prohibition, is untenable. Such an approach would effectively render the legislative bar meaningless and open the door to judicial overreach.

17. Any perceived hardship or injustice that may arise from the strict application of the statutory bar is a matter for the legislature to address through amendment. It is not for the Courts to fill perceived gaps in the law by exercising discretion contrary to the express provisions of the statute. However, as settled by the Supreme Court in the case of Prithvi Raj Chauhan (supra), the Court in its inherent jurisdiction under Section 482 Cr.P.C. or under Article 226/227 of the Constitution of India can still grant interim protection from arrest if prima facie, the offences alleged are not made out from the contents of the complaint. Further, even an interim bail can be granted by a Court, in appropriate cases, pending a regular bail application.

18. In light of the clear and unequivocal wording of Section 438 of the Cr.P.C., which prohibits filing of anticipatory bail application in cases where the offence is punishable by death sentence, this Court is of the opinion that no judicial discretion can be exercised to entertain anticipatory bail application in such cases.

19. The answer to the question referred to this Bench is, therefore, in the negative. The Courts cannot entertain anticipatory bail application in cases where the State amendment prohibits it."

20. Taking into consideration of reasons stated in foregoing paragraphs, I do not find any merit in the arguments advanced by learned counsel for applicant and contents made in the bail application for the following reasons:-

Firstly, the applicant allegedly involved in commission of heinous offence punishable under Section 302 IPC, in which the sentence may be awarded life imprisonment or death sentence.

Secondly, in the statement recorded under Section 161 Cr.P.C. of the informant has corroborated the contents of the F.I.R., the other materials on record, which have been collected by the police during investigation prima facie linked the applicant for commission of said offence.

Thirdly, applicant has history of 17 criminal cases.

Fourthly, Taking into consideration of criminal history of applicant, there are great apprehension of threat to the witnesses as stated by learned counsel appearing on behalf of the informant.

21. In view of the aforesaid reasons, I do not find any merit in the instant application. Therefore, without expressing any opinion on merits, the instant bail application is **rejected**.

(2025) 5 ILRA 1186
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE MADAN PAL SINGH, J.

Criminal Misc. Writ Petition No. 12507 of 2024

Anwar Dhebar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Utkarsh Malviya, Varad Nath

Counsel for the Respondent:
G.A.

Criminal Law – Constitution of India,1950 – Article 19(1), 21, 22(1), 39-A & 226 -

Criminal Procedure Code, 1973 – Sections 50, 167 & 304 - Indian Penal Code, 1860 - Sections 120-B, 384, 420, 467, 468 & 471 – Prevention of Corruption Act, 1961 - Sections 7 & 12 - Writ Petition – assailing the arrest and to declare illegal all the successive remand orders – ECIR - FIR – lodged by ACB - earlier petitioner was arrested along with other co-accused in Chhattisgarh by ACB for offenses under IPC and the Prevention of Corruption Act, for which he was granted bail - however, on same day after his release, he was re-arrested by the UP Police at Raipur, within 20 minutes after his bail release – Transit remand – the Special Judge, Meerut remanded him to judicial custody, despite his objections citing violations of Articles 19(1), 22(1) of the Constitution and Section 50 of Cr.P.C. - His arrest memo and intimation to his son were duly made on the same day - Court finds that, - the arrest memo lacked a column for stating reasons, and the petitioner was not informed of his right to legal aid, which is protected under Articles 21, 22(1), 39A of the Constitution and Section 304 Cr.P.C. – held, Right to access legal aid is a valuable right of an accused and he must be informed of that right before his arrest - therefore, due to non-compliance with Article 22(1) of the Constitution and Section 50 of the Cr.P.C. as the grounds of arrest were never communicated in writing, nor was the petitioner given an opportunity to defend his custodial remand, the arrest and all subsequent remand orders were quashed – however, the charge-sheet remains unaffected and proceedings may continue as per law – direction issued, for circulation of the judgment by the Director General of Police to all police personnel in U.P. to prevent future procedural lapses. (Para – 16, 17, 18, 19)

Writ petition stands allowed. (E-11)

Result: - Writ Petition – **Allowed.**

List of Cases cited:

1. Vimal Kishore Mehrotra Vs St. of U.P. & anr.- AIR 1956 All 56,

2. Ashish Kakkar Vs UT of Chandigarh - MANU/SCOR/31085/2025;

3. Vihaan Kumar Vs St. of Har. & ors.- MANU/SC/0161/2025;

4. Manjeet Singh @ Inder @ Manjeet Singh Chana Vs St. of U.P. & ors.– Order Dt. 09.04.2025 passed in Criminal Misc. Writ Petition No. 934 of 2025;

5. Marfing Tamang Vs St. (NCT of Delhi) - MANU/ DE/0755/2025;

6. Air India Statutory Corporation & ors.Vs United Labour Union & ors.- (1997) 9 SCC 377,

7. Vidhu Gupta Vs St. of U.P. & ors.- SLP (Criminal) No. 10178 of 2024;

8. Christie Vs Leachinsky (1947 A.C. 573),

9. Prabir Purkayastha Vs State (NCT of Delhi) (supra) – LAWS (SC)-2024-5-46,

10. Pankaj Bansal Vs U.O.I.– LAWS (SC)-2023-10-3,

11. Vihaan Kumar Vs St. of Har. – LAWS (SC)-2025-2-20 (Para-21)

12. Ashish Kakkar Vs UT of Chandigarh - Criminal Appeal No.1518 of 2025 arising out of SLP (Crl.) No.1662 of 2025 decided on 25.03.2025.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Madan Pal Singh, J.)

1. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Utkarsh Malviya, Sri Varad Nath and Sri Vikash Walia, learned counsel for the petitioner; Sri Manish Goyal, learned Additional Advocate General assisted by Sri Rupak Chaubey, Sri J.K. Upadhyay and Sri Vikas Sahay, learned counsel appeared for the State.

2. This writ petition has been filed with a prayer to declare the arrest of the petitioner as illegal vide the first

information report dated 30.07.2023 which had given rise to Case Crime No. 196 of 2023. A further relief has been prayed for and that is to declare illegal all the successive remand orders passed subsequent to the arrest of the petitioner.

3. The petitioner namely Anwar Dhebar in the instant case was arrested with regard to a case which was registered by way of an Enforcement Case Information Report (hereinafter referred to as the "ECIR") No. ECIR/RPZO/11/2022. This matter was being contested by the petitioner alongwith the other co-accused and the ECIR therein was challenged. However on 17.01.2024, an F.I.R. which gave rise to Case Crime No. 4 of 2024 was lodged by the Anti Corruption Bureau, Chhattisgarh under Sections 420, 467, 468, 471 and 120-B of I.P.C. read with section 7 and 12 of the Prevention of Corruption Act and therein the petitioner was arrested on 04.04.2024. When the petitioner was so arrested, the High Court of Chhattisgarh granted him bail on 14.06.2024. Simultaneously, with regard to the events which happened in the same sequence of event, in the State of Uttar Pradesh, a first information report was lodged by the Uttar Pradesh Police on 30.07.2023 under Sections 420, 468, 471, 473, 484 and 120-B of I.P.C. and that had given rise to Case Crime No. 196 of 2023. When the petitioner, in Case Crime No. 4 of 2024 by the High Court of Chhattisgarh, was released on bail by an order dated 18.06.2024 at 09:20 PM the Uttar Pradesh Police thereafter arrested him on the very same date i.e. on 18.06.2024 at 09:40 PM at Raipur itself. The Investigating Officer of the State of Uttar Pradesh, Sri A.C. Srivastava applied under Section 167 of the Cr.P.C. for a transit remand from the Magistrate at Raipur which was granted for 48 hours. On 21.06.2024, the Special Judge, Prevention of Corruption Act, Meerut took the petitioner into judicial custody till 01.07.2024 despite the fact that the petitioner had categorically applied before the Special Judge, Prevention of Corruption Act, Meerut that his arrest was in violation of Article 19(1) and 22(1) of the Constitution of India. He had also stated that the arrest was in violation of the provisions of Section 50 of the Cr.P.C. At the time when the petitioner had got arrested at Raipur by the Uttar Pradesh Police on 18.06.2024, there was a memo of arrest. The information regarding the arrest was also sent to his son on the very same date i.e. on 18.06.2024. The information which was given to the son of the petitioner is being reproduced here as under:

"गिरफ्तारी की सूचना

प्रति

जुनैद ढेबर 5/0 अनवर ढेबर उम्र 28 वर्ष निवासी ओस्मचौक के पास हिन्द घरस्कोल के सामने कैरन बाज़ार रायपुर छतीसगढ़। आपको सूचित किया जाता है कि थाना कसना गौतम बुद्ध नगर कि न०: 196/23 धारा 420, 419, 467, 468, 471, 120B, 384 IPC व 7 क भ्रष्टाचार निरोधक में आज दिनांक 18.06.24 को 21:40 अपने पिता अनवर ढेबर को थाना सिविल लाईनस में गिरफ्तार किया गया जिन्हें न्यायालय समय पर संबंधित न्यायालय में पेश किया जायेगा"

The memo of arrest is also being reproduced hereas under:

"गिरफ्तारी का प्रपत्र

1. अभियुक्त का नाम अनवर ढेबर पिता का नाम स्व० जीकर भाई ढेबर निवासी औकम चौक हिन्दू हाईसूख के सामने बैगम बाजार रामपुर छत्तीसगढ़ वर्ष 52 वर्ष लगभग

2. अन्तर्गत मु०अ०सं० / धारा 196/23 धारा 419, 420, 467, 468, 471, 120ए, 384 आई.पी.सी. व 8क 17/13 भ्रष्ट्राचार नि० अधि० थाना कासना गौतमबुद्धनगर में वांछित है।

3. गिरफ्तारी का स्थान जेल गेट के सामने दिनांक 18.6.24 समय 21:40

4. गिरफ्तारी करने वाले पुलिस अधि०/कर्मचारीगण का विवरण-एसआई श्री पवन कुमार, एसआई श्री फैजूददीन सिटली एच.सी. रमाशंकर चौधरी, एचसी राघवेन्द्र तिवारी, एचसी सूरज कुमार सी/ सुधीर कुमार एचसी प्रवीन शुक्ला

5. स्थानीय साक्षी जिसकी उपस्थित में गिरफ्तारी की गयी---

6. गिरफ्तारी के समय अभियुक्त के कब्जे से प्राप्त वस्तु इत्यादि का विवरण---

7. गिरफ्तारी साक्षीगण के हस्ताक्षर

8. अभियुक्त के नि०अ० / हस्ताक्षर

9. पुलिस अधिकारी/कर्मचारी का हस्ताक्षर शंकर एचसी राघवेन्द्र तिवारी सी / सुधीर कुमार एचसी सूरज कुमार रमा

प्रारूप-2

गिरफ्तारी सूचना पत्र जिला विधिक सेवा प्राधिकरण को दी जाने वाली सूचना

1. जनपद का नाम - रामपुर छत्तीसगढ़

2. अभिरक्षा में लिए गये व्यक्ति का नाम अनवर ढेबर पिता का नाम स्व० जीकर भाई ढेबर पता निवासी ओकम चौक हिन्दू हाईसुख के सामने बैगम बाजार रामपुर छत्तीसगढ़

3. अभिरक्षा में लेने की तिथि 18.6.24

4. अपराध संख्या थाना व धारा 196/23 धारा 419, 420, 467, 468, 471, 120बी, 384 आई.पी.सी. व 7 क भ्रष्टाचार नि० अधि०

5. किसके द्वारा गिरफ्तार किया गया - एसआई श्री पवन सिंह, एसआई श्री फैजूददीन सिददीकी, एचसी प्रवीन शुक्ल, एचसी राघवेन्द्र तिवारी, एचसी सूरज, एचसी रमा शंकर, सी / सुधीर

6. गिरफ्तारी के बाद कहाँ रखा गया

7. मित्र सम्बन्धी का नाम व पता जिसे सूचना देनी है- सोरव देवर (पुत्र) मो० 8881383333

दिनांक : 18.06.2024

(पवन कुमार सिंह)
उ०नि०
एस०टी०एफ०
लखनऊ"

4. It is the contention of the learned counsel for the petitioner that as per Article 22(1) of the Constitution of India, no person could be arrested or detained in custody without him being informed as soon as may be of the ground for such arrest. He also stated that he shall also not be denied the right to consult and be defended by a legal practitioner of his choice. Since, the learned counsel for the petitioner relied upon Article 22(1) of the Constitution of India and therefore the same is being reproduced here as under:

"22. Protection against arrest and detention in certain cases*. - (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice"*

5. He has also relied upon Section 50 of the Cr.P.C. and submitted that every police officer, who arrested a person without a warrant, shall have to forthwith communicate to the arrested person full particulars of the offences for which he was arrested. He would also inform the arrested person the grounds for such arrest. Section 50 of the Cr.P.C is being reproduced here as under:

"50. Person arrested to be informed of grounds of arrest and of right to bail.

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

6. Learned counsel for the petitioner relying upon a celebrated Division Bench judgment of the Allahabad High Court reported in **AIR 1956 All 56 (Vimal Kishore Mehrotra vs. State of Uttar Pradesh and another)** submitted that the object underlying the provision was that when the ground of arrest would be communicated to the person who was being arrested then that arrested person would be in a position to make an application to the appropriate Court for bail or move the High Court for appropriate relief. He also submitted that the information would enable the arrested person to prepare his defence in time for the purposes of his trial. For that purpose, he relied upon paragraph no. 31 of the abovementioned judgment and therefore the same is being reproduced here as under :

"The object underlying the provision that the ground for arrest should be communicated to the person arrested appears to be this. On learning about the ground for arrest, the man will be in a position to make an application to the appropriate Court for bail, or move the High Court for a writ of habeas corpus. Further, the information will enable the arrested person to prepare his defence in time for purposes of his trial. For these reasons, it has been provided by the Constitution that, the ground for the arrest must be communicated to the person ??? as soon as possible. In the present case it was not contended on behalf of the respondents that, it was impracticable to give the information to the petitioner soon after the arrest. The contention on behalf of the respondents is that, the necessary information has already been supplied to the petitioner. The alleged occurrence described in annexure 'C' took place at Kanpur. The petitioner was arrested in Kanpur City. The jail is located at Kanpur. The necessary information could easily be supplied to the petitioner within a week of his arrest."

7. The paragraph no. 31 was a part of the order which was delivered by a Division Bench of Hon'ble Mr. Justice Oak and Hon'ble Mr. Justice Desai, in which, Hon'ble Mr. Justice Desai who was also a part of the Bench gave his judgment separately though he came to the same conclusion as was arrived at by Hon'ble Mr. Justice Oak, and the learned counsel for the petitioner relied upon paragraph nos. 42, 43, 44, 45, 46, 47, 48 and 49 of the judgment for bringing home his point. The paragraphs are being reproduced here as under:

"42. It is the fundamental right of every person that on being arrested he must be "informed, as soon as may be, of the grounds for such arrest"; he cannot be detained in custody without being so informed. It is the common case of the parties before us that the applicant on being arrested was informed merely that he had been arrested under Section 7 of the Act; there is no allegation that any other information was given to him. Section 7 is a wide section containing several provisions and he was not informed under which particular provision he was arrested. Nothing was said to him about the allegation made against him or the act alleged to have been done by him and amounting, to an offence punishable under Section 7.

43. The rule in Article 22(1) that a person on being arrested must be informed of the grounds for the arrest is similar to, though not exactly identical with, the rules prevailing in England and in

United States of America. The rule prevailing in England is that

"in normal circumstances an arrest without warrant either by a policeman or by a private person can be justified only if it is an arrest on a charge made known to the person arrested"; (per Viscount Simon L.C. in — 'Christie v. Leachinsky (1947 AC 573 at p. 586(F).

44. It is a rule of the common law and is described in different languages by different authorities, but the meaning is the same; the arrested person must be told for what he is arrested or the cause of his arrest. In the United States the accused has the constitutional right "to be informed of the nature and cause of the accusation"; see 6th Amendment to the American Constitution. In — 'Hooper v. Lane', (1857) 6 HLC 443 : 10 ER 1368 (G), one of the reasons for the rule was said to be that the person arrested should know whether he is or is not bound to submit to the arrest. In 'Leachinsky's case (F)' Lord Simonds observed at page 591:

"Putting first tilings first, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitied to resist arrest unless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested? ..... Blind, unquestioning obedience is the law of tyrants and of slaves: it does not yet flourish on English soil".

45. Professor Glanvile L. Williams in his article "Requisites of a Valid Arrest in (1954) Criminal Law Review, page 6 at page 16, criticised the reason given by Lord Simonds as "somewhat legalistic" because few people know the law of arrest in such a way that they can decide on the spot whether the arrest to which they are being subjected is legal. In his opinion the true reason is a different one, e.g., the reason given by Viscount 11th Simon L.C. in the same case at page 588 in the following words:

"If the charge on suspicion of which the man if arrested is then and there made known to him, he has the opportunity of giving an explanation of any misunderstanding or of calling attention to other persons for whom he may have been mistaken with the result that further inquiries may save him from the consequences of false accusation."

46. Another reason given by Lord Simonds at page 592 is that the arrested person may without a moment's delay take such steps as will enable him to regain freedom. One more reason is that it acts as a safeguard against despotism and over-zeal. As remarked by Professor Glanville L. Williams (supra, at page 17)

"the rule has the effect of preventing the police from arresting on vague general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of some crime for which they have power to arrest".

47. In 'McNabb v. United States of America', (1943) 318 US 332 (H), Frankfurter, J. observed at page 343:

'Experience has therefore counselled that safeguards must be provided against the dangers of the overzeaious as well as the despotic ..... Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard".

48. In 'Unted States v. Cruikshank', (1876) 92 US 542 at page 559

: 23 Law Ed 588 at p. 594(I), it was observed by Waite C.J. that the accused is given the right to have a specification of the charge against him in order that he may decide whether he should present his defence by motion to quash, demurrer or plea. The debates of the Constituent Assembly which framed the Constitution are relevant for the purpose of ascertaining the reason behind a certain enactment. In the Draft Bill of the Constitution the Article corresponding to the Article under consideration was 15A. The reason given for the provisions of the Article was that they were safeguards against illegal or arbitrary arrests (9 Constituent Assembly Debates, p. 1497).

49. The words "grounds for such arrest" or curing in Article 22(1) should be interpreted in the light of the reasons given above for the provision. If a person is arrested on a warrant, the grounds fir reasons for the arrest are the warrant; if the warrant is read over to him, that is sufficient compliance with the requirement that he should be informed of the grounds for his arrest. If he is arrested without a warrant, he must be told why he has been arrested. If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial. In order to inform him that he has committed a certain offence, he must be told of the act done by him which amounts to the offence."

8. Learned counsel for the petitioner further relied upon the recent judgments of the Supreme Court which are **Ashish Kakkar vs. UT of Chandigarh** reported in **MANU/SCOR/31085/2025; Prabir Purkayastha vs. State (NCT of Delhi)** reported in **(2024) 8 SCC 254; Vihaan Kumar vs. State of Haryana and Ors.** reported in **MANU/SC/0161/2025; Manjeet Singh @ Inder @ Manjeet Singh Chana vs. State of U.P. And 2 Others** dated 09.04.2025 passed in **Criminal Misc. Writ Petition No. 934 of 2025 and Marfing Tamang Vs. State (NCT of Delhi)** reported in **MANU/DE/0755/2025**. While relying upon the judgment of **Prabir Purkayastha *(Supra)***, learned counsel for the petitioner relied upon specifically paragraph no. 8 of that judgment and therefore the same is being reproduced here as under:

"8. Shri Kapil Sibal, learned senior counsel representing the appellant canvassed the following submissions in order to question the proceedings of arrest and remand of the appellant:-

(i) That the FIR No. 224 of 2023(FIR in connection of which appellant was arrested) is virtually nothing but a second FIR on same facts because prior thereto, another FIR No. 116 of 2020 dated 26th August, 2020 had been registered by PS EOW, Delhi Police("EOW FIR") alleging violation of Foreign Direct Investment(FDI) regulations and other laws of the country by the appellant and the company, thereby causing loss to the exchequer. A copy of the said FIR was, however, not provided to the appellant. By treating the EOW FIR as disclosing predicate offences, the Directorate of Enforcement(for short "ED") registered an Enforcement Case Information Report(for short 'ECIR') for the offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002(for short 'PMLA'). The ED carried out extensive search and seizure operations at various places including the office of the company-M/s. PPK Newsclick Studio Pvt. Ltd., of which the appellant is the Director.

(ii) The company assailed the ECIR by filing Writ Petition(Crl.) Nos.

1129 of 2021 and 1130 of 2021 wherein interim protection against coercive steps was granted by High Court of Delhi on 21st June, 2021. The appellant was also provided interim protection in an application seeking anticipatory bail vide order dated 7th July, 2021.

(iii) The FIR No. 224 of 2023 has been registered purely on conjectures and surmises without there being any substance in the allegations set out in the report. The contents of the FIR which were provided to the appellant at a much later stage discloses a purely fictional story without any fundamental facts or material warranting registration of the FIR.

(iv) Admittedly, the copy of FIR No. 224 of 2023 was neither made available in the public domain nor a copy thereof supplied to the appellant until his arrest and remand which is in complete violation of the fundamental Right to Life and Personal Liberty enshrined in Articles 20, 21 and 22 of the Constitution of India.

(v) Shri Sibal pointed out that the learned Remand Judge, vide order dated 5th October, 2023, allowed the application filed by the appellant seeking certified copy of the said FIR which was provided to the learned counsel for the appellant in the late evening on 5th October, 2023, i.e., well after the appellant had been remanded to police custody.

(vi) ***That the grounds of arrest were not informed to the appellant either orally or in writing and that such action is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973(hereinafter being referred to as the 'CrPC').***

(vii) Reliance was placed by the learned senior counsel on the judgment of this Court in Pankaj Bansal v. Union of India and Others1 and it was contended that the mere passing of successive remand orders would not be sufficient to validate the initial arrest, if such arrest was not in conformity with law. Learned senior counsel urged that this Court in the case of Pankaj Bansal(supra) interpreted the provision of Section 19(1) of PMLA which is pari materia to the provisions contained in Section 43B(1) of the UAPA. Thus, the said judgment fully applies to the case of the appellant.

(viii) Shri Sibal referred to the observations made in the judgment of Pankaj Bansal(supra) and urged that since the grounds of arrest were not furnished to the appellant at the time of his arrest and before remanding him to police custody, the continued custody of the appellant is rendered grossly illegal and a nullity in the eyes of law because the same is hit by the mandate of Article 22(1) of the Constitution of India.

(ix) Shri Sibal further urged that the view taken by a two- Judge Bench of this Court in Ram Kishor Arora v. Directorate of Enforcement2 holding the judgment in Pankaj Bansal(supra) to be prospective in operation would also not come in the way of the appellant in seeking the relief. He pointed out that the judgment in the case of Pankaj Bansal(supra) was pronounced on 3rd October, 2023 whereas the illegal remand order of the appellant was passed on 4th October, 2023 and hence, the law laid down in the case of Pankaj Bansal(supra) is fully applicable to the case of the appellant despite the interpretation given in Ram Kishor Arora(supra).

(x) That the arrest of the appellant is in gross violation of the provisions contained in Article 22 of the Constitution of India, hence, the appellant is entitled to seek a direction for quashment

of the remand order and release from custody forthwith.

(xi) That the action of the Investigating Officer in arresting and in seeking remand of the appellant is not only mala fide but also fraught with fraud of the highest order. 2 2023 SCC OnLine SC 1682

(xii) Referring to the remand order dated 4th October, 2023, it was contended that the appellant was kept confined overnight by the Investigating Officer without conveying the grounds of arrest to him. He was presented in the Court of the learned Remand Judge on 4th October, 2023 in the early morning without informing Shri Arshdeep Khurana, the Advocate engaged on behalf of the appellant who was admittedly in contact with the Investigating Officer because he had attended the proceedings at the Police Station Lodhi Colony, post the appellant's arrest. In order to clandestinely procure police custody remand of the appellant, the Investigating Officer, presented the appellant at the residence of learned Remand Judge before 6:00 a.m. by informing a remand Advocate Shri Umakant Kataria who had never been engaged by the appellant to plead his cause.

(xiii) Learned Remand Judge remanded the accused to police custody at 6:00 a.m. sharp as is evident from the remand order(supra). Shri Arshdeep Khurana, the appellant's Advocate was informed about the order granting remand by a WhatsApp message at 7:07 a.m. but the same was an exercise in futility because there was no possibility that the learned Advocate could have reached the residence of the learned Remand Judge in time to oppose the prayer for remand.

(xiv) That, as a matter of fact, the remand application had already been accepted at 6:00 a.m. which fact is manifested from the time appended at the end of the remand order(supra). The learned Remand Judge signed the proceedings by recording the time as 6:00 a.m. Hence, there is no escape from the conclusion that the remand order was passed without supplying copy of the grounds of arrest to the appellant or the Advocate engaged by him. The appellant was intentionally deprived from information about the grounds of his arrest and thereby he and his Advocate were prevented from opposing the prayer of police custody remand and from seeking bail.

(xv) He further urged that the stand taken by the respondent that the grounds of arrest were conveyed to the learned counsel for the appellant well before the learned Remand Judge passed the remand order is unacceptable on the face of the record because the time of passing the remand order is clearly recorded in the order dated 4th October, 2023 as 6:00 a.m. Admittedly, the grounds of arrest were conveyed to Shri Arshdeep Khurana, Advocate for the appellant well after 7:00 a.m. It was contended that the noting made by the learned Remand Judge in the order dated 4th October, 2023 that the learned counsel for the appellant was heard on the application for remand is a subsequent insertion clearly visible from the remand order. The fact of subsequent insertion of these lines is fortified from the fact that the appellant had already been remanded to police custody by the time the Advocate was informed and the copy of the remand application containing the purported grounds of arrest was transmitted to him.

(xvi) That the foundational facts in the FIR No. 224 of 2023 are almost identical to the allegations set out in the EOW FIR. The appellant had been granted

protection against arrest by the High Court of Delhi in the EOW FIR. Owing to this protection, the mala fide objective of the authorities in putting the appellant behind bars was not being served and, therefore, a new FIR No. 224 of 2023 with totally cooked up allegations came to be registered and the appellant was illegally deprived of his liberty without the copy of the FIR been provided and without the grounds of arrest being conveyed to the appellant."

9. He thereafter to further bolster his case, relied upon paragraph nos. 20, 22, 29, 30, 46, 47, 48, 49, 50, 51 and 52 of that judgment and therefore they are being reproduced here as under:

"20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in Roy V.D. v. State of Kerala [Roy V.D. v. State of Kerala, (2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p. 593, para 7)

"7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens."

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly."

22. The learned ASG referred to the language of Article 22(5) of the Constitution of India and urged that even in a case of preventive detention, the constitutional scheme does not require that the grounds on which the order of detention has been passed should be communicated to the detenu in writing. Ex facie, we are not impressed with the said submission.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.

46. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the investigating officer.

47. We have carefully perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a pro forma

indicating the formal "reasons" for which the accused was being arrested.

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 tampering 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.

49. From the detailed analysis made above, there is no hesitation in the mind of the court to reach to a conclusion 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 appellant-accused or his counsel before passing of the order of remand dated 4-10-2023 which vitiates the arrest and subsequent remand of the appellant.

50. As a result, the appellant is entitled to a direction for release from custody by applying the ratio of the judgment rendered by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] .

51. Accordingly, the arrest of the appellant followed by remand order dated 4-10-2023 and so also the impugned order passed by the High Court of Delhi dated 13-10-2023 [Prabir Purkayastha v. State (NCT of Delhi) Crl. MC No. 7278 of 2023 sub nom Amit Chakraborty v. State (NCT of Delhi), (2023) 6 HCC (Del) 565] are hereby declared to be invalid in the eye of the law and are quashed and set aside.

52. Though we would have been persuaded to direct the release of the appellant without requiring him to furnish bonds or security but since the charge-sheet has been filed, we feel it appropriate to direct that the appellant shall be released from custody on furnishing bail and bonds to the satisfaction of the trial court.

10. Learned counsel for the petitioner, while placing his arguments, submitted that the petitioner had categorically stated in paragraph nos. 24, 28, 29 and 30 of the writ petition that during the arrest and thereafter during the subsequent remand, the petitioner was never provided with the grounds of arrest and these paragraphs have nowhere been denied by the State in the counter affidavit. In fact, learned counsel for the petitioner heavily relied upon the order of the Special Judge, Prevention of Corruption Act, Meerut dated 21.06.2024 wherein the petitioner had specifically relied upon the provisions of Article 22(1) of the Constitution of India and that of Section 50 of the Cr.P.C. and had submitted

that no ground had been informed for the arrest of the petitioner and to that the Special Judge, Prevention of Corruption Act, Meerut after going through all the record had stated that only an information was given to the son of the petitioner, Shoeb Dhebar, and he had thereafter stated nothing in the order. For ready reference, the order dated 21.06.2024 is being reproduced here as under:

''न्यायालय - विशेष न्यायाधीश (भ्रष्टाचार निवारण अधिनियम) विशेष न्यायालय सं०-2/अपर सत्र न्यायाधीश, मेरठ ।

मुकदमा अपराध संख्या-196/2023

अन्तर्गत धारा-419, 420, 467, 468, 471, 484 व 120बी भा०द०सं० व धारा 7क भ्रष्टाचार निवारण अधिनियम, थाना-कासना, जनपद गौतमबुद्ध नगर, (ग्रेटर नोएडा)

रिमाण्ड शीट

दिनांक-21.06.2024

प्रार्थना पत्र पेश हुआ। उक्त प्रस्तुत मामले में अभियुक्त अनवार ढेबर की ओर से अन्य प्रार्थना पत्र प्रस्तुत कर कथन किया गया है कि अभियुक्त को गिरफ्तार करके विवेचक द्वारा सविधान के अनुच्छेद 19 (1) एव 22 (1) का उल्लघन किया गया है तथा धारा 50 सीआर०पी०सी० के प्रावधानों का पालन नहीं किया गया है। अतः विवेचक को निर्देशित किया जाए कि गिरफ्तारी के कारण से संबधित कागजात की छायाप्रति प्रदान की जाए।

सुना गया तथा समस्त प्रपत्रों का अवलोकन किया गया। प्रपत्रो के अवलोकन से स्थष्ट है कि प्रार्थी / अभियुक्त को दिनांक 18.06.2024 को गिरफ्तार किया गया है। 24 घण्टे के अन्दर अभियुक्त को इस न्यायालय मे प्रस्तुत नहीं किया जा सकता था इसलिए अभियुक्त को दिनाक 19.06.2024 को विशेष न्यायाधीश, भ्रष्टाचार निवारण अधिनियम / प्रथम अपर सत्र न्यायाधीश, रायपुर (छत्तीसगढ) के समक्ष प्रस्तुत किया गया, जहां से उसको 48 घण्टे का ढांजिट रिमाण्ड स्वीकार किया गया जिसके अनुसार अभियुक्त को आज दिनांक 21.06.2024 को इस न्यायालय के समक्ष प्रस्तुत किया गया। गिरफ्तारी के समय अभियुक्त को शोएब ढेबर पुत्र को सूचना दिया जाना गिरफ्तारी प्रपत्र में उल्लेख है। अभियुक्त को अन्तर्गत धारा 419, 420, 467, 468, 471, 484 व 120थी भा०५०स० व धारा 7क भ्रष्टाचार निवारण अधिनियम में गिरफ्तार किया गया है।

प्रपत्रों के अवलोकन से स्पष्ट है कि अभियुक्त के विरूद्ध गम्भीर अपराध का आरोप लगाया गया है। विवेचक द्वारा 14 दिवस की न्यायिक अभिरक्षा की मांग की गयी है। अतः तथ्यों व परिस्थितियों को दृष्टिगत रखते हुए। प्रार्थी / अभियुक्त का रिमाण्ड अन्तर्गत धारा 167 द०प्र०सं० स्वीकार किये जाने का आधार पर्याप्त है। अतः अभियुक्त को दिनांक 01.07.2024 तक न्यायिक अभिरक्षा में जेल प्रेषित किया जाए। अभियुक्त नियमानुसार प्रत्येक आदेश की प्रतिलिपि प्राप्त करने का हकदार होगा।

(रमेश)

प्रभारी विशेष न्यायाधीश (भ्रष्टाचार निवारण अधिनियम)

विशेष न्यायालय सं०-02/अपर सत्र न्यायाधीश, मेरठ''

11. In the end, learned counsel for the petitioner submitted that since the ground of arrests which were necessarily required to be furnished by the investigating agency in writing at the time of arrest and since they are palpably absent in any of the communications sent by the arresting authorities, the arrest would be bad and illegal in law. In fact learned counsel for the petitioner, relying upon the entire counter affidavit and all the documents annexed therein, states that there is an admission of the respondents that no grounds of arrest were ever supplied to the petitioner. Learned counsel for the petitioner therefore submitted that this Court may rely upon the judgment of Supreme Court in Air India Statutory Corporation & Ors. vs. United Labour Union & Ors. reported in (1997) 9 Supreme Court Cases 377 and use its extra ordinary powers to give protection to the petitioner and grant relief to the petitioner by declaring that the arrest of the petitioner which was followed by successive remand order was illegal and invalid in the eyes of law and in violation of the Fundamental Rights as guaranteed by Articles 21 and 22 of the Constitution of India, in relation to the first information report dated 30.07.2023 which had given rise to Case

Crime No. 196 of 2023, Police Station – Kasna (Gautam Buddha Nagar), Uttar Pradesh. Since the learned counsel for the petitioner heavily relied upon paragraphs no. 60 and 61 of the judgment, they are being reproduced here as under:

"60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In LIC v. Escorts Ltd. [(1986) 1 SCC 264] this Court (in SCC para 102, p. 344) had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in M.C. Mehta v. Union of India

61. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. ***For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law — be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element.*** *The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044 : 1962 Supp (3) SCR 1] (AIR para 5) that if the legal right of a manager of a company is denuded on the basis of recommendation by the Board of Management of the company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution. In Mulamchand v. State of M.P. [AIR 1968 SC 1218 : 1968 Mah LJ 842] this Court had held that even though the contract was void due to non-compliance of Article 229, still direction could be given for payment of the amount on the doctrine of restitution under Section 70 of the Act, since the State had derived benefit under the void contract. The same view was reiterated in State of W.B. v. B.K. Mondal & Sons [AIR 1962 SC 779] (AIR at p. 789) and in New Marine Coal Co. (Bengal) (P) Ltd. v. Union of India [(1964) 2 SCR 859 : AIR 1964 SC 152] . In Gujarat State Financial Corpn. v. Lotus Hotels (P)*

Ltd. [(1983) 3 SCC 379] a direction was issued to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel. In Mahabir Auto Stores v. Indian Oil Corpn. [(1990) 3 SCC 752] contractual obligations were enforced under public law remedy of Article 226 against the instrumentality of the State. In Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] contractual obligations were enforced when public law element was involved. Same judicial approach is adopted in other jurisdictions, namely, the House of Lords in Gillick v. West Norfolk and Wisbech Area Health Authority [1986 AC 112 : (1985) 3 All ER 402 : (1985) 3 WLR 830, HL] wherein the House of Lords held that though the claim of the plaintiff was negatived but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in Roy (Dr) v. Kensington and Chelsea and Westminster Family Practitioner Committee [(1992) 1 AC 624 : (1992) 1 All ER 705 : (1992) 2 WLR 239, HL] the House of Lords reiterated that though a matter of private law is enforceable by ordinary actions, a court also is free from the constraints of judicial review and that public law remedy is available when the remuneration of Dr Roy was sought to be curtailed. In LIC v. Consumer Education and Research Centre [(1995) 5 SCC 482] this Court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated."

12. Sri Manish Goyal, learned Additional Advocate General assisted by Sri Rupak Chaubey, Sri J.K. Upadhyay and Sri Vikas Sahay, however, submitted that when there was a memo of arrest and also the son of the petitioner had been informed about the arrest, then the arrest was legal as the reasons were known to the petitioner. Sri Manish Goyal, learned Additional Advocate General, however, submitted that after the petitioner was released on 18.06.2024 from the Chhattisgarh Jail, the Uttar Pradesh Police had arrested the petitioner on that very date vis-a-vis the First Information Report which had given rise to Case Crime No. 196 of 2023. On 19.06.2024, the Sessions Court, Raipur had granted transit remand to enable the petitioner's production before the Special Judge, Prevention of Corruption Act, Meerut. He submits that the petitioner's counsel had opposed the transit remand and had in fact sought bail on the ground that the first information report which had given rise to Case Crime No. 196 of 2023 (Uttar Pradesh) and the first information report which had given rise to Case Crime No. 4 of 2024 (Chhattisgarh) were identical and in fact the petitioner had also mentioned those grounds in the application before the Special Judge, Prevention of Corruption Act, Meerut. Also on 21.06.2024, to put the records straight, he had also submitted that the Supreme Court in **SLP (Criminal) No. 10178 of 2024 (Vidhu Gupta vs. State of U.P. & Ors.)** had stayed further proceedings in First Information Report which had given rise to Case Crime No. 196 of 2023 (Uttar Pradesh) and the petitioner had also got himself released on 12.08.2024 in pursuance of the order dated 19.08.2024 passed by the Supreme Court. Thereafter, the petitioner was not arrested and only a charge-sheet was submitted on 19.04.2025, the cognizance which was taken by the court concerned on 23.04.2025. Learned Additional Advocate

General, therefore, submitted that when the transit remand was being obtained by the State of Uttar Pradesh then the petitioner had opposed the same and, therefore, he submits that the allegation and material forming the basis of the First Information Report which had given rise to Case Crime No. 196 of 2023 (Uttar Pradesh) were known to the petitioner and so were known the grounds of arrest. He, therefore, submitted that it could not be said that the petitioner was not aware of the grounds.

13. It was further argued by the learned Additional Advocate General that it is an established rule of criminal jurisprudence that the substance of the ground of arrest was of importance and not the technicalities in the form of communication. He, therefore, submitted that a technical error would not vitiate the arrest. Learned Additional Advocate General for the State relying upon the words "as soon as may be" contained in the Article 22(1) of the Constitution of India had stated that when a person resisted his arrest, it is not necessary for the arresting officer to state the ground of the arrest before using force. He, therefore, submits that in this case also when there was resistance from the petitioner and his family members, it was impossible for the investigating agency to provide the grounds of arrest. Learned Additional Advocate General relying upon the judgment in **Christie v. Leachinsky (1947 A.C. 573)** went into the origin and development of the rule of informing the accused of the grounds of arrest and a specific paragraph which he relied upon specially is being reproduced hereas under:

"what is particularly noteworthy is that in many of these decisions an exception to the general rule is explained and justified, and this indirectly establishes the general rule. For example, in Mackalley's case (1), the decision of the Star Chamber in the Countess of Rutland's case (2), was followed to the effect that it is not necessary to state the ground of arrest when the party makes resistance before the person arresting him "can speak all his words." Mackalley's case (1) arose out of an arrest based on a plaint of debt which led to the debtor and his friends resisting the official arrester with fatal results, and it was ruled that "an officer making an arrest, ought to show at whose suit, out of what court, and for what cause he made the arrest, when the party arrested submits himself to the arrest, but not when the party resists." In Rex v. Howarth (3), it is laid down that there is no need to tell a man why he is being arrested when he must, in the circumstances of the arrest, know the reason already. Another qualification may be gathered from the decision of Rex v. Ford (4), to the effect that it is not necessary for a person making an arrest to state the charge in technical or precise language."

14. Sri Manish Goyal, learned Additional Advocate General also stressed on the exceptions of the general rule of informing the accused about the grounds of arrest. Finally, he also submitted that the High Court should not issue a declaratory writ after a certain event had passed, specially when the matter was subjudice before a certain court. He submits that the High Court had the power to issue writs of habeas corpus and quo warranto by which a declaration could have been made. The other writs namely mandamus, prohibition and certiorari were operating in different fields. He also submitted that reliance of the petitioner on the judgments of the Supreme Court in Prabir Purkayastha

(Supra) and in **Pankaj Bansal v. Union of India reported in (2024) 7 SCC 576** was misconceived. In those cases, there was a direction of the Supreme Court to immediately release the accused upon finding the arrest to be unlawful as they were mandatory in the cases pertaining to PMLA and UAPA and, therefore, those judgments were not applicable in the instant case.

15. Having heard learned counsel for the parties, this Court is of the view that under Article 226 of the Constitution of India this Court can issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose]. However, there is no prohibition for the High Court to issue such orders which were required in a particular case in the interest of justice as has been held by the judgment of Supreme Court in **Air India Statutory Corporation (Supra). Definitely**, the arrest took place on 18.06.2024 and the memo of arrest was served upon the petitioner and an information was sent to the son of the petitioner. There was in fact no resistance from the side of the petitioner and his family. Thereafter, there were various remand orders dated 21.06.2024 and 01.07.2024. From the memos of arrest, the information given to the son of the petitioner and the remand orders, we do not find that the grounds of the arrest were communicated to the petitioner. In fact the arrest memo does not contain any column for giving the reason of arrest. Also, no opportunity of hearing was given to the petitioner for defending his custodial remand. Thus, with some certainty it can be said that the petitioner was never furnished the grounds of arrest as is mandated under Section 50 Cr.P.C. (now the Section 47 of the B.N.S.S.). Here though the nature of the instant case does not demand that we give the grounds which necessarily ought to be there at the time of arrest and which should have been provided to the accused which was being arrested, we consider it appropriate to enumerate a few of the grounds.

i. Even though the offences are already enumerated in the first information report, the fact that the police had an apprehension that the accused was a dreaded criminal and therefore he had to be arrested had to be given out as a ground.

ii. Further the police apprehended that the accused might tamper with the evidence and pressurize witnesses has also to be given out as a ground of arrest.

iii. Still further we are of the view that a ground of arrest could also be that the person sought to be arrested was a habitual criminal and outside the jail he would be a threat to the society.

iv. The police should also give as a ground of arrest all the investigation which had preceded the arrest which had led the police to determine that the accused was a dreaded criminal and was a threat to the witnesses of the case.

v. The grounds would also contain the evidence with regard to the complicity of the accused to the crime.

vi. The grounds ought to also contain the actual offence committed by the accused.

vii. The grounds should also specify as to whether the police expected disturbance of public order.

viii. Even if there was an apprehension of disturbance of public order then that could also form a ground.

The above grounds however not exhaustive.

16. Thus, we have no hesitation in holding that the grounds of arrest were never communicated in writing at the time of arrest. Even the reasons were not given. The formats of memo of arrest do not satisfy the mandatory conditions of Section 50 of Cr.P.C. (now Section 47 of B.N.S.S.) and Article 22(1) of the Constitution of India. The right to access legal aid is a valuable right of an accused and he must be informed of that right before his arrest. In fact, if he is unable to engage a counsel then the State must provide him with sufficient aid to get legal assistance. These rights flow from Articles 21, 22(1) and 39A of the Constitution of India. Adequate legal aid to the accused at State expense is also enshrined under Section 304 of Cr.P.C. (now Section 341 of B.N.S.S.). A very recent judgment of the Apex Court dated 25.03.2025 passed in **Criminal Appeal No. 1518 of 2025 @ SLP [Crl] No. 1662 of 2025 (Ashish Kakkar vs. UT of Chandigarh)** has also stated as follows :

"13. In a recent judgment of Apex Court ***dated 25.03.2025 passed in Criminal Appeal No.1518 of 2025 @ SLP [Crl] No.1662 of 2025) (Ashish Kakkar vs. UT of Chandigarh****) has considered the similar issue. The judgment and order dated 25.03.2025 is reproduced below:*

"Leave granted.

2. The appellant was arrested on 30.12.2024 in connection with FIR No. 33/2022 registered under Sections 384, 420, 468, 471, 509 and 120B of the Indian Penal Code, 1860 and remanded to police custody for a period of 3 days.

3. Vide the present appeal, the appellant has challenged both his arrest and the remand order dated 30.12.2024 on three grounds, namely, there is a clear non-compliance of the mandate under Section 41-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'); the appellant was not heard at the time of remand and the grounds of arrest as mandated under Section 50 of the Code have not been furnished to the appellant as against the mere arrest memo.

4. We are inclined to consider only the last issue raised by the appellant with respect to the non- furnishing of the grounds of arrest.

5. Upon perusing annexure P-3, we can see that what has been provided to the appellant is only an arrest memo in the prescribed format, which is meant to be given to the appellant by way of an intimation. It has been filled up with the name of the appellant along with the place of arrest. Additionally, it has been written that he has been arrested based upon the statement of the co- accused.

6. We are in agreement with the submission made by the learned senior counsel appearing for the appellant that the said arrest memo cannot be construed as grounds of arrest, as no other worthwhile particulars have been furnished to him.

7. This, being a clear non-compliance of the mandate under Section 50 of the Code which has been introduced to give effect to Article 22(1) of the Constitution of India, 1950 we are inclined to set aside the impugned judgment, particularly, in light of the judgment rendered by this Court reported as ***Prabir Purkayastha v. State (NCT of Delhi) (2024) 8 SCC 254.***

8. In such view of the matter, the impugned judgment stands set aside and the arrest of the appellant followed by the consequential remand order are also set aside.

9. The appellant shall be set at liberty, until and unless he is required in any other case. The appeal stands allowed accordingly.

10. Pending application(s), if any, shall also stand disposed of."

17. In the instant case, we definitely find that the arrest memo does not contain any column for the ground of the arrest of the petitioner. Thus, there being a definite non-compliance of the mandate of Section 50 of the Cr.P.C. and Article 22(1) of the Constitution of India, we are of the view that the arrest of the petitioner be declared illegal and all subsequent arrest memos be quashed and also the remand orders be set-aside.

18. We have not interfered with the charge-sheet which has been submitted. The Court may continue with the proceedings in accordance with law as per the charge-sheet.

19. For the reasons given above, the writ petition stands ***allowed***.

20. This judgment be sent to the office of the Director General of Police who would circulate it amongst all the police personnel of the State of Uttar Pradesh. We are getting this circulation done as a technical error in many of the arrests is resulting in the declaration of the arrests as illegal.

(2025) 5 ILRA 1203
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 370 of 1991

Taley Hasan & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
Imran Mabood Khan, Khalilullah Khan, Shyam Shanker Pandey

Counsel for the Respondent:
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(A) Criminal Law - Murder and Rape based on Circumstantial Evidence - Admissibility of extra-judicial confession and recovery without proper disclosure under Section 27 Evidence Act - Indian Penal Code, 1860 - Sections 302, 376 & 201 - Evidence Act, 1872 - Section 27 - Recovery of weapon and extra-judicial confession must be proven strictly through admissible and cogent evidence - Extra-judicial confession alone cannot justify conviction in absence of corroboration - Recovery without proper disclosure statement fails the test of Section 27 and cannot alone form basis of conviction - Suspicion, however strong, cannot substitute proof beyond reasonable doubt in circumstantial evidence cases - Conviction cannot be sustained where the prosecution fails to establish a complete chain of circumstances and the evidence presented consists of doubtful recoveries and unreliable extra-judicial confessions.(Para - 60,61,75)

Two minor girls went missing on 17.05.1987 - their decomposed bodies were recovered on 21.05.1987 - appellants arrested thereafter and allegedly confessed and led to recovery of weapons and belongings of deceased - accused allegedly confessed before villagers and led to recovery of 'daratis' and an earring - conviction based on extra-judicial confession and recoveries - Medical opinion could not ascertain cause of death; no direct evidence or eyewitnesses. (Para - 3 to 13, 41 to 42)

HELD: - Conviction of the appellants cannot be sustained on uncorroborated extra-judicial confession and inadmissible recoveries. Prosecution failed to establish complete chain of circumstances to prove guilt beyond reasonable doubt. **Conviction and sentence set aside.** (Para - 41, 50 to 52, 54 to 60,78)