21 of *Prabir Purkayastha*

illegal.[11] The NIA must remind itself that a constitutional mandate cannot be circumvented by resorting to jugglery of statutory provisions. These arguments, therefore, also must be rejected.

31. Though the learned counsel appearing for the NIA has cited the decision of the Kerala High Court in ***Saheer E.P. vs. National Investigation Agency***,[12] where a Division Bench of that court had taken the view that any arrest validly made under the UAPA prior to the decision of the Supreme Court in *Prabir Purkayastha* would not be invalidated merely because the grounds of arrest were not informed to an accused in writing, it transpires that an appeal filed against that judgment has subsequently been allowed by the Supreme Court *vide* order dated 13.12.2024 in SLP (CRL) No.12691/2024; and the said judgment has accordingly been set-aside.

32. It may also be recorded for completeness that in a judgment rendered by a Division Bench of the Bombay High Court in ***Manulla M. Kanchwala vs. State of Maharashtra & Ors.***,[13] while interpreting the provisions of section 50 of the Cr.P.C., the court has held that arrests made post *Pankaj Bansal* were vitiated since they did not comply with the verdict of the Supreme Court in *Prabir Purkayastha*. The special leave petition challenging *Manulla M. Kanchwala* has been dismissed by the Supreme court *in-limine vide* order dated 04.11.2024 in SLP (CRL) Diary No.43194/2024.

---

11 Para 21(d) of *Vihaan Kumar*
12 2024 SCC OnLine Ker 3896
13 MANU/MH/5167/2024

33. It must be articulated that, in light of the verdicts of the Supreme Court in *Pankaj Bansal*, *Prabir Purkayastha*, and *Vihaan Kumar*, which are founded on Article 22(1) of the Constitution of India, there remains no doubt that the requirement of serving grounds of arrest in writing to an arrestee is compulsory and unquestionable regardless of whether an arrest has been made under the PMLA or the UAPA or under any other criminal statute. Moreover, the burden to prove compliance with the requirements of Article 22(1) of the Constitution always rests with the Investigating Agency.[14]

34. A perusal of the learned Special Court's orders shows that the court also did not make any enquiry as to whether grounds of arrest in writing had been served upon the petitioners.

35. Before closing, this court may also observe that though neither of the parties have pressed this contention, the record shows that no 'transit remand' or other order of a court was obtained by the NIA before bringing the petitioners to Delhi after taking them into custody in Imphal, Manipur. Therefore, it would appear that no legal representation was afforded to the petitioners at that stage.

36. As a sequitur to the above discussion, and notwithstanding the seriousness of the allegations made against the petitioners, there is only one inference that can be drawn, namely that in the present case the NIA has failed to comply with the mandate of serving the grounds of arrest upon the petitioners in writing, whether at the time of arrest

[14] Para 21(c) of *Vihaan Kumar*

or even later-on, whether in the arrest memos or in the remand applications.

37. The arrest of all 03 petitioners on 13.03.2024 is accordingly vitiated and is hereby set-aside. Consequently, remand order dated 14.03.2024 and all subsequent remand orders passed by the learned Special Court are also quashed.

38. Accordingly, the petitioners – (1) ***Thokchom Shyamjai Singh s/o late Th. Ibotombi Singh***, (2) ***Laimayum Anand Sharma s/o late L. Indreshwar Sharma***, and (3) ***Ibomcha Meite s/o Lokesar Meitei*** – are directed to be released from judicial custody *forthwith* unless required in any other case.

39. However, considering that the petitioners are facing charges in the subject FIR, they shall be released from judicial custody *subject to* each of them furnishing a personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) with 02 *local* sureties in the like amount, to the satisfaction of the learned trial court.

40. Needless to add, nothing in this judgment is to be construed as an expression of opinion on the merits of the pending case.

41. The present petition is disposed-of in the above terms.

42. Pending applications, if any, also stand disposed-of.

43. A copy of this judgment be forwarded to the Jail Superintendent for information and compliance *expeditiously*.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 20, 2025/ds