



**State of Maharashtra  
Vs.  
Gaurav Shahaji Kakade**

**ORDER BELOW EXH.37**

Present regular bail application is filed by Gaurav Shahajirao Kakade, who is accused no.2 in the offence to release him on regular bail under Section 439 of the Code of Criminal Procedure (for short Cr.P.C.) in Crime No. 283/2024, registered at Wadgaon Nimbalkar Police Station, in offences under Sections 302, 307, 143, 147, 148, 149, 352, 504, 506 and 201 of the Indian Penal Code (for short 'IPC') and under Sections 3, 25, 29, 30 of the Arms Act, on account of arrest being illegal.

2. Heard learned advocate for accused. Heard learned A.P.P. for State, as also, learned advocate for complainant. Perused the charge-sheet, documents and reliance placed on the material by both the sides.

3. In this case of murder, prosecution story is that complainant-Ankita Ranjeet Nimbalkar, aged 23 years, lodged report against accused persons on 28.06.2024, on which F.I.R. came to be registered, with the allegations that deceased Ranjeet Eknath Nimbalkar was having fond of bullock-cart racing, and was having two bullocks by names '*Sarja*' and '*Sundar*', which were kept in custody of Vitthal Chavan known as Vitthal driver, for maintenance at Budh, Tal. Khatav, Dist. Satara. *Sarja* was purchased one year ago from Gautam Kakade of Nimbut for Rs.61,00,000/-, being accused no.1. Both the bullocks were run in racing, who have won such races. On 24.06.2024, accused no.1-

Gautam Kakade had been to deceased for purchasing bullock *Sundar*, and stated that he and Santosh Todkar wanted to purchase *Sundar*. The transaction was settled for Rs. 37,00,000/- and said accused handed over Rs. 5,00,000/- as earnest contract money. The balance of Rs. 32,00,000/- was agreed to be paid on 27.06.2024 and further, to reduce into writing on stamp, the said transaction. The bullock was carried with him by accused no.1 when the said transaction took place, which was witnessed by complainant. On 27.06.2024, at 11.00 a.m., the deceased and Santosh Todkar had been to accused no. 1 at Nimbut to discuss on the transaction and deceased returned home at 2.00 p.m. Deceased told complainant that without making payment of balance amount, accused no. 1 asked him to put signature on stamp paper, which he refused, and further that accused no. 1 called in the evening to the deceased. At about 9.00 p.m., on 27.06.2024, the complainant, her deceased husband, child daughter aged 10 months, with relative by name Vaibhav Kadam and his friend Pintu Jadhav, proceeded for village Nimbut in a vehicle. Santosh Todkar was waiting at village Lonand, who asked the deceased as to why he did not sign in spite of receiving the whole amount. Her deceased husband told Santosh Todkar that he received only Rs. 5,00,000/-, and the balance amount was not paid by accused no.1-Gautam. Santosh Todkar told that accused no. 1 told him that he paid all the amount to deceased Ranjeet and completed the transaction. Santosh Todkar then left for his village. Thereafter, as accused no. 1 had called deceased to receive balance Rs.32,00,000/-, he accompanied with complainant and others to the house of accused no. 1 at 11.00 p.m. They all sat on one cot in the court yard of his house. Accused no. 1 asked her husband as to why he told Santosh that

balance amount was not paid. Accused no. 1 told that he would pay the balance amount in the next morning and asked the deceased to put signature on the stamp paper. Her deceased husband asked him to pay the balance and then he would immediately sign, and further that if said accused did not want to complete the transaction, deceased told him to be ready to refund Rs.5,00,000/-, and asked him to return the bullock. Then deceased, complainant and the persons with him went towards their vehicle. At that time, accused no. 1, uttered to deceased that he would see as to how deceased would carry the bullock and said accused made phone call asking the boys to come. The accused also called his brother being present accused-Gaurav there. Accordingly, present accused-Gaurav and three unknown boys came towards the deceased and others. Accused no. 1 uttered and told present accused-Gaurav and three boys to assault on the deceased who was talking much. Present accused was possessing a stick, which was taken in his hand by accused no.1, and he ran to assault the deceased and abused him. Vaibhav Kadam asked Gautam Kakade not to make any dispute, and they would discuss on the transaction next day. The other three boys were abusing the deceased and complainant. At that time, present accused uttered that he would kill the deceased so as not to carry the bullock, and fired a shot by a pistol in his hand on the head of her deceased husband. The deceased fell down. She, with the help of persons with her, carried the deceased in their vehicle at Sai-Seva Hospital, Waglewadi, and then in ambulance, at Bhoite hospital, Baramati. Thereafter, she approached the police station and lodged report against accused no.1, his brother present accused-Gaurav and three unknown boys. During the course of investigation, the three boys have been

identified and total six accused have been arraigned including the present accused. In the charge-sheet, it is mentioned that during course of treatment, deceased Ranjeet died on 29.06.2024, at 2.30 a.m., due to injury suffered by him and in the *Post Mortem* report, the cause of death is stated to be head injury. All the accused persons are alleged to have committed the offences as above in prosecution of common object.

4. Ground taken for releasing the accused Gaurav on bail are that accused is falsely implicated, however, without going into the merits of the case, he is sought to be released on the ground that at the time of arrest on 28.06.2024, the grounds of arrest with particulars were not provided to him under Section 50(1) of Cr.P.C. So also, no notice regarding arrest is given to the relative of accused. Citations of Hon'ble Apex Court are relied on in support of the arguments of Ld. Advocate for accused regarding non-compliance of Sections 50(1) and 50-A of Cr.P.C. and violation of Article 22(1) of The Constitution of India. In support of the said grounds, Ld. Advocate for accused made elaborate submissions vehemently regarding non-compliance of mandatory provisions by referring to the case record. He submitted that there is no written communication regarding grounds of arrest available anywhere on record. Neither with the Arrest Memo/Panchnama or after registration of FIR, no such grounds were communicated in writing to the accused. Mere mention in Station Diary of compliance would not amount to such compliance in the eye of law. So also, no reasons for arrest have been given. The notice is alleged to have been given without any proof to father of accused, who himself is also an accused in the case. Mention in FIR, Station Diary, Arrest Memo, and Remand Report would not dispense with the

mandatory requirement of such communication and notice as per law. In support of his submissions, Ld. Advocate relied on the following citations:

(i) ***Pankaj Bansal Vs. Union of India [(2024) 7 SCC 576, decided on 03.10.2023]***, wherein, Hon'ble Apex Court observed as under:

*“.....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. 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.*

*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. In this regard, the grounds of arrest in V. Senthil Balaji (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. 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) of the Act of 2002.”*

(ii) ***Prabir Purkayastha Vs. State (NCT of Delhi) India [2024 CRI.L.J. 2450]***, in which, Hon’ble Supreme Court held that:

*“30. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.*

*31. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal (supra) 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 learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.*

*51. 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 the case of Pankaj Bansal (supra).*

*52. Accordingly, the arrest of the appellant followed by remand order dated 4th October, 2023 and so also the impugned order passed by the High Court of Delhi dated 13th October, 2023 are hereby declared to be invalid in the eyes of law and are quashed and set aside.*

*53. Though we would have been persuaded to direct the release of the appellant without requiring him to furnish bonds or security but since the charge sheet has been filed, we feel it appropriate to direct that the appellant shall be released from custody on furnishing bail and bonds to the*

*satisfaction of the trial Court.”*

(iii) ***Vihaan Kumar Vs. State of Haryana and another [Arising out of Special Leave Petition (Cri.) No. 13320 of 2024],***

wherein, Hon’ble Supreme Court held 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;*

*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 charge-sheet 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.”*

(iv) ***Mahesh Pandurang Naik Vs. State of Maharashtra [2024 SCC OnLine Bom 3918]***, in which, Hon'ble Bombay High Court held that:

*“24..... In light of the elucidation of law in the above manner, the focus being clause (1) of Article 22 of the Constitution of India, when we have examined the present case, it is evident that the grounds of arrest were not furnished to the Petitioner in writing and the arrest/surrender form/panchnama produced before us, column 8 is an unfilled column, which in fact expected the arresting authority to ensure, "whether the arrested person, after being informed of the grounds of arrest and his legal rights, was duly taken into custody on ---(date) --- (hours) ---- (place)". The form only indicate that the intimation of arrest was given to Laxmi Pandurang Naik, mother of the Petitioner. The station diary entry record that note of his arrest has been taken in the concerned Register and he was apprised of the reasons of arrest (अटकेची कारणे) and, thereafter, he was arrested.”*

(v) ***Sachin Nimbalkar Vs. State of Maharashtra [2024 SCC OnLine Bom 3493]***, wherein, Hon'ble Bombay High Court observed that:

*“8. After considering the submissions as well as the documents produced on record, we do not find grounds of arrest being communicated to the petitioner as contemplated by Section 50 of the Cr.P.C. and explained by this Court as well as the Hon'ble Apex Court in its various judicial pronouncements. We are satisfied that there is a flagrant violation of Section 50 of the Cr.P.C. as well as Article 22(1) of the constitution of India, and since the grounds of arrest are not communicated to the petitioner, making his arrest illegal.”*

(vi) ***Habibur Rahman Vs. The State of Assam [Bail Appln. No. 3529/2024, decided on 05.05.2025]***, in which, Hon'ble Gauhati High Court held that:

*“29. In view of the entire discussions made above, it is the opinion of this Court that the period of incarceration undergone by the accused/petitioner may not be a good ground for considering his bail application at this stage as the charge-sheet of the case has already been filed finding prima facie materials against the present petitioner and the charge has also been framed and the trial is about to commence. However, considering the fact that the grounds of arrest were not communicated to the petitioner or mentioned in the Arrest Memo as well as in the Notice issued to the present accused/petitioner under Section 50 of Cr.P.C., this Court find it a fit case to extend the privilege of bail to the accused/petitioner.”*

(vii) ***Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and Anr. [2023 LiveLaw (SC) 749]***, wherein, Hon’ble Supreme Court observed that:

*“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.*

5. Ld. APP for State submitted that offence alleged against the accused persons is of murder, wherein,, the present

accused is alleged by the direct eye witness, being complainant to have used a pistol in firing in the head of deceased. He submitted that in the remand report, it is specifically mentioned that by following the guidelines laid down by Hon'ble Supreme Court, the accused was arrested and produced before Ld. Magistrate. No objection has been taken by the accused hereinbefore, which itself goes to show that accused had no grievance regarding non-furnishing of grounds of arrest to him. He submitted that in such a serious offence, accused may not be released by applying the law as cited by Ld. Advocate for accused as the present case stands on different footing being of murder, to which, there are eye witnesses, and the procedural law shall be applied accordingly to the case at hand. He further submitted to adopt the arguments of Ld. Advocate for complainant.

6. Ld. Advocate for complainant strongly objected for release of the accused on the grounds mentioned by the accused. He further submitted that the present accused has played a key role by shooting the victim in head in front of his wife carrying a small girl child in her hand and witnessed by two other witnesses. The accused with co-accused fled from the spot. The CCTV footage of the incident was destroyed with the help of co-accused. He submitted that the cases of *Pankaj Bansal and Prabir Purkayastha (supra)* dealt with the matter under PMLA and UAPA, for which the considerations are different, whereas in the case of *Mihir Shah* before Hon'ble Bombay High Court, the case was of causing death of a human being, in which, Division Bench of Hon'ble Bombay High Court refused to release the accused. He submitted that the matter is now taken-up before Hon'ble Apex Court, in which the Judgment is reserved on 22.04.2025, observing that the question

needs to be decided as to whether it is necessary to furnish grounds of arrest in offences under IPC. He further relied on the two affidavits sworn by panchas to Arrest Memo/Panchanama in respect of the present accused stating that after incident, uncontrollable mob of people gathered at the police station, during which the accused was arrested and grounds were furnished to him in writing, and notice was given to his father, who was subsequently, after six hours was also arrested for tampering valuable evidence of CCTV footage and other circumstances. Ld. Advocate submitted that arrest of accused was legal. The question before Hon'ble Supreme Court is heard in the *Mihir Shah's* case, of which, notes have been published in a report, in which, arguments of both the sides and queries raised by Hon'ble Court are reported. He submitted that the case of *Vihaan Kumar (supra)* was also referred to, which is decided in this year, when offence in this case is of last year. Ld. Advocate further submitted that in the case of *Vihaan Kumar (supra)*, the cases of *Pankaj Bansal and Prabil Purkayastha* are already considered, which are referred to in the case of *Mihir Shah*, and therefore, in the case at hand, it may be observed that requirement of furnishing grounds of arrest or reason for arrest are substantially complied with, and even otherwise, this is a case of offence of serious nature being of murder, in respect of which, the accused had full knowledge, inasmuch as he was present as per complainant while shooting by pistol in the head of deceased took place, and then accused fled away from the spot. Evidence was tried to be destroyed. Release of accused will have serious repercussions on the case as there are number of eye witnesses and other witnesses who will be threatened in such a manner that complainant would not get justice. He submitted that

said Section 50 in Cr.P.C., is enacted with the object that no innocent shall be arrested and detained in custody without furnishing grounds of arrest and his further detention shall not be authorized except when grounds for arrest are mentioned, and notice is accordingly contemplated to the relative of accused. The complainant in this case is a victim whose rights would be seriously prejudiced and affected while releasing the accused on such a technical ground, who has committed murder of her husband when she is a very young woman having a child of couple of months. Thus, Ld. Advocate submitted to deal with the application in view of the matters raised by him keeping in view rights of victim's also and relied on following citations:

(i) ***Danish Rafiq Fansophkar Vs. The State of Maharashtra [Criminal Writ Petition (ST) No. 19471 of 2024, decided on 16.10.2024]***, wherein, Hon'ble Bombay High Court observed that:

*“11. The necessity of communication of “grounds of detention” being specifically highlighted as above, when we have perused the panchnama drawn while the Petitioner and the co-accused were apprehended and were subjected to search, which led to seizure of contraband from them and the whole process was specifically recorded in the panchnama, which is signed by the Petitioner, merely on the ground that the copy of the panchnama is not given to him, it cannot be said that the Petitioner is unaware as to why he is being put under arrest, as immediately upon following the procedure, which is recorded in the panchnama, he alongwith the co-accused was taken to the police station and was subjected to arrest.*

*12. Alongwith the affidavit-in-reply, the station diary entry is produced, which clearly record that the Petitioner was informed about the “grounds of arrest” and in any case, on being apprehended, when his search led to seizure of contraband, we do not deem it appropriate to apply the principle laid down in the two pronouncements above that if the “grounds of arrest” are not communicated, the arrest is an illegality. In a peculiar case like this, where the*

*Petitioner was conscious of the fact as to why his arrest is being effected, since his search led to seizure of contraband from him and even if the formal grounds of arrest are not communicated to him, we do not find any flaw in the action on the part of the investigating agency, which would warrant interference.”*

(ii) ***Bhavesh P. Bhinde Vs. State of Maharashtra [AIROnline 2024 Bom 1484]***, in which, Hon’ble Bombay High Court held that:

*“18.....These guidelines clearly contemplate that the police officer carrying out the arrest shall prepare memo of arrest at the time of his arrest and such memo shall be attested by at least one witness, who may be either member of the family or respectable person of the locality, where arrest is made, and it shall be countersigned by the arrestee, and shall contain time and date of arrest. Forwarding the copies of the documents, including the memo of arrest to be sent to the Magistrate for his record, further ensure its accountability, along with a requirement that the person arrested must be made aware of his right to have someone informed about his arrest as soon, as he is put under arrest.*

*20.....Finding no legal infirmity in effecting the arrest of the Petitioner in connection with a serious offence registered against him, the grounds raised for claiming his arrest to be illegal, according to us, is nothing, but a faux and ersatz call, as we have noticed that the procedural safeguards which are indispensable and received recognition through the Constitution, which has considered liberty of a citizen to be of a paramount importance, is not impaired in any manner.”*

(iii) ***Vicky Kalyani Vs. State of Maharashtra [Cri. Writ Petition (Stamp) No. 24338 of 2024]***, in which, Hon’ble Bombay High Court on 31.01.2025, referred bunch of Writ Petitions to the larger bench for decision on the questions formulated on Section 50 of Cr.P.C. regarding furnishing grounds of arrest in writing to accused and notice under Section 41A of Cr.P.C.

(iv) ***Rajrishi Bindawat Vs. The State of Maharashtra and another [Criminal Writ Petition No. 3529 of 2024] with Mihir Rajesh Shah Vs. The State of Maharashtra and another [Criminal Writ Petition No.3533 of 2024]***, wherein, Hon'ble Bombay High Court observed that:

*“20.....Both the petitioners, who had committed the accident which was seen by the eye witnesses and the fact that the fastag was swiped by the person driving the BMW at the sea link toll, was found to be in the name of Mihir Shah, considering the chain of circumstances and its continuity, which was well within the knowledge of the petitioners, and the attempt on part of accused Mihir Shah to flee the course of justice, apprehending his arrest, as he was aware about the charge he was bound to face, we are of the clear opinion that since the grounds of arrest in a situation like this, which are well within the knowledge of the offenders, they shall not be permitted to take advantage on the account that the 'grounds of arrest' are not communicated in writing.*

*For these reasons, though we record that the grounds of arrest admittedly are not communicated to the petitioners and as far as Mihir Shah is concerned, he was absconding and was required to be arrested and produced before the Magistrate, when the remand application clearly discerned to him the reasons for his arrest, we are of the firm view that in a serious offence of this nature, when the presence of both the petitioners is established in the offending car which is responsible for the mishap, they cannot take the benefit that the grounds of arrest are not communicated to them in writing. Admittedly, the petitioners apprehending that their applications for being released on bail on account of seriousness of the offence may not receive positive consideration have chosen not to file the bail applications.*

*Despite the fact that we are conscious of the position of law laid down by the Hon'ble Apex Court, and which we are duty bound to follow, we are making an exception in case of the present petitioners, as they were aware of the consequences of their gruesome act and since the petitioner Rajrishi was apprehended with the offending*

*car, which itself offered a proof of his presence in the car, which was noticed in continuation, in the CCTV footages after the accident had occurred, and as far as petitioner no.2 chose to flee from the spot and remained absconding till he was arrested, we are not inclined to grant them the benefit of the orders of the Apex Court, when they are raising a plea of not furnishing the grounds of arrest and that their arrest shall be declared as illegal and so also the subsequent remand orders.*

*We, therefore, decline to extend the benefit of the said order to them in the above circumstances.”*

7. In the case of *Vihaan Kumar (supra)*, decided recently on 07.02.2025 by Hon'ble Supreme Court for offence under Sections 409, 467, 468 and 471 read with Section 120B of IPC, the cases of *Pankaj Bansal and Prabil Purkayastha* have been considered, and it is laid down that it is mandatory to inform the arrested person, grounds of arrest in such a manner that sufficient knowledge of basic facts constituting the grounds is made known to him properly, and the mode and method of communication must be such that object of constitutional safe guard is achieved. It is held that the burden lies on Investigating Officer to prove the compliance when accused alleges contrary, and if the requirement is not proved to have been complied, it vitiates the arrest. It is also the duty of Magistrate to see compliance when accused is produced before him, and if there is violation of Article 22(1) of the Constitution, the accused shall be released forthwith. Hon'ble Supreme Court after laying down the principles as above, in factual adjudication released the accused. Offence in this case took place on 27.06.2024, and accused was arrested by adopting procedure hereinbelow discussed, to which, no objection was taken till filing of this application, before or after committal of the case. Ld. Advocate for accused has relied on this case, on the basis of which,

application is filed. Ld. Advocate for complainant submitted that the said appeal came to be decided on 07.02.2025, when in the instant case, arrest by adopting the procedure was effected on 28.06.2024, in respect of which, no grievance was made during remand and committal proceeding when the accused was duly represented by advocate and was aware fully of his rights, and cannot show ignorance of law and any discrepancy. Be that as it may, it is the fact on record that till filing of this application, no grievance was made by accused since his arrest that it is illegal, and his detention is not in compliance of the provisions of Section 50 and 41A of Cr.P.C., in the facts of the case where the offence dated 27.06.2024 is of serious nature being under Section 302 and other sections of IPC.

8. In the cases of *Mahesh Naik, Sachin Nimbalkar and Habibur Rahman (supra)* relied on for accused, accused persons therein were released for non-compliance of furnishing grounds of arrest under Section 50 of Cr.P.C. to the accused as revealed from the facts of the respective cases. In *Vicky Kalyani (supra)*, Hon'ble Bombay High Court referred to number of writ petitions for decision to larger bench on question of compliance of Section 50 and 41A of Cr.P.C. In *Mihir Rajesh Shah's* case, an SLP (CrI.) No. 17132/2024 is filed before Hon'ble Supreme Court, in which, the matter is heard on 22.04.2025. In the instant case, Ld. Advocate for accused relied on *Union Territory of Ladakh and Ors. (supra)*, wherein, the observations have been made that it is not open to await outcome of reference. Ld. Advocate for accused insisted that though the matter is heard by Hon'ble Apex Court in the case of *Mihir Shah (supra)*, as the present case pertains to the right of accused to be enlarged on bail, it shall be decided forthwith with

reference to the citations and material relied on by him as above. Ld. Advocate for complainant and Ld. APP relied on the material showing compliance substantially, apart from inviting the attention of Court to the fact that offence is of brutal murder of a young boy in front of his wife by pistol. Ld. Advocate for complainant also relied on the cases of *Rajrishi Bindawat and Mihir Shah (supra)*, against which appeal as above is taken-up before Hon'ble Supreme Court, wherein the Hon'ble High Court has taken into consideration the presence of accused on the spot and fleeing away, as recorded in the CCTV footage and considering the concept of victimology, carving out an exception to release the accused therein. Case of *Danish Fansophkar (supra)* is relied on by Ld. Advocate for complainant in the offence under Section 8(c), 20(b) (ii) of NDPS Act, in which, affidavit in reply was filed with Station Diary, recording informing grounds of arrest to the accused. Similarly, in case of *Bhavesh Bhinde (supra)*, bail on such ground to accused was rejected where the accused was absconding, who had played active role in the crime.

9. In the case at hand, Arrest Memo/Panchnama in respect of the present accused shows that he was arrested on 28.06.2024 at 6.32 a.m., after occurrence of incident on 27.06.2024 in late night hours, mentioning that intimation of his arrest was given to his father Shahaji Mukutrao Kakade, who though later on in the course of the day, came to be arrested for destroying the evidence relating to crime. At the time of arrest of present accused, it appears that said Shahaji Kakade was not arrayed in the FIR, as it was initially lodged against present accused with accused Gautam and unknown three persons. Accused has signed on the said Arrest Memo. Thereafter, in the Station Diary dated 28.06.2024, there is

mention that person of accused was searched and he was arrested, who was medically examined, and that the guidelines issued by Hon'ble Apex Court have been scrupulously followed before arresting accused and by informing the arrest to his relative. On 28.06.2024, as per the remand report, accused was produced before Ld. Magistrate with contents that the present accused has fired one bullet shot in the head of deceased Ranjeet Nimbalkar with intent to kill him. Custody of the accused was sought for making investigation and recovery of pistol from him. The accused has signed on the remand application and was represented by advocate. Initially, offence under Section 307 of IPC was registered as deceased Ranjeet was admitted to hospital and was undergoing treatment, however, he died succumbing to the fatal injury of bullet on head. Ld. Magistrate granted police custody of the accused till 01.07.2024. The police custody on the remand application dated 01.07.2024 was granted and extended to 02.07.2024 and from 02.07.2024, he is sent to Magisterial Custody. All the remand reports are signed by the accused. In the say filed by I.O., he stated that while arresting the accused, the police officer informed the accused crime number, sections of law and reasons for arrest and that the directions of Hon'ble Apex Court have been followed while arresting the accused. He further stated that the Arrest Form was prepared in presence of two panchas and that father of accused was informed personally of the arrest of said accused. Ld. Advocate for complainant relied on two affidavits of the panchas who signed the Arrest Memo as panch witnesses, in which, they stated that they were called in Crime No. 283/2024 as arrest panchas at Wadgaon Nimbalkar Police Station on 28.06.2024, and in their presence, accused Gaurav Kakade was informed by police

regarding the crime and the grounds of arrest, of which, a written paper was handed over to accused and intimation was given to Shahaji Kakade of arrest of accused. They stated that at that time, there was a mob of thousands of people gathered in police station, and in such a situation, the procedure for arrest was completed by Police Officer Rahul Ghuge. There is nothing at this stage to disbelieve the version of panch witnesses coupled with the Diary produced on record mentioning that procedure for arrest is followed by police. The panchnama of personal search of the accused on 28.06.2024 was carried out at the time of his arrest, in which, a mobile of Samsung Company was seized before two panchas, which is also signed by the accused, mentioning the Crime Number, sections of law and that the accused consented for the same.

10. Ld. Advocate for accused submitted that the affidavits of panchas are nothing but an afterthought when no such paper is produced on record and no notice was given to father of accused, who himself is arrayed as accused. The I.O., in this offence has prepared Arrest Panchnama of the accused after making search of the person of accused and taking entry in the Station Diary that he followed the procedure of arrest and the guidelines issued by Hon'ble Apex Court in this regard, and the accused from time to time signed on remand reports containing all the grounds of his arrest and his custody sought by police for making investigation. It is pertinent to note here that no grievance was made before Ld. Magistrate regarding illegal arrest, and Ld. Magistrate also has not observed any such thing when the accused came to be produced before him from time to time. Thus, during remand proceeding and before committal of case to this Court of Sessions, no such

objection was taken before Ld. Magistrate as was contemplated by law to be taken that arrest was illegal. Ld. Magistrate was never called upon to decide such an aspect, and it is only after committal of case and after lapse of sufficient time thereafter, when the case is put-up for hearing before charge, the present application came to be filed. The offence initially registered under Section 307 of IPC, is subsequently ripened into Section 302 of IPC as deceased succumbed to the bullet injury on head. It is also a matter of record that accused Shahaji Kakade being father of present accused who was not arrayed in the FIR, is subsequently so arrayed during the course of investigation in the afternoon on the charge of offence under Section 201 of IPC, to whom, Notice/Intimation of Arrest of present accused is stated to have been given by Investigating Officer. The Case Diary was also called for perusal of contents relating to arrest of present accused dated 28.06.2024 for what has been stated by the I.O., and the panchas.

11. Thus, in case where accused alleges non-compliance of the requirement of furnishing grounds of arrest to him, the burden lies on Investigating Officer to prove compliance. After taking into consideration the law on the subject so applicable and the material on record relating to facts of the case, in the present case relating to offence under Section 302 of IPC, FIR came to be lodged by complainant-lady being wife of deceased against accused, and he was arrested on 28.06.2024 as per the Arrest Memo prepared and signed by panchas, after taking search of his person. I.O., and panchas state that the grounds of arrest were communicated to the accused and that his father, who was not arrayed as accused till that time, was informed regarding the arrest of accused. The accused was produced before Ld. Magistrate,

whose police custody was sought, and then, he was sent to Magisterial Custody, during which, no whisper was made by accused duly represented by advocate. Apart therefrom, nature of offence being under Section 302 of IPC punishable with capital punishment or imprisonment for life, it appears that there were acts and actions on the part of accused in the offence to tamper and destroy evidence as is clear from the charge-sheet. The pistol used by the present accused came to be recovered from accused no.1, and evidence on the spot is alleged to have been tampered or destroyed by accused no.3, which included the CCTV footage, of which, DVR is seized by police. Soon after shooting the deceased, it *prima facie* appears that it was the complainant-lady with her two assistants, who took the deceased from one hospital to another as per the contents of FIR. Complainant and two eye witnesses have been named in the charge-sheet to have witnessed the incident where the accused is stated to have fired a round from pistol possessed by him in the head of deceased, who later on succumbed to fatal injury and died. There is evidence of eye witnesses coupled with the recovery of the weapon used in the offence. Observations in the *Post Mortem* report are made relating to cause of death as head injury. Alongwith pistol used by accused no.2 to shot on deceased-Ranjeet, empty round cartridge, one iron magazine and *bamboo* stick have been seized in the offence. The bullet was taken out from the brain of deceased, and all the Muddemal is sent for Chemical Analysis. The CCTV footage DVR of the spot is also seized by the police where incident occurred, for further investigation and analysis. Therefore, apart from the aspect of compliance of arrest procedure stated by I.O., and two arrest panchas, looking to the seriousness and gravity of

the offence, in which, the complainant is a lady being wife of deceased, evidence collected against the accused showing full knowledge to him regarding commission of offence and then his arrest effected by police, and in view of other material as well as circumstances existing on record, in the humble and considered opinion of this Court, no case is made out on the ground so alleged by accused to release him on bail. Hence, the following order:

**ORDER**

Application is hereby rejected.

Date :- 17.05.2025

(V. C. Barde)  
Additional Sessions Judge,  
Baramati.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer : V.B.Lalsangi  
Stenographer (G-1)

Court Name : V. C. Barde  
Additional Sessions Judge,  
Baramati, Dist. Pune.

Date of Order : 17.05.2025  
Order signed by  
Presiding Officer : 17.05.2025  
Order uploaded on : 17.05.2025