

IN THE COURT OF DISTRICT JUDGE & ADDITIONAL SESSIONS JUDGE-1,
PANVEL-RAIGAD, AT : PANVEL
ORDER BELOW EXHIBIT 11 IN SESSIONS CASE NO.144/2024
(DATED 11/02/2025)
CNR NO.MHRG170021842024

1] Applicant/accused **Vaibhav Gopal Londhe** is seeking bail in C.R.No.291/2024 registered with Kalamboli police station for the offence p/u/sec.376(2)(n), 377, 385, 506 of Indian Penal Code.

2] As per prosecution informant was intending to complete a general nursery course. Informant was given the cell number of the accused. The accused assured the informant that, he will get the course done in minimum amount. In August, 2023 the accused called the informant as his house, on the pretext to secure a admission for nursing course accused indulged in forceful physical relationship. Thereafter the accused took nude photos of the informant in his cell phone. Further it is submitted that, the accused thereafter demanded money and the informant kept golden ornaments mortgage and gave money to the accused.

3] Applicant/accused submit that, this is his second bail application. According to him there was no compliance of section 47(1) of BNSS, 2023. It is submitted that, grounds of arrest were not informed in writing. The accused is behind bar since 12/08/2024. As arrest was illegal accused is praying for release on bail.

4] Heard Ld.Advocate Shri Dinesh Shah for the applicant/accused and Ld.APP Yerunkar. Victim of the crime is present at the time of hearing of the bail application. Her advocate on record has filed say at Exh.19. Victim has also placed photocopies of documents on record.

5] At the outset it be noted that, say of IO at Exh.15, is totally silent about compliance of provisions of arrest. Hence, I had directed IO to furnish an affidavit on record. Accordingly on 04/02/2025 below Exh.16 filed her affidavit and on oath it is stated that, accused was orally informed about grounds of arrest.

6] Ld.Advocate for applicant/accused placed reliance on following decisions.

- 1] Pankaj Bansal Vs. Union of India Criminal Appeal No.3051-3052/2023 Supreme Court of India decided on 03/10/2023
- 2] Mahesh Pandurang Naik Vs State of Maharashtra High Court Bombay decided on 18/07/2024
- 3] Directorate of Enforcement Vs. Subhash Sharma Supreme Court of India Special Leave Petition No.1136/2023
- 4] Vihaan Kumar Vs. State of Harayana Supreme Court of India Special Leave Petition No.13320/2024 07/02/2025

7] Hon'ble Apex Court in case of Prabir Purkayastha Vs. State (NCT of Delhi), has laid down law regarding necessity to inform the grounds of arrest, relying on its earlier decision of Pankaj Bansal Vs. Union of India. I am reproducing paragraph No.25 to 28 of the decision of the Hon'ble Apex Court as under ;

“A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of Harikisan v. State of Maharashtra and Others 4 and held that the communication of the grounds of detention to the detenue in 4 1962 SCC OnLine SC 117 writing

and in a language which he understands is imperative and essential to provide an opportunity to detainee of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted here-in-below

“clause (5) of Article 22 requires that the grounds of his detention should be made available to the detainee as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detainee should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detainee should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detainee sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detainee would not amount to communication, in this context, must mean bringing home to the detainee effective knowledge of the facts and circumstances on which the Order of Detention is based. (emphasis supplied)

26. Further, this Court in the case of Lallubhai Jogibhai Patel v. Union of India and Ors.⁵, laid down that the grounds of 5 (1981) 2 SCC 427 detention

must be communicated to the detenue in writing in a language which he understands and if the grounds are only verbally explained, the constitutional mandate of Article 22(5) is infringed. The relevant para is extracted hereunder: -

“Communicate” is a strong word. It means that sufficient knowledge of the basic facts constituting the “grounds” should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the “ground” to the detenu is to enable him to make a purposeful and effective representation. If the “grounds” are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.....” (emphasis supplied)

27. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in *Harikisan* (supra), wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

28. Thus, there is no hesitation in the mind of this Court that the submission of learned ASG that in a case of preventive detention, the grounds of detention need not be provided to a detenue in writing is *ex facie* untenable in eyes of law.

8] Hon’ble Apex Court in case of *Vihaan Kumar Vs. State of Harayana* SLP (Cri) No.133320/2024 on 07/02/2025 again laid down law that, failure to comply with requirement of informing grounds of arrest, renders arrest illegal, invalidating

any subsequent custody or remand orders. The burden of proof for compliance lies on police.

9] In light of this law laid down by Hon'ble Apex Court and Hon'ble High Court now if arrest of present applicant is considered then admittedly grounds of arrest were not informed in writing. IO on oath states that, grounds of arrest were orally informed. This is gross violation of law laid down by Hon'ble Apex Court and legal provisions or arrest.

10] The victim of crime in her say has given in detail about how she was cheated, blackmailed etc. Ld.APP submits that, there was no recovery of Rs.3,00,000/- and gold ornaments.

11] The victim, her Advocate have not submitted anything about how accused was arrested. The victim may not be aware of this fact. It is duty of prosecution more particularly investigating officer to prima facie prove that, all legal provisions were followed at time of arrest and grounds of arrest were informed in writing. In present case IO admits that, grounds of arrest were not given in writing. In such circumstances there is no alternative before me than to enlarge accused on bail. Hence, I pass following order.

ORDER

1. Application Exh.1 is allowed.
2. Applicant/accused **Vaibhav Gopal Londhe** in C.R. No.291/2024 registered with Kalamboli police station for the offence p/u/sec.376(2)(n), 377, 385, 506 of Indian Penal Code be released on P.B. of Rs.50,000/- and executing SB of like amount. If accused is unable to furnish surety, he is permitted to deposit Rs.50,000/- as cash security.

3. Applicant/accused to attend concerned police station on every first Monday of month in between 10.00 a.m. to 01.00 p.m., till further orders.
4. Applicant/accused shall not directly or indirectly induce or threat the prosecution witnesses and shall not commit any type of criminal activity.
5. Inform concerned police station.
6. Bail before this court.
7. Copy be sent to jail authorities by E-mail.

Panvel
Date :-11/02/2025

(Jairaj D.Wadne)
Additional Sessions Judge,
Panvel-Raigad

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the stenographer	: S.J.Sheth
Name of the Court	: Additional Sessions Judge, Panvel Raigad
Dictation given on (direct typing)	: 11/02/2025
Order signed by the P.O.on	: 11/02/2025
Order uploaded on	: 12/02/2025