



2025:DHC:1402



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment Delivered on 28.02.2025*

+ BAIL APPLN. 73/2025

GAGAN

.....Petitioner

Through: Mr. Tanveer Ahmed Mir, Sr. Adv.  
with Mr. M.D. Imran Ahmad, Ms.  
Yashodhara Singh and Ms. Amrita  
Jha, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkrash, APP with Ms. Punya  
Rekha, Ms. Vasundhara N, Mr. Aman  
Akhtar, Ms. Sana Singh and Mr.  
Vinayak Gautam, Advs. for State with  
SI Dheer Singh, PS Anand Vihar.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J (ORAL)**

1. The present petition has been filed seeking regular bail for the petitioner in connection with FIR No. 290/2024 under Section 306/34 IPC registered at Police Station Anand Vihar, Delhi.
2. The case of the prosecution is that an information regarding MLC No. 930/2024 was received at Police Station Anand Vihar from Dr. Hedgewar Arogya Sansthan on 09.05.2023, informing that a patient named Pankaj (hereinafter referred to as 'the deceased') son of Mahaveer Singh had been admitted to the hospital. The deceased had reportedly consumed one tablet



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of Selphos approximately an hour before admission and was brought to the hospital by his cousin, Pradeep Tavetia, who is a practising Advocate in Karkardooma Courts (hereinafter referred to as ‘the complainant’).

3. Upon receiving this information, the Investigating Officer (IO) visited the hospital, collected the MLC, summoned the crime team to the scene of the incident and ensured that photographs of the scene were taken.

4. According to the prosecution’s case, as reflected from the chargesheet as well as the other material, the victim’s statement could not be recorded due to his critical medical condition. However, in the interim, the complainant recorded a video of the deceased, in which the deceased stated that he had consumed poison due to teasing by the accused persons, namely Gagan, Sandeep, and Aman Khanna, who were his office colleagues.

5. The victim subsequently passed away. The present FIR was registered based on the complainant's allegations. The FIR ultimately resulted in the filing of a chargesheet against the present petitioner and co-accused Sandeep Kuzur. The third co-accused Aman has not yet been charge-sheeted but the learned APP informs the Court that investigation against him is still underway.

6. Mr. Tanveer Ahmed Mir, learned Senior Counsel appearing for the petitioner submits that the prosecution has cited as many as 19 witnesses, out of which eight are public witnesses. He submits that from the said eight witnesses, five witnesses including father of the deceased have given exculpatory statements. To buttress his submission, Mr. Mir has invited attention of the Court to the statement of Ankit Rawat, Harshita Pawa, Sourav Kumar, Rahul Ray and Mahaveer Singh (father of the deceased)



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which were recorded under Section 161 Cr.P.C.

7. He submits that insofar as statement of complainant, on the basis of which FIR came to be registered, is concerned, the same is hearsay.

8. Mr. Mir further submits that the grounds of arrest were not provided to the present petitioner at the time of his arrest. He submits that the right to be informed of the grounds of arrest flows directly from Article 22(1) of the Constitution of India as well as Section 50 of the Criminal Procedure Code (*akin to Section 47 of BNSS, 2023*). In support of his contention, Mr. Mir has relied upon the decisions of the Hon'ble Supreme Court in *Pankaj Bansal Vs. Union of India & Ors., (2024) 7 SCC 576* and *Prabir Purkayastha Vs. State (NCT of Delhi) (2024) 8 SCC 254*. He further relies upon the decisions of the coordinate benches of this Court in *Pranav Kuckreja Vs. State (NCT of Delhi), 2024 SCC OnLine Del 9549* and *Marfing Tamang Vs. State, 2025 SCC OnLine Del 548*.

9. He submits that there is no material on record to suggest active instigation or intentional provocation which are essential ingredients for invoking the offence under Section 306 IPC. According to Mr. Mir, mere harassment does not constitute abetment of suicide.

10. He further submits that the maximum sentence which can be awarded for the offence under Section 306 IPC is 10 years, however, no minimum sentence is prescribed therefor.

11. It is also the contention of Mr. Mir that the FIR came to be registered after a delay of 18 days. He further submits that petitioner is in custody since 08.08.2024 and as the chargesheet has already been filed, the custody of the petitioner is not required for any purpose.



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12. He further contends that the co-accused who is similarly situated as present petitioner, namely, Aman has already been granted anticipatory bail.

13. Mr. Mir also submits that the petitioner does not have any criminal record. In this backdrop, a prayer is made that petitioner be granted regular bail.

14. *Per contra*, learned APP has argued on the lines of the status report. He submits that since the complainant had recorded the statement of the deceased on his mobile, therefore, the same is not hearsay, rather such statement of deceased can be treated as a dying declaration and the same is admissible in view of the provisions of Section 32 of the Indian Evidence Act.

15. He, however, fairly concedes that the grounds of arrest have not been served on the petitioner in the present case. He also fairly states that coordinate benches of this Court in *Pranav Kuckreja (supra)* and *Marfing Tamang (supra)* have held that serving of grounds of arrest simultaneously when the accused is being arrested is mandatory requirement and infringement thereof would vitiate the process of arrest and remand.

16. I have heard the learned Senior Counsel appearing for the petitioner as well as learned APP for the State.

17. The question that whether requirement of informing a person arrested of grounds of arrest is mandatory or not, is no more *res integra*. The Hon'ble Supreme Court in *Pankaj Bansal (supra)* while dealing with the question as to how an arrested person is to be "informed of the ground of arrest" in terms of Section 19 of the PMLA observed that there is no valid reason as to why a copy of such written grounds of arrest should not be



furnished to the arrested person as a matter of course and without exceptions. The relevant part of the decision reads thus:

***42. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1]. Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.***

*(emphasis supplied)*

18. Again in *Prabir Purkayastha* (*supra*), the Hon'ble Supreme Court was confronted with the controversy as to whether the right to be "informed of the ground of arrest" enshrined in Article 22(1) of the Constitution, Section 19(1) of PMLA and Section 43-B(1) of UAPA, is the same as the "right to be communicated" in "full particulars" the offence for which person is arrested or other ground for such arrest under Section 50(1) CrPC, and the "right to be communicated" the grounds of preventive detention



under Section 22(5).

19. The Hon'ble Apex Court observed that the provisions regarding communication of grounds of arrest to an arrested person contained in Section 43-B(1) of UAPA is verbatim the same as that in Section 19(1) of PMLA. It was further observed that any person arrested for the allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. It was further observed that the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. It was also observed that there is a significant difference in the phrase "reasons for arrest" and "grounds of arrest". The relevant part of the decision in said decision in *Prabir Purkayastha* (*supra*) reads thus:

***19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.***



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***21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.***

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***26. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in Harikisan [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117], wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.***

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***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.***

*(emphasis supplied)*

20. In *Vihaan Kumar vs. State of Haryana & Anr.*; 2025 SCC OnLine SC 269, the Hon’ble Supreme Court was adverting to the issue as to the violation of the rights of the appellant therein under Article 22(1) of the Constitution of India as he was not informed of the grounds of his arrest. The arrest of the appellant in the said case was for the offences under Sections 409/420/467/468/471 read with Section 120B of IPC. It was reiterated by the Hon’ble Supreme Court that requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate Fundamental Right to Liberty guaranteed under Article 21, and arrest will be rendered illegal. It was further observed that on the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, a person arrested cannot remain in custody even for a second.

21. The Hon’ble Supreme Court also negated the argument that in view of the sub-section (1) of the Section 50 CrPC<sup>1</sup>, there is an option to communicate to the person arrested “*full particulars of the offence for which*

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<sup>1</sup> Section 50(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.



he is arrested” or “the other grounds for such arrest”. It was observed that Section 50 cannot have the effect of diluting the requirement of Article 22(1) of the Constitution of India<sup>2</sup>, rather the requirement of Section 50 is in addition to what is provided in Article 22(1). The relevant part of the decision in this regard reads thus:

***19. An argument was sought to be canvassed that in view of sub-Section (1) of Section 50 of CrPC, there is an option to communicate to the person arrested full particulars of the offence for which he is arrested or the other grounds for the arrest. Section 50 cannot have the effect of diluting the requirement of Article 22(1). If held so, Section 50 will attract the vice of unconstitutionality. Section 50 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him. The ‘other grounds for such arrest’ referred to in Section 50(1) have nothing to do with the grounds of arrest referred to in Article 22(1). The requirement of Section 50 is in addition to what is provided in Article 22(1). Section 47 of the BNSS is the corresponding provision. Therefore, what we have held about Section 50 will apply to Section 47 of the BNSS.***

*(emphasis supplied)*

22. In *Pranav Kuckreja (supra)*, a Coordinate Bench of this Court held that it is mandatory that grounds of arrest must be communicated in writing to the arrested individual expeditiously. Further, interpreting the expression “forthwith” used in Section 50 CrPC, it was observed that it implies that “grounds of such arrest” have to be communicated at the earliest. The Court even suggested that a column be incorporated in the format of an arrest memo requiring the Investigating Officer/Arresting Officer to mention the

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<sup>2</sup> Article 22(1) - **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.



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grounds of arrest at the time of arrest itself and ensure that such grounds are communicated to the arrestee forthwith at the time of issuing arrest memo.

23. Yet another Coordinate Bench of this Court in *Marfing Tamang (supra)* has reiterated that the word *forthwith* appearing in Section 50 CrPC mandates the Arresting Officer to serve the arrestee grounds of arrest simultaneously, with the issuance, or, as part of the arrest memo. It was further observed that a person can be detained for an inquiry or interrogation only when an I.O. forms an opinion that there are some justifiable grounds to arrest a person and that he would place the person under arrest. Once the grounds for requiring a person's arrest have been formulated in the Investigating Officer's mind, there can possibly be no reason why those grounds cannot be reduced into writing and communicated to the person simultaneously at the time of arrest.

24. The position thus, emerges is that the I.O is required to serve in writing the grounds of arrest upon the arrested person simultaneously at the time of arrest or in other words, simultaneously with the issuance of the arrest memo.

25. Now coming to the facts of the present case, a perusal of the arrest memo shows that though there is column providing for 'reasons of arrest' against which it is stated '*for the purpose of fair investigation*' but neither there is column for 'grounds of arrest' in the arrest memo nor it is the case of the prosecution that the 'grounds of arrest' were separately served upon the present petitioner at the time of his arrest. Rather, the learned APP has fairly stated that the petitioner was not served with grounds of arrest. Thus, it leaves no manner of doubt that the 'grounds of arrest' in terms of Section



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50 CrPC (*now Section 47 of BNSS 2023*) read with Article 22(1) of the Constitution of India has not been supplied to the petitioner. Resultantly, the arrest of the petitioner stands vitiated and is declared as invalid.

26. That apart, there is also substance in Mr. Mir's submission that out of 08 public witnesses, the statements of 05 witnesses, are exculpatory in nature. Further, co-accused Aman Khanna was granted anticipatory bail by the Court of the Additional Sessions Judge-04, Karkardooma Courts *vide* order dated 13.01.2025. The petitioner is in custody since 08.08.2024 and the charge sheet has already been filed, therefore, his custody otherwise is not required for any purpose. Further, there is no minimum punishment prescribed for the alleged offence. Even the antecedents of the petitioner are clean. All these factors would have also enured to the benefit of the petitioner.

27. However, since the arrest of the petitioner has been declared invalid, therefore, all such factors pale into insignificance and the petitioner is entitled to be released forthwith, if not required in any other case but since the charge-sheet has been filed *qua* the present petitioner, it is directed that the petitioner be released from custody on furnishing a Personal Bond in the sum of Rs. 50,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CJM/Duty JM. It is further directed that the petitioner shall regularly appear before the learned Trial Court as and when the matter is taken up for hearing unless his presence is exempted.

28. The petition stands disposed of.

29. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall



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not be construed as an expression of opinion on the merits of the case.

30. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

31. Order *dasti* under signatures of the Court Master.

32. Order be uploaded on the website of this Court.

**FEBRUARY 28, 2025**

**'rs'/dss**

**VIKAS MAHAJAN, J**