IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1478 of 2025

CNR No. BRHC011148682025

Arising Out of PS. Case No.-17 Year-2024 Thana- NIA District- Patna

==========

Sarfaraz @ Muzaffar Ahmad Wani, Son of Gul Mohammad Wani, Resident of - Dahmal, P.S.- Dist.- Anantnag, J & K.

... ... Appellant

Versus

The Union of India through National Investigation Agency, New Delhi

... ... Respondent

==========

Appearance :

For the Appellant	:	Md. Tahir, Advocate Mr. Kundan Kumar Ojha, Advocate Mr. Navneet Prabhakar, Advocate
For the NIA	:	Dr. Krishna Nandan Singh, ASG Mr. Arvind Kumar, Advocate Mr. Tirupati Gaurav Shahi, Advocate Ms. Angel, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 06-10-2026

This Criminal Appeal has been preferred under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act' or 'the Act of 2008').

2. The appellant is aggrieved by and dissatisfied with the order dated 15.07.2025 (in Proceeding No. III) passed by learned Special Judge, NIA, Patna rejecting his prayer for regular bail in Special Case No. 10 of 2024 corresponding to RC No. 17/2024/NIA/DLI arising out of Banjariya P.S. Case No. 229

WEB COPY

of 2024 dated 05.09.2024 for the offences punishable under Sections 317(5), 318(4), 61(2), 338, 336(3), 340(2), 111, 178, 179, 180, 181, 3/5 of the Bharatiya Nyaya Sanhita, 2023.

Prosecution Case

3. The prosecution case is based on the self-statement of ASI Indrajeet Paswan recorded on 05.09.2024 at 18.15 hrs at NH-28A near Kharwa Pool, Banjaria, District-East Champaran, Motihari. In his self-statement, the informant has stated that on 05.09.2024 at about 17:30 Hours in the evening, he along with other police personnel proceeded for patrolling and vehicle checking. When they reached near Shankar Dhaba, they got secret information that that from Jhakiya village three persons on one without number plate red coloured motorcycle are coming towards Khandwa Pool. One of the three persons have beard who was wearing blue colour T-shirt and black coloured pant and was carrying black coloured backpack in front of his stomach as also he is the person who was driving the motorcycle. Second person was wearing Khaki coloured Fullshirt and Blue coloured Jeans pant and third person was wearing white coloured T-shirt with lining and Black coloured Jeans Pant. All of them were carrying fake Indian notes. On this information, the informant has informed the senior officials and with the Shashtra

WEB COPY

Bal personnels, they proceeded towards Khandwa Pool where they found one red motorcycle with above description and three persons on it was coming. On seeing police personnel, they tried to flee away, but police personnel chased them and nabbed all three persons. Seeing this action of the police, nearby people gathered there. Thereafter, police asked their names. They told their names as (1) Md. Nazar Saddam, (2) Md. Waris and (3) Md. Jakir Hussain. The informant requested the people who have assembled there to become witness to the production-cum-seizure list to which all of them refused by saying that these accused persons are outsiders, if we become witness, anything bad can happen to us. Thereafter, two of the raiding team members, namely, Sukhram Bharti and Aditya Kumar were made witnesses to the production-cum-seizure list. Police asked for papers of the motorcycle from Md. Nazar Saddam but he could not produce any papers. The Engine number and chasis number of the motorcycle was worn out. It seems that the motorcycle was stolen one. On search of black coloured backpack, some clothes and hundred notes of 500 Rupees (total 50,000/-) two Aadhar Cards of Md. Nazar Saddam of different addresses was found. On search of his pant, hundred notes of 500 Rupees (total 50,000/-) was found. On search of Md. Waris, from his pant’s

WEB COPY

pocket, eighty notes of Rs. 500/- and from his shirt's pocket twenty notes of Rs. 500/- (total Rs.50,000/-) was found. And on search of Md. Jakir Hussain, sixty notes or Rs.500/- from his pant's pocket and thirty notes of Rs.500/- from his shirt's pocket (total 45,000/-) was found. Altogether from all the three persons, three hundred ninety (390) fake notes total of Rs.1,95,000/- was found. On further interrogation, they disclosed that they used to carry these fake Indian currency from Pakistan via Nepal through one Rajesh Sahni. They used to transport these fake notes via Delhi to Sarfaraj @ Muzaffar Ahamd resident of Jammu Kashmir. They disclosed that they have done this many times earlier also. In the presence of two witnesses named above, seizure list was prepared, on these three accused persons have put their signature. The informant alleged that from the above facts, it is clear that these three accused persons in conspiracy with other named accused persons were trying to use fake Indian notes in the market.

4. The investigation of the case was handed over to the NIA vide order dated 10.12.2024 issued by the Ministry of Home Affairs, Government of India. Before handing over the investigation to the NIA, the Bihar Police had already completed the investigation of the case and submitted a charge-sheet vide

WEB COPY

Charge-sheet No. 310 of 2024 dated 24.10.2024 against four accused persons, namely, Mohammad Waris, Mohammad Nazar Saddam, Mohammad Zakir Hussain and Sarfaraz @ Muzaffar Ahmad Wani (the present appellant).

5. The present appellant has been arrayed accused number 4 in the charge-sheet. The seized mobile phone as allegedly revealed contained various PDF files of counterfeit currency notes, incriminating voice clips, photographs of suspected persons along with their contact details as well as incriminating chats related to the procurement and supply of Fake Indian Currency Notes (in short 'FICN'). His connections with the co-accused have been highlighted in the charge-sheet filed by the NIA.

6. It is the case of the appellant that he is innocent, has not committed any offence and that the appellant was not arrested on the spot and nothing incriminating has been recovered from his conscious possession. It is submitted that whatever counterfeit Indian currencies have been recovered, have been recovered from the possession of the persons arrested from the spot, one of whom is accused number 1. This appellant had interactions through Social media platform and by virtue of this interaction, they had developed a business relation.

WEB COPY

7. The appellant claims that he was running a business of poultry farm at his local place and was exploring the idea of selling fruit through e-commerce platform, and in that process he came in contact with Nazar Saddam (A1) who was running an e-commerce business with the name of Zamad Online Shopping and Service Private Limited. In connection with the investment in the business in the e-commerce company of Zamad the appellant started investing his money from time to time. The story of transferring money for procuring 'FICN' is completely false and without any corroborative legal evidence.

8. The appellant has taken a specific ground in paragraph '27' of his memorandum of appeal that the appellant has been arrested in complete violation of the law as the appellant has not been served with the grounds of arrest, which would make his arrest completely illegal and unsustainable in the eye of law.

9. It is lastly submitted that the charges under Sections 16, 18, and 20 of the Unlawful Activities (Prevention) Act (in short 'UA(P) Act') would not be attracted in the present case. The prerequisites for inviting applicability of these Sections is that there must be a terrorist act as defined under Section 15 of the UA(P) Act. It is submitted that in the present case the

WEB COPY

appellant has neither produced, nor smuggled, or circulated the high quality counterfeit Indian currency or coin or any material.

10. Learned counsel for the appellant submits that in the present case although trial is going on, till date only 3 out of 91 witnesses have been examined. The trial is not likely to be concluded in near future within a stipulated period.

11. It is submitted that earlier this Court had occasion to consider the prayer of the appellant for bail. This Court, having considered the same vide order dated 24.02.2026 refused to enlarge the appellant on bail. Therefore, Cr. Appeal (DB) No. 1478 of 2025 preferred by the present appellant was dismissed.

12. It is pointed out that being aggrieved by the dismissal of the appeal by this Court, the appellant preferred Criminal Appeal No. 3238 of 2026 (SLP (Crl) No. 8196 of 2026) before the Supreme Court of India. The Hon'ble Supreme Court, having gone through the order of this Court, noticed that the issue pertaining to the non-furnishing of written grounds of arrest to the appellant, though raised, had not been considered by the High Court. For this reason, without going into the merit of the case, the Hon'ble Supreme Court set aside the impugned order

WEB COPY

and remitted it to the High Court to consider the said issue while deciding the bail application of the appellant.

13. In the aforementioned background, the appeal was once again taken up for consideration on 17.09.2026. On that date, this Court passed the following order:-

> "Heard learned counsel for the appellant and learned Additional Solicitor General assisted by Mr. Arvind Kumar learned counsel for the N.I.A.
>
> 2. This appeal has been taken up for consideration in view of the remand made by the Hon'ble Supreme Court vide order dated 15.07.2026 in SLP (CRL.) No. 8196 of 2026. It is noticed that the Hon'ble Supreme Court having gone through the impugned order found that one of the submissions made on behalf of the accused-appellant was that the written ground of the arrest memo was not furnished to the accused-appellant. The Hon'ble Supreme Court held that this ground was not considered by the High Court.
>
> 3. In today's submissions, Md. Tahir, learned counsel for the appellant has placed before this Court, judgments of the Hon'ble Supreme Court in the case of ***Vihaan Kumar v. State of Haryana & Anr.*** reported in ***(2025) 5 SCC 799, Ahmed Mansoor & Ors. v. State Rep. By Assistant Commissioner of Police & Anr.*** reported in ***2025 SCC OnLine SC 2650*** and ***Dr. Rajinder Ranjan v. Union of India & Anr.*** reported in ***2026 SCC OnLine SC 802***. It is submitted that all these recent judgments of the Hon'ble Supreme Court have taken note of the judgment rendered in the case of ***Mihir Rajesh Shah***

WEB COPY

v. State of Maharashtra & Anr. reported in ***(2026) 1 SCC 500*** in which the Hon'ble Supreme Court has been pleased to take a view that the ground of arrest in writing, it should effectively serve the intended purpose as envisaged under the Constitution of India and the ground of arrest must be made available within two hours minimum interval before the production of the accused before the learned Magistrate. It is submitted that non-compliance with this direction would be in the teeth of the arrestee's constitutional right under Article 22(1) of the Constitution of India.

4. Learned counsel for the appellant has further submitted that in the remand requisition submitted before the Court seeking transition, there is no mention of furnishing of written grounds of arrest.

5. Learned A.S.G. has placed before this Court a copy of the arrest memo dated 12.09.2024, showing the date and time of arrest of the accused-appellant at Hawai Adda Road, under Humhama Police Station in the District of Budgam (J&K). It is submitted that the arrest memo of the accused was prepared by the Bihar Police in which in paragraph '7' there is a statement, "The arrested person, after being informed of the grounds of arrest and his legal rights on date 12.09.2024, time 15:20 at place Hawai Adda Road taken into custody." The case number in connection with which he is taken into custody is mentioned in the arrest memo. It is submitted that from paragraph '7' of the arrest memo, copy of which has been served upon the appellant, would appear that the appellant was informed about the ground of arrest. Learned A.S.G. is, however, not aware whether written ground of arrest was served upon the accused-appellant

WEB COPY

before two hours of his production before the learned Magistrate at Anantnag, Budgam (J&K) from where the transit remand was taken. It is submitted that he may be granted a short time to verify from the Department as to whether any separate written ground of arrest was served upon the appellant.

6. Let the copy of the arrest memo made available by the learned A.S.G, the copy of the remand requisition submitted by S.I. Pankaj Kumar in the Court of the learned Chief Judicial Magistrate, Budgam at J&K and copy of the order dated 13.09.2024 by which the appellant was sent on transit remand, be kept with the record.

7. List this matter on 28.09.2026 under the same heading. If any written ground of arrest has been furnished to the appellant, the same must be brought on record by the N.I.A. before the next date of listing."

14. When the appeal was taken up for consideration, the learned ASG representing the NIA has categorically stated that no written grounds of arrest seems to have been furnished to the appellant. He has not been made available any such copy of written grounds of arrest, however, learned ASG has once again relied upon paragraph '7' of the arrest memo. Learned ASG has placed before this Court the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka versus Sri Darshan etc.** reported in **2025 SCC OnLine SC 1702.** A judgment of the Hon'ble Madhya Pradesh

WEB COPY

High Court in Miscellaneous Criminal Case No. 32331 of 2026 (**Raju Sonker versus the State of Madhya Pradesh)** has also been placed before this Court. It is submitted that learned Single Judge of the Madhya Pradesh High Court, having gone through the judgments of the Hon'ble Supreme Court in the case of **Prabir Purkayastha versus State (NCT of Delhi**) reported in **(2024) 8 SCC 254** and in the case of **Vihaan Kumar versus State of Haryana** reported in **(2025) 5 SCC 799, Mihir Rajesh Shah versus State of Maharashtra** reported in **(2026) 1 SCC 500, State of Meghalaya versus Sonal Raghuvanshi @ Bittu in (SLP (Cr.) No. 11944 of 2026)**, held that though personal liberty is a cherished constitutional value, it is not absolute in the sense that liberty must yield where it poses a threat to the collective interest of the society and when the facts of the case are seen in the context of the allegations leveled against the applicant as well as his criminal antecedents. It is submitted that a similar view is required to be taken by this Court.

15. To set the records straight, this Court would record that although this Court has taken notice of the various submissions made in the memorandum of appeal but it is made clear that in the hearing of the case, learned counsel for the appellant has solely focused on his submissions with regard to

WEB COPY

non-furnishing of the grounds of arrest, therefore, this Court is not going into any other aspect of the matter at this stage.

Consideration

16. To start with, this Court would extract the relevant information from the arrest memo. It appears that in connection with Banjariya P.S. case No. 229 of 2024 dated 05.09.2024, the Bihar Police found significant role of the present appellant, the name of the appellant surfaced in connection with the seizure of 'FICN' of Rs. 1,00,000/- and Rs. 95,000/- from Mohammad Nazar Saddam (A1), Mohammad Waris (A2), and Mohammad Zakir Hussain (A3). They were in possession of 'FICN' of Rs. 1,00,000/-, Rs. 50,000/-, and Rs. 40,000/- respectively. The appellant was arrested on 12.09.2024 from Anantnag, J&K. The arrest memo contains the case number, place of arrest, the date of arrest, and time of arrest. It contains the other details of the appellant. For the purpose of this case, paragraph '7' of the arrest memo is required to be extracted which we do hereunder:

> "7- The arrested person, after being informed of the grounds of arrest and his legal rights on date 12/09/24 time 15:20 at place Hawai Adda Road taken into custody. The following(s) was/were found on physical search, conducted on the person of the arrested person and was/were taken into possession, for which a receipt was given to the

WEB COPY

arrested person. If no article found, "Nil" may be indicated. (As per section 49 of BNSS)

(गिरप्तार व्यक्ति को उसकी गिरप्तारी का कारण और उसके कानूनी अधिकारों को बताते हुए दिनांक ––– समय ––– स्थान ––– पर रिासत में लिया गया । गिरप्तार व्यक्ति की जमा तलाशी लेने पर निम्नलिखित सामान पाया गया । जिसे कब्जे में लेकर रसीद दी गई । यदि कुछ भी सामान नहीं पाया गया हो तो "कुछ नहीं" लिखा जाए ।) (भा0 न0 सु0 सं0 की धारा 49 के अनुसार)

Sl. No. (क्रम सं)	Article found (सामान पाया गया)	Quantity (मात्रा)
1.	Mobile	01

17. In paragraph '8', it is stated that information was given to Abdul Hamid, the brother-in-law, on 12.09.2024. The name and address of the witnesses in presence of whom arrest was made are shown in paragraph '11' of the arrest memo.

18. In response to the statements present in paragraph '27' of the memorandum of appeal, learned ASG submitted with reference to paragraph '48' of the counter affidavit that arrest memo dated 12.09.2024 disclose that the appellant after being informed of the grounds of arrest and his legal rights, was arrested.

19. Learned counsel for the appellant has relied upon the judgments of the Hon'ble Supreme Court in the case of **Vihaan Kumar** (supra), **Ahmed Mansoor and Others versus State represented by Assistant Commissioner of Police** reported in **2025 SCC OnLine SC 2650, Dr. Rajinder Rajan versus Union of India and another** reported in **2026 SCC OnLine SC 802** and **Mihir Rajesh Shah** (supra).

WEB COPY

20. In the case of **Vihaan Kumar** (supra), the Hon'ble Supreme Court has concluded its opinion in paragraphs '26' to '26.6', which we reproduce hereunder:-

> **"26.** Therefore, we conclude:
> **26.1.** The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);
> **26.2.** 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;
> **26.3.** 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);
> **26.4.** 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 charge-sheet will not validate a breach of constitutional mandate under Article 22(1);
> **26.5.** 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

WEB COPY

> **26.6.** 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."

21. It appears that after **Vihaan Kumar** (supra), the Hon'ble Supreme Court considered the **Sri Darshan's case** (supra) in which the State of Karnataka had challenged the order dated 13.12.2024 passed by the High Court of Karnataka in Criminal Petition Number 11096 of 2024 and its connected matters, whereby the respondents/accused were enlarged on bail **.** . In the said case, after submission of the charge sheet before the learned jurisdictional court, the specific charges were also framed against those respondents under various Sections of the Indian Penal Code.

22. The respondents/accused moved for bail and ultimately, they were granted bail by the High Court. The order passed by the Hon'ble High Court was challenged on the ground *inter alia* that it was contrary to the material evidence on the record and suffered from non-application of mind, facts in law involved.

WEB COPY

23. Before the Hon'ble Supreme Court, the prosecution contested the High Court's findings recorded regarding non-compliance with Article 22(1) of the Constitution and Section 50 of the CrPC. It is was contested that the respondents were informed of the grounds of arrest orally at the time of arrest and they were served with written grounds immediately thereafter. This process was in line with the Hon'ble Supreme Court rulings in the case of **Ram Kishor Arora v. Directorate of Enforcement**, reported in **(2024) 7 SCC 599**, and in the case of **Prabir Purkayastha** *(supra)*. It was submitted that the requirements under Section 50A of the CrPC to satisfy the Magistrate about arrest intimation was duly fulfilled.

24. Thus, it was contended that the High Court's insistence that the actual grounds of arrest must be filed in court finds no support in law.

25. While dealing with the aforesaid contentions, the Hon'ble Supreme Court went into the orders granting bail to the accused and took into consideration the various aspects which are required to be considered for the purpose of grant of bail. We are not concerned with that aspect of the matter in the present case.

WEB COPY

26. It is evident on going through paragraph ‘24’ of the judgment in **Sri Darshan's** case, that the Hon’ble Supreme Court was satisfied that the case called for the exercise of its extraordinary jurisdiction under Section 439(2) CrPC. We reproduce paragraph ‘24’ of **Sri Darshan's** case hereunder for a ready reference:-

> **“24.** On a cumulative analysis, it is evident that the order of the High Court suffers from serious legal infirmities. The order fails to record any special or cogent reasons for granting bail in a case involving charges under Sections 302, 120B, and 34 IPC. Instead, it reflects a mechanical exercise of discretion, marked by significant omissions of legally relevant facts. Moreover, the High Court undertook an extensive examination of witness statements at the pre-trial stage, highlighting alleged contradictions and delays - issues that are inherently matters for the trial Court to assess through cross-examination. The trial Court alone is the appropriate forum to evaluate the credibility and reliability of witnesses. Granting bail in such a serious case, without adequate consideration of the nature and gravity of the offence, the accused's role, and the tangible risk of interference with the trial, amounts to a perverse and wholly unwarranted exercise of discretion. The well-founded allegations of witness intimidation, coupled with compelling forensic and circumstantial evidence, further reinforce the necessity for cancellation of bail.

WEB COPY

> Consequently, the liberty granted under the impugned order poses a real and imminent threat to the fair administration of justice and risks derailing the trial process. In light of these circumstances, this Court is satisfied that the present case calls for the exercise of its extraordinary jurisdiction under Section 439(2) Cr. P.C."

27. In the case of **Ahmed Mansoor** (supra), the Hon'ble Supreme Court quoted **Vihaan Kumar's** case and held that the earlier judgment of the Hon'ble Supreme Court in *Sri Darshan's* case (supra) was rendered in quite different facts. We reproduce paragraphs '6', '7', '8', and '9' of **Ahmed Mansoor's** case hereunder for a ready reference.

> **"6.** In *Vihaan Kumar* v. *State of Haryana*, this Court, in the supplementing judgment, was pleased to observe as follows:
>
> > "3. The purpose of inserting Section 50A of the CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure

WEB COPY

release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detenue, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal."

7. Learned Senior counsel appearing for the respondent(s) has placed reliance on recent decisions of this Court in *Kasireddy Upender Reddy* v. *State of Andhra Pradesh*-Criminal Appeal No. 2808/2025 dated 23.05.2025 and *State of Karnataka* v. *Sri Darshan* - Criminal Appeal Nos. 35283534/2025 dated 14.08.2025.

8. In *State of Karnataka* v. *Sri Darshan* (supra) the facts governing are quite different. It was a case dealing with the cancellation of bail where the charge sheet had been filed and the grounds of detention were served immediately. This Court has, in fact, given its approval to the decision in

WEB COPY

> *Vihaan Kumar* v. *State of Haryana* (supra). Similarly, in *Kasireddy Upender Reddy* v. *State of Andhra Pradesh* (supra), this Court was pleased to hold in para 27 that the object underlying the provision that the grounds of arrest should be communicated has been explained by this Court in *Vihaan Kumar* v. *State of Haryana* (supra). Therefore, the law as laid down in *Vihaan Kumar* v. *State of Haryana* (supra) has been approved and reiterated in the abovesaid decisions.
>
> **9.** In such view of the matter, we are inclined to hold that the present appeal deserves to succeed only on the ground that the mandate of furnishing the grounds of arrest at the time of securing the appellants has not been complied with. Therefore, we are not inclined to go into the merits of the case. However, while setting aside the order passed by the High Court and consequently setting aside the order of arrest and remand, we would only say that liberty is granted to the respondents to take recourse to law, to arrest, if a case is made out."

28. In the case of **Mihir Rajesh Shah** (supra), the Hon'ble Supreme Court reviewed the previous case laws on the subject and held in paragraphs '50', '51', and '52' as under:-

> **50.** Further, the above judgment has been reiterated and followed by this Court in *Lallubhai Jogibhai Patel* v. *Union of India*[19] wherein it has been reaffirmed that grounds of detention must be communicated to the detenu in writing in a language which he understands.

19. (1981) 2 SCC 427 : 1981 SCC (Cri) 463 : (1982) 52 Comp Cas 543

WEB COPY

> **51.** On perusal of the above two judgments, it turns out that mere communication of the grounds in a language not understood by the person arrested does not fulfil the constitutional mandate under Article 22 of the Constitution of India. The failure to supply such grounds in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Articles 21 and 22 of the Constitution of India. The objective of the constitutional mandate is to place the person in a position to comprehend the basis of the allegations levelled against him and it can only be realised when the grounds are furnished in a language understood by the person, thereby enabling him to exercise his rights effectively.
>
> **52.** From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse."

29. Referring to the issues with regard to the mode of communicating the grounds of arrest, the Hon'ble Supreme Court held in categorical words that "the grounds of arrest must

WEB COPY

be such that it effectively serves the intended purpose as envisioned under the Constitution of India, which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law." The Hon'ble Supreme Court opined that there would be no harm in providing the grounds of arrest in writing in the language the arrestee understands as this approach would not only fulfill the true intent of the constitutional mandate but will also be beneficial for the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.

30. In the case of **Dr. Rajinder Rajan versus Union of India and another** reported in **2026 SCC Online SC 802**, the Hon'ble Supreme Court took note of paragraphs '66', '66.1', '66.2', '66.3', and '66.4' of its judgment rendered in the case of **Mihir Rajesh Shah** (supra). In paragraph '66.3', it has been held that in case(s) where the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least 2 hours prior to production of the arrestee for

WEB COPY

remand proceedings before the Magistrate. Non-compliance with this would result, the arrest and subsequent remand shall be rendered illegal and the person will be at liberty to be set free. In paragraph '20' of its judgment in the case of **Dr. Rajinder Rajan** (supra), the Hon'ble Supreme Court held as under:-

> **"20.** It is no longer res integra that supplying the grounds of arrest to the accused in writing before the arrest or, in a given case, under exceptional circumstances, immediately thereafter, is the mandate of the Constitutional guarantees provided under Article 22(1) read with Article 21 of the Constitution of India. The ratio of the judgment in *Mihir Rajesh Shah*[3] conclusively holds that any deviation from the above principle would lead to the arrest of the accused being declared illegal entitling such accused to be released forthwith."

31. It is evident on going through paragraph '22' of the judgment in the case of **Dr. Rajinder Rajan** (supra) that in the said case also, the arrest memo had been prepared in a template format and contains statements like the one present in the arrest memo of this case. Paragraph '22' is, therefore, extracted hereunder for a ready reference:-

> "**22.** On going through the arrest memo, we find that it has been prepared in a template

3. (2026) 1 SCC 500 : (2026) 1 SCC (Cri) 1

WEB COPY

> format and contains a statement to the effect that the arresting officer had explained the grounds of arrest to the accused before the arrest. Thus, the arrest memo, by itself, reflects that the grounds of arrest had been orally explained to the accused before the process of formal arrest was undertaken. Consequently, it was incumbent upon the arresting officer to have supplied the memo of grounds of arrest in writing to the accused two hours prior to producing them before the Magistrate as per the mandate of *Mihir Rajesh Shah*[3] which apparently has not been followed in this case."

32. In the light of the aforementioned judgments, when we go through the judgments of the learned Single Judge of the Hon'ble Madhya Pradesh High Court in the case of **Raju Sonker** (supra), we find that in the said case, the applicant was in custody since 22.01.2026. The Hon'ble Madhya Pradesh High Court took note of paragraphs '46', '66.3', and '68' of the judgment in the case of **Mihir Rajesh Shah** (supra). Further, the learned Single Judge of Madhya Pradesh High Court extensively took note of paragraph '20.1.7' of **Sri Darshan's** case wherein the Hon'ble Supreme Court held as under:-

> "**20.1.7.** In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest,

WEB COPY

> evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a *prima facie* case. Its reliance on *Pankaj Bansal* and *Prabir Purkayastha* is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not *ipso facto* render custody illegal or entitle the accused to bail."
>
> (underline is mine)

33. Learned Single Judge, though noticed the judgment of the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah** (supra), applied the prejudice test as observed by the Hon'ble Supreme Court in the case of **Sri Darshan** (supra).

34. We are of the considered opinion that learned Single Judge of the Hon'ble Madhya Pradesh High Court, in the case of **Raju Sonker** (supra) has produced the facts of the case in **Sri Darshan** (supra). That was a case in which the State had moved the Hon'ble Supreme Court for cancellation of bail. The

WEB COPY

High Court had allowed the bail on the grounds inter-alia of non-furnishing of the grounds of arrest in writing. But the Hon'ble Supreme Court found that in the said case, the arrest memos and remand records clearly reflected that the respondents were aware of the reasons for their arrest. They were legally represented from the outside and applied for bail shortly after arrest. It is for this reason their Lordships, in the case of **Sri Darshan** (supra) observed that "No material has been placed on record to establish that any prejudice was caused due to alleged procedural lapse…." So far as the present case is concerned, the respondent has not demonstrated before this court that the accused- appellant was well aware of the accusations and grounds of arrest and had , therefore , taken immediate steps to oppose the remand .

35. The observations of the Hon'ble Supreme Court in the case of **Sri Darshan** (supra) has been taken note of in the case of **Ahmed Mansoor** (supra), which we have already taken note of hereinabove.

36. The upshots of the aforementioned discussions would lead to conclude this Court as under:-

(i) The constitutional mandate and the statutory mandate as contained under Article 22 of the Constitution of

WEB COPY

India and Section 50 of the CrPC leave no room for doubt that it would be necessary for the investigating agency/arresting authority, that a copy of the written grounds of arrest is furnished to the arrested person as a matter of course and without exception. This has been held by the Hon'ble Supreme Court in the case of **Pankaj Bansal versus Union of India** reported in **(2024) 7 SCC 576:**

(ii) If the arrest memo is simply a proforma indicating that the grounds of arrest has been conveyed, it would not be a compliance with the judgments of the Hon'ble Supreme Court in the case of **Ahmed Mansoor** (supra) and **Dr. Rajindra Rajan** (supra): and

(iii) Templates of the arrest memo containing the statement to the effect that the arresting officer explained the grounds of arrest to the accused before the arrest, is no compliance with the mandate of Article 22 of the constitution of India read with section 50 and 50A of the Code of Criminal Procedure (Now Sections 47 and 48 of the BNSS); and

(iv) The judgment in **Sri Darshan's case** (supra) was rendered by the Hon'ble Supreme Court with a clear finding that the arrest memos and remand orders reflected that the respondents were aware of the reasons for their arrest. They were

WEB COPY

legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. In such circumstance, the Hon'ble Supreme Court took a view that no material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the present case, the facts are entirely different, therefore, the decision of the Hon'ble Supreme Court in **Sri Darshan's case** (supra) is to be read as explained in the case of **Ahmed Mansoor** (supra) in paragraph '8' of the judgment.

37. In terms of paragraph '66.3' of the judgment in the case of **Mihir Rajesh Sah** (supra), the grounds of arrest must be communicated in writing within a reasonable time and in any case, at least two hours prior to the production of the arrestee for remand before the Magistrate.

38. In the present case, the respondent has failed to demonstrate that the ground(s) for arrest/detention have been furnished in writing. Even as time was granted to the respondent, no document showing service of grounds of arrest in writing has been placed before this Court.

39. We have further found from the transit remand order dated 13.09.2024 passed by the learned Chief judicial

WEB COPY

Magistrate, that before the learned magistrate Bihar police produced the Case- diary (C.D. File) and a remand petition but there is nothing to indicate that the copy of the C.D. File and the remand application was served on the appellant two hours before his production before the learned magistrate. Therefore, in this case the prejudice caused to the accused is evident. The learned Magistrate didn't satisfy himself with the compliance of Article 22 of the constitution of India read with section 50 Cr.P.C. [Now section 47 & 48 of Bharatiya Nagarik Suraksha Sanhita, 2023 (In short 'BNSS')]. Perhaps, in absence of the service of grounds of arrest the accused- appellant couldn't file an application for bail immediately before the learned CJM at Budgam , and before the learned special judge NIA at Patna.

40. We are, therefore, of the considered opinion that the appellant has made out a case for interference. His arrest cannot be sustained.

41. Accordingly, we set aside the impugned judgment/order of the learned trial court and direct that the appellant shall be released from custody, giving him the benefit of the ratio in the case **Mihir Rajesh Shah** (supra). The appellant shall be released on bail forthwith, subject to furnishing bail bonds to the satisfaction of the learned trial court.

WEB COPY

The learned trial court may impose such other conditions as may deem fit and proper to secure the attendance of the appellant in course of trial. The impugned order is, therefore, set aside.

42. It will be open to the learned trial court to secure presence of the appellant in course of trial, if occasion so arises, by issuing coercive order(s) in accordance with law.

43. This appeal stands allowed to the extent indicated herein-above.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

SUSHMA2/-

AFR/NAFR	*AFR*
CAV DATE	*01.10.2026*
Uploading Date	*06.10.2026*
Transmission Date	*06.10.2026*

WEB COPY