
WHEN ARREST BECOMES A CONSTITUTIONAL EVENT: REASSESSING PROCEDURAL FAIRNESS UNDER SECTION 19 PMLA

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Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244 (Supreme Court of India, decided on 3 October 2023).

ABSTRACT

The power of arrest under the Prevention of Money Laundering Act, 2002 (PMLA) raises significant concerns concerning individual liberty and procedural fairness. The Supreme Court's decision in *Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244*, marked an important development in Indian arrest jurisprudence by holding that an arrested person must be furnished with written grounds of arrest as a matter of course and without exception. The judgment located the procedural requirements of Section 19 of the PMLA within the constitutional protection guaranteed under Article 22(1) of the Constitution, emphasising that the right to be informed of the grounds of arrest must be meaningful and capable of enabling the arrested person to understand and challenge the deprivation of liberty. The Court further rejected the proposition that a subsequent order of judicial remand can retrospectively cure an unlawful arrest.

This paper critically examines the constitutional and procedural significance of *Pankaj Bansal*, with particular focus on the meaning and communication of the "grounds of arrest," the role of judicial remand, and the balance between investigative secrecy and the accused's right to information. It analyses the judgment alongside *Vijay Madanlal Choudhary, V. Senthil Balaji* and the subsequent decision in *Ram Kishor Arora v. Directorate of Enforcement*, which clarified the prospective application of the written-copy requirement. The paper also considers the wider constitutional implications of the decision through its later application in *Prabir Purkayastha v. State (NCT of Delhi)* and draws a comparative perspective from Article 9(2) of the International Covenant on Civil and Political Rights and Article 5(2) of the European Convention on Human Rights. It argues that *Pankaj Bansal* represents more than a procedural requirement concerning documentation; it strengthens the principle that coercive state power must be exercised through transparent, reasoned and judicially reviewable procedures. The paper concludes by proposing greater standardisation in the drafting and redaction of grounds of arrest and stronger judicial scrutiny at the remand stage.

INTRODUCTION

The power of arrest is perhaps the most coercive power that the state can exercise, as it impinges directly on individual liberty. The decision in *Pankaj Bansal v. Union of India*¹ is important because it located the procedural requirements of arrest under the Prevention of Money Laundering Act, 2002 (PMLA) within the constitutional ambit of Article 22(1)². The Supreme Court laid down that hereafter the Directorate of Enforcement (ED) shall provide, as of right and without fail, a copy of the written grounds of arrest to the person arrested. In addition, the court discarded the argument that an illegal arrest at the time of initial detention can be subsequently validated by the order of remand.

The proceedings under challenge were the arrest of Pankaj Bansal and his father Basant Bansal, on allegations of illegal corruption and money laundering that has allegedly come about with M3M Group. The Court, while it was not determining whether the Bansals are guilty or not, was concerned with the procedural regularity of their arrest under both Section 19 of the PMLA and Article 22(1) of the Constitution.

This commentary argues that although this decision has persuasive value on the ground that knowledge of the grounds of arrest is essential for legal advice, court challenge and application for bail; the present judgment raises unanswered questions about the meaning of the term "grounds", redacting of sensitive information and its comparison with another later decision of the Supreme Court in *Ram Kishor Arora*

FACTS OF THE CASE

It is a matter where the FIR was filed in 2019 by the Anti-Corruption Bureau, Panchkula under the Prevention of Corruption Act and Section 120B IPC into allegations of corruption and conspiracy with the then Special Judge and persons who have some association with M3M Group. Pankaj Bansal was neither the party nor mentioned in the FIR. Thereafter, ED filed a proceeding under PMLA.²

While apprehending arrest, the appellants approached the courts. As mentioned in Para 9 of the judgement, "The appellants are in apprehension of arrest and are seeking protection by approaching this court. On 14th June, 2023 Pankaj Bansal, Appellant and Basant Bansal, Appellant appeared before the ED in response to summon and were arrested under section 19 of PMLA.

The ED took the stand that it possessed incriminating materials to arrest both the persons and the procedural requirement was adhered to.

The ED had stated that written grounds of arrest was read out to the appellants. It was stated that Basant Bansal had refused to sign on the arrest memo and the same was signed by a witness. Based on the above recorded submissions, the ED submitted that due grounds of arrest and procedure under law have been followed. The appellants challenged the arrest and subsequent remand."

ISSUES BEFORE THE COURT

The important issues were: (1) whether there was compliance with Section 19 of the PMLA, which provides for recording by the authorized officer of the reasons to suspect that the accused had committed any crime; (2) what is meant by being "informed of the grounds for such arrest"; (3) whether mere explanation of the grounds or furnishing a written copy is enough; (4) whether a judicial remand would make up for an improper arrest; and (5) what is the duty of the remand court in the event of production before it of the accused.³

This matter was important since Section 19 acts as a bridge between executive investigation, statutory procedure and constitutional liberty.

ARGUMENTS OF THE PARTIES

The appellants argued that Section 19 and Article 22(1) require meaningful communication of the grounds of arrest, not merely an assertion by an investigating officer that the grounds were orally conveyed. They also contended that a subsequent remand order cannot cure an arrest that was unlawful when made.

The ED defended the arrests as being based on incriminating material and maintained that the statutory requirements had been followed. It relied on the existing interpretation of Section 19, particularly Vijay Madanlal Choudhary, to contend that the provision did not necessarily require a written copy at the precise moment of arrest.

JUDICIAL REASONING

The Court examined Section 19 within the statutory scheme of the PMLA. An authorised officer may arrest where the statutory conditions are satisfied, but reasons for the belief must

be recorded in writing and the arrested person must be informed of the grounds of arrest.⁴

The Court relied on *Vijay Madanlal Choudhary v. Union of India*, where the constitutional validity of Section 19 had been upheld, but noted that the earlier judgment did not finally settle the precise manner in which grounds must be communicated. It also relied on *V. Senthil Balaji v. State*, which had treated recording of reasons and communication of grounds as safeguards promoting fairness and accountability.

The Court gave Article 22(1) a practical meaning. The right to be informed of the grounds of arrest is a fundamental right, and the method of communication must actually enable the arrested person to understand why liberty has been curtailed. A person who has just been arrested may be unable to remember a lengthy oral explanation. Oral communication can also create a dispute between the arrested person and the officer about what was actually communicated.

The Court identified a second purpose: knowledge of the grounds enables the arrested person to obtain legal advice and seek bail. This was particularly important under the PMLA because Section 45 imposes stringent conditions for bail. Without knowing the basis of the officer's belief, the accused would be seriously handicapped in challenging continued detention.

Accordingly, the Court held that, henceforth, a copy of the written grounds of arrest must be furnished to the arrested person "as a matter of course and without exception". It also recognised the State's interest in protecting an ongoing investigation. If sensitive material appears in the grounds, the authorised officer may redact such portions and provide the edited copy.

The Court separately rejected the argument that subsequent remand automatically cures an illegal arrest. The legality of the initial arrest is a distinct question. Judicial remand cannot retrospectively make an arrest compliant with Section 19. The remand court therefore has a meaningful duty to examine statutory compliance before authorising continued custody.

The appeals were allowed, the impugned orders were set aside and the appellants were directed to be released forthwith unless their incarceration was validly required in another case.

CRITICAL ANALYSIS

The strongest feature of *Pankaj Bansal* is its insistence that procedural safeguards must have

practical content. The Court did not treat Article 22(1) as satisfied by a formal statement that grounds were “communicated”. It asked whether the method of communication actually enabled the arrested person to understand the case and exercise legal rights. This approach is consistent with the constitutional principle that procedural fairness cannot be reduced to empty formalities.⁵

The written-copy requirement is also institutionally valuable. It creates a contemporaneous record, reduces disputes about what was communicated, assists counsel and permits the remand court to assess compliance. In a statute where arrest can have serious consequences before trial, documentation promotes accountability.

The reasoning is especially persuasive in the PMLA context. Section 45’s stringent bail framework gives the accused a strong interest in knowing the basis of arrest. If the grounds are vague or generic, the constitutional right to be informed becomes practically weak. Pankaj Bansal therefore connects Article 22(1) with the effective exercise of the right to seek release.

The Court was also right to reject the proposition that remand cures an invalid arrest. Otherwise, the executive could commit a procedural defect at the moment of arrest and rely on a later judicial order to legitimise it. That would weaken the discipline imposed by Section 19. Judicial remand should involve genuine scrutiny, not mechanical endorsement.

There are, however, areas where the judgment could have been more precise. First, it did not formulate a detailed test for what constitutes adequate “grounds of arrest”. Grounds must contain enough factual information to make the arrest intelligible, but they need not disclose every piece of evidence gathered during an ongoing investigation. The Court’s recognition of redaction is useful, but future cases must determine when redaction becomes so extensive that the safeguard is defeated.

Second, the judgment’s use of “henceforth” created a temporal difficulty. In *Ram Kishor Arora v. Directorate of Enforcement*, the Supreme Court later treated the written-furnishing requirement in Pankaj Bansal as prospective. It held that before 3 October 2023, oral communication could satisfy Section 19 and Article 22(1) in the circumstances before it. This creates a distinction between the constitutional principle of being informed and the particular procedural method of written furnishing.

The prospective approach promotes legal certainty and respects the Court’s wording, but it also

creates a conceptual tension: if written furnishing is necessary to make an existing fundamental right meaningful, the difference between an arrest immediately before and immediately after the judgment can appear formal. Future benches should clearly explain whether the written requirement is a new procedural rule or a judicial articulation of an existing constitutional minimum.

Third, the Court could have more sharply separated two safeguards: the officer's duty to record reasons for believing that the person is guilty and the duty to communicate the grounds to the arrested person. The first disciplines executive decision-making; the second enables the arrested person to challenge it. Keeping these functions distinct would improve doctrinal clarity.

Fourth, the redaction method presents a significant balancing act between liberty and secrecy in investigations. Too much disclosure could impair the investigation while too much redaction might render the document worthless. A standard in the future must ensure that the redaction is appropriately proportionate and allow the court access to review contested documents, when necessary.

However, the rationale in the decision appears compelling despite the problems mentioned above. The ruling is not creating an exemption from investigation. It merely means that the State must use its coercive powers through a documented procedure. This is clearly established by the subsequent impact of the case. For instance, in *Prabir Purkayastha v. State (NCT of Delhi)*, the Supreme Court used similar arguments in relation to arrests under the Unlawful Activities (Prevention) Act, 1967.

Pankaj Bansal therefore represents more than a technical rule about paperwork. It strengthens the culture of justification in criminal investigation: the State must be able to identify why a person was arrested, communicate that basis meaningfully and withstand judicial scrutiny of the procedure.

COMPARATIVE PERSPECTIVE

The constitutional rationale adopted in Pankaj Bansal reflects the international position that an arrested person must be promptly informed that he has been arrested and given the reasons for his arrest. As per article 9(2) of International Covenant on Civil and Political Rights, "Anyone who is arrested or detained shall be informed promptly of the reasons for his arrest or detention

and shall be promptly informed of the charges against him." Article 5(2) of European Convention on Human Rights similarly envisages a right of prompt notification of arrest, 'in a language he understands', of the grounds for the arrest or of charges against him'.⁶

While they do not lay down Indian mode, it is imperative that arrest must be legally comprehensible to an arrested person and amenable to challenge by him. Therefore the comparative logic better suited for PMLA inquiry should be "sufficient disclosure", rather than unbridled disclosure. The principle applied in Pankaj Bansal, of permissible redacting of documents seems a logical way forward.

POLICY IMPLICATIONS

For governance, the judgment strengthens accountability within the ED by requiring arrest decisions to be documented and communicated. This can improve investigative discipline and reduce disputes about procedure.⁷

For individuals, it makes Article 22(1) more effective and facilitates meaningful legal representation. For financial enforcement, it does not prevent investigation or lawful arrest; instead, it makes coercive power more predictable and reviewable.

The principal implementation challenge is consistency. Different officers should not follow materially different standards for drafting or redacting grounds. Standardised internal protocols, training and reasoned remand orders can reduce this risk.

Future litigation is likely to examine whether grounds are specific enough, whether redactions are justified and whether the timing of communication satisfies the statutory requirement. Ram Kishor Arora and Prabir Purkayastha show that the doctrine will continue to develop beyond the original PMLA setting.

RECOMMENDATIONS

First, the ED should adopt a uniform format for grounds of arrest under Section 19, identifying the material facts connecting the person to the alleged offence and explaining the basis of the officer's belief in understandable language.

Second, redactions should be narrowly tailored. Where substantial redaction is necessary, the Special Court should be able to inspect the unredacted version and determine whether the

remaining grounds are sufficient.

Third, remand courts should expressly record their satisfaction regarding compliance with Section 19. This would make judicial oversight visible and reduce later disputes.

Fourth, legislative or rule-making clarification may be considered on the meaning, timing and form of “inform” under Section 19. Future judicial decisions should also clarify the relationship between Pankaj Bansal and Ram Kishor Arora so that investigators and accused persons have a predictable procedural standard.

DOCTRINAL SIGNIFICANCE

The judgment also deserves attention for its treatment of the relationship between statutory procedure and constitutional rights. Section 19 of the PMLA is not an isolated administrative provision: its requirements operate in the shadow of Article 21 and Article 22. When a statute authorises arrest, the statutory conditions become part of the legal discipline governing deprivation of liberty. A court therefore need not choose between enforcing the statute and protecting constitutional liberty; enforcing the statute strictly is itself a means of protecting liberty.

This approach is important for special criminal statutes. Stringent laws are often justified by the complexity or seriousness of the conduct being investigated. Yet the seriousness of an alleged offence cannot by itself reduce the standard of procedural fairness. Pankaj Bansal consequently offers a useful model for future cases involving statutes that confer exceptional powers on investigative agencies: stronger powers should ordinarily be accompanied by clearer procedural accountability.

The judgment also confirms that the legal grounds for arrest should not be judged solely by whether sufficient evidence for prosecution is ever recovered. The legal grounds for depriving an individual of their liberty in the first instance are a separate constitutional consideration. The importance of this distinction comes into sharp relief in those cases where an illegal arrest carries other deleterious effects not remediable through an acquittal.

CONCLUSION

Pankaj Bansal v. Union of India is an important development in Indian arrest jurisprudence. Its central insight is that informing an arrested person of the grounds of arrest must mean

communicating information in a form that makes the right real and usable. By requiring written grounds to be furnished as a matter of course and rejecting the idea that later remand automatically cures an unlawful arrest, the Supreme Court strengthened both liberty and institutional accountability.⁸

The decision does not weaken the substantive objective of the PMLA. It requires that financial-crime enforcement operate through legally disciplined procedures. Questions concerning the content of grounds, redaction and the prospective operation of the written-copy rule remain, particularly after *Ram Kishor Arora*. Nevertheless, the later application of the principle in *Prabir Purkayastha* confirms its wider constitutional importance.

The enduring contribution of Pankaj Bansal is therefore not merely the requirement of a written document. It is the principle that liberty requires reasons, reasons require meaningful communication, and meaningful communication enables a person to challenge the State's coercive power.

ENDNOTES:

1. *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1244.
2. The Prevention of Money Laundering Act, 2002, s. 19.
3. The Constitution of India, art. 22(1).
4. *V. Senthil Balaji v. State represented by Deputy Director*, 2023 SCC OnLine SC 934.
5. *Ram Kishor Arora v. Directorate of Enforcement*, 2023 SCC OnLine SC 1682.
6. International Covenant on Civil and Political Rights, art. 9(2).
7. The Prevention of Money Laundering Act, 2002, s. 45.
8. *Prabir Purkayastha v. State (NCT of Delhi)*, 2024 INSC 414.