

Gunwant Tarachand Jain @ Nikesh Madhani Vs State Of Maharashtra

Court: Bombay High Court

Date of Decision: Feb. 12, 2025

Acts Referred: Constitution of India, 1950 Article 22(1)
Bharatiya Nagarik Suraksha Sanhita, 2023 Section 35(1)(c), 47(1), 47(2), 48
Indian Penal Code, 1860 Section 328, 376(2)(n), 506

Hon'ble Judges: Dr. Neela Gokhale, J

Bench: Single Bench

Advocate: Sanjaykumar Singh, H. S. Venegavkar, Aashish I. Satpute, Nitin Thete

Final Decision: Dismissed

Judgement

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Dr. Neela Gokhale, J.

1. The main issue canvassed in the present matter is the violation of the Petitioner's constitutional right for not providing grounds of his arrest.

2. The Petitioner assails order dated 24th December 2024 passed by the Sessions Court at Dindoshi, Goregaon, Mumbai in Criminal Revision

Application No.284 of 2024, whereby the Sessions Court set aside order dated 22nd November 2024 passed by the Judicial Magistrate First Class

(JMFC), 44th Court, Andheri, Mumbai releasing the Petitioner/accused. The Petitioner/accused was directed to surrender before the

concerned police station immediately, failing which the Investigating Officer was given liberty to arrest him in accordance with law. The Sessions

Court granted police custody of the Petitioner/accused for five days from the date of surrender/arrest of the accused.

3. An F.I.R. was registered against the Petitioner bearing C.R.No.669 of 2024 registered on 21st November 2024 at 17:49 hrs. with the Versova

Police Station, Brihan Mumbai City for offences punishable under Sections 376(2)(n), 328 and 506 of the Indian Penal Code by one Smt. Seema Brijlal

Meena.

4. According to the Petitioner, on 21st November 2024, he was at his office and the Complainant/First Informant came to his office. They had tea and

snacks together. She also made four phone calls to him during the course of that day. The Petitioner at the request of a police constable claiming to be

of Versova Police Station and the Complainant, accompanied them to the Versova Police Station, where he learnt that there was an F.I.R. registered

against him.

5. The facts reveal that the Petitioner was arrested at 22:56 hours on 21st November 2024 and was produced before the JMFC, Andheri on 22nd

November 2024 at 3:20 p.m. The Magistrate, after hearing the Petitioner and the police observed that the notice-cum-intimation under Section 47(1) &

(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNS) revealed that the police officer arresting the accused communicated to him the

grounds of his arrest on 21st November 2024 at 23:00 hours. The concerned police officer then intimated regarding his arrest to his friend one Junaid

Ishak Khan at 23:00 hours on 21st November 2024. The JMFC. thus held that the grounds of arrest were provided to the accused 4 minutes after his

actual arrest and hence the fundamental right of the Petitioner was violated. The JMFC relied upon the ratio laid down by the Apex Court in its

decision in the matter of *Prabir Purkayastha v. State (NCT of Delhi)* .(2024) 8 SCC 254 The Petitioner was thus directed to be released forthwith

by order dated 22nd November 2024.

6. The State of Maharashtra being aggrieved by this order assailed the same before the Sessions Court at Dindoshi, Goregaon, Mumbai by filing

Criminal Revision Application No.284 of 2024. The matter was listed for hearing on 21st December 2024, when the Advocate of the Petitioner sought

an adjournment on the ground of bereavement in his family and requested an adjournment of two weeks. Although the State objected, the Sessions

Court adjourned the hearing to 23rd December 2024, to enable the Petitioner to engage counsel. Once again, on 23rd December 2024, second

adjournment Application was made on the same ground. The Sessions Court rejected the Application.

7. By order dated 24th December 2024, the Sessions Court set aside the order dated 22nd November 2024 passed by the JMFC directing

immediate release of the Petitioner. The Sessions Court recorded the time-line of the arrest of the Petitioner in its order, upon perusing the record

including the arrest memo and the station diary entries. The Sessions Court noted the time of arrest of the Petitioner from the form of arrest. The

station diary entry corroborated the time of arrest as well as the time of providing the grounds of arrest to the Petitioner. The Sessions Court found

that the grounds of arrest communicated within 4 minutes of his arrest is not unreasonable. In these circumstances, the Sessions Court held the arrest

of the accused to be legal and made after following the procedural requirements of the relevant provisions of the BNS. The Sessions Court thus

directed to Petitioner to surrender forthwith, failing which the Investigating Officer was given liberty to arrest him. It is this order which is assailed by

the Petitioner in this Petition.

8. Mr. Sanjay Kumar Singh, learned counsel represented the Petitioner and Mr. H. S. Venegavkar, learned Public Prosecutor with Mr. Aashish

Satpute, learned APP represented the State.

9. Mr. Singh submitted that he was illegally picked up by the police in the afternoon of 21st November 2024 from his office even before registration of

F.I.R. He submits that the Sessions Court refused his adjournment Application and hence, he was unable to remain present for the hearing before the

Sessions Court. He places reliance on the Prabir Purkayastha (supra) decision to say that the grounds of arrest must be conveyed to the accused

simultaneously with his arrest. He further submits that the Sessions Court has recorded a strange reason that rape was committed on the pretext of

marriage although the prosecutrix has never mentioned this in the complaint. Thus, he says that the Investigating Agency has acted in contravention of

the mandate of the provisions of the BNSS and has violated his fundamental right. He, thus, prays for setting aside the impugned order.

10. Mr. Venegavkar produced the Notice of grounds of arrest conveyed to the Petitioner/accused dated 21st November 2024 at 23:00 hours as

contemplated under Section 47(1) of the BNSS. He has also produced the intimation given to Junaid Khan, the friend of the Petitioner, dated 21st

November 2024 at the same time under Section 48 of the BNSS. He has also produced the General Diary details of the police station pertaining to

21st November 2024. He also placed on record the Arrest Form relating to the Petitioner.

11. Mr. Venegavkar draws my attention to the aforesaid documents produced by him to contend that the Petitioner was arrested on 21st November

2024 at 22:56 hrs. At this stage, he also points to a typographical error in the impugned order, where 22:56 is erroneously typed as 12:56. The

documents pertaining to the arrest corroborate this stance. The arrest form also indicates the arrest to be at 22:56 hrs. The grounds of arrest were

immediately provided to the Petitioner within 4 minutes of his arrest. Thus, Mr. Venegavkar says that the police have acted strictly in consonance with

the mandate of law and there is no infirmity in the Sessions Court's order. He further informs that the Petitioner is presently absconding.

12. I have heard the parties and perused the record, with their assistance.

13. The procedure to be followed for arresting a person without warrant is provided in Section 35(1)(c) of the BNSS, which reads as under:

“35(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) if...

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend

to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such

person has committed the said offence; or

14. In the present case, a commission of cognizable offence punishable with imprisonment for a term more than seven years is alleged against the

Petitioner. Hence, Clause (1)(c) of Section 35 of the BNSS will apply.

15. Thereafter, Section 47(1) of the BNSS relating to the person arrested to be informed the grounds of arrest follows. Section 47(1) reads as under:

“47. 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.”

16. The legal position regarding providing the grounds of arrest to the accused is well settled. In *Prabir Purkayastha* (supra), the Supreme Court in

paragraph No.19 has held as under:

“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.

”

17. The Supreme Court in its decision in the matter of *Ram Kishor Arora v. Directorate of Enforcement* 2023 INSC 1082 also held that if the

person arrested is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about

the grounds of arrest as soon as may be, i.e., as early as possible and within reasonably convenient and requisite time of twenty four hours of his

arrest, that would be sufficient compliance of not only Section 19 of PMLA, but also Article 22(1) of the Constitution of India.

18. In another recent decision in the matter of *Vihaan Kumar v. State of Haryana & Anr.*, 2025 INSC 162 the Supreme Court has reiterated the

view taken in the case of *Prabir Purkayastha* (supra) that it is a fundamental right of every person arrested and detained in custody to be informed

of the grounds of arrest as soon as possible and that if the grounds are not informed as soon as may be after the arrest, it would amount to violation of

his right under Article 22(1) of the Constitution of India.

19. Considering the factual matrix, the timeline and the settled legal position, it is clear that the police have scrupulously followed the legally mandated

procedure. The grounds of arrest are conveyed to the Petitioner within 4 minutes of his arrest. The communication of the grounds of arrest are

indicated based on the diary entry as well as the contemporaneous documents produced by Mr. Venegavkar. There is no violation of any fundamental

right of the Petitioner.

20. Insofar as the contention of Mr. Singh pertaining to rejection of his adjournment Applications by the Sessions Court is concerned, it is clear that the

Petitioner was duly represented by a learned counsel. The submissions of the counsel are specifically reproduced and considered in the impugned

order. Thus, there is no gainsaying that the Petitioner was deprived of an opportunity of hearing on the basis of rejection of his plea of adjournment. In

fact, I am told that the Petitioner is presently absconding. In these circumstances, I find no infirmity in the impugned order even on this count.

21. The Petition is accordingly dismissed.

22. After the order was pronounced, Mr. Singh prayed for staying this order for a period of one week to enable him to take further steps. In view of

the findings recorded above, I am not inclined to grant stay to this order. The request is declined.