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2026 INSC 1169

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. OF 2026

(@ Special Leave Petition (Crl.) No. 13374 OF 2026)

STATE OF RAJASTHAN **.....APPELLANT(s)**

VERSUS

JHABRA RAM **.....RESPONDENT(s)**

J U D G M E N T

PRASANNA B. VARALE, J.

1. Leave granted.

2. The present Criminal Appeal is directed against the impugned judgement and order dated 18th May, 2026[1] passed by the High Court of Judicature for Rajasthan, Bench at Jaipur[2], in S.B. Criminal Miscellaneous Bail Application No. 4778 of 2026. By

[1]Impugned judgement
[2]High Court

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the order under challenge, the High Court, in exercise of powers under Section 483[3] of the Bharatiya Nagarik Suraksha Sanhita, 2023,[4] enlarged the respondent on regular bail in connection with FIR No. 01/2026 registered at Special Police Station, District CID (Security), Jaipur, for offences punishable under Sections 3[5] and 9[6] of the Official Secrets Act, 1923[7], and Sections 152[8] and 238(b)[9] of the Bharatiya Nyaya Sanhita, 2023[10].

3. A perusal of the impugned judgment reveals that the High Court allowed the respondent's regular bail application on the sole premise that the grounds of arrest were not furnished to him in writing prior to or at the time of remand proceedings, holding that oral intimation or disclosure recorded in the case diary does not satisfy Section 47[11] of the BNSS in light of ***Mihir Rajesh Shah v. State of Maharashtra***[12].

I. FACTUAL MATRIX

4. The facts of the case are that credible intelligence information was gathered by the Assistant Sub-Inspector of Police, CID (BI), Post Pokhran, Jaisalmer, indicating that suspect Jhabra Ram (hereinafter the "respondent") was in contact with foreign handlers

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[3] Special powers of High Court or Court of Session regarding bail.
[4]Hereinafter BNSS
[5]Penalties for spying.
[6]Attempts, incitements, etc.
[7]Hereinafter OSA
[8]Acts endangering sovereignty, unity and integrity of India
[9]Causing disappearance of evidence of offence, or giving false information to screen offender.
[10]Hereinafter BNS
[11]Person arrested to be informed of grounds of arrest and of right to bail
[12](2026) 1 SCC 500

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belonging to a Pakistani intelligence agency and was actively transmitting sensitive military intelligence regarding the Indian Army in exchange for financial benefits. Prior to registration of FIR, statutory notices dated 23rd January, 2026 and 26th January, 2026 issued under Section 8(1)[13] of the OSA, 1923 were served upon the respondent, calling upon him to appear before the Joint Interrogation Centre, Jaisalmer, on 25th January, 2026 and the Central Interrogation Centre, Jaipur, on 28th January, 2026, respectively, and to furnish information within his knowledge regarding a suspected offence under Section 3[14] of the OSA, 1923.

5. Upon completion of preliminary inquiry and technical analysis establishing that the respondent was operating WhatsApp number 7726061757 and transmitting sensitive military photographs, videos, and strategic troop movement details in Pokhran and Jaisalmer to Pakistani intelligence handlers (operating via WhatsApp numbers 7688997085, 9352051832, and virtual number +27623657623) in exchange for financial consideration, FIR No. 01/2026 was registered on 30th January, 2026 at 12:27 PM. The respondent was formally arrested at 04:00 PM on the same day.

6. At the time of arrest, the specific factual basis of the accusations was communicated to the respondent. In paragraph 16 of the impugned order, the High Court itself recorded that the case diary reflects that the respondent was informed by the investigating officer regarding the fact and reasons of his arrest as

[13]Duty of giving information as to commission of offences.
[14] Penalties for spying.

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mandated by Section 47[15] of the BNSS. Subsequently, the Arrest Memo setting out details of the accusations was drawn up, read over to the respondent in the presence of two witnesses, both being police personnel posted at the Special Police Station, Jaipur (an Assistant Sub-Inspector and a Constable), and bears his signature.

7. Immediately thereafter, at 04:10 PM on 30th January, 2026, the Investigating Officer obtained the mobile number 8290945086 of the respondent's brother, Shri Bhomaram, as indicated by the respondent, and telephonically informed him of the arrest of the respondent in the presence of the same two witnesses. This was recorded in the Arrest Information Memo, which was read out in the presence of the witnesses and bears the signature of the respondent.

8. On 31st January, 2026, the respondent was produced before the learned Additional Chief Judicial Magistrate No. 5, Jaipur Metropolitan-I, the respondent was represented by legal counsel, who opposed police custody remand on merits. Crucially, as acknowledged in paragraph 17 of the impugned order, neither the respondent nor his counsel raised any grievance or objection before the learned Magistrate regarding non-furnishing or non-communication of grounds of arrest. The learned Magistrate perused the case diary and the notice under Section 47[16] BNSS annexed therewith, recording a specific finding in the remand order dated 31st January, 2026 that the respondent's family had

[15]Person arrested to be informed of grounds of arrest and of right to bail
[16]Person arrested to be informed of grounds of arrest and of right to bail

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been informed of the arrest, sufficient grounds existed on record, and the accused appeared to have been apprised of the same.

9. Following the remand, the respondent's application for regular bail was rejected by the learned Additional District and Sessions Judge-3, Jaipur Metropolitan-I, vide order dated 10th March, 2026. The learned Sessions Judge, while adverting to the merits, held that the detailed grounds recorded in the signed Arrest Memo constituted complete compliance in substance with Section 47[17] BNSS, and that non-furnishing of a separate written document could not be a ground to enlarge the respondent on bail. The respondent thereafter approached the High Court in S.B. Criminal Miscellaneous Bail Application No. 4778 of 2026, culminating in the impugned order dated 18th May, 2026 enlarging him on bail.

II. SUBMISSIONS OF THE PARTIES

10. Mr. Rajkumar Bhaskar, learned A.S.G appearing for the appellant - State of Rajasthan[18] vehemently submitted that the High Court proceeded to grant regular bail without considering the gravity of the accusations involving national security, or the material collected during investigation. It was further submitted that the High Court committed a grave error in enlarging the respondent on regular bail under Section 483[19] BNSS on a purely hyper-technical ground. It was contended that the constitutional safeguard under Article 22(1)[20] of the Constitution of India[21] and

[17]Person arrested to be informed of grounds of arrest and of right to bail
[18]State
[19] Special powers of High Court or Court of Session regarding bail.
[20]Protection against arrest and detention in certain cases.
[21]Article 22(1)

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Section 47[22] BNSS was meaningfully complied with, inasmuch as the respondent was specifically informed of the factual basis of his arrest, which was explicitly spelled out in the Arrest Memo signed by him, and the fact of his arrest was telephonically communicated to his brother under a contemporaneous Arrest Information Memo.

11. It was further submitted on behalf of the State that the respondent had full prior knowledge of the allegations through statutory notices issued under Section 8(1)[23] of the OSA, 1923. When produced before the learned Magistrate, the respondent was represented by counsel who opposed remand on merits without raising any grievance regarding non-communication of grounds of arrest. Relying upon ***Kasireddy Upender Reddy v. State of Andhra Pradesh***[24] and **State of Karnataka v. Sri Darshan**[25], learned counsel submitted that substantial compliance with procedural safeguards is sufficient unless demonstrable prejudice is shown. It was highlighted that unlike ***Pankaj Bansal v. Union of India***[26] and ***Prabir Purkayastha v. State (NCT of Delhi)***[27], where the accused had established prejudice, the respondent herein was directly named in the FIR, knew the precise allegations, and failed to plead or establish any prejudice whatsoever.

12. Per contra, learned counsel appearing for the respondent supported the impugned order and submitted that non-furnishing of grounds of arrest in writing constitutes a mandatory violation of

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[22]Person arrested to be informed of grounds of arrest and of right to bail
[23]Duty of giving information as to commission of offences.
[24](2026) 8 SCC 275
[25](2026) 8 SCC 223
[26](2024) 7 SCC 576
[27](2024) 8 SCC 254

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Article 22(1)[28] of the Constitution and Section 47[29] of the BNSS. It was contended that the gravity or seriousness of the allegations cannot excuse or cure non-compliance with fundamental constitutional protections.

13. It was submitted on behalf of the respondent that as laid down by this Court in ***Pankaj Bansal*** *(supra)*, ***Prabir Purkayastha*** *(supra)*, ***Vihaan Kumar v. State of Haryana***[30], and ***Mihir Rajesh Shah*** *(supra)*, written grounds of arrest must be served upon the arrestee or his counsel at least two hours prior to the remand hearing, and oral communication or case diary entries cannot substitute actual written service. It was, therefore, prayed that the Special Leave Petition be dismissed and the bail order be affirmed.

III. ANALYSIS AND FINDINGS

14. We have accorded our thoughtful consideration to the rival submissions advanced by Mr. Rajkumar Bhaskar, learned A.S.G appearing for the appellant-State and learned counsel representing the respondent, and have perused the materials on record.

15. Since this order is confined to consideration of the prayer for cancellation of regular bail, we need not delve into the ultimate correctness of the allegations or the materials collected during investigation.

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[28]Protection against arrest and detention in certain cases.
[29]Person arrested to be informed of grounds of arrest and of right to bail
[30](2025) 5 SCC 799

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16. We have no hesitation in observing that the communication of grounds of arrest is a crucial constitutional and statutory safeguard under Article 22(1)[31] of the Constitution and Section 47[32] of the BNSS, designed to ensure that an arrested person is promptly apprised of the reasons for his apprehension so as to enable him to consult legal counsel, oppose remand, and seek legal remedies effectively. There can be no dispute as to the principles reflected in the judgments of this Court in ***Pankaj Bansal*** (supra), ***Prabir Purkayastha*** (supra) and ***Mihir Rajesh Shah*** (supra), but the facts emerging from the material on record in the present case unequivocally establish that there was substantial and effective compliance with this mandate of law.

17. In an application seeking regular bail under Section 483[33] of the BNSS, the Court is mandated to consider well-settled statutory and judicial parameters, including: (i) the nature and gravity of the accusation; (ii) the severity of the punishment in the event of conviction; (iii) the danger of the accused absconding or tampering with evidence; and (iv) the overarching impact on public interest and national security. A hyper-technical objection regarding the form or mode of communicating grounds of arrest cannot be treated as a self-executing, blanket key to unlock regular bail, bypassing the core parameters governing bail jurisprudence.

18. A careful examination of the material placed on record reveals that the constitutional and statutory requirements were duly satisfied at every stage:

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[31] Protection against arrest and detention in certain cases.
[32] Person arrested to be informed of grounds of arrest and of right to bail.
[33] Special powers of High Court or Court of Session regarding bail.

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(i) Prior to formal arrest, statutory notices dated 23rd January, 2026 and 26th January, 2026 issued under Section 8(1) of the OSA, 1923[34] were served upon the respondent, putting him on notice regarding the ongoing investigation into unauthorized transmission of classified military data.

(ii) Immediately upon arrest on 30th January, 2026 at 04:00 PM, the specific factual basis of his apprehension which includes namely, espionage and transmitting photographs, videos, and strategic troop movements in Pokhran and Jaisalmer to foreign handlers was communicated to him. The High Court itself, in paragraph 16 of the impugned order, noted upon a perusal of the case diary that the respondent was informed by the concerned police officer of the factum and basis of his arrest, as contemplated under Section 47[35] of the BNSS.

(iii) Referring to the Arrest Memo (Annexure P-5, pages 67–71 of the paper book), a perusal of the memo in the vernacular language shows that it sets out in detail the material against the respondent.

- It records that, on the basis of the technical examination report of his mobile phone and his interrogation, he was found to be in contact, through his WhatsApp number, with the WhatsApp numbers of handlers of a Pakistani

[34]Duty of giving information as to commission of offences.
[35] Person arrested to be informed of grounds of arrest and of right to bail.

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intelligence agency in exchange for money, and to have transmitted photographs and videos of strategic importance relating to the Indian Army, along with information regarding army movements. This material, which itself constitutes the ground of arrest, was thus informed to the respondent at the time of his arrest.

- The Arrest Memo further records the date and time of arrest (30th January, 2026 at 04:00 PM), the activities of the respondent constituting the alleged offences, the identity and designation of the arresting officer, namely, Shri Chaitanya Prakash, Sub-Inspector of Police, and that the respondent was informed of his constitutional rights. It was read over to the respondent in the presence of the witnesses, and a perusal of the document i.e., arrest memo further shows that the respondent has signed it, as also noticed by the learned Sessions Judge.

- The personal search conducted at the time of arrest yielded a sum of Rs.430/- in cash and a copy of the notice issued to the respondent under Section 8[36] of the OSA, 1923. The cash was deposited in the Malkhana, and the same was made part of the case record. The Arrest Memo also records that, when asked which relative should be informed of his arrest, the respondent named his brother, Shri Bhomaram (mobile number 8290945086), and that the information was given to him separately. Accordingly,

[36] Duty of giving information as to commission of offences.

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as recorded in the Arrest Information Memo (Annexure P-6), the brother was informed of the arrest at 04:10 PM.

- Admittedly, the respondent was arrested at the Special Police Station, Jhalana Mahal, Jaipur, whereas he is a resident of Village Nedan, Tehsil Pokaran, District Jaisalmer. In these circumstances, the only practicable way of promptly informing his brother was by telephone/mobile phone and the arresting officer could not have obtained the brother's signature on a written intimation. The information was therefore passed over mobile phone and stands duly recorded in the Arrest Memo.

(iv) When produced before the learned ACJM No. 5, Jaipur Metropolitan-I on 31st January, 2026, the respondent was represented by legal counsel who opposed police custody remand on merits. Significantly, as acknowledged by the High Court in paragraph 17 of the impugned order, no grievance or objection was raised on behalf of the respondent regarding non-furnishing or non-communication of grounds of arrest.

(v) The learned Magistrate while referring to the record and case diary, recorded a specific finding in the remand order dated 31st January, 2026 that the family was informed, sufficient grounds existed on record, and the accused appeared to have been apprised of the same.

19. In evaluating the effect of alleged procedural defects in communicating grounds of arrest, this Court in ***State of Karnataka v. Sri Darshan*** *(supra)* definitively established that

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the governing principle is the prejudice-oriented test. The Court categorically observed as follows:

> *"32.5. While Section 50 CrPC is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.*
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> *32.6. The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a prima facie case. It noted, inter alia, that there was no mention in the remand orders about service of memo of grounds of arrest (SCC OnLine Kar para 45), the arrest memos were allegedly template-based and not personalised (SCC OnLine Kar para 50), and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (SCC OnLine Kar para 48). Relying on Pankaj Bansal v. Union of India [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] and Prabir Purkayastha v. State (NCT of Delhi) [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573], it concluded (SCC OnLine Kar paras 43, 49-50) that from 3-10-2023 onwards, failure to serve detailed, written, and individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.*
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> *32.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing*

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an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] and Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail."

20. In examining the constitutional object underlying Article 22(1)[37] of the Constitution and Section 47[38] of the BNSS, this Court in ***Kasireddy Upender Reddy*** *(Supra)* reiterated that the requirement of communicating grounds of arrest is designed to serve a substantive purpose rather than a mere formalistic routine. The Court observed as follows:

"32. The object underlying the provision that the grounds of arrest should be communicated to the person arrested has been very succinctly explained in Vihaan Kumar [Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799]. On learning

[37] Protection against arrest and detention in certain cases.
[38] Person arrested to be informed of grounds of arrest and of right to bail.

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about the grounds for arrest, the person concerned will be in a position to make an application before the appropriate court for bail, or move the High Court for a writ of habeas corpus. Further, the information will enable the arrested person to prepare his defence in time for the purposes of his trial. For these reasons, it has been provided by the Constitution that, the ground for the arrest must be communicated to the person arrested as soon as possible.

33. For the purposes of clause (1) of Article 22, it is not necessary for the authorities to furnish full details of the offence. However, the information should be sufficient to enable the arrested person to understand why he has been arrested. The grounds to be communicated to the arrested person should be somewhat similar to the charge framed by the Court for the trial of a case."

21. Applying these principles to the present facts, the record clearly reflects that the respondent was fully cognizant of the grounds for his apprehension and was effectively represented by counsel at the stage of remand. The substantive mandate of Article 22(1) thus stands meaningfully fulfilled, with no demonstrable prejudice having been suffered.

22. As affirmed ***in Kasireddy Upender Reddy*** *(supra)* and ***State of Karnataka*** *(supra)*, the constitutional framework requires that the arrestee be informed of the grounds of arrest but does not insist upon written communication as an indispensable formality irrespective of the attendant circumstances. In the absence of demonstrable prejudice or denial of an opportunity to defend, an alleged procedural defect in the mode of service cannot *ipso facto* invalidate detention or entitle an accused to regular bail, more so

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in cases involving grave allegations of espionage affecting national security and sovereign integrity.

IV. CONCLUSION

23. The High Court fell into error in treating an alleged procedural irregularity as an automatic ground for grant of regular bail, while completely ignoring the gravity of the offences under Sections 3[39] and 9[40] of the OSA, 1923, and Sections 152[41] and 238[42](b) of the BNS, as well as the material collected during investigation and placed on record. In the circumstances, we are of the considered opinion that the High Court was not justified in enlarging the Respondent on regular bail. The impugned judgment and order cannot be sustained in law and is liable to be set aside.

24. At this juncture, we make it clear that we are not expressing any opinion on the merits of the allegations or the case. The observations made hereinabove are confined exclusively to the adjudication of the present appeal seeking cancellation of bail and shall have no bearing whatsoever on the trial or the merits of the case.

V. OPERATIVE ORDER

25. In the result, the appeal succeeds and is allowed. The Impugned Judgment and Order dated 18th May, 2026 passed by the High Court, in S.B. Criminal Miscellaneous Bail Application No. 4778 of 2026, is hereby set aside.

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[39] Penalties for spying.
[40] Attempts, incitements, etc.
[41] Acts endangering sovereignty, unity and integrity of India.
[42] Causing disappearance of evidence of offence or giving false information to screen offender.

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26. The regular bail granted to the respondent, Jhabra Ram, stands cancelled. The respondent is directed to surrender before the trial court / investigating agency within a period of two weeks from today, failing which the appellant-State shall take him into custody forthwith in accordance with law.

27. Pending application(s), if any, shall stand disposed of.

.....J.
(M.M. SUNDRESH)

.....J.
(PRASANNA B. VARALE)

NEW DELHI;
OCTOBER 28, 2026.