E-Mail

From,

Registrar General,
High Court of Uttarakhand,
Nainital.

To,

All the District Judges,
State Judiciary of Uttarakhad.

No. 680/UHC/Admin.B/V-a-23/2026 Dated: 16 Oct., 2026

Sub: Circulation of Hon'ble Supreme Court Judgment.

Sir/Madam,

Apropos to above, I am directed to enclose herewith a copy of Judgment dated 21.09.2026 passed by Hon'ble Supreme Court in Criminal Appeal No. 4234 of 2026 *'Jaskaran Jeet Singh Deol Vs. The State of Punjab'*,with a request to circulate the same among all the Judicial Officers in your judgeship for their information and compliance.

Encl: *As above*

Yours sincerely,

(Kaushal Kishore Shukla)
Registrar General

Seen & circulate all the Judicial officers of Judgeship. Pauri for information & compliance.

I/c D.J.

17. X. 2026
District & Sessions Judge
Pauri Garhwal

2026 INSC 1022

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 4234 OF 2026
(Arising out of Special Leave Petition (Crl.) No.11103 of 2026)

JASKARAN JEET SINGH DEOL **APPELLANT(S)**

VERSUS

STATE OF PUNJAB **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

By filing this appeal, appellant has assailed the legality and correctness of the order dated 29.05.2026 passed by the Punjab and Haryana High Court at Chandigarh (briefly 'the High Court' hereinafter) in CRM-M-31323-2026(O&M) (*Jaskaran Jeet Singh Deol Vs. State of Punjab)*, whereby the High Court dismissed the petition filed by the appellant by holding

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Date: 2026.09.21 16:27:23 IST
Reason:

that the investigating agency cannot be prohibited or restrained from seeking warrants of arrest against the appellant or from re-arresting him or seeking his custody/remand.

2. This appeal raises an important issue of wide constitutional import. The question is, can an accused who has suffered breach of both clauses (1) and (2) of Article 22 of the Constitution of India be re-arrested for the same offence? If so, under what circumstances, in what manner and the procedure that is required to be followed in such a case.

3. Though it is not necessary for a detailed reference to the facts i.e. the allegations against the accused-appellant, nonetheless for a proper perspective and for completion of the narrative, relevant facts may be briefly set out.

3.1. Informant lodged a first information on 13.05.2026 before the Mataur Police Station in the district of SAS Nagar (Punjab) alleging that his wife had left his company and started living with the accused-appellant from about October-November, 2024 taking with her both his daughters including the alleged victim girl, being his elder daughter. On 09.05.2026,

the elder daughter (alleged victim) came back to the company of the informant. It is stated that she narrated to the informant physical and sexual abuse committed on her by the accused-appellant from 25-26.10.2024 onwards, off and on. The first information was registered as FIR No. 73/2026 under Sections 64, 65(1) and 351 of the Bharatiya Nyaya Sanhita, 2023 (BNS) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, as amended (POCSO Act).

3.2. On 17.05.2026, at around 07:54 am, the appellant was arrested by the police whereafter he was produced before the Judicial Magistrate In-Charge (Duty) on the next day i.e. on 18.05.2026 at around noon for obtaining police remand for one day.

3.3. However, the learned Judicial Magistrate noted that though the appellant was arrested on 17.05.2026 and produced before her on 18.05.2026, no written grounds of arrest were provided to the appellant. After referring to the judgment of this Court in *Mihir Rajesh Shah Vs. State of Maharashtra*[1], the

[1] (2026) 1 SCC 500

learned Magistrate held that the investigating agency had miserably failed to comply with the mandate of law of providing written grounds of arrest. Therefore, appropriate action should be taken against the officers at fault. For non-furnishing of written grounds of arrest, which is in violation of Article 22(1) of the Constitution read with Section 50(1) of the Code of Criminal Procedure, 1973 (Cr.P.C.) and Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS), the appellant was directed to be released immediately since his arrest was rendered illegal. However, the learned Magistrate clarified that if the investigating agency finds it necessary, they can move an application for remand or custody, if required, alongwith the reasons and the necessity for the same after supplying the grounds of arrest in writing to the appellant setting forth the explanation for non-supply thereof. The learned Magistrate further clarified that the aforesaid order dated 18.05.2026 would not preclude the investigating agency from proceeding in accordance with law and in strict compliance with the statutory and constitutional mandate.

3.4. On the same day itself i.e. 18.05.2026, the same Station House Officer Rupinder Singh, who had caused the arrest of the appellant without furnishing the grounds of arrest and who had moved the earlier remand application, again moved a fresh application for custody and remand of the accused-appellant. The following were furnished as the grounds of arrest:

(a) accused has committed aggravated sexual assault on a minor girl of 16 years (approx.), who was his step-daughter;

(b) accused has committed a heinous crime and the punishment for the same is a minimum of 20 years of imprisonment, if convicted;

(c) custodial interrogation of the accused Jaskaran Jeet Singh is required for taking the accused to both the places of incident i.e. Radisson Hotel and their house in Sector 70, Mohali;

(d) mobile phone and other video recordings are to be recovered from the accused; and,

(e) potency test of the accused is to be got done.

3.5. This time the subsequent custody/remand application was assigned to the learned Additional Chief Judicial Magistrate who passed order dated 22.05.2026 dismissing the said application as being not maintainable at that stage. Learned Additional Chief Judicial Magistrate noted that the said application was moved by the prosecution without supplying the grounds of arrest to the accused and before the arrest of the accused. Referring to the decision of this Court in *Mihir Rajesh Shah*, the learned Magistrate observed that such an application could be moved only after supplying the grounds of arrest to the accused. According to him, in the present case, grounds of arrest have not been provided to the accused till then. Moreover, custody and remand of the accused can only be granted by the court after the arrest of the accused and it cannot be granted in the absence of the accused.

3.6. It was, thereafter, that the appellant moved the High Court in the related proceedings under Section 482 Cr.P.C. (Section 528 BNSS) seeking the following reliefs:

(i) quashing of observations made in the order dated 18.05.2026 by the learned Magistrate;

(ii) to prohibit and restrain the investigating agency from re-arresting the appellant under any circumstances;

(iii) to prohibit and restrain the respondents from seeking custody of the appellant and his remand; and

(iv) to prohibit and restrain the respondents seeking warrant of arrest of the appellant.

3.7. It was contended on behalf of the appellant before the High Court that the appellant was released by the learned Magistrate for not furnishing grounds of arrest. However, the clarification by the learned Magistrate that notwithstanding such release of the appellant, the investigating agency would not be precluded from proceeding in accordance with law and in strict compliance with the statutory and constitutional mandate was susceptible to misconstruction. Such clarification was unwarranted particularly in the teeth of several judgments of this Court including in *Mihir Rajesh Shah*. Another contention urged on behalf of the appellant was that appellant was arrested

on 17.05.2026 at 07:55 am and was produced before the learned Magistrate at 12:00 noon on 18.05.2026 which is more than 24 hours. Appellant was released at 03:00 pm. In the circumstances, an indefeasible right of release has accrued in favour of the appellant. Consequently, no arrest warrant can be issued *qua* the appellant.

3.8. In the above context, the High Court framed the question for determination as to whether release of the appellant in the case on 18.05.2026 completely shielded him from future arrest in the same case.

3.9. By way of the impugned order dated 29.05.2026, the High Court dismissed the said petition of the appellant by observing that liberty granted by the learned Magistrate to the investigating agency to proceed in accordance with law in strict compliance with the statutory and constitutional mandate is in consonance with the settled legal principles and does not call for interference. Even though the arrest of the appellant was declared illegal by the learned Magistrate for non-furnishing of written grounds of arrest, the investigating agency is not

precluded from seeking his re-arrest, provided that the subsequent arrest made is strictly in accordance with the procedure established by law. The High Court further observed that for the illegal detention beyond 24 hours before production before the learned Magistrate, appellant may take appropriate legal action against the defaulting police officials. However, the appellant who is accused of serious and grave offences against a minor child cannot claim blanket immunity from future arrest. The investigating agency cannot be prohibited or restrained from seeking warrant of arrest of the appellant or from re-arresting him or seeking his custody/remand.

4. It was thereafter that the matter has travelled to this Court.

5. This Court *vide* the order dated 27.07.2026 had directed that the appellant should not be arrested till the next date of hearing which order was continued subsequently. In the proceedings held on 06.08.2026, learned state counsel was directed to file an affidavit disclosing therein the steps taken against the erring police officer(s) and as to whether

investigation into FIR No. 73/2026 was being carried out by the very same officer or handed over to another officer.

6. On 14.08.2026, this Court was informed by the learned state counsel, on the basis of the compliance affidavit filed, that Mr. Gurtej Singh, Assistant Sub-Inspector, investigating officer of the case, has been suspended and Mr. Rupinder Singh, Inspector, Station House Officer, has been transferred to and posted at the Police Lines. Departmental action was also being taken against the aforesaid two officers.

7. Finally, the matter was heard on 01.09.2026, whereafter the judgment was reserved. While reserving the judgment, this Court directed that the interim protection granted to the appellant *vide* the order dated 27.07.2026 shall continue until delivery of the judgment; however, the appellant was directed to appear before the investigating officer and cooperate with the investigation.

8. Mr. Siddharth Agarwal, learned senior counsel for the appellant submits that appellant has suffered two violations of the Constitution at the hands of the police. There is violation

of Article 22(2) as well as violation of Article 22(1) of the Constitution of India.

8.1. Adverting to the provision of Article 22(2), learned senior counsel submits that no person detained for more than 24 hours by the arresting authority in violation of Article 22(2) can be automatically re-arrested after release by a judicial order. He submits that it is an admitted fact that appellant was arrested at 07:54 am on 17.05.2026 from his residence at Ludhiana and produced before the duty Magistrate at 12:00 noon on 18.05.2026 beyond the period of 24 hours in flagrant violation of Article 22(2) of the Constitution. Adverting to the judgment of this Court in *Khatri Vs. State of Bihar*[2], he submits that Magistrates across the country are duty bound to ensure strict compliance to Article 22(2) of the Constitution of their own accord. In the instant case appellant's arrest became *otiose* and his further detention beyond the period of 24 hours became illegal. Referring to the judgment of this Court in *Manoj Vs. State of Madhya Pradesh*[3] he submits that once it had come to the

[2] (1981) 1 SCC 627
[3] (1999) 3 SCC 715

notice of the Magistrate that there was violation of Article 22(2) of the Constitution, appellant was entitled to be released by the duty Magistrate.

8.2. He further submits that a person released for violation of Article 22(2) cannot be automatically re-arrested by the same police force which had committed the violation. The breach of Article 22(2) is an absolutely incurable breach which cannot be remedied by the prosecution. He asserts that permitting re-arrest of a person by the prosecution who is clothed with a judicial order releasing him over a constitutional violation risks severely diluting the absolute nature of this principle and its role as a *grund norm* of judicial oversight over the police.

8.3. Cautioning against permitting re-arrest, learned senior counsel submits that if such permission is granted without fetters, a person may be kept in illegal detention for a period exceeding 24 hours, be released by a competent court and then may instantly be re-arrested and detained again. It is precisely to guard against such a possibility that this Court in *Directorate of Enforcement Vs.*

Subhash Sharma[4] has categorically held that a person detained for more than 24 hours is entitled to be released on bail forthwith.

8.4. Elaborating on this aspect, learned senior counsel submits that the purpose of releasing such a person on bail is to appropriately balance the interest of the prosecution and the accused. A person released on bail does not enjoy complete immunity from re-arrest. He has to strictly abide by the conditions of bail failing which his bail can be cancelled and he can be taken back into custody. However, as long as the bail order remains in subsistence, a person clothed with a protective order cannot be taken into custody by the prosecution. In this connection he has placed reliance on a decision of this Court in *Sumit Vs. State of U.P.*[5] .

8.5. Further submission of Mr. Agarwal is that the consequence of such a breach is not exhausted by release alone. Referring to the decision of this Court in *Bhim Singh Vs. State of Jammu & Kashmir*[6], he submits that the petitioner in that

[4] 2025 SCC OnLine SC 240
[5] 2026 SCC OnLine SC 186.
[6] (1985) 4 SCC 677

case had already been set at liberty when the matter was heard. Yet this Court held that since the petitioner's fundamental rights were violated with impunity, compensation under the public law remedy was granted to the petitioner in addition to his release. Therefore, the observation of the High Court that for the illegal detention beyond 24 hours it is open to the appellant to take appropriate legal action against the defaulting police officials is not correct; the High Court seriously erred in leaving it to the appellant alone to pursue his remedy against the erring officers.

8.6. Therefore, learned senior counsel submits that since violation of Article 22(2) of the Constitution is admitted, the respondent-State may be restrained from automatically re-arresting the appellant.

8.7. In so far violation of Article 22(1) of the Constitution is concerned, learned senior counsel submits that the obligation of the arresting authority to inform an arrestee of the grounds of his arrest is not merely a procedural formality; it is a fundamental right linked to the personal liberty of a person.

Referring to the decisions of this Court in *Pankaj Bansal Vs. Union of India*[7], *Prabir Purkayastha Vs. State (NCT of Delhi)*[8], *Vihaan Kumar Vs. State of Haryana*[9] and *Mihir Rajesh Shah,* he submits that this Court has held and reiterated that upon a finding of infraction of Article 22(1) of the Constitution, the person arrested has to be released forthwith. Once an arrest is unconstitutional, the arrest itself is vitiated. A chargesheet and an order of cognizance will not validate an arrest which is *per se* unconstitutional. If a subsequent judicial event cannot validate such an arrest, a subsequent executive act of re-arrest cannot do so either. Referring to the decision of this Court in *Mihir Rajesh Shah,* Mr. Agarwal submits that upon release of an arrestee for non-supply of written grounds of arrest, an application for fresh custody will have to be moved before the jurisdictional Magistrate alongwith the reasons and the necessity for such custody, after supplying the grounds of arrest in writing and also furnishing explanation for non-supply thereof at the first instance. It is thereafter that the Magistrate

[7] (2024) 7 SCC 576
[8] (2024) 8 SCC 254
[9] (2025) 5 SCC 799

shall decide the application expeditiously and preferably within a week adhering to the principles of natural justice. Thus, this Court did not grant discretion to the investigating agency to re-arrest on its own but explained that for affecting such an eventuality, judicial sanction was required.

8.8. It is further submitted that it is an admitted position that appellant was not supplied with the grounds of arrest till the hearing of the remand application and consequential release by the learned Magistrate for non-compliance of Article 22(1) of the Constitution. Though the second application of the investigating agency for custody was filed on the same day of release i.e. on 18.05.2026 and relied upon *Mihir Rajesh Shah,* learned Additional Chief Judicial Magistrate dismissed the said application on 22.05.2026 for the reason that grounds of arrest were still not provided to the appellant. This decision of the learned Additional Chief judicial Magistrate dated 22.05.2026 has remained unchallenged. Thus, having adopted the course prescribed by this Court and failed, the investigating agency

now cannot secure the same results by resorting to executive action.

8.9. Summing up his submissions, Mr. Siddharth Agarwal, learned senior counsel for the appellant submits that appellant has admittedly suffered violation of Articles 22(1) and (2) of the Constitution of India at the hands of the respondent-State. In these circumstances, the respondent-State may be restrained from automatically re-arresting the appellant. This Court may put any strict condition as may be deemed appropriate which the appellant will abide by. He, therefore, submits that the impugned order of the High Court may be set aside and necessary reliefs may be granted to the appellant.

9. *Per contra,* Mr. Rajat Bhardwaj, learned Additional Advocate General for the State of Punjab at the outset has referred to the facts of the case and submits that allegations against the appellant are extremely serious. It's a heinous crime attracting provisions of the POCSO Act. The victim is a minor; her date of birth being 28.05.2010. From the counter affidavit filed on 27.07.2026, learned Additional Advocate General

submits that though the learned Additional Chief Judicial Magistrate declined to entertain the subsequent application for custody *vide* the order dated 22.05.2026, arrest warrants against the appellant were obtained from the learned court on 23.05.2026 considering the necessity to take the appellant into custody. Thereafter, fresh warrants were also obtained against the appellant on 14.07.2026. Despite being searched, appellant could not be apprehended as he was evading arrest. There are also antecedents of the appellant indicating that appellant is a habitual offender.

9.1. From the second affidavit filed on 14.08.2026, learned Additional Advocate General submits that the department has viewed the failure of the arresting authority to furnish written grounds of arrest to the appellant as a grave administrative and procedural lapse. As such, departmental enquiry and disciplinary action against the erring police officers have been initiated. In this connection, he submits that on the basis of preliminary enquiry report dated 19.05.2026, it has been established that investigating officer Assistant Sub

Inspector (ASI) Gurtej Singh had committed a blatant neglect of duty by failing to properly prepare the written grounds of arrest; the Station House Officer Inspector Rupinder Singh also failed to properly supervise, examine and verify the arrest documents before production of documents and accused before the learned Magistrate. Consequently, the Senior Superintendent of Police after concurring with the enquiry report, issued disciplinary order on 20.05.2026 directing immediate action against the two officials. While ASI Gurtej Singh, who had conducted the initial investigation and had affected the arrest without delivering the written grounds of arrest, has been placed under immediate suspension, Inspector Rupinder Singh, the Station House Officer, was held accountable for supervisory lapse. He was removed from his post as Station House Officer and transferred to the Police Lines. Departmental enquiry against both the officers has been instituted with Shri Saurabh Jindal, Superintendent of Police, Investigation, District SAS Nagar, appointed as the Enquiry Officer.

9.2. Now the investigation into FIR No. 73/2026 has been assigned to Inspector Amandeep Singh who is the newly appointed Station House Officer of Police Station Mataur.

9.3. Learned Additional Advocate General has referred to the judgment of this Court in *State of Karnataka Vs. Sri Darshan*[10] and *State of Meghalaya Vs. Sonam Raghuvanshi*[11] to contend that no fetters can be imposed on the investigating agency from re-arresting an accused if investigation requires the custody of the accused. While violation of Article 21(1) of the Constitution is certainly a matter of serious concern, the same would not come in the way of re-arrest of the accused if the investigation and circumstances of the case require.

9.4. Mr. Bhardwaj has also placed reliance on the decision of the Kerala High Court in the case of *Ramjith Nayak Vs. State of Kerala*[12] as well as on the decision of the Delhi High Court in *Anwar Khan @ Chacha Vs. State (NCT of Delhi)*[13] to support his contention that the concept of re-arrest is not alien

[10] 2025 SCC Online SC 1702
[11] 2026 SCC Online SC 1294
[12] 2026 SCC Online SC Kerala 6283
[13] 2025 SCC Online Delhi 4929

to Indian criminal jurisprudence. There is no bar either under the Constitution or under the criminal law. After furnishing the grounds of arrest, if an accused is re-arrested that would not be a violation of the Constitution or the law. He has placed reliance on a decision of this Court in *Rakesh Kumar Paul Vs. State of Assam*[14] in support of the proposition that release of an accused on the ground that chargesheet was not filed within a period of 60 days would not prohibit or otherwise prevent the arrest or re-arrest of the accused on cogent grounds in respect of the subject charge.

9.5. He submits that the lapse or omission on the part of the investigating agency in complying with the procedural safeguards under Article 22(2) of the Constitution cannot result in a blanket immunity to an accused against any future arrest in the same case. According to him, the consequence of such non-compliance must remain confined to the legality of the defective arrest or detention and cannot be enlarged into a

[14] (2017) 15 SCC 67

permanent prohibition against the exercise of the statutory power of arrest.

9.6. He further submits that release from such illegal custody does not erase the offence or terminate the investigation or confer blanket immunity upon the accused against any subsequent lawful arrest. There is no such provision either in the Constitution or in the BNSS imposing an absolute bar for fresh arrest merely because the earlier arrest or detention was declared illegal. To hold otherwise would be to convert procedural safeguard against unlawful detention into a substantive and permanent immunity from arrest, which is not contemplated by law.

9.7. Thus, release consequent upon violation of the twenty four hour requirement and the permissibility of a subsequent lawful arrest operate in distinct and different fields. The former gives effect to the constitutional and statutory violation by terminating the unlawful custody, whereas the latter preserves the lawful power of investigation and arrest. In such circumstances, appellant cannot claim blanket protection

against any future arrest/re-arrest merely on the ground that the earlier arrest or detention suffered from a procedural violation.

9.8. Placing reliance on a compilation of judgments submitted on behalf of the State of Punjab, learned Additional Advocate General submits that the impugned judgment and order of the High Court is in accordance with law. Therefore, no interference is called for. Consequently, the appeal of the appellant may be dismissed.

10. On the other hand, Mr. Gopal Sankaranarayan, learned senior counsel appearing for the respondent No. 2, *de facto* complainant, submits that the prayers made by the appellant before the High Court were not maintainable. Therefore, the High Court rightly dismissed the petition of the appellant. Seeking a blanket direction to the investigating agency prohibiting and restraining it from re-arresting the appellant under any circumstances cannot be accepted. On that ground itself, the appeal is liable to be dismissed.

10.1. Referring to the case of *A.K. Gopalan (In Re)*[15], he submits that the petitioner therein was detained afresh just 5 minutes after his release was ordered. The court set aside the second detention order on the ground that the government ought to have disclosed to the court the fresh detention order when he was released. However, no bar on re-arrest was laid down by the court. Referring to decisions of this court in *Ujagar Singh Vs. State of Punjab*[16] and *V.S. Sundaram Vs. Laisram Achou Singh*[17], he submits that in those cases, this Court had directed release of the arrestee without recording any finding that such a person cannot be re-arrested. In fact, if an accused is released on bail, Section 439(2) Cr.P.C. corresponding to Section 483(3) BNSS grants the High Court and the Court of Session the power to direct re-arrest of any person who has been released on bail, subject to judicial reconsideration in the light of emerging facts.

[15] 1951 SCC Online Madras 1993
[16] 1951 SCC 170
[17] 1958 SCC Online SC 174

10.2. Referring to the constitutional guarantees under Article 22(1) and Article 22(2) of the Constitution i.e. the right to be informed of the grounds of arrest and the right to be produced before a Magistrate within 24 hours, learned senior counsel submits that these are also part of the criminal law of this country. While Section 50 of the Cr.P.C. corresponding to Section 47 of the BNSS mandates supply of grounds of arrest, Section 57 of the Cr.P.C. (Section 58 of the BNSS) requires an arrestee to be produced before the Magistrate within 24 hours.

10.3. Referring to *Bhim Singh,* learned senior counsel submits that it was a case of violation of Article 22(2). This Court held that since the petitioner was no longer in detention, there was no need to make any order to set him at liberty but to compensate him suitably and adequately. On the basis of the said decision, Mr. Gopal Sankaranarayan would like to contend that since the appellant is already at liberty, the only remedy available to him is to sue the State for compensation for infringement of his right under Article 22(2), if any.

10.4. Referring to the scheme of arrest, learned senior counsel submits that under Section 41 Cr.P.C. (corresponding provision being Section 35 of BNSS), a police officer has been authorized to arrest a person without a warrant issued by a Magistrate upon reason to believe that the person has committed a cognizable offence. Upon such arrest, two rights accrue to the arrestee under the statute flowing from Article 22 i.e. (i) Section 50 Cr.P.C. (Section 47 BNSS) requires the grounds of such arrest to be supplied to the accused; and (ii) Section 57 Cr.P.C. (Section 58 BNSS) mandates that such arrestee should be produced before a Magistrate within 24 hours (excluding the travel time) for further detention.

10.5. He submits that infringement of any of the above two rights i.e. non-supply of written grounds of arrest or production before the Magistrate after 24 hours, renders the arrest illegal for which the arrestee has to be released by the Magistrate. However, such release is neither on bail nor on execution of any bond. It is a case where the accused is released on account of

violation of his fundamental rights but without any further protection in the form of bail or a personal bond.

10.6. Referring to the decision of this Court in *Mihir Rajesh Shah,* more particularly to paragraph 67 thereof, he submits that what is deducible from the said decision is that non-supply of written grounds of arrest upto two hours prior to production of the arrestee for remand renders the arrest illegal for which the arrestee is entitled to be released; upon such release, if the investigating agency wants to re-arrest the accused immediately, it is required to move an application for custody before the Magistrate furnishing therewith the grounds of arrest and the reasons for prior non-compliance. Such an application shall be decided by the Magistrate within a week. Thus, this Court has made a carve-out for the investigating agency to move such an application without the accused being in custody. Learned senior counsel submits that in the event the investigating agency prefers not to move such an application, there is no bar on re-arresting the accused at a later point of time.

10.7. Referring to the decisions of this Court relied upon by the learned senior counsel for the appellant i.e. in *Subhash Sharma* and *Manoj*, Shri Sankaranarayan submits that in these cases, the arrestee had filed bail applications. Therefore, those cases are entirely distinguishable from the present case where the appellant had filed a petition under Section 482 Cr.P.C. (corresponding to Section 528 BNSS) seeking *carte blanche* protection from arrest which is *per se* not maintainable.

10.8. As regards default bail for failure of the investigating agency to file the chargesheet within 60 days or 90 days, as the case may be, under Section 167(2) Cr.P.C. (Section 187(2) BNSS), the same has been held by this Court to be an indefeasible fundamental right of an accused. In such a case, the Magistrate is under an obligation to inform the arrestee about the fundamental right that had accrued to him because of the default of the investigating agency. However, this Court in *Sanjay Dutt Vs. State*[18] and *Rakesh Kumar Paul* has clarified that even in such an eventuality, upon being released for such

[18] (1994) 5 SCC 410

default, there is no bar for re-arresting the accused though the procedure under the Cr.P.C. must be followed.

10.9. Finally, Mr. Sankaranarayan, learned senior counsel for respondent No. 2, submits that if the contention of the appellant that a person who has suffered a breach under Article 22(2) of the Constitution cannot ever be re-arrested, is accepted, it would only encourage *mala fide* or illusory arrests, thereby defeating the rule of law which includes the right of the victim to a free and fair trial. In this connection, he has referred to a decision of this Court in *Asha Ranjan Vs. State of Bihar*[19], wherein this Court held that a wrongful act of an individual cannot derogate the right of fair trial as that interest is closer, especially in criminal trials, to the rule of law.

10.10. Concluding his submissions, learned senior counsel submits that there is no merit at all in the submissions of learned senior counsel for the appellant and, therefore, the appeal should be dismissed.

[19] (2017) 4 SCC 397

11. Submissions made by learned counsel for the parties have received the due consideration of the Court. The judgments cited at the Bar have been carefully perused and analysed.

12. In this case, we are concerned with Article 22(1) and Article 22(2) of the Constitution of India. While Article 22(4) to Article 22(7) of the Constitution of India deal with preventive detention, Article 22(3) clarifies that clauses (1) and (2) of Article 22 shall not apply to any person who for the time being is an enemy alien or to any person who is arrested or detained under any law providing for preventive detention. Therefore, clauses (1) and (2) of Article 22 apply in the case of an arrest other than preventive detention. Article 22(1) and Article 22(2) are as follows:

> **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.

12.1. Clause (1) of Article 22 is a negative prohibition. It says 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.

12.2. In so far clause (2) is concerned, there is a clear mandate here. 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 the Magistrate.

13. The constitutional mandate of Article 22(1) has been provided for as a statutory protection to an arrestee under Section 50 of Cr.P.C. Section 50 Cr.P.C. reads thus:

> **50. 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.

13.1. While sub-section (1) of Section 50 mandates every police officer or other person arresting any person without warrant to forthwith communicate to the arrestee full particulars of the offence for which he is arrested or other grounds for such arrest, as per sub-section (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 for which he may arrange his sureties.

14. Section 50 Cr.P.C. is reproduced in BNSS in the form of Section 47.

15. The protection of clause (2) of Article 22 finds manifestation in Section 57 Cr.P.C. which reads as under:

> **57. Person arrested not to be detained more than twenty-four hours.** - No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

15.1. Section 57 prohibits a police officer from detaining in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.

16. Section 58 BNSS is the present provision corresponding to Section 57 Cr.P.C., providing for the same time frame of twenty-four hours.

17. *Pankaj Bansal* is a case where the appellant was arrested under Section 19 of the Prevention of Money Laundering Act, 2002 (PMLA). The arrest was challenged on the ground that grounds of arrest were not furnished to the appellant. Adverting to Section 19 of PMLA, this Court posed the question as to how the Enforcement Directorate is required to 'inform' the arrested person of the grounds of his arrest. Section 19 does not specify in clear terms as to how the arrested person is to be 'informed' of the grounds of arrest. In the above context, the Bench referred to Article 22(1) of the Constitution observing that 'informing' a person who is arrested of the grounds of such arrest is a fundamental right guaranteed to the arrested person; the mode of conveying 'information' of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. Noting that Section 45 of PMLA imposes stringent twin conditions for grant of bail to a person arrested under Section 19, the Bench opined that it would be essential for the arrested

person to be aware of the grounds on which the authorized officer arrested him under Section 19 and the basis for the officer's 'reason to believe' that he is guilty of an offence punishable under the PMLA. It is only if the arrested person has knowledge of the facts and grounds for his arrest that he would be in a position to plead and prove before the special court that there are grounds to believe that he is not guilty of the offence alleged so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

17.1. When Section 19 PMLA provides that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the PMLA, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. Non-compliance in this regard would entail release of the arrested person straightaway. This Court opined that such a

precarious situation can be easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest to the arrested person under due acknowledgement.

17.2. Proceeding further, this Court highlighted as to why the aforesaid would be the proper course to adopt i.e. to achieve the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person why he is being arrested but also to enable such person to seek legal counsel and, thereafter, to present a case before the court under Section 45 to seek release on bail. The Bench explained that in the event the grounds of arrest are voluminous, it would be well-nigh impossible for the arrestee to record and remember all that were read out to him for future recall so as to avail the legal remedies. 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 out to him. In such a scenario, 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 out of the grounds of arrest and claim due compliance with the constitutional requirement or the statutory mandate.

17.3. Therefore, this Court in *Pankaj Bansal* declared that it would be necessary henceforth that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.

18. In *Prabir Purkayastha,* this Court was dealing with the challenge to the arrest of the appellant on various grounds including on the ground of non-furnishing of the grounds of arrest. Alongwith various provisions of the IPC, appellant was arrested under the provisions of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAP Act' hereinafter). After surveying the law, this Court declared that any person arrested on the allegation of commission of an offence under the provisions of the UAP Act or for that matter any other offence, he has a fundamental and statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds

of arrest has to be furnished to the arrested person as a matter of course and without exception at the earliest.

18.1. Dilating on the necessity for furnishing the grounds of arrest to the arrested person, this Court held thus:

> **19.** .....The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

18.2. The Bench observed that the right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon the fundamental rights guaranteed under the aforesaid provisions of the Constitution has not only been frowned upon by this Court in a catena of judgments but would have to be dealt with strictly.

18.3. This Court declared that any infringement of Article 22(1) of the Constitution of India would vitiate the process of

arrest and remand. Mere fact that subsequently a chargesheet came to be filed would not validate the illegality and the unconstitutionality of the arrest. Such a fundamental right is sacrosanct and cannot be breached under any situation.

19. This Court in *Vihaan Kumar* was considering the challenge to the arrest of the appellant on the ground that he was not informed of the grounds for his arrest, thus being in violation of his fundamental right under Article 22(1) of the Constitution. In this case, the appellant was arrested under various provisions of the IPC.

19.1. This Court held that as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The ground should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. 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. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects of Articles 21 and 22.

19.2. On the basis of the said reasoning, this Court declared that if the requirement of Article 22 is not followed while arresting a person or after arresting a person, it will also violate the fundamental right to liberty guaranteed under Article 21, rendering such arrest illegal.

19.3. Once it is held that the arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a chargesheet and order of cognizance will not validate an arrest which is *per se* unconstitutional, being violative of Articles 21 and 22(1) of the Constitution. This Court emphasized in no uncertain terms, *we cannot tinker with the most important safeguards provided under Article 22.*

19.4 Though an argument was advanced on behalf of the State that even if the accused is released on the ground of

violating Article 22, he can be re-arrested was not gone into by this Court as it was found to be not necessary to decide the issue involved in that case.

19.5. In the above context, this Court declared that 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 would also be a ground to grant bail even if statutory restrictions on the grant of bail exist. This Court held thus:

> **26.6.** 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.

20. *Mihir Rajesh Shah* is a case where this Court was considering the issue as to violation of the appellant's right under Article 22(1) of the Constitution and Section 50 of the Cr.P.C. (now Section 47 of BNSS) as the appellants contended that they were not informed of the grounds of their arrest in writing.

20.1. It was a case of rash and negligent driving by the driver Mihir Rajesh Shah leading to the death of the pillion rider of the scooter who was the wife of the informant. The offending vehicle dashed against the scooter leading to the tragic death of the wife. Appellants were charged under various provisions of the BNS and the Motor Vehicles Act, 1988.

20.2. The Bench observed that the mandate contained in Article 22(1) of the Constitution is unambiguous and clear in nature. It provides that the arrested person cannot be detained in custody without being informed, as soon as may be, of the grounds for such arrest. Explaining the above, the Bench held as follows:

> **38.** The objective enshrined in Article 22(1) of the Constitution of India for furnishing grounds of arrest stems from the fundamental principle of providing opportunity to a person to allow him to defend himself from the accusations that are levelled against him leading to his arrest. The salutary purpose of informing the grounds of arrest is to enable the person to understand the basis of his arrest and engage legal counsel to challenge his arrest, remand or seek bail and/or avail of any other remedy as may be available to him/her under law.

20.3. Explaining further, the Bench held that Article 22(1) does not create any exception; in other words, there is no exception to the mandatory unexceptional duty cast on the State to provide the arrested person with the grounds of such arrest to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22(1) is without any exception. It is not statute specific. It is grounded in the fundamental right to life and personal liberty under Article 21 of the Constitution of India; therefore, making it applicable to all offences including those under the IPC or BNS.

20.4. The requirement of informing the arrested person the grounds of arrest in the light of and under Article 22(1) is not a mere formality but a mandatory binding constitutional safeguard. Thus, if a person is not informed of the grounds of his arrest as soon as may be, it would amount to violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal. The provisions of Article 22(1) cannot be read in a restrictive manner; otherwise, its intended purpose of securing

personal liberty would not be achieved, rather curtailed and put to disuse.

20.5. After analysing a catena of decisions, this Court opined thus:

> **55.** This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.

20.6. This Court also considered another issue i.e. when the grounds of arrest are not furnished either prior to arrest or immediately after the arrest, would it vitiate the arrest for non-compliance of the provisions of Section 50 Cr.P.C. (Section 47 BNSS) irrespective of certain exigencies where furnishing such grounds would not be possible forthwith. It was in that context, this Court after due consideration held as under:

> **62.** We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However,

in exceptional circumstances such as offences against body or property committed in *flagrante delicto*, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.

20.7. Thereafter, this Court explained the rationale for insisting on such a time frame and declared as under:

65. 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.

20.7.1. Therefore, what this Court contemplated is that when the schedule for complying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal, entitling the arrestee to automatic release. If the arresting authority desires to re-arrest such a person, it has to move an application for custody before the Magistrate furnishing the reasons and necessity for the same. It will also be necessary to supply the grounds of arrest in writing to such person setting forth the explanation for non-supply thereof at the first place. On receipt of such an application, the Magistrate shall decide the same expeditiously and preferably within a week by adhering to the principles of natural justice.

20.8. This Court summarized the conclusions in the following manner:

66. In conclusion, it is held that:

66.1. 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);

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

66.3. 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.

66.4. 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.

21. Two judgments we need to deal with before we move on to clause (2) of Article 22 of the Constitution of India. These two judgments are *Sri Darshan* and *Sonam Raghuvanshi. Shri Darshan* is a judgment by a two-Judge Bench of this Court delivered on 14.08.2025. That was a case where the State had filed the appeal challenging the order of the High Court of Karnataka at Bengaluru whereby the accused persons were enlarged on bail. The allegations against the accused persons

were under Sections 120B, 364, 384, 355, 302, 201, 143, 147, 148, 149 and 34 IPC. This Court cancelled the bail granted by the High Court on various grounds. In paragraph 20.1, the Bench captioned the heading as: *delay in furnishing the grounds of arrest cannot by itself constitute a valid ground for grant of bail.* The contention made on behalf of the accused was that the grounds of arrest were not furnished immediately in writing. This submission was rejected by the Bench by holding the same to be devoid of merit. The Bench was of the view that neither Article 22(1) of the Constitution nor Section 50(1) of Cr.P.C. prescribes a specific form or insists upon written communication of grounds in every case. The consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. Mere absence of written grounds does not render the arrest illegal unless it results in demonstrable prejudice or denial of a fair opportunity to defend. In the facts of that case, it was found that the accused were aware of the reasons for their arrest and they were legally represented from the outset; they had applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusation. However, the Bench

recorded a finding that the settled principle is that procedural lapses in furnishing grounds of arrest do not *ipso facto* render custody illegal or entitles the accused to bail.

21.1. In the case of *Sonam Raghuvanshi* also, the State of Meghalaya had filed the appeal challenging the order of the High Court of Meghalaya granting bail to the respondent-accused. In the said case, this Court noted that the respondent-accused was arrested by the State on 09.06.2025 and the grounds of arrest were also supplied to her on the same date. However, it was contended that there was misquoting of a section in the grounds of arrest; instead of Section 103(1) BNS, Section 403(1) BNS was mentioned. This Court observed that the same was apparently a typographical error. Prior to the present order granting bail, respondent-accused had filed three previous bail applications. It was only in the related bail application that this ground was raised.

21.1.1. This Court in *Sonam Raghuvanshi* noted that the decision in *Mihir Rajesh Shah* is prospective. The same was rendered on 06.11.2025 whereas respondent-accused was

arrested on 09.06.2025 much before the date of pronouncement of the judgment in *Mihir Rajesh Shah.* That apart, the Bench held that there is a fundamental difference between non-service of grounds of arrest and non-furnishing of adequate reasons thereunder. While the first category would vitiate the arrest, in the second category one has to see the prejudice caused to the accused. In the facts of that case, this Court noted that respondent was indeed served with the grounds of arrest.

21.1.2. However, the Bench made a passing observation that the law does not restrain the prosecuting agency from re-arresting a person; in other words, for non-compliance of the service of grounds of arrest to an accused and consequent enlargement on bail, it would not act as a fetter to re-arrest the said accused person for the purpose of investigation.

22. Though *Sri Darshan* and *Sonam Raghuvanshi* may appear to strike a discordant note, we need not labor on this. Judgment in *Sri Darshan* was rendered before *Mihir Rajesh Shah*; likewise, in the case of *Sonam Raghuvanshi*, the arrest took place prior to *Mihir Rajesh Shah*. Therefore, it is *Mihir Rajesh Shah*

which sums up the correct legal position and lays down the correct law which is binding. It is in tune with the consistent line of jurisprudence developed over the years by this Court.

23. Having discussed the judgments, it would be apposite to sum up the core principles *qua* Article 22(1). The grounds of arrest must be in writing and in a language which is understood by the accused. A copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception. An accused has a fundamental and statutory right to be informed about the grounds of his arrest in writing and a copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception at the earliest. Any attempt to encroach upon the fundamental rights guaranteed under Article 22(1) of the Constitution has to be frowned upon by the courts and dealt with strictly. It would vitiate the process of arrest and remand. Such a fundamental right being sacrosanct, cannot be breached under any situation. Any breach or non-compliance would entail immediate release of the arrested person because such arrest is

unconstitutional. We cannot tinker with the most important safeguards provided under Article 22. Subsequent filing of chargesheet and order of cognizance will not validate such an arrest. Article 22(1) applies across the spectrum including offences under the IPC or under special enactments. It is not statute specific. It is not a mere formality or a matter of procedure. It is a mandatory binding constitutional safeguard. When there is violation of the Constitution, question of prejudice or demonstrable prejudice does not arise. The safeguards adumbrated in Article 22(1) are not mere procedural safeguards; these are fundamental principles which are required to be followed in the event liberty of a person is sought to be curtailed. Therefore, it is not correct at all to say that procedural lapses in furnishing grounds of arrest do not *ipso facto* render custody illegal or entitles the accused to bail. When an accused is released for violation of his fundamental rights under Article 22 (1), he is not enlarged on bail. He is released from illegal and unconstitutional detention.

24. While we are bound by the ratio laid down in *Mihir Rajesh Shah* with the conclusions summarized in paragraph 66

of the said judgment and endorse the course of action declared in paragraph 65 thereof, we would like to further stress upon and strengthen the safeguards introduced by way of the said judgment when it comes to re-arrest of an accused who is released from custody for breach of Article 22(1). If upon release of such an accused, the investigating agency is still of the opinion that for furthering the course of investigation it is necessary to have custodial interrogation of the accused, then as directed in paragraph 65 of *Mihir Rajesh Shah,* the investigating agency has to file an application before the concerned Magistrate for custody mentioning therein the reasons for re-arrest of the accused and the necessity for the same. The application should also contain the explanation for non-supply of the grounds of arrest to the accused at the first instance. However, this application can only be moved after furnishing the grounds of arrest to the accused. To rule out any foul play or collusion, such an application must have the endorsement of the immediate superior authority. This is because the immediate superior authority should know that the concerned officer has committed an unbecoming act of violating a constitutional provision for which necessary remedial

steps will have to be taken. On receipt of such application with the endorsement, the concerned Magistrate shall decide the same expeditiously and as directed in *Mihir Rajesh Shah* preferably within a week of its submission by adhering to the principles of natural justice.

25. What is sought to be highlighted is that once there is a breach of Article 22(1) of the Constitution, the power to re-arrest the accused must not be left to the discretion of the very same authority who had violated the said provision of the Constitution. It must have the judicial imprimatur. It is only when the Magistrate is satisfied that for *bona fide* reasons the grounds of arrest could not be furnished to the arrestee at the first instance but furnished subsequent to his release and on further satisfaction that the accused needs to be re-arrested, he may pass an order permitting the investigating agency to re-arrest.

25.1. On the administrative side, the superior authority when presented with the application seeking his endorsement for custody of the accused who has been released for violation of

Article 22(1) shall hand over the investigation of the case to another officer, further directing departmental enquiry for such a serious lapse. If the enquiry culminates in adverse finding against the erring police officer(s), it would entail departmental action with entry in the service book of such officer(s).

26. Let us now turn our attention to clause (2) of Article 22 and the consequences of breach thereof.

27. Insofar the impugned order of the High Court is concerned, we find that the High Court held that for the illegal detention of the appellant beyond 24 hours, he may take appropriate legal action against the defaulting police officials. Thus, the High Court left it to the appellant to initiate action against the defaulting police officials who had violated Article 22(2) of the Constitution in the case of the appellant. However, the High Court further observed that because the appellant is accused of a serious and grave offence, the investigating agency cannot be prohibited or restrained from re-arresting him. Question is, is it the correct legal proposition?

28. *Bhim Singh* is a case where Article 22(2) was violated. Shorn of details, Bhim Singh, a member of the Legislative Assembly of Jammu and Kashmir, was arrested at about 03:00 am on September 10, 1985 for an offence under Section 153A of the Ranbir Penal Code on the allegation of making an inflammatory speech at a public meeting in Jammu on September 8, 1985. He was arrested by the Qazikund police from there and was taken to Jammu. The police alongwith Bhim Singh reached Jammu city police station at around 07:30 pm. On reaching Jammu, it was informed that Bhim Singh was wanted in connection with a case registered by the police of Pacca Danga Police Station. Therefore, he was taken to the Pacca Danga Police Station at about 09:30 pm. On September 11,1985, police remand for two days was obtained from the Executive Magistrate. However, the Court noted that neither the remand application nor the endorsement showed that Bhim Singh was produced before the Magistrate when remand was sought for. Bhim Singh expressly denied that he was produced before any Magistrate on 11th. Thereafter, further remand for one day was obtained from the Sub-Judge on September 13, 1985. Again, Bhim Singh stated on

oath that he was not produced before the Sub-Judge on the 13th nor was he examined at any time by a doctor. Ultimately, he was taken to the Court of the Sessions Judge on September 6, 1985, where he was released on bail on his personal bond by the Additional Sessions Judge.

28.1. This Court noted that it was only concerned with the detention of Bhim Singh from 03:00 am of September 10, 1985 until he was produced before the Sub-Judge on September 14, 1985. The two remand orders made by the Executive Magistrate and by the Sub-Judge on September 11 and September 13, 1985 did not contain any statement that Bhim Singh was produced either before the Executive Magistrate or before the Sub-Judge. After examining thoroughly the materials on record, this Court recorded the finding that it did not have the slightest hesitation in holding that Bhim Singh was not produced before the Executive Magistrate on 11th and was also not produced before the Sub-Judge on 13th. Orders of remand were obtained from the Executive Magistrate and the Sub-Judge on the applications of

the police officers without the production of Bhim Singh before them.

28.2. In these circumstances, this Court held that it had no doubt that the constitutional rights of Bhim Singh were violated with impunity. However, as he was then not in detention, the Court refrained from passing any order setting him at liberty. However, the Court declared that Bhim Singh should be suitably and adequately compensated. This Court observed that when a person comes to the court with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases, suitable mandatory compensation should be awarded. Taking the view that it was the appropriate case to award compensation, this Court directed the State to pay to Bhim Singh a sum of Rs. 50,000.00 within two months.

29. In *Manoj,* the appellant was arrested on 22.06.1998 in connection with a case involving Section 15 of the Narcotic

Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act' hereinafter) registered by the police of Kota in Rajasthan. In the meanwhile, the appellant was also shown as arrested in connection with another case under the NDPS Act in the State of Madhya Pradesh on 07.08.1998. Appellant was granted bail by the High Court of Rajasthan (Jaipur Bench) in the Rajasthan case on 16.10.1998. But appellant could not be released on bail as he was unable to execute the bond because of his arrest in the Madhya Pradesh case. When he moved the High Court of Madhya Pradesh for bail after his first attempt before the Sessions Court of Mandsaur was rejected, the High Court of Madhya Pradesh also rejected his bail petition. After expiry of 90 days of arrest in the Madhya Pradesh case, he moved an application before the Sub-Judge, Kota seeking his release under the proviso to Section 167(2) Cr.P.C. as no chargesheet was filed in the M.P. case till then. However, the Special Court rejected the application for bail on the ground that appellant was never produced before the court after his formal arrest on 07.08.1998 and, therefore, he could not be stated to be in judicial custody in the M.P. case.

29.1. In this context, the Bench observed that the police officer who conducts investigation cannot obviate the legal obligation to perform two requisites if he knows that investigation cannot be completed within 24 hours after the arrest of the accused. One requisite is to transmit a copy of the case diary to the nearest Judicial Magistrate. The other is to forward the accused to such Magistrate simultaneously. The only exceptional ground on which the police officer can avoid producing the arrested person before such Magistrate is when the officer concerned is satisfied that there are no grounds for believing that the information or accusation was well founded. In such case, the accused must be released from custody.

29.2. If the police officer is forbidden for keeping an arrested person beyond 24 hours without the order of a Magistrate, what should happen to the arrested person after the said period? This Court answered the question by holding that it is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established in law. Close to its heels, the Constitution directs that the person

arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest with only the time necessary for going from the place of arrest to the court of the Magistrate to be excluded. There are only two exceptions to this constitutional command: the first being that the arrested person is an enemy alien; and the second contingency is when the arrest is made under any law for preventive detention. In all other cases, the Constitution has prohibited peremptorily that no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

29.3. This Court held that when the State of Madhya Pradesh, whose police made the arrest of the appellant in connection with the Madhya Pradesh case on 07.08.1998 admitted that after the arrest, he was not produced before the nearest Magistrate within 24 hours, its inevitable corollary is that detention made as a sequel to the arrest would become unlawful beyond the said period of 24 hours. State of Madhya Pradesh cannot validly press for further detention of the accused beyond 24 hours. That arrest had become *otiose*.

30. A Single Bench of the Gauhati High Court in *Kamal Dutta Vs. Union of India*[20] (judgment by Justice Ujjal Bhuyan) also dealt with a similar case where the accused petitioner was not produced before the Magistrate within the constitutionally mandated time limit of 24 hours. There was thus violation of Article 22(2); therefore, the continued detention of the accused beyond 24 hours became illegal and unconstitutional. Since the detention of the petitioner accused was found to be unconstitutional, Gauhati High Court observed that question of payment of compensation would arise in such a case. When there is violation of Articles 21 and 22 of the Constitution, a writ court exercising its jurisdiction under Article 226 of the Constitution of India can certainly award compensation as a public law remedy. Following the decisions of this Court in *Rudul Sah Vs. State of Bihar*[21] and *Nilabati Behera @ Lalita Behera Vs. State of Orissa*[22], it was held that order for compensation in such a proceeding would be in the nature of a palliative and would not preclude the affected person from bringing in a suit to recover appropriate

[20] (2016) 1 GLR 539
[21] (1983) 4 SCC 141
[22] (1993) 2 SCC 746

damages from the State and its erring officials. Compensation awarded under the public law remedy is in the nature of exemplary damages for violation of civil liberties of a person which is not compensation as is understood under the private municipal law.

31. A two-Judge Bench of this Court in *Subhash Sharma* held that where detention continued beyond 24 hours without the accused being produced before the Magistrate, the arrest of the accused was rendered completely illegal as a result of violation of clause (2) of Article 22 of the Constitution of India. Continuation of the accused in custody without being produced before the nearest Magistrate within the stipulated time frame of 24 hours is completely illegal and infringes the fundamental rights of the accused under clause (2) of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

31.1. Once a court while dealing with a bail application finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution have been violated while arresting the accused or after arresting him, it is the duty of the court dealing with the bail application to release the accused. When arrest is illegal or vitiated, bail cannot be denied notwithstanding non-fulfilment of the twin tests under Section 45(1)(ii) of the PMLA. It is because it is the duty of every court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

32. As noticed supra, the above judgments are in complete sync with the constitutional jurisprudence which has evolved in our country over the years.

33. Long back, in the celebrated case of *Khatri*, this Court had strongly urged that the constitutional requirement to produce an arrested person before a Judicial Magistrate within 24 hours of his arrest must be strictly and scrupulously observed. We have come a long way since then but this constitutional mandate continues to remain firm and unshaken, as if engraved in stone.

34. We are unable to concur with the reliance placed by the learned Additional Advocate General for the State of Punjab on the decisions of this Court in *Sanjay Dutt* and *Rakesh Kumar Paul*. Reliance placed on the above two judgments is misplaced because those two decisions dealt with cases of default bail. In *Sanjay Dutt*, the Constitution Bench made it clear that an indefeasible right accrues to the accused in the event of non-filing of chargesheet within the statutory period of 60 days or 90 days or 180 days, as the case may be, and is enforceable only prior to filing of the chargesheet; it does not survive or remain enforceable thereafter, if already not availed of. In other words, the Constitution Bench took the view that the indefeasible right of default bail continues till the chargesheet or challan is filed and it gets extinguished thereafter. In the case of *Rakesh Kumar Paul*, the chargesheet was not filed within the period of 60 days. In the above factual backdrop, this Court held that accused Rakesh Kumar Paul was entitled to the grant of default bail but that would not prohibit or otherwise prevent the arrest or re-arrest of the petitioner-accused on cogent grounds in respect of the subject charge. Of course, upon arrest or re-arrest, the

petitioner-accused would be entitled to petition for grant of regular bail which application should be considered on its own merit.

35. There is a fundamental difference to the proposition of law laid down in those two cases and the present one. In the former, the question for consideration was whether upon grant of default bail for failure to file the chargesheet within the statutory period, can an accused be arrested or re-arrested again? The view of this Court is in the affirmative. In the present case, we are dealing not only with the violation of statutory rights of the appellant but also his fundamental rights under clauses (1) and (2) of Article 22; both infringements being at the threshold of arrest, unlike in a case of default bail.

36. Similar to what we have held and directed in paragraphs 24 to 25.1 above, the same procedure has to be followed when there is a breach of clause (2) of Article 22 of the Constitution of India and if the investigating agency still wants custody of the accused after his release for such constitutional violation. Additionally, depending upon the facts and circumstances

of the case, the High Court may direct payment of compensation as part of the public law remedy in a case of violation of Article 22(2) of the Constitution, with the liberty to the accused to avail his remedy under the private civil law.

37. Before we wind up, we need to remind ourselves that the Constitution or a constitutional provision cannot be interpreted in a vacuum. Interpretation of the Constitution cannot also be left to imponderables in the form of ifs and buts. The Constitution is based on certain basic principles, much above the statutory threshold. Therefore, violation of the Constitution or a constitutional provision cannot be countenanced. It has to be dealt with strictly. It is not dependent on the nature or gravity of the offence, encompassing within its sweep all offences. It cannot be interpreted in a restrictive manner. Though observed in the backdrop of an order of preventive detention, nonetheless, it is worth mentioning and reiterating what a three-Judge Bench of this Court held in *Prabhu Dayal Deorah Vs. District Magistrate, Kamrup* [23]. This

[23] (1974) 1 SCC 103

Court observed in no uncertain terms that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen except in accordance with the procedure established by the Constitution and the laws. When a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, it is the duty of the court to ensure that such procedure is rigorously observed, howsoever, strange this might sound to some ears.

38. For all the aforesaid reasons, we set aside and quash the impugned order of the High Court dated 29.05.2026 as well as the impugned observations of the learned Magistrate dated 18.05.2026. We hold and direct that in the event the respondents are of the view that custodial interrogation of the appellant is necessary, they will have to follow the mandate of *Mihir Rajesh Shah* read with paragraphs 24 to 25.1 of this judgment as well as the mandate of paragraph 36 supra. We, however, clarify that we have not expressed any opinion on the merit of the accusation against the appellant.

39. A copy of this judgment and order may be circulated to all Director Generals of Police of the States and Union Territories as well as to the Registrar Generals of the High Courts and Directors of State Judicial Academies.

40. Appeal is accordingly allowed.

.....J.
[UJJAL BHUYAN]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI;
SEPTEMBER 21, 2026.