

EXPERTS CORNER

Preserving Foundational Rights: Supreme Court Reaffirms Importance of Informing Accused of Grounds of Arrest in UAPA Offences



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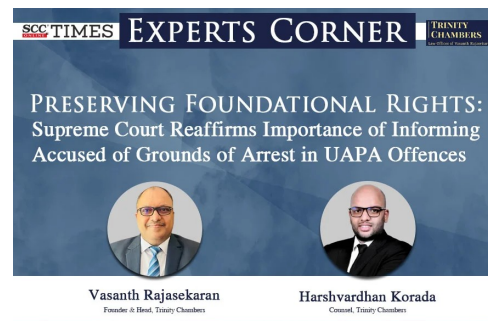
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Preserving Foundational Rights: Supreme Court Reaffirms Importance of Informing Accused of Grounds of Arrest in UAPA Offences

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By its very nature, adherence to the principles of natural justice may seem to be an obvious, fundamental, and non-controversial subject, yet this is not the case in Indian criminal law jurisprudence. In the recent past, the fundamentals of arrest and remand, particularly the rights of individuals to be informed of the grounds of their arrest, have become a theme of extensive debate. A vital aspect of these discussions is whether reasons of arrest/detention should be communicated in writing to the detainee or arrestee. This article delves into the critical issue of how and when a person should be informed of the grounds of their arrest, specifically in the context of the Unlawful Activities (Prevention) Act, 1967 (UAPA).

A. Laying the foundation in *Pankaj Bansal v. Union of India*

In *Pankaj Bansal v. Union of India*¹, the Supreme Court, in context of the Prevention of Money-Laundering Act, 2002 (PMLA), upon referring to its earlier decisions in *Vijay Madanlal Choudhary v. Union of India*² and *V. Senthil Balaji v. State*³, reaffirmed the following principles:

- (i) Officers authorised to make arrest under the PMLA must adhere to inherent safeguards outlined in Section 19 of the PMLA.
- (ii) The authorised officer must document reasons for believing that the person is guilty of an offence and warrants arrest.
- (iii) The arrested person must be informed of the grounds for arrest, in compliance with Article 22(1) of the Constitution of India.
- (iv) The arrested person must be presented before a Magistrate within 24 hours, as required by Section 167 of the Code of Criminal Procedure, 1973 (CrPC).
- (v) The investigating agency must convince the Magistrate of the necessity for the accused's custody through substantial evidence.
- (vi) Section 19 of the PMLA does not specify how the arrested individual should be informed of the

grounds of the arrest. This aspect was also not explicitly discussed in *Vijay Madanlal Choudhary*⁴ and *V. Senthil Balaji*⁵.

(vii) To ensure proper compliance with Article 22(1) of the Constitution of India, which guarantees that an arrested person is promptly informed of the grounds of arrest, it is crucial that the method of conveying the grounds is meaningful. In this regard, the Supreme Court observed as below:

36. That being so, *there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrest person as a matter of course and without exception.* There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. *Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard....*

37. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses....The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.

* * *

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, *we hold 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.*⁶

B. The case in *Prabir Purkayastha v. State (NCT of Delhi)*

In *Prabir Purkayastha v. State (NCT of Delhi)*⁷, an FIR dated 17-8-2023 (FIR) was registered for offences punishable under Sections 13, 16, 17, 18, and 22-C of the UAPA. In pursuance of the FIR, the officers of the PS Special Cell carried out extensive raids at the residential premises of the appellant and a company, namely, PPK Newsclick Studio Pvt. Ltd. (PPK Newsclick) of which the appellant was a director.

During the search and seizure proceedings, numerous documents, and digital devices of the appellant, PPK Newsclick and its employees were seized. The appellant was arrested in relation to the FIR on 3-10-2023 by way of an arrest memo prepared at PS Special Cell. Notably, the arrest memo was prepared in a computerised format and did not contain any column setting out the grounds of arrest.

Eventually, the appellant was presented before the Additional Sessions Judge 02, Patiala House Court (remand Judge) on 4-10-2023 sometime before 6.00 a.m. By way of an order (remand order) passed on the same day, the remand Judge remanded the appellant to police custody of seven days.

Aggrieved by the passing of the remand order, the appellant promptly preferred a criminal miscellaneous case before the Delhi High Court which came to be rejected by a judgment⁸ dated 13-10-2023. The aforesaid order passed by the Single Judge of the High Court was challenged in a petition seeking special leave of the Supreme Court.

(i) Case of the appellant

Before the Supreme Court, the appellant criticised the remand proceedings as having been “manipulated”

and argued that at the time of arrest and even until the passing of the remand order, a copy of the FIR was not shared with the appellant affording him an opportunity to familiarise himself with the nature of the allegations.

The appellant contended that the FIR is virtually nothing, but a second FIR filed on the same set of underlying facts. As such, another FIR dated 26-8-2020 had already been registered by PS Economic Offences Wing (EOW FIR) alleging the violation of the foreign direct investment (FDI) regulations and other laws applicable to the appellant and PPK Newsclick. By treating the EOW FIR as a foundational document disclosing predicate offences, ED registered an ECIR for offences punishable under Sections 3 and 4 of the PMLA. Thereafter, ED carried out extensive search and seizure operations at various places including the office of PPK Newsclick. Ultimately, the ECIR registered by ED was put to challenge by PPK Newsclick and interim reliefs were granted in relation to the same by the High Court. As per the appellant, it was because of this reason that the new FIR came to be registered.

The appellant argued that the contents of the FIR were never disclosed to him. Further, it was an admitted position that the FIR was not made available in the public domain nor a copy of the same was supplied to the appellant until his arrest and subsequent remand. Thus, the appellant argued that the non-supply of the FIR was in clear violation of the fundamental rights enshrined in Articles 20, 21 and 22 of the Constitution of India.

It was only when the appellant filed an application before the remand Judge seeking a certified copy of the FIR that the same was provided to the appellant's counsel on 5-10-2023 i.e. well after the appellant had been remanded to police custody.

In addition to having not been informed of the contents of the FIR, the appellant contended that he was also not informed of the grounds of arrest thereby violating the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 CrPC. In this regard, the appellant relied upon the case in *Pankaj Bansal*⁹ to argue that the mere passing of successive remand orders would not be sufficient to validate the initial arrest, if such arrest was not in conformity with law.

While arguing on the applicability of the decision in *Pankaj Bansal*¹⁰ the appellant submitted that the provisions under Section 19(1) of the PMLA were *pari materia* to Section 43-B(1) of the UAPA. Addressing the prospective applicability of the *Pankaj Bansal*¹¹ (as subsequently clarified in *Ram Kishor Arora v. Enforcement Directorate*¹²), the appellant submitted that the decision in *Pankaj Bansal*¹³ would still continue to apply since the aforesaid judgment was pronounced on 3-10-2023 whereas the remand order was passed on 4-10-2023. Thus, as per the appellant, viewed from any angle, his arrest was made in violation of the constitutional mandate warranting the quashing of the remand order and release of the appellant from custody forthwith.

(ii) Case of the respondent

The State (respondent) vehemently opposed the plea of the appellant seeking quashing of the remand order and release of the appellant from custody. The respondent made the following arguments in support of its case:

- The judgment in *Pankaj Bansal*¹⁴ was only applicable prospectively as held in *Ram Kishor Arora*¹⁵. The appellant was remanded to police custody on 4-10-2023 whereas the judgment in *Pankaj Bansal*¹⁶ was uploaded on the website of the Supreme Court during the late hours of 4-10-2023. Hence, the arresting officers could not have been expected to ensure the compliance of the directions in the said decision. On this ground alone, the respondent urged that the alleged inaction of the investigating officer in furnishing the grounds of arrest in writing to the appellant could not be questioned as the judgment in *Pankaj Bansal*¹⁷ was uploaded and brought in public domain after the

remand order had been passed.

- The respondent referred to Articles 22(1) and (5) of the Constitution of India and contended that there is no such mandate in either of the provisions that the grounds of arrest or detention should be conveyed in writing to the accused or the detainee, as the case may be.
- The right conferred upon the appellant by Article 22(1) of the Constitution of India to consult and to be defended by a legal practitioner was complied with in letter and spirit because one of the relatives of the appellant was informed before the appellant was produced before the remand Judge. Further, admittedly, the appellant's counsel was informed regarding the proposed remand proceedings.
- The counsel of the appellant had shared written objections against the police's prayer for remand of appellant with the Head Constable and the remand Judge had taken note of the said objections.
- The investigation had been completed and a charge-sheet had already been filed in the matter. Thus, the illegality/irregularity, if any, in the arrest of the appellant and the grant of remand of initial police custody stood cured.
- There was considerable difference in the language employed in Section 19 of the PMLA and Sections 43-A and 43-B of the UAPA. Thus, the decision in *Pankaj Bansal*¹⁸ would not come to the aid of the appellant.

(iii) Decision of the Supreme Court

Since the appellant heavily relied on the decision of the Supreme Court in *Pankaj Bansal*¹⁹, the Supreme Court first read through the relevant paras of the aforesaid decision and reiterated that the no person who is arrested shall be detained in custody without being informed of the grounds of arrest.

The Supreme Court then dealt with the argument made on behalf of the respondent that there was an inherent difference between the provisions contained in Section 19 of the PMLA and Sections 43-A and 43-B of the UAPA and thus, the decision and ratio in *Pankaj Bansal*²⁰ would not be applicable to the present case.

In order to address the above aspect, the Supreme Court read through the language of the provisions contained in Section 19 of the PMLA and Sections 43-A and 43-B of the UAPA. The text of the aforesaid provisions is set out side-by-side hereinbelow:

Section 19 of the PMLA	Sections 43-A and 43-B of the UAPA
19. <i>Power to arrest.</i>—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, <i>he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.</i> (2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the adjudicating authority in a sealed envelope, in the manner, as may be prescribed and such	43-A. <i>Power to arrest, search, etc.</i>—Any officer of the designated authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this chapter is kept or concealed in any building, conveyance or place, may authorise any

adjudicating authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a (Special Court or) Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the (Special Court or) Magistrate's Court.

officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43-B. *Procedure of arrest, seizure, etc.*—(1) Any officer arresting a person under Section 43-A shall, as soon as may be, inform him of the grounds for such arrest. (2) Every person arrested and article seized under Section 43-A shall be forwarded without unnecessary delay to the officer in charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

43-C. *Application of provisions of Code.*— The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.

Based on a reading of the aforesaid provisions, the Supreme Court opined that there was no significant difference in the language adopted in Section 19 of the PMLA and Sections 43-A and 43-B of the UAPA. In fact, the Supreme Court held that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43-B(1) of the UAPA were verbatim the same as that in Section 19(1) of the PMLA and both of the aforesaid provisions were rooted in the constitutional safeguards provided under Article 22(1) of the Constitution of India.

On the scope and ambit of Article 22(5) of the Constitution of India, the Supreme Court turned to the Constitution Bench decision in *Harikisan v. State of Maharashtra*²¹ and held that the communication of the grounds of detention to the detainee in writing and in a language which the detainee understands is utmost essential.

As such, the language used in Articles 22(1) and 22(5) of the Constitution of India regarding the communication of grounds of arrest was exactly identical. Thus, the Supreme Court clarified that the interpretation of Article 22(5) would ipso facto apply to Article 22(1) of the Constitution of India inasmuch as the requirement to communicate the grounds of arrest was concerned.

Consequently, the Supreme Court opined that there could be no doubt that any person arrested under the provisions of UAPA has a fundamental and a statutory right to be informed about the grounds of arrest in writing. The object of informing the arrested individual about the grounds of arrest is to ensure that such individual has sufficient and effective means to defend himself and oppose the arrest and take any legal measures available to him.

The Supreme Court observed that right to life and personal liberty is the most sacrosanct and fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India and any attempt to encroach upon the same is heavily frowned upon. In this regard, the Supreme Court referred to the decision in *Roy*

*V.D. v. State of Kerala*²².

Speaking on the respondent's argument that any illegality in the initial remand ought to have been cured upon the filing of the charge-sheet, the Supreme Court held that the mere fact that a charge-sheet had been filed in the matter would not validate the illegality and unconstitutionality of the initial arrest and remand of the appellant.

Turning to the facts of the matter at hand, the Supreme Court observed as below:

- (i) Indisputably, the FIR was never brought to public domain as the same was not uploaded on the website of the investigating agency.
- (ii) A copy of the FIR was not provided to the appellant despite an application having been made in this regard until the remand order was passed by the remand Judge.
- (iii) The appellant was arrested on 3-10-2023 at 5.45 p.m. as per the arrest memo. Since the provisions of CrPC applied to UAPA as well, in terms of Sections 57 and 167(1) CrPC, the appellant was required to be produced before the remand Judge concerned within twenty-four hours of his arrest. Therefore, the investigating authority had a clear window till 5.45 p.m. on 4-10-2023 for producing the appellant before the remand Judge.
- (iv) The advocate for the appellant had presented himself at the police station on 3-10-2023 after the arrest of the appellant and the contact details of the advocate were made available to the investigating officer. Regardless of these crucial facts, the appellant was presented before the remand Judge sometime before 6.00 p.m. on 4-10-2023.
- (v) Apparently, the entire exercise was carried out in a clandestine manner to circumvent the due process of law and to confine the accused to police custody without informing him of the grounds of arrest.
- (vi) By the time the advocate engaged by the appellant had been informed, the remand order had already been passed.
- (vii) The interpretation given by the Single Judge of the High Court that the grounds of arrest were conveyed to the accused in writing by way of the arrest memo was unacceptable. The arrest memo sets out some general/basic reasons for arrest which can be attributed to any person.

On the prospective application of the judgment, the Supreme Court observed that it was an indisputable case that the appellant was remanded to police custody on 4-10-2023 whereas the judgment in *Pankaj Bansal*²³ was delivered on 3-10-2023. Thus, the conjectural plea of the respondent that the law laid in *Pankaj Bansal*²⁴ shall not apply to the remand proceedings was held to be misconceived.

Based on the above analysis, the Supreme Court concluded that the arrest and subsequent remand of the appellant stood vitiated on account of the non-supply of the written grounds of arrest to the appellant. As a result, the Supreme Court opined that the appellant was entitled to a direction for release from custody by applying the ration of the judgment in *Pankaj Bansal*²⁵.

As a result, the impugned order of the High Court dated 13-10-2003 was declared to be invalid in law, and quashed and set aside.

C. Conclusion

In conclusion, the judgment in *Prabir Purkayastha*²⁶ represents a much-needed reaffirmation of the fundamental principles of natural justice within Indian criminal law jurisprudence. The decision brings out the indispensable nature of procedural safeguards in the context of UAPA, particularly the importance of informing individuals of the grounds of their arrest in writing, as enshrined in Article 22(1) of the

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1. 2023 SCC OnLine SC 1244.
2. 2022 SCC OnLine SC 929.
3. (2024) 3 SCC 51.
4. 2022 SCC OnLine SC 929.
5. (2024) 3 SCC 51.
6. *Pankaj Bansal case*, 2023 SCC OnLine SC 1244.
7. 2024 SCC OnLine SC 934.
8. *Amit Chakraborty v. State (NCT of Delhi)*, 2023 SCC OnLine Del 6413.
9. 2023 SCC OnLine SC 1244.
10. 2023 SCC OnLine SC 1244.
11. 2023 SCC OnLine SC 1244.
12. 2023 SCC OnLine SC 1682.
13. 2023 SCC OnLine SC 1244.
14. 2023 SCC OnLine SC 1244.
15. 2023 SCC OnLine SC 1682.
16. 2023 SCC OnLine SC 1244.
17. 2023 SCC OnLine SC 1244.
18. 2023 SCC OnLine SC 1244.
19. 2023 SCC OnLine SC 1244.
20. 2023 SCC OnLine SC 1244.
21. 1962 SCC OnLine SC 117.
22. (2000) 8 SCC 590.
23. 2023 SCC OnLine SC 1244.
24. 2023 SCC OnLine SC 1244.
25. 2023 SCC OnLine SC 1244.
26. 2024 SCC OnLine SC 934.