IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2823 OF 2026

Shankesh Prithviraj Sanghvi .... Petitioner

V/s.

The State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO.2126 OF 2026
IN
CRIMINAL WRIT PETITION NO. 2823 OF 2026

XYZ .... Intervenor

In the matter between :-

Shankesh Prithviraj Sanghvi .... Petitioner

V/s.

The State of Maharashtra ...Respondent

Mr. Aabad Ponda, Sr. Advocate a/w. Mr. Veerdhawal Deshmukh, Mr. Mihir Nakrani, Mr. Suresh Jambhale, Adv. Londhe, Adv. Shubham Shingade and Mr. Vinod Shingade i/b. One Access for the Petitioner.
Ms. Sangeeta D. Shinde, APP for the Respondent – State.
Mr. Sudeep Pasbola, Sr. Advocate a/w. Mr. Chinmay Gudse and Ms. Anjali Joshi i/b. Adv. Hrutik R. Chavan for the Intervenor.
Ms. Archana Patil, Police Inspector, Tardeo Police Station, Mumbai, present.

CORAM: **SHYAM C. CHANDAK, J.**
RESERVED ON : **24th JUNE, 2026**
PRONOUNCED ON : **30th JUNE, 2026**

JUDGMENT :-

. Present Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**") and under Article 227 of the Constitution of India prays for following reliefs :-

"(a) This Hon'ble Court may be pleased quash and set aside remand order dated 22.10.2026, 25.05.2026 and subsequent order dated 28.05.2026 passed by the Ld. Judicial Magistrate First Class 18th & 40th Court Girgaon Mumbai, in connection with FIR No.226 of 2026 registered at Tardeo Police Station for offence punishable u/s. 64, 75, 76, 77, 78, 79, 308, 351(2), 352, 115(2) of Bharatiya Nyaya Sanhita, 2023 and Section 66E of Information Technology Act, 2000.

(b) That this Hon'ble Court may be pleased to direct and declare the arrest of the Petitioner is illegal and in gross violation of Article 21 and 22 of the Constitution of India in relation to FIR bearing no.226/2026 dated 21.05.2026 registered at Tardeo Police Station;

(c) That this Hon'ble Court may be pleased direct the immediate release of the Petitioner from the judicial custody in FIR bearing no.226/2026 dated 21.05.2026 registered at Tardeo Police Station on such terms and conditions as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Petitioner is arraigned in an FIR bearing C.R.No.226/2026 registered at Tardeo Police Station, Mumbai for the offence punishable under Sections 64, 75, 76, 77, 78, 79, 308, 351 (2), 352, 115 (2) of Bharatiya Nyaya Sanhita, 2023 and under Section 66E of Information Technology Act, on the Report dated 21.05.2026 filed by the Intervenor XYZ ("**the victim**").

3. Heard Mr. Ponda, learned Senior Counsel for the Petitioner, Mr. Pasbola, learned Senior Counsel for the victim and Ms.Shinde, learned APP for the Respondent – State. Perused the record

3.1 Mrs. Sunita Ruprao Pawar Rajput, Police Inspector, Tardeo Police Station and the victim filed their separate Affidavit-in-Reply and oppose the Petition. A photocopy of the Arrest Form produced by the leaned APP is taken on record.

4. Rule. Rule made returnable forthwith. With consent, heard finally.

5. The facts giving rise to this Petition are that the Petitioner and the victim were acquainted with each-other as the Petitioner was the cousin brother-in-law of the victim's husband. Together, their families used to participate in social programmes, events and tours. Their family relationships were faithful.

5.1 The victim alleged that in August 2024, their families and others had been to London for a pleasure trip. On 15th August 2024, when the victim was under the influence of alcohol, stealthy, the Petitioner took her obscene photos. In September 2024, the Petitioner showed those photos to the victim. On seeing the photos, she slapped him. However, the Petitioner threatened her that she should not complain against him, otherwise, he will post those photos on social media. Further, the Petitioner caused the victim to share her objectionable videos, he sexually exploited and repeatedly raped her at different places by threatening her in similar manner. He created morphed obscene images showing the victim in obscene situation with another man in an attempt to humiliate and psychologically pressurise her. The Petitioner used to contact her through an unidentified Instagram account and made obscene video calls, during which he allegedly forced her to appear uncovered on camera. He allegedly used to send obscene photographs and messages and repeatedly force her to engage in explicit talk online. The Petitioner also demanded her ransom of Rs.50 Lakhs to delete her videos. Finally, the victim gathered the courage and filed the Report on 21.05.2026, at 20.08 hours, leading to registration of the said crime. Following that, police arrested the Petitioner on the same night at about 22.29 hours.

6. On 22.05.2026, at about 03:50 p.m., the Petitioner was produced before the learned Magistrate alongwith an Application seeking his Police Custody Remand. Learned Advocate appearing for the Petitioner orally objected the PCR request on the premise that the alleged offence for which the Petitioner was arrested, is punishable with more than 7 years imprisonment. It was contended that the notice issued to the Petitioner under Section 35 of BNSS, was not correct. Prior to arrest of the Petitioner, the Investigating Officer had not issued the notice as contemplated in Section 47 (1) of BNSS thereby communicating the Petitioner the grounds of his arrest. In the backdrop, the arrest of the Petitioner was illegal and hence, he may be released. The learned APP appeared before the learned Magistrate contested that plea, asserting that, the Investigating Officer had issued a proper notice under Section 35 (1) (b) of BNSS. The offence is serious and therefore, he prayed for the police custody remand. Having heard the parties, the learned Magistrate passed the Order, thereby remanding the Petitioner into the police custody till 25.06.2026.

In this regard, in paragraphs 4 and 5 of the Order, the learned Magistrate has observed thus :-

> *"4. I have gone through the record, which shows that notice under Section 35(1)(b) is placed on record. However, a notice which is mandatory one under section 47(1) of BNSS in case of an offence punishable more than 7 years. However, in the instant case learned Counsel appeared before this Court and defended his case by arguing lengthly before this Court. The main objection of this provision is to provide legal aid to the accused for protecting his constitutional rights. In the instant case learned counsel appeared and arguing before this Court on merit, thereby fulfilled the main purpose of providing legal aid to the accused.*

> *5. However, considering the serious nature of offence, considering the reasons forthwith, at this state custody is necessary for further investigation."*

7. On 25.05.2026, when the Petitioner was produced before the Magistrate, written submissions were filed on his behalf. Therein, it was submitted as under :-

> *1. That the initial arrest of the applicant is illegal, and in violation of the provisions of Article 22 of the Constitution of India, and the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, as the written grounds for arrest in writing are not furnished to the applicant as required as per the law. So no remand be granted.*
>
> *2. There is a difference between the reasons for the arrest and the grounds for the arrest. What has been given are reasons for arrest and not grounds for arrest, as has been clearly exemplified by the Supreme Court authorities and the judgements of the Hon'ble Bombay High Court.*
>
> *3. That the extension of the earlier remand order, which is sought by the police today, based on the earlier remand order, which is obtained illegally, is itself illegal in law. And all the remands are illegal, on this ground alone. The remand is objected to these submissions are without any reference to the allegations.*
>
> *4. These submissions are made in law, without prejudice to the rights and contentions of the applicant, in the case on its on facts, which is a case relating to, at best, a consensual relationship between parties, not amounting to rape, and in the light of the same, on these grounds, the remand is also objected.*

7.1 After hearing the parties, the learned Magistrate passed an Order, thereby, rejected the written submissions on behalf of the Petitioner and remanded him into further police custody till 28.05.2026. The reasons for this set out in paragraph 2 and 3 of the Order, read :-

> *2. Advocate for accused submitted that grounds of arrest were not given to the accused. Therefore, his arrest is illegal. He placed reliance on case of Vihaan Kumar Vs. State of Haryana 2025 (5) SCC 799 and case of Prabir Purkayastha, order of Hon'ble Apex Court dated 15.05.2024. Ld. APP submitted that this is second remand. Present objection was raised at the time of first remand also. It is decided by Presiding Officer on that date. That order has not been set aside. This Court cannot review that order. Hence he prayed to reject objection regarding illegal arrest.*
>
> *3. I have perused remand order dated 22.05.2026. Objection regarding Sec. 35 and 47 of BNSS has been considered in that order. Already that objections are decided by Presiding Officer. Therefore, this Court cannot looked into that objections again. That order cannot be reviewed.*

8. On 28.05.2026, when the Petitioner was produced before the learned Magistrate for seeking his further police custody, again written objection was raised on behalf of the Petitioner contending that the arrest and earlier remands to police custody were illegal and in violation of Article 22 of the Constitution of India read with Section 47 of BNSS. On this occasion, the learned Magistrate observed that no satisfactory reasons were made out to extend the PCR. Hence, remanded the Petitioner to MCR till 11.06.2026. In this backdrop, present Petition has been filed.

9. Before adverting to the main controversy involved in the Petition and the issues arise for my determination, first, let me deal with the objection raised by Mr. Pasbola, the learned Senior Counsel, that considering the said prayer clause (b), the present Petition shall lie before the Division Bench of this Court and not before the Single Judge. Because, said prayer has been seeking to direct and declare the arrest of the Petitioner illegal. To endorse

this, Mr. Pasbola, the learned Senior Counsel has referred to Rule 18 in Chapter XVII of the Bombay High Court Appellate Side Rules, 1960. However, in my considered view, said objection is not sustainable in law. And its reason is simple, as said Rule 18 (4) provides that notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter, a Single Judge of this Court has powers to finally dispose of applications under Article 226 or 227 arising out of the orders and decisions of the Courts constituted under the Code of Criminal Procedure. Secondly, when aforesaid questions was orally referred to the Registry of this Court, the Deputy Registrar, Criminal 'A' Department submitted the Office Report, therein, it is stated that the present Petition falls under said Chapter – XVII, Rule-18 (4) and hence, this Petition would lie before the Hon'ble Single Bench taking up Criminal Writ Petition matters as per the extant assignment.

(emphasis underlined)

10. That apart, in case of ***Prabir Purkayastha*** (supra), after concluding that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel before passing of the order of remand dated 4th October, 2023 which vitiated the arrest and subsequent remand of the appellant, the appellant was held entitled to a direction for release from custody. Accordingly, the arrest of the appellant followed by remand order dated 4th October, 2023 and so also the impugned order passed by the High Court of Delhi dated 13th October, 2023 were declared to be invalid in the eyes of law and were quashed and set aside. In the case in hand, the prayer (b) appears to have been written on the basis of the said conclusion and the declaration in ***Prabir Purkayastha*** (supra). Hence, the objection

that this Petition in hand shall lie before the Division Bench, is rejected.

(emphasis underlined)

11. Now let us turn to the central issues arise for consideration out of the controversy involved in the Petition and the rival submission which require determination by this Court. The issues are:- (a) Whether the Petitioner was communicated with the grounds of arrest when he was apprehended or immediately thereafter? (b) If not, whether the arrest of the Petitioner and his remand to police and judicial custody was illegal on that account?

12. Mr.Ponda, the learned Senior Counsel for the Petitioner submitted that, as alleged, around the time of registration of the report filed by the victim, the Petitioner was called at the police station. However, till production of the Petitioner before the learned Magistrate for the purpose of 1st remand, he was not aware of the text of the FIR or the allegations made against him therein. Except certain Sections/provisions of the penal statutes, nothing specific about the alleged act of the Petitioner was mentioned in the notices thereby communicating the grounds and reasons of his arrest. In other words, no brief details of the prosecution story or allegations made against the Petitioner were stated in the said notices. Such notices/communications drafted in a mechanical manner, are not sufficient to hold that, indeed, the Petitioner was furnished the grounds of arrest before or immediately after his arrest and till his production before the learned Magistrate for the purpose of remand. As such, the arrest of the Petitioner is illegal and the Petition deserves to be allowed, as prayed for.

13. To support these submissions, Mr. Ponda, the learned Senior Counsel has relied upon following reported cases :-

Vihaan Kumar V/s. State of Haryana and another	(2025) 5 SCC 799
Prabir Purkayastha V/s. State (NCT of Delhi)	(2024) 8 SCC 254
Mihir Rajesh Shah V/s State of Maharashtra and Anr	(2026) 1 SCC 500
Chandrashekhar Bhimsen Naik V/s State of Maharashtra and Others	2025 SCC OnLine Bom 5357
Lalit Shyam Tekchandani V/s. State of Maharashtra and anr.	2024 SCC Online Bom 3837
Hem Prabhakar Shah V/s. State of Maharashtra	2024 SCC Online Bom 3660
Rajrishi Bindawat V/s. State of Maharashtra	2024 SCC Online Bom 3660
Amit Giridhar Lalge V/s. State of Maharashtra	2024 SCC Online Bom 3963
Manulla M. Kanchwala V/s. State of Maharashtra	2024 SCC Online Bom 4530
Navneen Siyaram Sharma V/s. State of Maharashtra and Others	2025 SCC Online Bom 4532
Mahesh Pandurang Naik V/s. State of Maharashtra	2024 SCC Online Bom 3918
Directorate of Enforcement V/s. Arvind Kejriwal	2024 SCC Online Del 4421
Pankaj Bansal V/s. Union of India and others	(2024) 7 SCC 576
Ahmed Mansoor and Others V/s. State Rep. By Assistant Commissioner of Police and another	2025 SCC Online SC 2650
Dr. Rajinder Rajan V/s. Union of India and another	2026 SCC Online SC 802
Gaurav Shahajirao Kakade V/s. State of Maharashtra and anr.	Order dated 04/02/2026 in Criminal Writ Petition No.5933 of 2025

14. The prayers in the Petition alongwith the submissions raised by Mr. Ponda, the learned Senior Counsel, are stoutly opposed by Ms. Shinde, the learned APP and Mr. Pasbola, the learned Senior Counsel. They have submitted that when the Petitioner was called at the police station immediately after filing of the report by the victim, at that very juncture he was made aware of the allegations against him in the report. Considering the

facts and circumstances of the case, even otherwise the Petitioner was aware of the accusations levelled against him by the victim. The record clearly indicates that the reasons and the grounds of arrest were properly communicated to the Petitioner. At the time of 1st remand, the Petitioner has not specifically claimed that the grounds of arrest were not communicated to him before or immediately after his arrest. Such a plea cannot be raised by an accused at every subsequent stage of the remand. Lastly, they submitted that even assuming for the sake of argument that the grounds of arrest were not communicated to the Petitioner as claimed by him, he has not demonstrated that a serious prejudice caused to him on account of said failure/omission on the part of the police. The cited decisions in ***Dr.Rajinder Rajan*** (supra), is not applicable to the present case for distinction in facts.

15. To support these submissions, Mr. Pasbola has relied upon following reported decisions :-

Vicky Bharat Kalyani V/s. State of Maharashtra and anr.	2025 SCC Online Bom 193
State of Karnataka V/s. Sri Darshan, etc.	2025 SCC OnLine SC 1702

16. I have considered the rival submissions. While dealing with the issue (a), this Court was taken through the material on record and the cited decisions. According to the learned Senior Counsel Mr. Ponda, at no point of time before passing the 1st police custody remand Order, the Petitioner was communicated the ground of his arrest. The Arrest Form is silent about the grounds and reasons of the arrest. The grounds of arrest of the Petitioner as stated in the General Diary Entry and the communication under Section 47 (1) (2) of the BNS, were not sufficient. Therefore, the Petitioner could not defend his 1st remands. Consequently, the arrest, 1st as well as the subsequent remand Orders are illegal.

Ms. Shinde, the learned APP and Mr. Pasbola, the learned Senior Counsel replied that, in the Report filed by the victim, there is specific mention that the Report/Information was received at 16.00 hours, immediately after reducing the Report into writing, the Petitioner was summoned to the police station. Then the Report was entered in the General Diary at 20.08 hours and registered at 20.41 hours. Soon thereafter, the Petitioner was arrested at 22.29 hours and accordingly, General Diary Entry No.40 was recorded. Therefore, there is no substance in the claim that the Petitioner was not informed about the grounds of arrest.

17. In so far as the Arrest Form is concerned, Mr.Ponda, the learned Senior Counsel is correct, because, one would find 'nil' information in the said document about the reasons for and the grounds of the arrest of the Petitioner. The Arrest Form is a simply a proforma which is proof of the arrest of the Petitioner and conveying that fact to his relative. In the communication under Section 35 (1) (b) of the BNSS served upon the Petitioner, it is stated that the Petitioner was arrested for following reasons :

गिरफ्तारी के कारण रू.

१. अन्य किसी भी अपराध को करने से प्रतिबंधित करने या नया अपराध होने से रोकने के लिए।

२. साक्ष्यों (सबूतों) के संरक्षण के लिए – आरोपी के बाहर रहने पर वह फोरेंसिक या डिजिटल साक्ष्यों को नष्ट कर सकता है।

३. पीडिता और गवाहों की सुरक्षा – पीडिता या गवाहों को धमकाने की या उन पर दबाव बनाने की तीव्र संभावना है।

४. जांच और पूछताछ – अपराध में इस्तेमाल किए मोबाइल/लैपटॉप को जब्त करने और कब्जे में लेने के लिए जांच करने हेतु।

५. फरार होने से रोकने के लिए – कानून के चंगुल से बचने के लिए आरोपी फरार न हो जाए, इसलिए।

६. जिस व्यक्ति को मामले के वास्तविक तथ्यों की जानकारी है, एसे व्यक्ति को न्यायालय या जांच अधिकारी के सामने सच उजागर करने से रोकने, उसे प्रलोभन देने, धमकी देने या उसे कोई आश्वासन देने से प्रतिबंधित करने के लिए।

७. चिकित्सीय जांच कराने के लिए।

17.1 The General Diary Entry No.40 mentions that the Petitioner was arrested for the same reasons and on the same grounds.

17.2 In the communication under Section 47 (1) (2) of the BNSS served upon the Petitioner, he was informed about the grounds of his arrest as under :-

विषयः– आरोपी की गिरफ्तारी के आधारों की जानकारी देने के संबंध में।
संदर्भः– अपराध क्रमांक २२६/२०२६ धारा ६४, ७५, ७६, ७७, ७८, ७९, ३५१(२), ३५२, ३०८, ११५ (२) भारतीय न्याय संहिता माथ ही धारा ६६ (ई) आयटी ॲक्ट, २०००

आपको इसके द्वारा सूचित किया जाता है कि आपके विरुद्ध ताडदेव पुलिस स्टेशन, मुंबई में आज दिनांक २१. ०५.२०२६ को अपराध क्रमांक २२६/२०२६ के तहत भारतीय न्याय संहिता की धारा ६४, ७५, ७६, ७७, ७८, ७९, ३५१(२), ३५२, ३०८, ११५ (२) भारतीय न्याय संहिता साथ ही धारा ६६ (ई) आयटी ॲक्ट, २००० के अनुसार मामला दर्ज किया गया है। उक्त अपराध में आपकी संलिप्तता (सहभागिता) पाई गई है।

उक्त अपराध की जांच हमारे पास दर्ज है और हम स्वयं इस मामले की जांच कर रहे हैं। इस अपराध की जांच के सिलसिले में आपको निम्नलिखित आधारों पर दिनांक २१.०५.२०२६ को रात २२.२५ वा. गिरफ्तार किया जा रहा है।

गिरफ्तारी के आधार

१. पीड़िता ने आपके खिलाफ कानूनी शिकायत दर्ज कराई है।
२. अपराध की अब तक की जांच से यह स्पष्ट रूप से दिखाई दे रहा है कि इस अपराध में आपकी प्रत्यक्ष संलिप्तता है।

18. Now turning to the requirements to be fulfilled in law towards arrest of an accused, communicating him; his family member/friend about his arrest, its reasons and the grounds of his arrest. In the case of ***Prabir Purkayastha*** (supra), while distinguishing the phrase 'reasons for arrest' and 'grounds of arrest', in paragraph 48, the Hon'ble Supreme Court enunciated thus :-

> *"48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely*

formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making 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 Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature."

(emphasis in italic and underlined)

19. On similar line, in the case of ***Vihan Kumar*** (supra) the Hon'ble Supreme Court in paragraph 26 concluded that :-

"26.1. The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22 (1);

26.2. The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

26.3. When arrested accused alleges non-compliance with the requirements of Article 22 (1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22 (1);

26.4. Non-compliance with Article 22 (1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 22 (1) of the Constitution. Therefore, non-compliance with the requirements of Article 22 (1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22 (1);

26.5. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22 (1) and other mandatory safeguards has been made; and

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 Article 22 (1) and 22 of the Constitution is established."

20. In the instant case, as noted above, the General Diary Entry No.40, mainly, mentions about the conditions with which the police concerned was satisfied to arrest the Petitioner without a warrant. Exactly the same is mentioned in the communication under Section 35 (1) (b) of BNSS, thereby apprising the reasons of his arrest to the Petitioner. It is thus apparent that the purpose of recording those documents was only to record and convey the reasons for the arrest of the Petitioner.

21. As held in case of ***Mihir Rajesh Shah*** (supra), where the Investigating Officer has sent a notice for appearance of the accused to join the investigation under Section 41A of CrPC 1973 (now Section 35 (3) to 35 (6) of BNSS 2023) pursuant to which the accused has joined the investigation, the Investigating Officer, after perusal of material available before him and/or on interrogating the accused, makes up his mind that the arrest of the accused person is required for further investigation or has other reason(s) for arrest, in such cases, since the accused is under the supervision of the Investigating Agency and there exists no apprehension of him absconding, it becomes incumbent upon the Police Officer to supply the grounds of arrest in writing on arresting the accused person. The case of ***Dr. Rajinder Rajan*** (supra) also insists upon the same. Therein, the arrest memo was found to have been prepared in a template format and, by itself, reflected that the grounds of arrest had been orally explained to the accused before the process of formal arrest was undertaken. However, the Hon'ble Supreme Court held that, consequently, it was incumbent upon the arresting officer to have supplied the memo of grounds of arrest in writing to the accused two hours prior to production before the Magistrate. To clarify this more, the Arrest Form was reproduced as under :-

> "Arrest Memo
>
> Consequent upon the recovery/seizure of 2000 Tablets of Tramadol on 02/05/2025 from Corporate Chemist inside Corporate Hospital, Batola Road, Amritsar -14300/ and on the basis of voluntarily statement dated 02/05/2025 of Rajinder Rajan S/O Janak Raj R/o D-84, Ranjit Avenue, Amritsar, Punjab recorded u/s 67 of NDPS Act, 1985 having reasons to believe that Rajinder Rajan has violated section 8 and 22 of NDPS act and committed offence punishable u/s

> 8 and 22 of NDPS Act; accordingly, I place Rajinder Rajan under arrest on 02/05/2025 at 2300 hrs. I have explained the ground of arrest to him/her before arrest. (SD)"

21.1 In the case in hand, according to Ms. Shinde, the learned APP and Mr.Pasbola, the learned Senior Counsel, immediately upon the victim's report being reduced into writing, the Petitioner was summoned to the police station and informed of the case registered against him. It is submitted that the Petitioner having been so apprised amounted to sufficient compliance with the statutory and constitutional requirement of communicating the 'grounds of arrest' to the Petitioner. Considering this submission in harmony with the communication thereby informing the 'grounds of arrest' to the Petitioner and, the timings of the Petitioner's arrest, it can be inferred that immediately after reducing the Report into writing, the Petitioner was available in the police station to join the investigation and at that time, the Investigation Officer was aware of all the basic facts of the case and the accusations, so as to formulate the 'grounds of arrest' as required in law and pass on to the Petitioner. Since, the Petitioner was in the police station, he was not likely to abscond. However, the record is silent as to what precisely was orally conveyed to the Petitioner at that time, concerning the allegations in the FIR and the grounds on which he was arrested.

22. In so far as the communication under Section 47 (1) (2) is concerned, it speaks of only two aspect (as grounds of arrest) conveyed to the Petitioner : (1) That, the victim has filed a lawful Complaint/Report against him; and (2) That, the investigation of the crime conducted so far it has been seen that the Petitioner is directly involved in this crime. This, as urged by Ms.Shinde, the

learned APP and Mr.Pasbola, the learned Senior Counsel, is sufficient and substantive compliance in law, insofar as the question of furnishing the 'grounds of arrest' to the Petitioner is concerned. However, they have not clarified as to how said communication complies with the requirements enunciated in the cases of ***Prabir Purkayastha*** (supra) and ***Vihan Kumar*** (supra). Because, even on plain reading of the said communication under Section 47 (1) (2) of BNSS, it is not fathomable that it had contained all the necessary details and the basic facts on which the Petitioner was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. In view thereof, in my considered view, the communication under Section 47 (1) (2) of the BNSS addressed to the Petitioner was not sufficient or a substantive compliance of the legal requirement of informing the 'grounds of arrest'.

23. This diverts me to the Order of 1st remand dated 22.05.2026. By that Order, the learned Magistrate rejected the contention of the Petitioner that he was informed the grounds of the arrest. Yet, no brief satisfaction has been recorded in this Order by the learned Magistrate, as laid down in ***Vihan Kumar*** (supra) in paragraph 26.5, about ascertainment that the impugned communication under Section 47 (1) (2) of the BNSS had sufficiently or substantially conveyed the grounds of arrest to the Petitioner. The line of reasoning adopted by the learned Magistrate to reject that contention is: in the instant case, the learned Counsel had appeared for the Petitioner and defended his case by arguing at length; that the main object of the provision of Section 47 (1) BNSS is to provide legal aid to the accused for protecting his constitutional rights; that, in the instant case, the

learned Counsel had argued before the Court on merit, thereby fulfilled the main purpose of providing the legal aid to the accused.

Nevertheless, the said Order neither records the submissions advanced by the learned Counsel appeared on behalf of the Petitioner nor discloses any reason for rejecting those submissions. The Order is, in fact, bereft of any consideration of the Petitioner's defence. Therefore, the 1st remand Order is not helpful to definitely say that the Petitioner had got sufficient opportunity of defending himself against the custodial remand and to seek bail.

24. Ms. Shinde, the learned APP and Mr. Pasbola, the learned Senior Counsel have mainly banked upon the decision in case of ***Sri Darshan*** (supra). Therein, it is held that "While Section 50 Cr.P.C is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend." They have submitted that, in the case in hand, the Petitioner has not shown that he was prejudiced because of non-communication of the grounds of his arrest. Therefore, his arrest and the remand Orders cannot be rated as illegal. But, I find it difficult to be in unison with this submission. In this regard, it is apt to refer the decision in ***Ahmed Mansoor and Others*** (supra). Therein, the Appellants before the Hon'ble Supreme Court were not furnished with the grounds of arrest when they were apprehended. Therefore, the order of their arrest and remand was set aside, but, without touching the issue of demonstrable prejudice. While dealing with the question involved in that Appeal, the top Court

also referred to the decision in ***Sri Darshan*** (supra) cited by the Respondent therein. However, observed that the facts governing were quite different. It was a case dealing with the cancellation of bail where the charge sheet had been filed and the grounds of detention were served immediately. The Apex Court has, in fact, given its approval to the decision in ***Vihaan Kumar*** (supra).

25. After surveying the decisions in the field, in case of ***Mihir Rajesh Shah*** (supra) it is held that, the grounds of arrest 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. In the case in hand, before passing the 1st remand Order, a copy of the PCR Application was served upon the Petitioner. However, exactly when the copy was provided or whether such a copy was provided two hours prior to production of the Petitioner, is not pointed out from the record by the Respondent. That apart, in case of ***Ahmed Mansoor and Others*** (supra), as noted in paragraph 4, the contention on behalf of the Respondents was that the grounds of arrest was duly explained by the Court at the time of remand, followed by furnishing of a copy of the same containing the grounds of arrest to the Counsel who appeared with them. However, having regard to the law laid down in cases of ***Pankaj Bansal*** (supra) 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, as well as the observations in paragraphs 45 to 48 in ***Prabir Purkayastha*** (supra) and the observations in paragraph 3 in ***Vihaan Kumar*** (supra), the Hon'ble Supreme Court in ***Ahmed Mansoor and Others*** (supra), in paragraph 10, held that the explanation by the Court before whom the arrestees are produced can never be an adequate compliance

of furnishing the grounds of arrest at the time of securing an accused.

26. A Constitution Bench in ***State of West Bengal V/s. Anwar Ali Sarkar***, reported in ***(1952) 1 SCC 1***, held that procedural law confers very valuable rights on a person, and their protection must be as much the object of a Court's solicitude as those conferred under the substantive law. This principle, in the case in hand, appears to be ignored by the police and also by the learned Magistrate.

27. The aforesaid consideration impels me to hold that, in the present case, the grounds of arrest were not furnished to the Petitioner and his relatives, or at least in a sufficient or substantive manner as per the mandate of the law. Hence, I answer issue (a) above in 'negative'. As a corollary, I hold that the arrest of the Petitioner is illegal on account of not furnishing him the grounds of his arrest as needful in law. Nevertheless, the learned Magistrate remanded him to custody from time to time. This is impermissible in law as it is against the safeguards provided to protect the Constitutional rights of a person arrested by a police without warrant. Consequently, the impugned Order of arrest and the remand Orders are not sustainable in law and liable to be set aside. Issue (b) stands answered in 'affirmative', accordingly.

28. The Petition thus deserves to succeed in terms of prayer clauses (a) to (c) noted above only on the ground that the mandate of furnishing the grounds of arrest at the time of securing the Petitioner has not been complied with. It is, therefore, not necessary to go into the merits of the case. Hence, following Order is passed :-

(i) The Arrest of the Petitioner in connection with the FIR bearing C.R.No.226/2026, dated 21.05.2026, registered with Tardeo Police Station is declared as illegal it being in violation of Article 21 and 22 of the Constitution of India.

(ii) The Order of the Arrest of the Petitioner and the impugned remand Orders dated 22.05.2026, 25.05.2026 and 28.05.2026 passed by the 18th & 40th Court of the learned Judicial Magistrate First Class, Girgaon Mumbai, are quashed and set aside.

(iii) The Petitioner is directed to be forthwith released from the judicial custody in connected with the FIR bearing C.R.No.226/2026, dated 21.05.2026, registered with Tardeo Police Station.

(iv) However, liberty is granted to the Respondent-State to take recourse to law, to arrest, if a case is made out.

(v) It is abundantly made clear that that none of the observations made above shall be treated as a comment on the merits of the case.

(vi) Petition stands disposed of in aforesaid terms.

29. Since the intervention and hearing opportunity was granted to the victim, Interim Application No.2126 of 2026 seeking said relief, is disposed of, accordingly.

(SHYAM C. CHANDAK, J.)