

WRITTEN GROUNDS OF ARREST: MANDATORY OR DISCRETIONARY?

In an important judgment delivered on 06.11.2025, the Supreme Court of India in *Mihir Rajesh Shah v. State of Maharashtra and Another (Criminal Appeal No. 2195 of 2025)* has settled the law relating to the constitutional requirement of informing an arrested person of the grounds of arrest. The Supreme Court examined the scope of Article 22(1) of the Constitution of India ("Constitution") and its statutory reflection under Section 50 of the erstwhile Code of Criminal Procedure, 1973 ("CrPC"), which is now Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNS").

The judgment assumes importance as it clarifies the mandatory nature, mode and timeframe for communication of grounds of arrest across all offences, including those under the Indian Penal Code, 1860 ("IPC"), which is now the Bharatiya Nyaya Sanhita, 2023 ("BNS") as well as special statutes such as Unlawful Activities (Prevention) Act, 1967 ("UAPA") and Prevention of Money Laundering Act, 2002 ("PMLA").

Background

The lead appeal arose from FIR No. 378 of 2024 registered at Worli Police Station, Mumbai, following a road accident on 07.07.2024. A white BMW car, driven at a high speed, collided violently with the complainant's scooter from behind. The force of the impact propelled both the complainant and his wife onto the car's bonnet whereby the complainant was thrown to the side and his wife became ensnared between the vehicle's front left wheel and bumper.

The vehicle allegedly continued moving after the collision dragging the victim before fleeing the scene. The complainant's wife later succumbed to the severe injuries.

During investigation, the offending vehicle was identified through CCTV footage. The damaged BMW was later found near Kalanagar Junction Flyover where Rajrishi Rajendra Singh Bindawat and Rajesh Shah (father of the appellant) were present. Rajrishi Rajendra Singh Bindawat was arrested on the same day, and Mihir Rajesh Shah was arrested on 09.07.2024. The prosecution relied upon CCTV footage, evidence of alcohol consumption prior to the incident, use of a FASTag registered in the appellant's name and other material to establish the appellant's involvement. The appellant was produced before the Magistrate and remanded to police custody extending subsequently to judicial custody. The legality of this arrest was questioned on the ground that the grounds of arrest were not furnished to him in writing in violation of Article 22(1) of the Constitution and Section 47 of the BNS.

Proceedings

The Bombay High Court while acknowledging the procedural lapse upheld the arrest, reasoning that the appellant was conscious of the nature and gravity of the allegations and had attempted to evade arrest. Before the Supreme Court, the challenge was limited to the legal question concerning the requirement of furnishing grounds of arrest. The Supreme Court clarified that it was not examining the merits



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of the criminal case but only the constitutional and statutory position regarding arrest procedures.

Questions of Law

The Supreme Court framed the following questions of law in this matter: -

1. Whether in each and every case, even arising out of an offence under IPC (now, BNS), would it be necessary to furnish grounds of arrest to an accused either before arrest or forthwith after arrest; and

2. Whether, even in exceptional cases, where on account of certain exigencies it will not be possible to furnish the grounds of arrest either before arrest or immediately after arrest, the arrest would be vitiated on the ground of non compliance with the provisions of Section 50 of the CrPC (now Section 47 of BNS).

Answering the first question of law, the Supreme Court traced the right to be informed of grounds of arrest to Article 21, which protects personal liberty and Article 22(1) which expressly mandates that an arrested person must be informed of the grounds of arrest "as soon as may be" and must be allowed to consult a legal practitioner. This constitutional mandate is given statutory effect through Section 50 CrPC (now,

Section 47 BNS) which requires the arresting officer to "forthwith communicate" the grounds of arrest. It was also emphasised the importance of Section 50A CrPC (now, Section 48 BNS) which obligates the police to inform a friend or relative of the arrest and casts a duty on the Magistrate to verify compliance.

Supreme Court's Existing Jurisprudence

The Supreme Court analysed its earlier pronouncements in *Pankaj Bansal v. Union of India* (2024) 7 SCC 576, *Prabir Purkayastha v. State (NCT of Delhi)* (2024) 8 SCC 254 and *Vihaan Kumar v. State of Haryana* (2025) 5 SCC 799.

In *Pankaj Bansal (supra)*, while examining arrests under the PMLA, it was held that communication of the grounds of arrest under Article 22(1) must be meaningful and effective and that mere oral communication is insufficient. It was held that furnishing the written grounds of arrest as a matter of course and without exception is necessary as oral communication alone is prone to factual disputes and undermines the integrity of the arrest process.

Building upon this principle, in *Prabir Purkayastha (supra)*, dealing with arrests under the UAPA, the Supreme Court reiterated that the right to be informed of the grounds of arrest in writing is both a fundamental and statutory right applicable to all offences. It was held that a copy of the written grounds of arrest must be furnished to the arrested person at the earliest and without exception as this safeguard enables effective legal consultation, opposition to remand and pursuit of bail. It was further held that any violation of this constitutional requirement would vitiate the

arrest and subsequent remand and that later developments such as filing of a chargesheet would not cure the illegality.

Thereafter, in *Vihaan Kumar (supra)*, the Supreme Court reaffirmed the principles laid down in *Pankaj Bansal (supra)* and *Prabir Purkayastha (supra)*, holding that failure to communicate the grounds of arrest soon after arrest would render the arrest illegal. The judgment further emphasised the importance of informing friends or relatives under Section 50A CrPC (now Section 48 BNS), so as to ensure timely legal assistance and effective protection of the arrestee's personal liberty.

Impact of Arrest

The profound impact of arrest on an individual was also highlighted. Arrest, as was observed, carries a stigma that affects not only the arrestee but also family and associates, impairing reputation, dignity and psychological well-being. Custodial confinement particularly in overcrowded conditions can aggravate mental and physical health issues.

Referring to *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273 and *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260, the Court reiterated that arrest should not be routine. The existence of power to arrest does not justify its indiscriminate exercise. Except in heinous offences, arrest ought to be avoided unless justified by necessity.

Mandatory Written Grounds of Arrest?

The Supreme Court reaffirmed that Article 22(1) of the Constitution is unambiguous in mandating that grounds of arrest must be communicated "as soon as may be." The purpose of this safeguard is not merely informational but functional as

it enables the arrested person to consult legal counsel, oppose remand and seek bail. Early access to legal assistance was emphasised with reference to statutory safeguards and judicial directions ensuring representation at the remand stage. A Magistrate is not to act as a mere rubber stamp while authorising remand but must apply judicial mind after hearing the accused or his counsel. It was further held that mere reading out of grounds of arrest is inadequate. Relying on the jurisprudence in *Harikisan v. State of Maharashtra* AIR 1962 SC 911 and *Lallubhai Jogibhai Patel v. Union of India and Others* (1981) 2 SCC 427, it was reiterated that the grounds of arrest must be communicated in writing and in a language understood by the arrestee, failing which the constitutional safeguard under Article 22 would be rendered illusory.

Exceptions

Addressing the second question, it was recognised that rigid insistence on written grounds at the exact moment of arrest may in exceptional cases impede effective law enforcement. In situations such as offences where the accused is caught in the act, oral communication at the time of arrest may suffice initially. However, even in such exceptional cases, written grounds of arrest must be supplied within a reasonable time and in any event at least two hours before the arrestee is produced before the Magistrate for remand. This minimum interval was considered necessary to allow meaningful legal consultation and opposition to remand. Failure to adhere to this timeline would render the arrest and subsequent remand illegal entitling the arrestee to release.

Conclusion

Therefore, the judgment in *Mihir Rajesh Shah (supra)* settles the constitutional requirement of informing an arrested person of the grounds of arrest. The Supreme Court has held that this safeguard flowing from Articles 21 and 22(1) of the Constitution applies to all offences under all statutes and is not a mere procedural formality. The Court has clarified that the grounds of arrest must be communicated

in writing and in a language understood by the arrestee. At the same time, the Court has recognised limited exceptional situations where immediate written communication may not be feasible permitting initial oral communication subject to the strict requirement that written grounds are supplied within a reasonable time and in any event, at least two hours prior to production before the Magistrate. In case of non-compliance, the

arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free. By consolidating previous jurisprudence on the subject and laying down clear directions, the judgment brings much needed clarity and uniformity to arrest procedures across both general and special statutes. It reinforces the importance of personal liberty while ensuring that law enforcement authorities are able to discharge their duties within constitutional limits.

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