
CAN ARREST AND REMAND BE LEGAL WITHOUT INFORMING THE GROUNDS OF ARREST IN WRITING: A CASE NOTE ON PRABIR PURKAYASTHA V. STATE (NCT OF DELHI)

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ABSTRACT

This Document contains the case Note on Prabir Purkayastha v. state of NCT of Delhi. In this Case the Supreme court of India quashed the arrest and remand of Prabir purkayastha under the unlawful Activities (prevention) Act, 1967 holding that the failure to provide the grounds of arrest in writing at the time of arrest and before remand violated Articles 22 (1) and 22 (5) of constitution of India and held Communication of the grounds of arrest is the fundamental rights of accused person under the above Articles. The Case Note comprises of the Introduction & Background, Legal Issues, Reasoning and Decisions of the Court, Analysis of the case and at the end Concluding Remarks. The judgement sends a clear message that the National Security Concerns can't override the constitutional Rights of Written communication of grounds of arrest even in cases involving serious allegations in UAPA, the Rule of Law and due process must be followed.

Keywords: Written Communication, UAPA, Liberty, Arrest. Constitution.

PRABIR PURKAYASTHA V. STATE (NCT OF DELHI), 2024

Criminal Appeal No. 2577 of 2024, reported in (2024) 6 S.C.R. 666: 2024 INSC 414

Bench: Division Bench of Justice B.R Gavai & Justice Sandeep Mehta (Author of the Judgement)

Date of Judgment: 15 May 2024.

Law Concerned: Unlawful Activities (Prevention) Act, 1967 sec. 13, 16, 17, 18, 22C, Constitution of India Art. 22(1) and 22(5), Indian Penal Code, 1860 sec. 120B and 153B.

INTRODUCTION & BACKGROUND

The case of Prabir Purkayastha v. State NCT of Delhi, 2024 Decided by a Division Bench of the supreme court comprising Justice B.R Gavai and Justice Sandeep Mehta (Authored the judgement) on 15th May 2024, Raises Important questions about Constitutional safeguards during arrest and remand under unlawful Activities (Prevention) Act, 1967. This Judgement deals with the fundamental right of an arrested person to be informed in writing the grounds of arrest and clarifies the difference between ‘grounds’ of arrest and ‘reasons’ of arrest. The case is particularly important as it applies and extends the precedent laid down in Pankaj Bansal v. UOI, 2023¹.

BACKGROUND

The officers of the special Cell at Lodhi Colony, New Delhi, conducted several raids at the Residential and official premises of the appellant and the Company. They also made raids at the office of appellant’s company which is named as M/s. PPK Newsclick Studio Pvt. Ltd., and the appellant is its director.

These raids were done in connection with a police case filed on 17th August 2023 at the Special Cell, under Sections 13, 16, 17, 18, 22C of the Unlawful Activities (Prevention) Act,

¹ Swasti Chaturvedi, *Any Person Arrested Has Fundamental Right To Be Informed About The Grounds Of Arrest 'In Writing' At The Earliest: Supreme Court*, Verdictum, (June 9, 2025, 10.43 pm), <https://www.verdictum.in/court-updates/supreme-court/prabir-purkayastha-v-state-nct-of-delhi-2024-insc-414-grounds-of-arrest-in-writing-fundamental-right-1535608> .

1967(UAPA) which is to be read with Section 153A, 120B of the Indian Penal Code, 1860 (IPC).

During the Raids, the police seized many documents and Digital Devices that belonged to the Appellant, Company and its employees. The appellant arrested through Above mentioned FIR on 3rd October, 2023 by an arrest memo prepared PS Special Cell, Lodhi Colony, New Delhi. It is Relevant to mention here that the said memo prepared did not contain any column for 'the Grounds of arrest' and this is the bone of contention between the parties to appeal².

The appellant was brought before the Court of Learned Additional Sessions Judge-02, Patiala House Courts, New Delhi (the 'Remand Judge') on October 4, 2023, sometime before 6:00 a.m., as revealed by the remand order filed on appeal with I.A. No. 217857 of 2023. The appellant was remanded to seven days in police custody in an order dated October 4, 2023.

The appellant promptly objected to his arrest and the police custody remand granted by the learned Remand Judge by order dated October 4, 2023, by filing Criminal Miscellaneous Case No. in the High Court of Delhi, which was rejected by the learned Single Judge of the High Court of Delhi by judgment dated October 13, 2023. As a result, the order is being challenged before the Apex Court under a special leave petition³.

ISSUES

1. Was the accused's arrest and police custody invalid because he and his lawyer were not given a copy of the Remand application or written notice of the grounds for his arrest before the court ordered his remand?
2. Does failing to state the cause of arrest in writing violate Articles 20, 21, and 22 of the Indian Constitution?
3. What is the difference between 'reasons of arrest' and 'grounds of arrest'?

² Metalegal Advocates, <https://www.metalegal.in/post/upholding-constitutional-rights-prabir-v-state-nct-of-delhi> (last visited June 11, 2025).

³ Supreme Court of India, https://scr.sci.gov.in/scrsearch/?p=pdf_search/home&text=Prabir%20Purkayastha%20&captcha=rGvdVw&search_opt=PHRASE&fcourt_type=undefined&escr_flag=&proximity=&sel_lang=&neu_cit_year=2024&neu_no=&ncn=&citation_vol=&citation_yr=&citation_supl=&citation_page=&app_token= (last visited June 12, 2025).

4. Is there a change in text between Sec. 19 of PMLA, 2002 and Sec. 43(B) 1 of UAPA, 1967?

5. Is it essential to convey the grounds of arrest or detention in writing, even though Articles 22(1) and 22(5) of the Constitution do not explicitly require it?

SUBMISSIONS BY APPELLANT

THE FOLLOWING ARGUMENTS WERE GIVEN BY SHRI KAPIL SIBAL, THE APPELLANT'S EXPERIENCED SENIOR COUNSEL:

- FIR No. 224 of 2023, which is well a second FIR based on the same facts, led to the appellant's arrest. The Economic Offenses Wing (EOW) of the Delhi Police had already filed FIR No. 116 of 2020.116 of 2020 on August 26, 2020, alleging that the appellant and his business had broken FDI(foreign Direct Investment) regulations and caused losses for the government. A copy of the prior FIR was not provided to the appellant.
- The Enforcement Directorate (ED) filed a money laundering case under sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (PMLA)⁴ based on an Enforcement Case Information Report, or "ECIR." The ED also carried out a number of searches, including at the office of M/s. PPK Newsclick Studio Pvt. Ltd., where the appellant is a director.
- The company challenged the ECIR by filing Writ Petitions Nos. 1129 and 1130 of 2021, and the Delhi High Court granted temporary protection from forceful measures on June 21, 2021. Later, on July 7, 2021, an anticipatory bail order was issued to the appellant, providing temporary protection from arrest. The FIR No. 224 of 2023 was filed based solely on speculation and assumptions thus, the accusations made in the report lacked merit.
- According to Sri Sibal, the appellant was not provided with a copy of FIR No. 224 of 2023 until his arrest and remand, nor was it made available to the public. This is a clear violation of the fundamental right to life and personal liberty guaranteed by

⁴ Prevention of Money laundering act, 2002, § 3 & 4, No. 15, Act of Parliament, 2002.

Articles 20, 21, and 22 of the Indian Constitution.

- That the grounds of arrest were not conveyed to the appellant whether orally or in writing thus such an action is gross violation of the constitutional, provisions under Art. 22(1)⁵ of Constitution and Section 50 of code of criminal procedure, 1973⁶.
- Support was put forward by the learned senior counsel from the judgment of Pankaj Bansal and it was argued that just passing of subsequent remand orders would not be sufficient to make initial arrest as valid, if such arrest was not in accordance with law.
- Counsel argued further that this court interpreted the provisions of sec. 19(1) of PMLA which is pari materia to the section 43 B (1) of the UAPA⁷. Accordingly, the said judgement fully applies to the case of the appellant.
- Shri Sibal argued that the appellant is entitled to relief under the Supreme Court's judgement in *Pankaj Bansal v. Union of India*⁸, delivered on 3rd October 2023, as the appellant's remand order was passed on 4th October 2023, that after the ruling. He contended that although a two-judge Bench in Ram Kishor Arora v. Directorate of Enforcement held that Pankaj Bansal would apply prospectively, this interpretation does not bar the appellant's claim since the remand occurred after the judgement in Pankaj Bansal.
- With reference to the remand order of October 4, 2023, it was argued that the investigating officer had detained the appellant overnight without informing him of the grounds for his detention. Without telling Shri Arshdeep Khurana, the advocate hired on the appellant's behalf, who was admittedly in contact with the investigating officer because of his presence at the Police Station Lodhi Colony following the appellant's arrest, and the appellant was brought before the Court of the learned Remand Judge early on October 4, 2023.

⁵ India Const. Art. 22, Cl.1.

⁶ code of criminal procedure, 1973, § 50, No. 10, Acts of Parliament, 1973.

⁷ Unlawful Activities (prevention) Act, 1967, § 43 (b)(1), No. 37, acts of parliament, 1967.

⁸ Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244.

In response to these arguments, Shri Sibal urged the court to accept the appeal, reverse the contested orders, and order the appellant's release from detention.

SUBMISSIONS BY RESPONDENT

IN RESPONSE, LEARNED ASG SHRI SURYAPRAKASH V. RAJU, SPEAKING ON BEHALF OF THE RESPONDENT, SUBMITTED THE FOLLOWING:

- He said that the ruling of Pankaj Bansal case should be applied prospectively as said in the *Ram Kishor Arora case*⁹. The respondent contended that the arresting officer could not have followed the *Pankaj Bansal judgment*¹⁰ since it was only posted online later that day, even though the appellant had been placed under police custody on October 4, 2023. Because the ruling in Pankaj Bansal (above) was posted and made public after the remand order was issued, it is not appropriate to criticize the officer's inability to provide documented grounds for arrest.
- Referring to Articles 22(1) and 22(5) of the Indian Constitution, the learned ASG maintained that neither article requires that the accused or the detainee, as the case may be, be informed in writing of the reasons for their arrest or imprisonment.
- He maintained that as the appellant's relative, Shri Rishabh Bailey, was informed before the appellant appeared before the learned Remand Judge, the appellant's right to legal advice and representation under Article 22(1) of the Indian Constitution was upheld in text and spirit. Regarding the anticipated procedures for the appellant's police custody remand, Shri Rishabh Bailey had notified the appellant's advocate, Shri Arshdeep Khurana.
- He argued further that Through Head Constable Rajendra Singh; Respondent invited the Advocate to send a formal objection to the police custody remand prayer over WhatsApp. The learned Remand Judge acknowledged receipt of the objection. Therefore, it would be pointless to claim that the remand order is unlawful in any way.

⁹ Ram Kishor Arora v. Directorate of Enforcement (2023)16 SCR 743: 2023 SCC OnLine SC 1682.

¹⁰ Supra note 8.

- He strongly argued that the language used in Section 19 of the PMLA and Sections 43A and 43B of the UAPA differs significantly, and as a result, the appellant cannot use the law established by this Court in Pankaj Bansal (Supra) to challenge the remand order.
- Learned ASG further urged that there is a presumption about the correctness of actions taken in the performance of judicial functions, so it is impossible to question or doubt anything in the remand order dated October 4, 2023, that the appellant's advocate had been heard on the remand application and that the appellant had been informed of the grounds for arrest¹¹.

He therefore requested the Court to uphold the Delhi High Court's ruling and reject the appeal.

REASONING OF COURT

- Justice Mehta responded to the Issues by stating that the person arrested for an offense must be informed in writing of the grounds for arrest as soon as possible. Nowhere in the arrest memo were the grounds for the appellant's arrest stated. Essentially, it was a proforma outlining the official "reasons" for his arrest. On 5.10.2023, the advocate for the accused received a copy of the FIR for the first time. Appellant was taken into custody at 5:45 p.m. on 3.10.2023. According to the arrest memo, on October 4, 2023, the Investigating Officer (IO) had until 5:44 p.m. a clear window to present the appellant to the appropriate magistrate and request, if necessary, a remand of his police custody. The appellant was brought before the Remand Judge at his home shortly before 6:00 a.m. on 3.10.2023, although the appellant's attorney showed up at the police station on 3.10.2023 after the appellant was arrested and the IO had his phone number. The appellant had previously hired a lawyer to defend him, but a remand advocate was present in the courtroom ostensibly to help with his legal requirements. This entire effort was carried out secretly and was an obvious attempt to go beyond the due process of law. Therefore, as stipulated in Articles 22(1) and 22(5) of the Indian Constitution, the requirement to provide written notice of the grounds of arrest or detention to an individual arrested in connection with an offense or placed under preventive detention

¹¹ Supra note 2.

is unalterable and cannot be violated in any circumstance.

- A copy of the written grounds for arrest must be provided to the arrested person as a matter of course and without exception as soon as possible. This is a fundamental and statutory right for anyone who is arrested on suspicion of committing an offense under the UAPA or, for that matter, any other offense or offenses. Informing the individual who was arrested of the grounds for their arrest serves a beneficial and sacred function because it is the only way for them to effectively consult their attorney, challenge the police custody remand, and request bail. The most sacrosanct fundamental right protected by Articles 20, 21, and 22¹² is the right to life and personal liberty, which would be undermined by any other interpretation. Any effort to infringe upon this basic right, which is protected by Articles 20, 21, and 22 of the Indian Constitution, will face severe consequences.
- The terms "reasons for arrest" and "grounds of arrest" differ significantly. According to the arrest memo, the "reasons for arrest" are merely formal ones: to stop the accused from committing any more crimes, to ensure that the crime is properly investigated; to stop the accused from destroying or tampering with the evidence of the crime, etc. These reasons would typically apply to anyone who is arrested on suspicion of a crime, but the "grounds of arrest" must include all information that the investigating officer has on record that led to the accused's arrest. Additionally, the written grounds of arrest must inform the arrested accused of all the fundamental facts that led to his arrest so that he has a chance to defend himself against custodial remand and to request bail. Therefore, the "reasons of arrest," which are broad in nature, cannot be equated with the "grounds of arrest," which are always specific to the accused.
- There is not much of a distinction between the language used in Section 19(1) of the PMLA and Section 43B (1) of the UAPA. Section 19(1) of the PMLA and Section 43B (1) of the UAPA both contain provisions pertaining to informing an arrested individual of the grounds for their arrest. The UAPA's Section 43B (1) and the PMLA's Section 19(1) are the same. Since the requirement to communicate the grounds of arrest is the same in both statutes, the respondent's argument that there are some differences between the general provisions of Section 19 of the PMLA and Sections 43A and 43B

¹² India Const. Art. 20, 21, 22.

of the UAPA would not affect the statutory mandate requiring the arresting officer to notify the person arrested under Section 43B (1) of the UAPA of the grounds of arrest as soon as possible. The constitutional protection outlined in Article 22(1) of the Constitution serves as the foundation for both clauses. The provisions that provide a crucial constitutional protection to an individual arrested on allegation of violating the PMLA or the UAPA must therefore be consistently interpreted and enforced, according to the golden rules of interpretation.

- In the case of *Harikisan v. State of Maharashtra and Others*,¹³ a Constitution Bench of this Court thoroughly reviewed the framework of Article 22(5) of the constitution. According to the Indian Constitution, it is mandatory and necessary to inform the detainee in writing and in a language that he can comprehend of the 'grounds' for his arrest. Failure to do so would render the order of detention void, as the guarantee under Article 22(5) of the Constitution was being broken. Regarding the disclosure of the grounds, Article 22(1) and Article 22(5) of the Indian Constitution employ exactly the same wording. The "grounds" for "arrest" or "detention," as the cases may be, do not need to be stated in writing according to either of the constitutional clauses. Therefore, insofar as the requirement to reveal the grounds for arrest is concerned, the Constitution Bench's interpretation of this important component of the fundamental right in *Harikisan v. State of Maharashtra and Others*, which looked at the scope of Article 22(5) of the Indian Constitution and held that the grounds of arrest are needed to be informed in writing, would ipso facto apply to Article 22(1) of the Indian Constitution.
- The plea of the Respondent is misconceived. Indisputably, the appellant was remanded to police custody on 4.10.2023 whereas the judgment in the case of *Pankaj Bansal*¹⁴ was delivered on 3.10.2023. Merely on a conjectural submission regarding the late uploading of the judgment, the respondent cannot be permitted to argue that the ratio of *Pankaj Bansal* would not apply to the present case. Once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously,

¹³ *Harikisan v. State of Maharashtra and Others* [1962] Supp. 2 SCR 918; 1962 SCC OnLine SC 117.

¹⁴ *Supra* note 8.

the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India.

DECISION OF THE COURT

The court found without hesitation, based on the detailed analysis mentioned above, that the accused appellant and his lawyer were not provided with a copy of the remand application in the purported exercise of communicating the grounds of arrest in writing before the issuance of the order of remand dated October 4, 2023, which nullifies the appellant's arrest and subsequent remand. Accordingly, the appellant is entitled to an order for release from custody based on the ratio of the decision this Court rendered in the *Pankaj Bansal v. Union of India* case¹⁵.

ANALYSIS

The fundamental rights guaranteed by Articles 22(1) and 22(5) of the Constitution are firmly upheld by the ruling. It highlights that in order to ensure openness and procedural justice, the grounds for an arrest must be stated in writing.

The court rightly applied the precedent set in *Pankaj Bansal v. Union of India* even though the formal judgment was uploaded hours after the remand. It clarified that once a decision is delivered, its reasoning becomes binding under Article 141 regardless of when it is uploaded.

The court drew a critical distinction between generic reasons and 'specific grounds related to arrest which is vital for ensuring an arrested person can meaningfully consult a lawyer seek bail or contest remand.

By invoking the Golden Rule, the court interpreted Articles 22(1) and 22(5) in a way that gives effect to their spirit that is the protection of liberty, even though the word "writing" is not explicitly mentioned.

But on the other hand, In National Security or UAPA cases involving terrorism, requiring prior written communication of grounds may cause delays or leaks, hampering the investigation in sensitive or urgent situations. There is concern that technical lapses in paperwork could be used

¹⁵ Sconline, <https://www.sconline.com/blog/post/2024/05/15/supreme-court-sets-aside-arrest-remand-newsclik-chief-editor-prabir-purkayastha-uapa-case/> (last visited June 15, 2025).

by guilty parties to secure release, even when there is strong prima facie evidence, thereby undermining National Security Cases.

Overall, the Judgement reflects a principled stand for constitutional rights, but its implementation requires careful calibration to avoid obstructing legitimate investigations.

CONCLUSION

The court strongly reaffirmed that Articles 22(1) and 22(5) guarantees the right to be informed of grounds of arrest or detention. It clarified that this right includes written communication, even if not explicitly stated in the constitution. The court relied heavily on the earlier decision ***Pankaj Bansal v. UOI***, 2023 and extended its ratio to the UAPA, confirming that sec. 19(1) of PMLA and 43(1)B UAPA are pari materia and should be interpreted uniformly. The court departed from the literal meaning to avoid an absurd and unjust result. “It held that written communication is mandatory, because it ensures the accused understands the grounds fully, it allows effective legal consultation and opposition to remand and bail denial, it prevents arbitrary arrest and preserves the right to liberty.” The requirements to communicate the grounds of arrest in writing flows from the constitutional protection under Art. 22(1) and is an indispensable safeguard against arbitrary deprivation of liberty.