

MHKO060003382025



**ORDER PASSED BELOW EXH.34 IN SESSIONS
CASE NO. 32/2025.**

This is second application filed by accused No.1 Jingonda Omgonda Patil and accused No.3 Rakesh @ Vinod Vasant Thorat for bail for non compliance of the mandatory provisions of sections 47 and 48 of Bharatiya Nagarik Suraksha Sanhita (BNSS) and ratio laid down in **Mihir Rajesh Shah Vs. State of Maharashtra and anr., AIR 2025 SC 5554.**

2] Facts in brief are as under;

Complainant Amol Koli is the police patil of village Tamadalge Tal.Shirol. He lodged report in the police station that on 27-05-2025, stating that he was going towards lake from Baswan Khind. He saw one Hero company splendor motorcycle bearing No.MH-09-FY-5362 near Gat No.28. He also saw one person was lying at some distance from motorcycle. The said person had wore blue colour jerkin and black colour pant. The blood had come from his head. He gave information to police station Jaysingpur. After sometime, police staff came. From the registration number of motorcycle, police came to know that motorcycle is owned by Priyanka Avinash Patil resident of village Nimshirgaon Tal.Shirol. Accordingly, police made contact to police patil Nimshirgaon. Police came to know that the name of deceased is Avinash Patil and he has not come at home since Yesterday night. The brother of deceased i.e. accused Jingonda Patil identified the dead body of Avinash. He also told that Avinash had no dispute with anyone. Thus, crime is registered against the unknown person.

3] Police started investigation. Accused were arrested. It is alleged that accused in furtherance of their common intention, committed the murder of Avinash.

4] After completion of investigation, chargesheet is filed against accused. The case is committed to this court for trial.

5] Mr.I.A.Kamble, advocate for accused submitted that earlier accused had filed bail application for non compliance of mandatory provisions above bearing No.78/2025. This court relied on the judgment of Hon'ble Supreme Court in **State of Karnataka Vs. Sri Darshan in Cri.Bail Appeal Nos.3528-3534 of 2025** and rejected the application. According to him, later on, the Hon'ble Supreme Court delivered the judgment in **Mihir Rajesh Shah Vs. State of Maharashtra and anr.** and laid down the guidelines for release of accused for non compliance of the mandatory procedure as well constitutional provisions. According to him, in **Prabir Purkayastha Vs. State, Arnesh Kumar Vs State of Bihar, Vihaan Kumar V. State of Haryana, Vishalkumar Bholu Ravani Vs. State of Maharashtra and Kasireddy Upender Reddy Vs. State of Andhra Pradesh** the Hon'ble Supreme Court consistently held that accused has right to know the grounds for arrest and if the investigation officer fails to supply grounds and also to inform his friend or relatives then accused is entitled for bail.

6] Mr.I.A.Kamble, advocate for accused has further drawn my attention towards the chargesheet and submitted that the police have not properly communicated the grounds of arrest to the accused. Thus, there is breach of mandatory provisions of section 47 and 48 of BNSS. Now in view of the judgment in **Mihir Rajesh Shah Vs. State of**

Maharashtra and anr., there is change in circumstances. He also invited my attention towards the arrest panchanamas and notices to accused. According to him, grounds of arrest were not communicated to the accused. Thus, accused are entitled for bail. In support of his contentions he relied on **Mihir Rajesh Shah Vs. State of Maharashtra and anr. 2025 INSC 1288**.

6] Mr.U.M.Kulkarni, learned APP for the state submitted that this is second bail application filed by accused on the same ground. This court has elaborately considered the fact that grounds of arrest were communicated to the accused. Thus, there is no change in circumstances and he prayed to reject the application.

7] In **Prabir Purkayastha Vs. State (NCT of Delhi)** wherein Hon'ble Supreme Court has explained the distinction between the **grounds of arrest** and **reasons of arrest**. In para No.48 it is held that, "we have carefully perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a proforma indicating the formal 'reasons' for which the accused was being arrested". Also in para No.49 it is held that "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 tempering 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.”

8] In **Arnesh Kumar Vs. State of Bihar**, Hon'ble Supreme Court held that, (1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C., (2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii), (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention, (4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention, (5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing, **Further said directions shall not only apply to the cases under Section 498-A of the I.P.C. or**

Section 4 of the Dowry Prohibition Act, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

9] Thus, there is difference between grounds of arrest and reasons for arrest. In view of ratio laid down in **Arnesh Kumar (supra)**, investigation officer must communicate the reasons for arrest for the offences when the punishment is below 7 years. It is true that as per the mandate of section 47 and 48 of BNSS, the grounds for arrest must be communicated to the accused.

10] The Hon'ble High Court in **Vishalkumar Ravani Vs. State of Maharashtra** held that, "applying the aforesaid ratio, we have no hesitation in holding that the communication placed on record by the I.O. claiming that the grounds of arrest have been communicated to the petitioner, in fact does not amount to communication of grounds of arrest, since those are purely formal in nature. The communication does not contain details in the hand of I.O., which necessitated the arrest of the accused. The basic facts on the basis which he is being arrested, is also absent from the said communication. The intention behind the communication of grounds of arrest being, granting an opportunity to an accused to oppose his custodial remand and seek bail. If these details are absent in the grounds of arrest, he is not in a position to oppose the remand application". It is also held that, "the Police Inspector who has sworn the affidavit has annexed the General Diary Details, Arrest/Court Surrender Form and the intimation letter dated 28.08.2024, titled as intimation letter (Section 47(1)(2) BNSS, 2023). The Intimation letter merely informs about the Sections under which allegedly offence has been registered against the petitioner and

that the intimation has been given to his wife, and even in the grounds of arrest which is claimed to be given to the petitioner does not disclose the specific ground about the allegations against the petitioner and his role in the said offence. Merely making entry in the general diary, that the accused has been communicated about his involvement in the offence and intimation given to the relatives can by no stretch amount to communication of 'grounds of arrest' as contemplated in law and explained in the authoritative judicial pronouncements laying down the law in this regard".

10] Further in **Vihaan Kumar V. State of Haryana**, Hon'ble Supreme Court held that, "the Court concluded that - a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1); b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved; c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1); d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial.

But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1); e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established”.

11] In **Kasireddy Upender Reddy Vs. State of Andhra Pradesh 2025 INSC 768** Hon'ble Supreme Court held that, "M.Historical Context of Right to Information of Arrest Grounds-Traced back to common law in England and constitutional rights in the United States, serving as a safeguard against arbitrary arrest and enabling early legal action.

12] I have perused the remand papers. Accused Nos.1 to 3 were arrested on 27-05-2025 at 23.57 hrs. The arrest panchanama of accused No.1 shows that the information was given to his wife Archana Patil through mobile phone. Similarly, as per arrest panchanama, information of arrest of accused No.3 Rakesh was given to his brother Swapnil Thorat through mobile phone. It also appears that investigation officer before producing the accused before the learned Magistrate, the grounds of arrest have been communicated.

13] It is pertinent to note that accused were produced before the learned Judicial Magistrate First Class first time on 28-05-2025. Accused No.1 was representing by Adv. Mr.D.M.Latake and accused

No.3 was representing by Adv. Mr.R.D.Gawade. In the remand order, the learned Magistrate in para No.8 observed that, “perused the remand report. It contains medical examination details mentioned on the medical examination application by police to PHC, Jaysingpur, check list as per Section 35(1)(b)(ii) of Bhartiya Nagarik Suraksha Sanhita 2023, (BNSS), written grounds of arrest informed to the accused, case diary etc.” and accused were remanded to police custody till 03-06-2025. It is pertinent to note that at that time accused had not raised objection about non communication of grounds of arrest before the learned Magistrate. The relevant provisions of sections 48 and 49 of BNSS reads as under;

47. Person arrested to be informed of grounds of arrest and of right to bail.

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

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

48. Obligation of person making arrest to inform about arrest, etc., to relative or friend.

(1) Every police officer or other person making any arrest under this Sanhita 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.

(2) 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.

(3) 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.

(4) 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] In **State of Karnataka Vs. Sri Darshan**, the Hon'ble Supreme Court held that, "in **Vihaan Kumar v. State of Haryana**, 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 v. 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. While Section 50 Cr.PC 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". The Hon'ble Supreme Court further held that, "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 v. Union of India and Prabir Purkayastha v. State (NCT of Delhi)** (supra), it concluded (paras 43,

49 – 50) that from 03.10.2023 onwards, failure to serve detailed, written, and individualized grounds of arrest immediately after arrest was a violation entitling the accused to bail”. It is further held that “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 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**”.

15] The first application was filed by accused after filing of chargesheet and second application is also filed after filing of chargesheet. In **Mihir Rajesh Shah** (supra) in para No.53,54 and 55 Hon’ble Supreme Court held that, “the above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively. This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. Any shorter

interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations". The Hon'ble Supreme Court further held that, "in view of the above, we hold with regard to the second issue that non supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50 of the CrPC 1973 (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the magistrate for remand proceedings". It is further held that, "it goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice".

16] In para No.56, the Hon'ble Supreme Court issued guidelines. Further in para No.58 the Hon'ble Supreme Court held that, "**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”.

17] Reverting to the factual score of the present case, I find that there is mandatory compliance of the provisions of BNSS. The grounds of arrest were communicated to accused. Accused on the first remand engaged the lawyer. Therefore, accused are not entitled for bail. Therefore, following order;

: ORDER:

- 1] Application is rejected.

Jaysingpur.
Dt.: 18-03-2026.

(G.B. Gurao)
Addl. Sessions Judge, Jaysingpur.