# IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

## CRIMINAL WRIT PETITION NO.734 OF 2026

Omkar s/o Mahendra Talmale,
aged about 25 years,
occupation: business, r/o plot
No.54, Smriti Layout, Dattawadi, taluka
& district Nagpur. (in jail) through
Mahendra Vithobaji Talmale i.e.
father of the petitioner. ….. Petitioner.

:: V E R S U S ::

State of Maharashtra, through
PSO Police Station, Kondhali,
district Nagpur. ….. Respondent.

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Shri A.S.Mardikar, Senior Counsel & Shri Kunal Pande, Advocate for the Petitioner.
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri A.A.Madiwale, APP for the Respondent/State.

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CORAM : URMILA JOSHI-PHALKE & RAJ D.WAKODE, JJ.
CLOSED ON : 22/09/2026
PRONOUNCED ON : 05/10/2026

JUDGMENT : (Per : URMILA JOSHI-PHALKE)

1. Heard learned Senior Counsel Shri A.S.Mardikar for the petitioner and learned Public Prosecutor (Senior Counsel) Shri D.V.Chauhan for the respondent/State. **Rule**.

2. By this petition, the petitioner has sought declaration that his arrest is in gross violation of fundamental rights as per provisions of Articles 21 and 22(1)(5) of the Constitution of India.

3. The petitioner came to be arrested on 28.7.2023 in connection with Crime No.580/2023 for offences under Sections 302, 201, and 404 read with 120-B of the IPC and under Sections 3 and 7 read with 25 of the Arms Act.

4. As per allegations levelled against the petitioner on the basis of report lodged by Assistant Police Inspector Raju Raut, initially, Anjali Nirala Singh has lodged a missing a report in respect of her husband Nirala Singh that he went from home on 25.7.2023 and did not return back. Similarly, it was also revealed that another missing report was lodged at Sonegaon Police Station regarding one Amrish Devdutta Gole who was also missing from his house since 26.7.2023. During investigation, it revealed that the petitioner along with other co-accused took missing persons Nirala Singh and Amrish Gole to a farmhouse. At the farmhouse, the petitioner and the co-accused persons snatched amount of Rs.1,50,000/- from Nirala Singh. It is

further alleged that they have also committed murder of both persons by firing bullets and to screen themselves from punishment, they tried to burn their dead bodies by pouring petrol over them. When they realized that dead bodies were not completely burned, the same were thrown in Wardha River. On the basis of the said FIR, the crime came to be registered. During investigation, the investigating officer has conducted spot panchanama, collected material evidence, and filed chargesheet against the petitioner as well as other co-accused. At this stage, trial is already commenced and 26 witnesses are already examined.

5. Now, the petitioner has come with a case that at the time of his arrest on 28.7.2023, grounds necessitating his arrest were never effectively communicated to him either orally or in writing. The arrest memo dated 28.7.2023 is silent as regards grounds of arrest and police custody remand application also does not record that grounds of arrest were communicated to the petitioner. It was further contentions of the petitioner that learned Magistrate at Katol, while authorizing the police custody on 28.7.2023, did not ascertain

or record mandatory compliance under Section 50 of the CrPC. There is no general diary entry in respect of grounds of arrest are communicated to the petitioner. He has filed criminal application before the Sessions Court, Nagpur for grant of regular bail, which came to be rejected on 5.12.2024. Thereafter, the petitioner filed a criminal application for grant of bail before this court. Learned Single Judge of this court has considered the bail application along with bunch of applications and held that non-communication of grounds of arrest would, in absence of demonstrable prejudice, constitutes at the most a procedural irregularity and would not vitiate the trial. Being aggrieved with the same, the petitioner approached the Hon'ble Apex Court by filing SLP (Cri) No.2635/2026 and by order dated 11.5.2026, the Hon'ble Apex Court was pleased to set aside the order dated 12.12.2025 passed by this court and taken a view that this court was patently incorrect as there were judgments covering the field and the impugned order was contrary to the settled law and remanded back the matter for fresh consideration to this court.

6. Learned Senior Counsel for the petitioner submitted that, now, in view of catena of decisions from **Vihaan Kumar vs. State of Haryana and anr, reported in (2025)5 SCC 799** to **Mihir Rajesh Shah vs. State of Maharashtra, reported in (2026)1 SCC 500**, this aspect is not remained *res integra*. Requirement of the law is that grounds of arrest to be effectively communicated to accused and if the said grounds of arrest are not communicated, it renders the arrest unconstitutional and violative of Articles 21 and 22(1)(5) of the Constitution. He submitted that unless grounds are communicated to the arrestee, he cannot meaningfully exercise his rights to consult and to be defended by an Advocate of his choice. Learned Magistrate was also required to ascertain as to whether the constitutional requirement under Article 22(1) of the Constitution before authorizing the remand.

In the present case, the record does not disclose any such enquiry or satisfaction. Therefore, considering there is a gross violation of Articles 21 and Article 22(5) of the Constitution, as no

grounds are communicated to him, the petition deserves to be allowed.

7. In support of his contentions, learned Senior Counsel has placed reliance on following decisions:

> (1) Criminal Appeal No.4505/2025 (Ahmed Mansoor & ors vs. The State Rep. by Assistant Commissioner of Police and anr) decided by the Supreme Court on 14.10.2025;
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> (2) Prabir Purkayastha vs. State (NCT of Delhi), reported in (2024)8 SCC 254;
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> (3) Vihaan Kumar vs. State of Haryana and anr, reported in (2025)5 SCC 799;
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> (4) Criminal Appeal No.1518/2025 (Ashish Kakkar vs. UT of Chandigarh) decided by the Supreme Court on 25.3.2025;
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> (5) Criminal Appeal SLP No.3326/2026 (Dr.Rajinder Rajan vs. Union of India and anr) decided by the Supreme Court on 1.4.2026;
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> (6) Criminal Appeal No.4234/2026 (Jaskaran Jeet Singh Deol vs. State of Punjab) decided by the Supreme Court on 21.9.2026; and
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> (7) SLP (Cri) No.11944/2026 (State of Meghalaya vs. Sonam Raghuvanshi & Bitti and Bittu) decided by the Supreme Court on 23.7.2026.

8. Per contra, learned Public Prosecutor for the State strongly opposed the said contentions and submitted that general diary entry as well as extract specifically disclose that grounds of arrest are not only communicated to the petitioner but also informed to relatives of the petitioner.

He invited our attention towards general diary entry and submitted that specific contention in the general diary entry discloses that grounds of arrest are also communicated to the petitioner as well as his father.

He submitted that, now, the trial is already commenced and 26 witnesses are already examined. At the earliest opportunity, this ground was not raised by the petitioner. He never raised that any prejudice is caused to him due to non-furnishing grounds of arrest.

He submitted that the petitioner was produced before learned Magistrate on 28.7.2023. He was represented by his counsel. Till today, he has not raised any contention stating that he

was not effectively represented before learned Magistrate at the time of first remand and, therefore, prejudice is caused to him.

He further submitted that when he filed earlier bail applications before the trial court as well as before this court, these grounds were not raised.

Now, application of the petitioner is already pending before learned Single Judge for grant of bail wherein he has raised these grounds.

Thus, he submitted that once he has already raised the said grounds in one of applications, he cannot raise the similar grounds in this petition.

He further submitted that considering no prejudice is caused to the petitioner; now the trial is already at advanced stage; in this petition also there is no whisper as to any prejudice is caused to the petitioner, and considering observations of the Hon'ble Apex Court in the case of **Mihir Rajesh Shah vs. State of Maharashtra, reported in**

**(2026)1 SCC 500** in paragraph No.58, the present petition deserves to be dismissed.

9. Since the entire issue revolves around question as to whether the arrest of the petitioner could be said to be illegal for want of supply of appropriate and meaningful grounds of arrest, it is necessary to look into provisions of the Constitution of India as well as provisions of Bharatiya Nagarik Suraksha Sanhita (BNSS).

10. Articles 21 and 22 of the Constitution of India read thus:

> **"21. Protection of life and personal liberty**. - No person shall be deprived of his life or personal liberty except according to procedure established by law."
>
> **22. Protection against arrest and detention in certain cases. - (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).”

11. Sub section (1) of Section 41 of the CrPC and Section 35 of the BNSS deal with cases where the police may arrest a person without warrant.

12. Section 47 of the BNSS states that a person arrested to be informed of grounds of arrest and of right to bail. It states that 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. It further states that 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.

13. Section 48 of the BNSS talks about obligation of person making arrest to inform about arrest, etc., to relative or friend. It states that every police officer or other person making any arrest under the BNSS shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and also to the designated police officer in the district. It further states that the police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide. It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-

section (3) have been complied with in respect of such arrested person.

14. Now, we shall look into the present matter.

15. It is contended by the respondent/State that there is a substantial compliance of communication of grounds of arrest. The affidavit-in-reply filed by Police Sub Inspector Sanket Nemoti, who is the Investigating Officer, states that the investigating agency arrested accused persons including the petitioner on 28.7.2023. Copy of the extract of the arrest register and extract of register maintained as per directions of the Hon'ble Apex Court informing relatives regarding the arrest along with Station Diary Entry No.3 dated 28.7.2023 is produced on record. Perusal of the extract of the register as well a the station diary entry reveals that there is a substantial compliance on behalf of the respondent. He further states that at the time of causing arrest of the petitioner, the father of the petitioner was initially informed telephonically about reasons and grounds of arrest. Simultaneously, the petitioner was

intimated orally as to why he has been arrested and what are grounds of arrest on which the arrest became necessary.

16. The statement in paragraph No.3 of the petition, that the petitioner was never effectively communicated actual grounds necessitating his arrest either orally or in writing, is grossly incorrect. He was certainly informed orally about reasons and grounds of arrest and signatures were obtained on requisite register. It is further contended that no such prejudice is caused to the petitioner and, therefore, grievance about absence of reasons and grounds of arrest deserves to be rejected.

17. Now, we shall look into entry taken in the station diary and extract of the register.

18. The general diary entry No.22 dated 27.7.2023 shows that during the investigation, name of the petitioner along with other co-accused was revealed to the investigating agency and they have informed their superiors about the said entry. The general diary entry No.3 dated 28.7.2023 is reproduced as under:

> "आरोपी अटकेबाबत त्यांचे नातेवाईकांना माहीती देण्यात आलेली आहे..... आरोपी अटकेसंबंधी संबधीत रजिस्टरला नोंदी घेतलेल्या आहे व आरोपीना सर्व नैसर्गिक सुविधा पुरविल्या आहेत. तसेच अटक करतांना मा.सर्वोच्च न्यायालयाचे सर्व मार्गदर्शक तत्वाचे पालन करण्यात आले आहे करीता नोंद घेत आहो."

19. The extract of the register showing information as to the arrested accused states that the petitioner was arrested and his father was informed telephonically about his arrest. A specific entry was taken in the said register. The said register specifically states that medical examination of the accused was carried out. His relatives were informed about his arrest.

20. Learned Senior Counsel for the petitioner placed reliance on the decision in the case of **Vihaan Kumar** (supra) wherein the Hon'ble Apex Court laid down guidelines for enforcement of Article 22 of the Constitution. This decision states a clear precedent that the investigating agency/police officer/authorities effecting arrest of any person in connection with any cognizable offence without a warrant must provide specific, actionable reasons for an individual's arrest, beyond citing broad provisions of law. The

object underlying the provision that the grounds of arrest should be communicated to the person arrested has been very succinctly explained in the said decision. On learning 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. This judgment lays down the following principles, which reads as under:

> "a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.
>
> b) Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested.
>
> c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Article 22(1).
>
> d) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1).
>
> e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be

> after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.
>
> f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.
>
> g) When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities.
>
> h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1) meaningful and effective, failing which, such arrest may be rendered illegal."

21. Since issue of liberty of a citizen is raised in this petition, and there is allegedly violation of Articles 21 and 22 of the Constitution, learned Public Prosecutor for the respondent/State relied upon the decisions in cases of **State of Karnataka vs. Sri Darshan, reported in AIR 2025 SC (Cri) 1175** and **Mihir Rajesh Shah** (supra). He also invited our attention towards observations

of the Hon'ble Apex Court in the case of **Sri Darshan** (supra) wherein it is clearly observed that the petitioner will have to show prejudice caused to him and he cannot simply argue that grounds of arrest were not communicated to him in writing. That alone, cannot be a ground for declaring his arrest as illegal.

Now, fresh guidelines are issued by the Hon'ble Apex Court in the case of **Mihir Rajesh Shah** (supra) which are prospective in nature and, therefore, he submitted that the petitioner's case requires to be considered in the light of ratio laid down in the case of **Sri Darshan** (supra).

22. We have considered the above submissions in the light of facts of the present case. Admittedly, the petitioner was first time produced before learned Magistrate on 28.7.2023. The remand order discloses that he was represented by his counsel. However, he has not raised issue that grounds of arrest were not communicated to him. Thereafter, though he preferred applications for bail before the Sessions Court as well as this court,

he has not raised grounds stating that due to non-communication of grounds of arrest any prejudice is caused to him. The bail application of the petitioner was considered by this court along with other applications and the same came to be rejected by this court by observing that fresh guidelines issued by the Hon'ble Apex Court in the case of **Mihir Rajesh Shah** (supra) are prospective in nature. The said order of learned Single Judge was challenged before the Hon'ble Apex Court.

23. Perusal of the order of the Hon'ble Apex Court, especially paragraph No.5, shows that the Hon'ble Apex Court has directed this court to pass appropriate orders in bail application on merits and in accordance with the law.

24. In the present petition also, the petitioner has not stated about any prejudice is caused to him due to non-communication of grounds of arrest.

25. Learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of **Ahmed Mansoor & ors**

(supra). We are unable to give any benefit to the petitioner based on the said decision. The said order refers the decision in the case of **Sri Darshan** (supra) and observed as follows:

> "In **State of Karnataka v. Sri Darshan Etc.**(supra) the facts governing are quite different. It was a case dealing with the cancellation of bail where the charge sheet had been filed and the grounds of detention were served immediately. This Court has, in fact, given its approval to the decision in **Vihaan Kumar v. State of Haryana & Anr.(supra)**. Similarly, in **Kasireddy Upender Reddy v. State of Andhra Pradesh and Ors**. (supra), this Court was pleased to hold in para-27 that the object underlying the provision that the grounds of arrest should be communicated has been explained by this Court in **Vihaan Kumar v. State of Haryana & Anr** (supra). Therefore, the law as laid down in **Vihaan Kumar v. State of Haryana & Anr** (supra) has been approved and reiterated in the abovesaid decisions."

26. In the case of **Sri Darshan** (supra), the Hon'ble Apex Court by referring its earlier various decisions observed that, "liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to

emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. This is because, fundamentally, laws are made for their obedience so that every member of the society lives peacefully in a society to achieve

his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, “it is regulated freedom”.

The Hon’ble Apex Court by referring the decision in the case of **Gudikanti Narasimhulu and ors vs. Public Prosecutor, High Court of Andhra Pradesh, reported in in (1978) 1 SCC 240** observed as under:

> “After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of ‘procedure established by law’. The last four words of Art.21 are the life of that human right. The doctrine of Police Power constitutionally validates punitive processes for the maintenance of public order, security of the State, national integrity and the interest of the public generally. Even so, having regard to the solemn issue involved, deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objectives of society, specified in the Constitution.”

Thus, the Hon’ble Apex Court, after considering various decisions, observed as under:

> “20.1. Delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for grant of bail.

20.1.1. The learned counsel for the respondents – accused contended that the arrest was illegal as the grounds of arrest were not furnished immediately in writing, thereby violating Article 22(1) of the Constitution and Section 50 Cr.P.C (now Section 47 of the Bharatiya Nagarik Suraksha Sanhita). This submission, however, is devoid of merit.

20.1.2. Article 22(1) of the Constitution mandates that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice". Similarly, Section 50(1) Cr.P.C. requires that "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.

20.1.3. The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest – but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.

20.1.4. In Vihaan Kumar v. State of Haryana2, it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in Kasireddy Upender Reddy vs. State of Andhra Pradesh, it was observed that

when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post-Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.

20.1.5. While Section 50 Cr.P.C 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.

20.1.6. 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 (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on Pankaj Bansal vs. Union of India and Prabir Purkayastha vs. State (NCT of Delhi) (2024 Cri LJ 2450 (SC) (supra), it concluded (paras 43, 49 – 50) that from 03.10.2023 onward, failure to serve detailed, written, and individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.

> 20.1.7. 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 (2024) 7 SCC 576 represented from the outset and applied for bail shortly after arrest, evidencing 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 and Prabir Purkayastha 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."

27. After considering earlier decisions and in particular the decision in the **Vihaan Kumar** (supra), the Hon'ble Apex Court in **Sri Darshan's** case (supra) has laid down that, "while Section 50 Cr.P.C is mandatory, the consistent judicial approach is 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."

28. In the present case, when the petitioner was produced before learned Magistrate at the time of first remand on 28.7.2023 and he was represented by his counsel, he had not raised any grounds that due to non-communication of grounds of arrest, prejudice was caused to him. Similarly, though he preferred applications for bail before the Sessions Court as well as this court, he has not raised the said grounds. Before this court, ground of non-communication of grounds of arrest was first time raised by the petitioner at the time of his oral submissions. Learned Single Judge of this court has considered the said submissions and held that in view of the decision in the case of **Mihir Rajesh Shah** (supra), which is prospective in nature and as the petitioner has not shown any prejudice is caused to him, rejected his bail application.

29. In view of the order of the Hon'ble Apex Court, now, the matter is remanded back to learned Single Bench and it is under consideration of learned Single Judge that whether the petitioner is entitled for bail on merits as well as grounds raised by him.

30. Even, in the present petition, the petitioner has not raised any grounds showing that due to non-communication of grounds of arrest in writing to him, any prejudice is caused to him. On the contrary, the record produced by learned Public Prosecutor shows that it is specifically mentioned in the general diary entry that the relevant entries are taken as to the arrest of the petitioner and all compliances are made in view of the decisions of the Hon'ble Apex Court while arresting the petitioner. The extract of the register also shows that father of the petitioner was intimated about the arrest of the petitioner.

31. Thus, from the record it nowhere discloses that any prejudice was caused to the petitioner when he was arrested. Moreover, in the affidavit, the investigating officer has specifically

stated that grounds of arrest were orally communicated to the petitioner as well as his father and the same were stated by him on affidavit and as such, there is no reason to doubt the said statement made by the investigating officer when there are some documents to show that the investigating officer has complied with guidelines of the Hon'ble Apex Court. Moreover, now, the trial is already commenced and 26 witnesses are already examined.

32. The next question raised in the argument was that, grounds of arrest were not given in writing. The same is answered by the Hon'ble Apex Court in the case of **Sri Darshan** (supra). Subsequent decision of the Hon'ble Apex Court in the case of **Mihir Rajesh Shah** (supra) also refers in paragraph No.50 that, "it may so happen that in the presence of a police officer a cognizable offence is being committed and the factual matrix presents a tangible and imminent risk of the suspect absconding or committing further offence(s). For instance, in a case involving a murder being committed in front of a police officer, it may not be possible for the officer to provide the grounds of arrest in writing before the arrest or forthwith on the

arrest to the accused. A rigid insistence upon informing of written ground(s) of arrest before or at the time of effecting the arrest or immediately thereafter may result into police officer not being able to discharge their duty and responsibility efficiently and effectively. The constitutional safeguards, valuable as they are, cannot be interpreted in a manner so as to allow it to metamorphose into a procedural impediment that handicaps the law enforcing agencies in due lawful discharge of their duties. Therefore, a balance between compliance of the constitutional as also the statutorily mandated safeguards on the one hand vis-a-vis the effective discharge of lawful statutory law enforcement duties and responsibilities cast upon the State agencies must be struck."

33. The Division Bench of this Court at Principal Seat has also considered this aspect in Criminal Writ Petition No.683/2025 decided on 27.11.2025. We are in respectful agreement with the view expressed by the Division Bench of this Court.

34. In the present case, as already observed, there is no whisper as to any prejudice is caused to the petitioner. Learned Senior Counsel for the petitioner has placed reliance on the decision of this court in Criminal Writ Petition No.576/2025 (**Kumar S/o Vasudeo Yeole vs. State of Maharashtra, Thr. P.S.O. Saoner, Dist- Nagpur**) wherein there was complete non-compliance regarding furnishing of grounds of arrest as well as intimation to relatives of the accused therein. No document therein was there to show that the accused was intimated telephonically. Whereas, in the present case, the extract of the register shows the substantial compliance which also bears the signature of the father of the petitioner showing that he was telephonically intimated about arrest the of petitioner.

35. The Hon'ble Apex Court in the case of **Mihir Rajesh Shah** (supra) has also stated about striking of balance. Paragraph No.56 of the said decision reads as under:

> "In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

These grounds are made prospective as it is clear from paragraph No.58 of the judgment, which reads as under:

> "58. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth."

36. In a very recent decision in the case of **Jaskaran Jeet Singh Deol vs. State of Punjab** (supra) wherein also an important issue of wide constitutional import was raised. The issue of breach of Clauses (1) and (2) of Article 22 of the Constitution was involved. In paragraph No.22, the Hon'ble Apex Court by referring decisions in the cases of **Sri Darshan** (supra) and **State of Meghalaya vs. Sonam Raghuvanshi & Bitti and Bittu** (supra) observed that it is **Mihir Rajesh Shah** (supra) which sums up the correct legal position and lays down the correct law which is binding.

37. Thus, the ratio of the decisions in the cases of **Sri Darshan** (supra) and **Mihir Rajesh Shah** (supra) is clear.

38. In the present case, the arrest of the petitioner was on 28.7.2023 i.e. much prior to the date of decision in the case of **Mihir Rajesh Shah** (supra) which was delivered on 6.11.2025. As such, substantial compliance shows that no prejudice is caused to the accused as after all, object of the provision is that the accused shall meaningfully exercise his rights to consult and to be defended by Advocate of his choice. Here, in the present case, from the first date, the accused was represented by Advocate of his choice.

39. The general diary entries; the extract of the register and the affidavit filed by the investigating officer clearly show that the petitioner and his relatives were informed. There is necessary entry to that effect. The provisions are very clear that there has to be an intimation to relatives which which appears to be complied with.

40. Admittedly, there is nothing on record to show that written grounds of arrest are not communicated, but the same is made mandatory in view of the decision in the case of **Mihir Rajesh Shah** (supra). As already observed, the said guidelines are prospective in nature and, therefore, the petitioner cannot take benefits of the same. At the same time, we have also considered that, now, the trial is already commenced; 26 witnesses are already examined; and the petitioner till today has not shown what prejudice is caused to him due to non-communication of grounds of arrest in writing. The issue is also pending before learned Single Judge of this court in a bail application.

41. For all above these observations, as we are not inclined to grant any relief in favour of the petitioner, the petition is dismissed.

Petition stands **disposed of**. Rule is discharged.

**(RAJ D.WAKODE, J.)** **(URMILA JOSHI-PHALKE, J.)**

!! BrWankhede !!



Signed by: Mr. B. R. Wankhede
Designation: PS To Honourable Judge
Date: 07/10/2026 10:35:31