

towards the sentence awarded by this Court in terms of Section 428 Cr.P.C.

58. It is directed that the accused-appellant shall furnish personal bond and two sureties in the like amount to the satisfaction of the court concerned within four weeks from the date of his release from jail in compliance with the provisions of Section 437-A Cr.P.C.

59. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court concerned for information and necessary compliance through fax/ e-mail.

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**(2025) 5 ILRA 205**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 15.05.2025**

**BEFORE**

**THE HON'BLE MAHESH CHANDRA  
TRIPATHI, J.**

**THE HON'BLE ANIL KUMAR-X J.**

Criminal Misc. Writ Petition No. 9733 of 2025

**Shashank Mishra** ...Petitioner

**Versus**

**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**

Krishna Kumar, Praveen Shrivastav

**Counsel for the Respondents:**

G.A.

**Criminal Law – Constitution of Indian, 1950 – Article 226 & 227 - Criminal Procedure Code, 1973 – Section 50 - Indian Penal Code, 1860 - Sections 120-B, 307, 323, 498-A & 506 – Dowry Prohibition Act, 1961 - Sections 3 & 4 - Writ Petition - FIR - Arrest - Allegation of procedural irregularity - Accused-petitioner contends neither he nor his family was informed**

of grounds of arrest – produced before remand magistrate – grievance that Remand Magistrate failed to address procedural lapse or afford fair hearing – relying on Supreme Court's decision in Prabir Purkayastha Vs St. (NCT of Delhi), petitioner moved application before Additional Sessions Judge seeking to set aside remand order – Application remain pending – present writ petition filed seeking direction to decide said application expeditiously – court observed that - (i) petitioner's bail application already rejected on merits by coordinate bench, (ii) entertaining present writ would amount to indirectly overturning coordinate bench's order and directing lower court to review its bail rejection, (iii) petition suffers from unexplained delay and laches, (iv) petitioner failed to raise issue of illegal arrest during bail proceedings before Sessions Court or High Court, - court held that, (i) collateral challenge is legally impermissible and tantamount to subverting the hierarchy and finality of judicial orders, (ii) writ jurisdiction under Article 226 cannot be invoked to bypass statutory remedies under Cr.P.C. – accordingly, writ petition is dismissed. (Para – 14, 15, 16, 17)

**Writ Petition Dismissed.** (E-11)

**List of Cases cited:**

1. U.O.I.& anr. vs Kirloskar Pneumatic Co. Ltd.- (1996) 4 SCC 453,
2. Eastern Coalfields Ltd. Vs Dugal Kumar - AIR 2008 SC 3000,
3. Shankar Ramchandra Abhyankar Vs Krishnaji Dattatreya Bapat - AIR 1970 SC 1,
4. Lallubhai Jogibhai Patel Vs U.O.I.- (1981) 2 SCC 427,
5. Manjeet Singh @ Inder @ Manjeet Singh Chana Vs St. of U.P. & ors.- Criminal Misc. Writ Petition No.934 of 2025,
6. Sachin Soni @ Aansu @ Sachin Kumar Soni Vs St. of U.P. & ors.- Criminal Misc. Writ Petition No. 905 of 2025,
7. Prabir Purkayastha Vs State (NCT of Delhi) (supra) – LAWS (SC)-2024-5-46,

8. Mohammad Amir Kasab @ Abu Mujahid Vs St. of Mah. – (2012) 8 SCC 1 (Paras 484-488),

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

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

11. 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 Mahesh Chandra  
Tripathi, J.  
&  
Hon'ble Anil Kumar-X, J.)

1. Heard Sri Praveen Shrivastava, learned counsel for the petitioner; Sri Paritosh Malviya, learned AGA-I for the State-respondents; and perused the material available on record.

2. The present writ petition has been filed seeking the following relief:

*"(i) Issue an order or direction in the nature of Mandamus directing the learned Additional District Judge, Fast Track Court (O.A.W.), Jhansi, to decide the pending application dated 29.04.2025, annexed herewith as Annexure No. 5 to the petition, strictly in light of the principles laid down by the Hon'ble Supreme Court and reiterated by this Hon'ble Court in Writ Petition No. 934 of 2025 (Manjeet Singh @ Inder @ Manjeet Singh Chana Vs. State of U.P. & Others), annexed as Annexure No. 4 to the petition."*

3. The petitioner contends that an FIR bearing Case Crime No. 396 of 2023 was registered against him under Sections 498-A, 323, 506, 120-B, and 307 of the Indian Penal Code, 18601, along with

Sections 3 and 4 of the Dowry Prohibition Act, 19612, at Police Station Navabad, District Jhansi, on 09.10.2023. He was arrested the following day, i.e., on 10.10.2023. It is specifically asserted that at the time of his arrest, the grounds thereof were neither disclosed to him nor communicated to any of his family members or any person authorized by him. Drawing attention to the arrest memo (Annexure No. 2), learned counsel submits that the same does not indicate any distinct column containing the grounds of arrest. When the petitioner was produced before the learned Remand Magistrate on 10.10.2023, the said irregularity was overlooked. It is further pointed out, referring to Annexure No. 1, the remand sheet, that the learned Magistrate did not record any observation regarding the non-compliance by the Investigating Officer in respect of the mandatory requirement of disclosing the grounds of arrest. Furthermore, the petitioner was not granted an effective opportunity of hearing at the stage of remand proceedings.

4. In view of the aforesaid circumstances, the petitioner preferred an application dated 29.04.2025 before the Additional Sessions Judge, Fast Track Court, Jhansi, praying for setting aside of the remand order in light of the law laid down by the Hon'ble Supreme Court in **Prabir Purkayastha Vs. State (NCT of Delhi) (supra)**<sup>3</sup>. Hence, the instant writ petition has been filed seeking a direction in the nature of Mandamus to the said court to expeditiously decide the pending application dated 29.04.2025, in consonance with the principles laid down in the judgments cited above.

5. Learned counsel has placed strong reliance on a catena of decisions

including **Mohammad Amir Kasab @ Abu Mujahid Vs. State of Maharashtra**,<sup>4</sup> **Prabir Purkayastha (Supra)**, **Pankaj Bansal Vs. Union of India**,<sup>5</sup> **Vihaan Kumar Vs. State of Haryana**,<sup>6</sup> and **Ashish Kakkar Vs. UT of Chandigarh**.<sup>7</sup> These decisions, it is contended, underscore the imperative of compliance with the mandate of Section 50 Cr.P.C. and Article 22(1) of the Constitution of India. In each of these cases, the Hon'ble Supreme Court has consistently held that non-communication of the grounds of arrest renders the arrest unconstitutional and illegal, warranting the release of the accused.

6. Further reliance is placed on the recent judgment dated 09.04.2025 passed by a Division Bench of this Court in **Manjeet Singh @ Inder @ Manjeet Singh Chana Vs. State of U.P. and Others**,<sup>8</sup> and the judgment of the same date in **Sachin Soni @ Aansu @ Sachin Kumar Soni Vs. State of U.P. and Others**,<sup>9</sup> wherein this Court, following the aforesaid principles, set aside the orders of judicial remand and ordered the release of the petitioners on account of non-communication of grounds of arrest.

7. On the other hand, Sri Paritosh Malviya, learned AGA, appearing for the State-respondents, has opposed the petition, contending that criminal proceedings against the petitioner are already at an advanced stage. It is submitted that the case has been committed to the Court of Sessions and is currently pending trial before the Additional Sessions Judge, Fast Track Court, Jhansi. The petitioner's bail application has already been rejected by the learned Magistrate and Sessions Court, and subsequently by this Court, vide order dated 15.04.2024. In these circumstances, it

is argued that the relief sought through the present writ petition is not maintainable at this belated stage.

8. We have considered the rival submissions advanced by learned counsel for the parties, perused the material on record and have given thoughtful consideration to the judicial precedents cited.

9. The arrest memo, annexed as Annexure No. 2, reveals that the arresting officer merely mentioned the case crime number under which the petitioner was apprehended and recorded the name and mobile number of his uncle to whom the arrest information was conveyed. However, the remand sheet dated 10.10.2023 (Annexure No. 1) discloses that when the petitioner was produced before the Magistrate, he was offered legal assistance through free legal aid, which he declined. The same document records that the petitioner was afforded an opportunity of hearing. Apparently an opportunity of legal assistance was provided which was declined by the petitioner himself, and he also failed to raise any grievance at the stage of remand. As such he cannot claim before this Court to have been denied the opportunity. The law is well settled that a party who chooses not to avail of a remedy or right at the appropriate stage cannot be permitted to agitate the same at a later point in time. Thus, this contention of the petitioner lacks merit.

10. The other limb of the argument that the grounds of arrest were not communicated appears to have some substance. The arrest memo merely reflects the case crime number but does not disclose the actual grounds or basis of arrest. Such mere reference cannot be

equated with “communication of grounds of arrest” as envisaged under Article 22(1) of the Constitution of India and Section 50 Cr.P.C. In **Lallubhai Jogibhai Patel Vs. Union of India**<sup>10</sup>, the Hon’ble Apex Court interpreted the term “communicate” to mean imparting sufficient knowledge of the basic facts constituting the grounds of arrest, in writing, and in a language understood by the accused. In the present case, such effective communication appears to be lacking.

11. Notwithstanding the above, it is pertinent to note that the petitioner has approached this Court nearly one and a half years after the arrest. During this intervening period, his bail applications were rejected at multiple stages including by this Court. As such the instant matter is distinguishable with **Manjeet Singh (Supra)** and **Sachin Soni (Supra)**. At no point prior to the present proceedings did the petitioner raise the issue of illegal arrest or violation of his constitutional rights. The legal position laid down in **Vihaan Kumar (supra)** cannot be stretched to imply that a litigant who remained silent throughout can, at any stage, invoke the extraordinary jurisdiction under Article 226 to challenge his remand. The same is reproduced herein below:-

*"21. Therefore, we conclude:*

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

*b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such*

*that the object of the constitutional safeguard is achieved;*

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

*d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);*

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

*f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established."*

12. In clause (f) of the judgment in **Vihaan Kumar (supra)**, the Supreme Court clearly observed that release on the ground of violation of constitutional rights

can be granted only if such violation is brought to the notice of the Court by the accused or otherwise. In the case at hand, the record confirms that legal aid was offered to the petitioner, which he declined. He neither challenged his arrest earlier nor made any grievance during bail proceedings. The present petition appears to be a disguised attempt to secure release on grounds that were never taken or agitated before the appropriate forums.

13. This Court further notes that entertaining the present writ petition would effectively amount to nullifying the order passed by a coordinate Bench of this Court on 15.04.2024 rejecting the petitioner's bail. Such an action is not legally permissible, as it would amount to reviewing the said order under the guise of fresh relief. The doctrine of merger, as expounded in **Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat11**, is applicable. The remedy now sought is not distinct but is essentially a reiteration of the relief already denied. The same is extracted as below:-

*"3. Now as is well known Section 115 of the Civil Procedure Code empowers the High Court to call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies to it. It can interfere if the subordinate court appears to have exercised the jurisdiction not vested in it by law or to have failed to exercise the jurisdiction so vested or to have acted in the exercise of its jurisdiction legally or with material illegality. The limits of the jurisdiction of the High Court under this section are well defined by a long course of judicial decisions. If the revisional jurisdiction is invoked and both parties are heard and an order is made the question is whether the*

*orders of the subordinate court has become merged in the order of the High Court. If it has got merged and the order is only of the High Court, the order of the subordinate court cannot be challenged or attacked by another set of proceedings in the High Court, namely, by means of a petition under Article 226 or 227 of the Constitution. It is only if by dismissal of the revision petition the order of the subordinate court has not become merged in that of the High Court that it may be open to party to invoke the extraordinary writ jurisdiction of that court. There again the question will arise whether it would be right and proper for the High Court to interfere with an order of a subordinate court in a writ petition when a petition for revision under Section 115, C.P.C., against the same order has been dismissed. Such a consideration will also enter into the exercise of discretion in a petition under Article 225 or 227."*

14. A perusal of the said judgment is sufficient to cover this particular matter. Here, the bail application of petitioner was rejected by High Court. It is apparent that grievance of illegal arrest was not raised either before Session Judge or High Court. Consequences which will follow, if this writ petition is allowed, were considered by us. Allowing this petition by setting the petitioner at liberty will result in upsetting the earlier order passed by another bench, vide which bail of petitioner was rejected on merits. It will mean that custody of petitioner, which was earlier held legal by another bench, will be reviewed by this Bench after holding that the custody of petitioner was illegal from the very beginning. Interpretation of what has been held in Vihan ( Supra) and other judgments referred above can not be stretched so far. Allowing the writ petition will also mean to

