

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6690 OF 2025

Ms. Sheetal Kisanchand Tejwani

Age: 42 years, Occ.: Business

Having its office at : 305, 3<sup>rd</sup> Floor, Tulsiani  
Chamber, Nariman Point, Mumbai – 400021  
(presently in Yerwada Central Prison)

...Petitioner

**Versus**

The State of Maharashtra, Khadak Police  
Station, Pune City, through Assistant Police  
Inspector, Shri. Dattatray Waghmare,  
Economic Offences Wing, Pune City Police,  
Pune.

...Respondent

SANTOSH  
SUBHASH  
KULKARNI

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SANTOSH SUBHASH  
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Mr. Ajay Bhise, a/w Ms. Deepali Kedar, for the Petitioner.

Ms. Mankuwar Deshmukh, Incharge Public Prosecutor, a/w

Mr. S. V. Gawand, APP, for the State.

Mr. D. M. Waghmare, I.O., API, EOW, Pune City, present.

Mr. Sarang Thakare, PSI, Bavdhan Police Station, Pimpri-  
Chinchwad, present.

**CORAM: N. J. JAMADAR, J.**

**RESERVED ON: 23<sup>rd</sup> FEBRUARY, 2026**

**PRONOUNCED ON: 17<sup>th</sup> APRIL, 2026**

**JUDGMENT:-**

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This petition under Articles 226 and 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 calls in question the legality of the arrest of the petitioner in CR No. 552 of 2025 registered with

Khadak Police Station, Pune, and the order dated 4<sup>th</sup> December, 2025 passed by the Learned Magistrate, Pune, thereby remanding the petitioner to police custody and the further detention of the petitioner in pursuance of the said remand order.

**3.** The petition arises in the backdrop of the following facts:

**3.1** The State Government was the holder of the land bearing Survey No.88 admeasuring 17 H 51 R situated at Mundhwa, Pune (“the subject land”). Despite being fully cognizant of the fact that the State Government was the holder of the subject land, the petitioner entered into criminal conspiracy with the co-accused and professed to sell the subject land to M/s. Amedia Enterprises for a consideration of Rs. 300 crores. A sale deed was executed and registered on 20<sup>th</sup> February, 2025 fraudulently.

**3.2** The subject land was a Mahar Vatan land. It was never re-granted to the original Vatandars. The petitioner had executed the sale deed in the capacity of the Power of Attorney of the Vatandars. The proceedings initiated at the instance of the petitioner to obtain the re-grant of the subject land were decided against the petitioner in the year 2013 and 2021. Yet, fraudulent applications were filed seeking information about the

occupancy price to be paid by falsely claiming that the subject land was re-granted to the original Vatandars by the State Government. To perpetrate the fraud, the petitioner had annexed a copy of the 7/12 extract, which was already closed, to the sale deed. Thus, the petitioner and the co-accused had committed the offences punishable under Sections 61(2), 201, 316(2), 316(5), 318(3), 318(4), 336(3), 336(4), 338 and 340(2), read with 3(5) of Bharatiya Nyaya Sanhita, 2023 ("BNS 2023").

**3.3** Upon registration of the FIR, initially notices were issued to the petitioner under Section 35(3) of BNSS 2023. On 18<sup>th</sup> November, 2025 and 20<sup>th</sup> November, 2025, the petitioner appeared before the Investigating Officer and claimed to have furnished the relevant documents. In response to the second notice, the petitioner had conveyed her inability to appear before the Investigating Officer on account of her ill health, on 21<sup>st</sup> November, 2025. Yet, the petitioner asserts, without considering the documents tendered by the petitioner, the Investigating Officer arrested the petitioner on 3<sup>rd</sup> December, 2025 at 2.00 p.m. However, the petitioner was shown to be formally arrested at 4.00 p.m. though the petitioner had fully complied with the notice under Section 35(3) and rendered full cooperation in the investigation.

**3.4** The petitioner further asserts that, the petitioner was produced before the learned Magistrate beyond 24 hours of the arrest, i.e. on 4<sup>th</sup> December, 2025 at 3.40 p.m. Though she was arrested at 2.00 p.m. on the previous day. The petitioner raised objections before the Magistrate including the non-compliance of the constitutional and statutory provisions. It is the grievance of the petitioner that the learned Magistrate discarded the legitimate objections raised by the petitioner and remanded the petitioner to judicial custody by passing the order in a mechanical manner. The learned Magistrate did not satisfy himself about the compliance of the mandatory requirements and the necessity of arrest, especially when the petitioner had rendered full co-operation during the course of investigation. The learned Magistrate went on to remand the petitioner to police custody on unsustainable grounds. Hence, this petition.

**3.5** An affidavit-in-reply has been filed on behalf of the prosecution. The Investigating Officer has affirmed that the investigating agency had ensured scrupulous compliance with the constitutional and statutory provisions. Controverting the contentions in the petition that there was no necessity for the arrest of the petitioner and the petitioner had rendered co-operation during the course of investigation, the Investigating

Officer affirmed that the investigation had revealed that the petitioner was involved in grave offences of defrauding the State Government by professing to sell the subject land over which the petitioner had no right, title and interest for a consideration of Rs.300 Crores. A reference was made to the antecedents of the petitioner in the context of the various offences registered against the petitioner.

**3.6** The allegations that the petitioner did not understand Marathi and, thus, the grounds of arrest were not communicated to the petitioner in the language known to the petitioner and that the petitioner was produced before the jurisdictional Magistrate beyond 24 hours of the arrest, were categorically denied. It was contended that the petitioner had entered the office of EOW at 3.30 p.m. and not at an earlier point in time. She was arrested at 4.10 p.m. Thus the production of the petitioner before the learned Magistrate on the following day was in compliance with the constitutional mandate.

**4.** I have heard Mr. Ajay Bhise, the learned counsel for the petitioner, and Ms. Mankuwar Deshmukh, the learned PP for the State. With the assistance of counsel for the parties, I have perused the material on record.

5. Mr. Bhise, the learned counsel for the petitioner, submitted that the petitioner had appeared twice before the Investigating Officer in response to the notice under Section 35(3) of BNSS 2023. In compliance with the requisition, the petitioner had also produced the documents. Yet, without any justifiable reason, on 3<sup>rd</sup> December, 2025, when the petitioner appeared before the Investigating Officer, the petitioner came to be arrested. Since the petitioner had appeared before the Investigating Officer, produced the documents and rendered the necessary co-operation, the arrest of the petitioner was wholly unwarranted and illegal. To buttress this submission, Mr. Bhise placed reliance on the decision of the Supreme Court in the case of *Satyendra Kumar Antil vs. Central Bureau of Investigation*<sup>1</sup>.

6. Secondly, Mr. Bhise would urge the requirement of furnishing the grounds of arrest were observed in breach. As the offences revolved around the documents, Mr. Bhise would urge, the grounds of arrest should have been furnished to the petitioner immediately upon her arrest. Yet, the grounds of arrest were furnished to the petitioner at 9.05 p.m.

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**1** (2022) 10 SC 51.

7. Thirdly, Mr. Bhise urged with tenacity that the compliance of the constitutional mandate to furnish the grounds of arrest in the language known to the petitioner to make the said communication effective and meaningful was starkly absent. The grounds of arrest were recorded in Marathi. The Investigating Officer, despite having known the fact that the petitioner did not understand Marathi, furnished the grounds of arrest in Marathi and thereby the right of the petitioner to effectively defend herself was critically jeopardized. Banking upon the pronouncement of the Supreme Court in the case of *Mihir Rajesh Shah vs. State of Maharashtra and another*<sup>2</sup>, Mr. Bhise would urge that, on both the counts, namely, the delay in furnishing the grounds of arrest and failure to furnish the grounds of arrest in the language known to the petitioner, the arrest stood vitiated.

8. Thirdly, it was urged that, since the petitioner entered the office of Investigating Officer at 2.00 p.m. on 3<sup>rd</sup> December, 2025, the petitioner instantaneously ceased to be a free citizen and became subject to the restraint of the Investigating Officer. Therefore, the petitioner was, in fact, arrested at 2.00 p.m. on 3<sup>rd</sup> December, 2025. Consequently, the production of the

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**2** (2026) 1 SCC 500.

accused before the jurisdictional Magistrate at 3.30 p.m., on the next day, was clearly beyond the 24 hours permissible period. To this end, Mr. Bhise placed reliance on the judgment of this Court in the case of *Ashak Hussain Allah Detha @ Siddique and another vs. The Assistant Collector of Customs (P) Bombay and another*<sup>3</sup>, wherein it was enunciated that the arrest commences with the restraint placed on the liberty of the accused and not with the time of arrest recorded by the arresting officer.

9. Per contra, Ms. Deshmukh, the learned PP, would submit that the indictment against the petitioner would indicate that the petitioner is the prime accused nay the beneficiary of the fraud perpetrated by the petitioner and the co-accused in pursuance of a well-planned conspiracy. Refuting the submission on behalf of the petitioner that there was no necessity of arrest, the learned PP would submit that the very nature of the accusation and the brazen manner in which government land was sought to be transferred, underscored the necessity of arrest. It was further urged that, the Investigating Officer had recorded reasons in the report submitted to the jurisdictional Magistrate and the case diary justifying the necessity of arrest.

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**3** (1990) 1 Bombay CR 451.

10. The learned PP laid emphasis on the fact that scrupulous compliance of the constitutional and statutory provisions is evident from the record. The grounds of arrest were furnished to the petitioner at the very moment of arrest. The grounds of arrest were also furnished to the person nominated by the petitioner. Thus the challenge premised on the delay in furnishing the grounds of arrest and non-communication of the grounds in the language known to the petitioner were wholly untenable. The learned PP pointed out that all the underlying documents were executed by the petitioner in Marathi and, thus, the claim that she had not known Marathi was but a subterfuge. Likewise, the precise time of arrest is borne out by the contemporaneous material in the form of the entries in the station diary made by the Investigating Officer. Therefore, none of the grounds urged on behalf of the petitioner merits consideration, submitted the learned PP.

11. I have given careful consideration to the submissions canvassed across the bar. To begin with, it is necessary to note that the petitioner has filed a substantive petition seeking quashment of FIR No.552/2025 being Criminal Writ Petition No. 6129/2025. The challenge in this petition is confined to the legality of the arrest, the remand order and the consequent

detention. Thus, this Court would delve into the three principal grounds on which the legality of arrest and detention has been challenged.

**12.** First, the non-compliance of the mandate contained in Section 35(3) of the Code, in the sense that despite full cooperation by the petitioner in response to the notices under Section 35(3), the petitioner was allegedly arrested sans any reason.

**13.** As is evident from the record, the first notice was issued to the petitioner on 15<sup>th</sup> November, 2025. The petitioner did appear before the Investigating Officer on 18<sup>th</sup> November and 20<sup>th</sup> November, 2025 and submitted certain documents. Another notice was addressed on 21<sup>st</sup> November, 2025, to which the petitioner gave a reply expressing her inability to appear on account of her physical condition. It further appears that on 24<sup>th</sup> November, 2025 also, the petitioner had submitted certain documents to the Investigating Officer. When the petitioner appeared before the Investigating Officer on 3<sup>rd</sup> December, 2023, the petitioner came to be arrested at 4.10 p.m.

**14.** The challenge to the legality of the arrest in regard to the alleged non-compliance of the mandate under Section 35(3) of

BNSS deserves to be appreciated in the backdrop of the aforesaid facts.

15. There can be no duality of opinion that arrest has grave consequences. There is a significant distinction between the power to arrest and necessity of arrest. The fact that, under the statute, the Police Officer has power to arrest does not necessarily imply that the arrest must be effected in every case. The constitutional guarantee of personal liberty has been construed in a dynamic manner to strike at unjustified arrest and detention. The decisions in the cases of *Joginder Kumar vs. State of U.P. and others*<sup>4</sup>, *Arnesh Kumar vs. State of Bihar and anr.*<sup>5</sup> emphasise the value of cherished personal liberty and cast a duty on the investigating agency as well as the magistracy to guard against unwarranted and unjustified arrest.

16. In the case of *Arnesh Kumar* (supra), the Supreme Court emphasised the consequences which entail an arrest of a person in the following words:

“5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not

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4 (1994) 4 SCC 260.

5 2014 (8) SCC 273

considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

17. The Supreme Court observed that its endeavour in the said judgment was to ensure that Police Officers do not arrest the accused unnecessarily and Magistrates do not authorize detention casually and mechanically. In order to ensure the scrupulous compliance of the mandate contained in Sections 41 and 41A of the Code of Criminal Procedure, 1973 (“the Code”) the Supreme Court issued directions.

18. In the case of *Satyendra Kumar Antil* (supra) the Supreme Court again reiterated the principles enunciated in the case of *Arnesh Kumar* (supra). It was, *inter alia*, observed that the provisions contained in Sections 41 and 41A of the Code of Criminal Procedure, 1973 (“the Code”) are facets of right to life and personal liberty guaranteed under Article 21 of the Constitution. The observations of the Supreme Court in paragraphs 24, 25, 26, 28, 29 and 100 read as under:

"24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons

when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

25. The consequence of non-compliance with Section 41 shall certainly enure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

26. Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41B deals with the procedure of arrest along with mandatory duty on the part of the officer.

.....

28. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the Court, which is expected to be reflected in the orders.

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100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which maybe subject to State amendments.:

100.1.....

100.2 The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

100.3 The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail."

(emphasis supplied)

19. The aforesaid enunciation of law makes it abundantly clear that, arrest is not mandatory. If the Investigating Officer is

satisfied that a person has committed a cognizable offence punishable with an imprisonment for a term which may be less than, or may extend to, seven years, he can resort to arrest the accused only when there is a reason to believe that such person has committed an offence and there is necessity for an arrest. The conditions or justification of the necessity for the arrest are stipulated in sub-clauses (a) to (e) of Section 35(1)(b)(ii), which read as under:

“35. When Police may arrest without warrant. - (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) the police officer has reason to believe on the basis of such complaint, information or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or  
.....”

20. In the light of the provisions and precedents, regard being had to the facts of the case at hand, it has to be seen whether the grounds of arrest communicated to the petitioner and the reasons for arrest recorded by the Investigating Officer justified the arrest. The grounds of arrest, it appears were furnished to the petitioner, instantaneously. A copy of the grounds of arrest (Page 128, (Exhibit-A Coll.) to the affidavit-in-reply) indicates that those grounds were furnished to the petitioner on 3<sup>rd</sup> December, 2025, itself. The station diary entry No.24/2025 made at 4.36 p.m. on 3<sup>rd</sup> December, 2025 clearly records that the compliance of the mandate contained in Sections 47 and 48 of BNSS 2023 was ensured at the time of the arrest. The intimation to the nominated person (Page 134, Exhibit-B Coll.), in terms, records that the grounds of arrest were furnished not only to the petitioner but even to the nominated person as a copy of the grounds of arrest was annexed to the said intimation of arrest under Section 48 of BNSS 2023.

21. Banking upon the pronouncement of the Supreme Court in the case of *Mihir Shah* (supra) in regard to the time of furnishing the grounds of arrest, Mr. Bhise would submit that since the Investigating Officer had issued notices before effecting the arrest under Section 35(3) of BNSS 2023 and the offences revolved around documents, the grounds of arrest ought to have been furnished simultaneously. Instead, it appears that the grounds of arrest were furnished to the petitioner at 9.05 p.m. when she was arrested at 2.00 p.m.

22. In the case of *Mihir Shah* (Supra), the Supreme Court enunciated that where the Investigating Officer had served notice on the accused to join the investigation under Section 35(3) of the BNSS, 2023 the Investigating Officer shall supply the grounds of arrest in writing on arresting the accused person. Likewise, in cases involving the offences which are primarily based on documentary evidence/records, the grounds of arrest in writing can be furnished to the arrested person on arrest simultaneously, and where the police are already in possession of the documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest.

**23.** In the instant case, this Court finds that the grounds of arrest were furnished to the petitioner simultaneously with the arrest. In addition to the acknowledgment of the receipt of the grounds of arrest made by the petitioner, the station diary entry No.24/2025 dated 3<sup>rd</sup> December, 2025 records that the grounds of arrest were furnished to the petitioner at 16.36 p.m. In addition, a copy of the grounds of arrest was also furnished to the nominated person on 3<sup>rd</sup> December, 2025 itself and an entry to that effect was made in the station diary at SD No.23/2025. Thus, there is no substance in the submission on behalf of the petitioner that the grounds of arrest were not simultaneously furnished to the petitioner.

**24.** On the substance of the matter, in regard to the justification for arrest, the grounds of arrest record that the petitioner had known the fact that there was no order of re-grant of the Vatan land to the erstwhile Vatandars, the petitioner had herself prosecuted proceedings before the State Government in the capacity of Power of Attorney of the Vatandars for the purpose of re-grant of the Vatan land and those proceedings were decided against the petitioner in the years 2013 and 2021; the petitioner had challenged the orders of the State Government before this Court by filing writ petitions

and those writ petitions were dismissed; the petitioner had filed applications with the revenue authorities seeking determination of the occupancy price to be paid by falsely claiming that there was an order of re-grant; the petitioner was called upon to explain as to why the petitioner had filed such application in the absence of an order of re-grant and, yet, the petitioner had submitted an application to deposit a sum of Rs.11,00,000/- by way of Demand Draft towards occupancy price and, eventually, the petitioner professed to sell the subject land by enclosing the 7/12 extract of the subject land, which was already closed, and thereby the petitioner deceived the State Government and that necessitated the arrest of the petitioner.

**25.** This Court finds that the Investigating Officer has furnished the grounds of arrest which were specific, clearly spelling out the role of the petitioner, and co-related with the grounds with the fact-situation of the case. Since a substantive petition seeking quashment of the FIR is sub-judice, this Court refrains from delving into the merits of the accusation against the petitioner. Suffice to note, in the context of the role attributed to the petitioner, the grounds of arrest did furnish sufficient knowledge of the facts constituting the grounds on

which the petitioner came to be arrested so as to equip the petitioner to defend herself.

**26.** The submission of Mr. Bhise that, the grounds of arrest were communicated to the petitioner at 9.05 p.m. does not carry substance. What were communicated to the petitioner at 9.05 p.m. were, the reasons for arrest (Page 138 Exhibit-C). The reasons for arrest also indicate the necessity of arrest for the purpose of effective investigation with reference to the role of the petitioner in the alleged offence. Cumulatively, this Court finds that in the peculiar facts of the case, especially in the context of the role attributed to the petitioner, the arrest of the petitioner was justified.

**27.** This takes me to the second ground of challenge, namely the delay in the production of the accused before the jurisdictional Court. The thrust of the submission of Mr. Bhise was that since the petitioner had appeared before the Investigating Officer at 2.00 p.m. on 3<sup>rd</sup> December, 2025 and she was produced before the learned Magistrate on 4<sup>th</sup> December, 2025 at 3.30 p.m., there was infraction of the fundamental rights of the petitioner under Article 22(1). Amplifying this submission, Mr. Bhise would urge, the moment the petitioner entered the office of the Investigating Officer, she

ceased to be a free citizen and became subject to the restraint by the Investigating Officer.

**28.** In the case of *Ashak Hussain Allah Detha* (supra) the learned Single Judge of this Court observed that “arrest” is the restraint on a man's personal liberty by the power or colour of lawful authority and, thus, it is complete when such restraint by authority commences. The observations in paragraph 10 read as under:

“10. It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by and authority, commences. Whether a person is arrested or not does not depend on the legality of the Act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases. It stands to reason, therefore, that what label the Investigating Officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest, the arrest commences with the restraint placed on the liberty of the accused and not with the time of “arrest” recorded by the Arresting Officers”.

**29.** There can be no quarrel with the aforesaid proposition. It is quite conceivable that a person is put under restraint and thereby his personal liberty is curtailed for all intent and purposes, much before he is shown to be formally arrested. Thus, it is the substance of the matter in the sense of putting restraint on the personal liberty that qualifies as arrest and not the form of arrest.

30. In the case at hand, it is pertinent note that, apart from asserting that the petitioner had entered the office of the Investigating Officer at 2.00 p.m. and, thus, she came to be arrested, nothing could be brought on record to lend support such claim. In contrast, in the affidavit-in-reply filed on behalf of the prosecution, the Investigating Officer has categorically asserted that the petitioner had appeared for inquiry on 3<sup>rd</sup> December, 2025 at 3.35 p.m. at the office of EOW Pune. The CCTV of the premises shows that the petitioner entered EOW, Pune, at that time. Reference is made to the entries made in the station diary. In the face of such material, and absence of any other material to show to the contrary, at this juncture, it would be rather difficult to accede to the submission on behalf of the petitioner that she was, in fact, arrested at 2.00 p.m.

31. The third ground of infraction of the constitutional right of being informed of the grounds of arrest was premised on the communication of the grounds of arrest in Marathi. It was submitted that, the petitioner does not understand Marathi. Yet, the grounds of arrest were communicated to her in Marathi.

32. To this end, Mr. Bhise placed a very strong reliance on the judgment of the Supreme Court in the case of *Mihir Shah* (supra), wherein it was enunciated that to be effective and

meaningful the grounds of arrest be communicated to the petitioner in the language the accused understands. The observations of the Supreme Court in paragraphs 45 to 47 read as under:

“45. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest...”, it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective 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 notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the IPC 1860 (now BNS 2023).

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the 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.

47. Another aspect, which flows from the above discussion and merits consideration is the mode of informing grounds of arrest to the arrested person to effectively serve the intended purpose of Article 22(1) of the Constitution of India. This Court, as observed above, had held that it would not be ideal to read out the grounds of arrest to a person who is arrested, as he may not be in the frame of mind to remember the contents of grounds that are read out to him. The Court underscored that if the authorities are permitted to read out the grounds and claim compliance with the constitutional and statutory mandate, the very purpose of the constitutional protection would be nugatory.”

**33.** The Learned Magistrate repelled the contention based on failure to furnish the grounds of arrest as all the Power of Attorney executed in favour of the petitioner were in Marathi. In the affidavit-in-reply, the Investigating Officer has stated that Ashok Abhaji Gaikwad and others executed the power of attorney in favour of the petitioner on 15<sup>th</sup> June, 2006 in Marathi. Moreover, as many as 77 other Power of Attorneys were executed in favour of the petitioner in Marathi. The petitioner had entered into 43 Development Agreements which were in Marathi language. He had interrogated the petitioner in Marathi and, at times, the petitioner gave answers in Marathi as well as in Hindi. The petitioner is, thus, well versed in Marathi.

**34.** *Prima facie*, the material on record, especially the instruments executed by, and in favour of, the petitioner, do indicate that the petitioner understands Marathi language. It is not a case of one or two documents executed by, and in favour of, the petitioner in Marathi language. Numerous documents have been so executed. Secondly, it is pertinent to note the notices under Section 35(3) were served on the petitioner in Marathi. The petitioner claimed to have appeared before the Investigating Officer and fully co-operated with the investigation and furnished the documents. At no point of time till the

petitioner was produced before the learned Magistrate, a grievance was made that the petitioner did not understand Marathi and was, thus, prejudiced in defending herself. Thus, the claim of the petitioner that the constitutional mandate was not strictly complied with as the grounds of arrest were not furnished to the petitioner in the language she understood, cannot be acceded to.

**35.** The upshot of the aforesaid consideration is that, it cannot be said that the learned Magistrate had not evaluated the necessity of arrest and remanded the petitioner to police custody in a mechanical manner. Neither the arrest of the petitioner appeared to be illegal nor any fault can be found with the order of remand. The petition therefore deserves to be dismissed.

**36.** Hence, the following order :

**: O R D E R :**

- (i)** The Writ Petition stands dismissed.
- (ii)** Rule discharged.

**[N. J. JAMADAR, J.]**