IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.13860 of 2025

CNR No.ODHC010945452025

Bikram Panda @ Bikram Kumar Panda ..... ***Petitioner***

-versus-

State of Odisha ..... ***Opposite Party***

For Petitioner … Mr. Ashok Kumar Parija,
Senior Advocate along with
Mr. Subir Palit, Senior Advocate &
M/s. P.K. Dash, S.N. Das &
A. Acharya

For Opposite Party … Mr. Partha Sarathi Nayak,
Additional Government Advocate.

Mr. B.K. Ragada,
Advocate for the Informant

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

Date of hearing : 31.07.2026 :: Date of judgment : 31.08.2026

A.K. Mohapatra, J.

1. The present bail application under Section 483 of the B.N.S.S., 2023 has been filed by the Petitioner Bikram Panda @

Bikram Kumar Panda, a former member of the Odisha Legislative Assembly, seeking regular bail in connection with Baidyanathpur P.S Case No.518 of 2025, corresponding to G.R Case No.2774 of 2025 for alleged commission of offences punishable under Sections 103(1), 61(2)(a), 111(2)(a), 238(a), 249(a) and 3(5) of the Bharatiya Nyaya Sanhita, 2023 ("BNS"), read with Sections 25(1)(a), 25(6) and 27(a) of the Arms Act, 1959 ("Arms Act"), currently pending before the learned 3rd Additional District & Sessions Judge, Berhampur as S.T. Case No. 18 of 2026. Though this is a regular bail application, since it involves applicability and interpretation of a crucial provisions of the Constitution of India as well as the B.N.S.S., moreover, considering the voluminous documents and case diary and the matter was mentioned for relisting by the learned counsels for rehearing of the matter on different points of law three was some delay in delivering the judgment. Such delay in delivery of the judgment is regretted by the Court, at the outset.

FACTUAL MATRIX OF THE CASE

2. The crux of the facts forming the backbone of the present case, as culled out from the FIR and the Chargesheet, is as

follows; On the night of 06.10.2025 at about 10.00 PM, two unknown assailants on a motorcycle waited near Kalyan Mandap under Baidyanathpur P.S. limits, Berhampur, Ganjam, and shot the deceased-Victim at close range by means of a pistol as he was returning from his chamber to his residence at Baikuntha Nagar. Upon hearing the gunshots, the family members of the deceased-Victim and bystanders rushed to the spot, found the deceased-Victim grievously injured, and immediately transported him to M.K.C.G. Medical College & Hospital, Berhampur, where the Medical Officer declared him brought dead. The cause of death, as subsequently established, was haemorrhage and shock resulting from the firearm injuries. Following such incident, on the written complaint of one Purna Chandra Panda, the younger brother of the deceased-Victim, the IIC, Baidyanathpur P.S. registered Baidyanathpur P.S. Case No. 518 dated 07.10.2025 under Sections 103(1) and 3(5) of the BNS, 2023, read with Sections 25(1-B) and 27 of the Arms Act, 1959, against unknown accused persons and took up investigation. Following the registration of the F.I.R, the SDPO, Berhampur was directed to take charge of the investigation and an

investigation team was constituted to assist, under the supervision of the Superintendent of Police, Berhampur.

3. During investigation, the Investigating Officer examined the spot along with the Scientific Team of RFSL, Berhampur, seized clue materials, recorded statements of the complainant and witnesses under Section 180 BNSS, and seized the motorcycle used by the assailants and articles belonging to the deceased. The eye-witnesses have also successfully identified some of the accused persons in TI Parade. CCTV footage obtained from cameras installed by Berhampur Municipal Corporation revealed two suspects, both wearing white shirts, black pants, and helmets, arriving and fleeing after the shooting on a motorcycle bearing a fake registration number OD07K2278. Subsequent investigation traced a suspicious UPI transaction of Rs. 9,500/- made through a mobile recharge shop at Goilundi, Berhampur, to one Mithun Kumar of Bihar, which led to a chain of digital evidence comprising CDRs, IPDRs, SDRs, CAFs, mobile handset data, and WhatsApp/application logs.

4. The investigation divulged several layers of conspiracy, as detailed in the Chargesheet. It was revealed that the present

Petitioner Bikram Panda (Ex-MLA) and one Pintu @ Sivashankar Dash (ex-Mayor), harboured deep-seated political, personal and professional enmity with the deceased-Victim. The I.O also identified one Madan Mohana Dalai and Malaya Kumar Bisoyi, close associates of the Petitioner, who had engaged middlemen Uma Shankar Bisoi and Jogendra Rauta @ Jogi to arrange 'supari' killers from Bihar. It was discovered that one Bipin Swain was engaged to source contract killers from Bihar, namely Sishupal Kumar Paswan, Kundan Kumar, and Simanchala Naik, who made multiple unsuccessful attempts to shoot the deceased from 10.09.2025 to 14.09.2025. eventually, two local criminals namely, Kurupati Bhuyan and Chintu Pradhan were engaged and they ultimately executed the murder plan to eliminate the deceased-Victim on 06.10.2025. The Chargesheet also discloses that one Sunil Kumar Hota, Sunya Chandra Das, and Kalu Charan Bhuyan, harboured the killers and provided logistical support, while one Rajendra Kumar Sahu dismantled and scrapped the motorcycle used in the offence.

5. All in, during investigation, a total of sixteen persons were apprehended by the local Police. The present Petitioner was

apprehended on 22.10.2025 at 12:00 midnight from his residence. The Prosecution-State avers that grounds of arrest were allegedly orally communicated in Odia and a written Memo of Arrest was prepared with a 'Grounds of Arrest' column, which the petitioner refused to sign, in the presence of two independent witnesses namely, Badri Narayan Nayak, Advocate, and Chandra Sekhar Gouda, Advocate who attested the Petitioner's refusal. The petitioner was formally placed under arrest at 3:30 AM on 22.10.2025 and, as alleged by the Prosecution, the father of the Petitioner was telephonically informed about the arrest and the grounds therefor, and when requested to receive copies of the arrest documents, he also declined. The father of the Petitioner additionally requested the police to collect medicines for the petitioner. Accordingly, SI Dusmanta Kumar Pradhan visited the Petitioner's residence, collected the medicines, and simultaneously communicated the grounds of arrest to the father of the Petitioner. Afterwards, the accused-Petitioner was forwarded on 22.10.2025 along with 11 other co-accused persons to the Court of the learned Sub-Divisional Judicial Magistrate (SDJM), Berhampur, in compliance with Section 58 of the

BNSS, 2023. The learned SDJM remanded all the accused persons to judicial custody till 03.11.2025 in GR No. 2774 of 2025. The present Petitioner has been in judicial custody continuously since 22.10.2025.

6. Subsequently, the Petitioner filed an application before the learned SDJM, Berhampur, seeking release from custody on the ground of alleged illegal arrest for non-supply of written grounds of arrest. The said application/petition was rejected vide order dated 14.11.2025, at Annexure-5. Thereafter, the Petitioner moved a bail application before the learned District & Sessions Judge, Ganjam at Berhampur, registered as B.A. No. 1309 of 2025. The hearing was subsequently transferred to the Court of the learned 3rd Additional Sessions Judge, Berhampur, who rejected the bail application vide order dated 16.12.2025 on several grounds mentioned therein, a copy of which is available at Annexure-7. Finally, the Investigating Officer submitted the Charge Sheet vide Baidyanathpur P.S. Charge Sheet No.1 dated 03.01.2026, keeping the investigation open in part, against all sixteen accused persons under Sections 103(1), 109(1), 61(2)(a), 111(2)(a), 238(a), 249(a) and 3(5) of BNS, 2023, read with

Sections 25(1)(a), 25(6) and 27(1) of the Arms Act, before the learned SDJM, Berhampur and the learned SDJM, after taking cognizance therein, supplied police papers under Section 230 of the BNSS and committed the matter to the Court of Sessions.

7. At present, the case is pending before the learned 3rd Additional District & Sessions Judge, Berhampur as S.T. Case No. 18 of 2026, at the stage of framing of charges. Being aggrieved by the rejection of his bail application by the learned Sessions Court, the present petitioner has preferred this petition under Section 483 BNSS before this Court, seeking bail and a declaration that his arrest was illegal.

CONTENTIONS OF THE PETITIONER

8. Heard Mr. Ashok Kumar Parija and Mr. Subit Palit, learned Senior Advocates along with Mr. Sailaza Nandan Das, learned counsel, appearing for the Petitioner. At the very outset, learned Senior Counsels for the Petitioner have stated before this Court that from the very inception of his arrest, the Petitioner was not served with written grounds of arrest by the arresting officer. This, it is submitted, constitutes a flagrant violation of the constitutional safeguards guaranteed under Articles 21 and 22(1)

of the Constitution of India, as also the statutory mandates under Sections 47, 48 and 62 of the BNSS, 2023. It is submitted that the Memo of Arrest furnished to the petitioner only mentions in the 'Grounds of Arrest' column "*In the strength of above noted case*", which is a wholly vague, non-specific, and constitutionally inadequate statement that does not disclose the nature of the accusations, the manner of the Petitioner's alleged involvement, or the specific acts attributed to him. Learned senior counsels have contended that the FIR being registered against unknown accused persons, the obligation on the I.O was all the more heightened to provide specific, cogent grounds of arrest. To lead further credence to their argument, the learned senior counsels for the Petitioner have cited an earlier judgment of a coordinate bench of this Court in ***Mrs. N. Ratnakumari v. State of Odisha & Others***, reported in ***2014 SCC OnLine Ori 256***, wherein this Court, while interpreting a ground of arrest stated in a memo as "*as found involved in the above noted case*", held that such a ground is inadequate for the purposes of Article 22(1) of the Constitution read with Section 50 Cr.P.C. The ground of arrest in

the present case being "*In the strength of above noted case*", is, if anything, even more vague and equally inadequate.

9. Drawing the attention of this Court to the fact that the forwarding report (at Annexure-3), the learned senior counsels contended that the report submitted by the I.O to the learned SDJM at the time of forwarding nowhere discloses the supply of written grounds of arrest to the petitioner. Similarly, the remand order dated 22.10.2025 (at Annexure-4) is equally silent. Moreover, the order dated 14.11.2025 (at Annexure-5), rejecting the Petitioner's application for release, contains not even a whisper of the existence of written grounds of arrest furnished exclusively to the Petitioner at the time of arrest. The learned senior counsels have stated that the Prosecution did not even claim compliance at the stage of the initial application before the learned SDJM. Instead, the claim of compliance was first raised only during the hearing of the bail application on 09.12.2025 before the learned Sessions Court, by relying upon entries in the case diary prepared by the I.O., which can be very well be construed as an act of afterthought which is liable to be treated with suspicion.

10. To further corroborate their stance, the learned senior counsels for the Petitioner have placed reliance on ***Vihaan Kumar v. State of Haryana and Another***, reported in ***(2025) 5 SCC 799***, wherein the Hon'ble Supreme Court held that the requirement of communicating the grounds of arrest in writing extends not only to the arrested person but also to his 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 the arrest may be rendered illegal. It was submitted that in the present case, the father of the Petitioner was only verbally informed of the fact of the arrest and no written grounds of arrest were ever supplied to him. Furthermore, the Hon'ble Apex Court in ***Vihaan Kumar*** (*supra*) has also cautioned that compliance with Article 22(1) of the Constitution cannot be inferred solely on the basis of a vague entry in the police diary. There must be a contemporaneous record specifically recording what the grounds of arrest were. No such independent contemporaneous document exists in the present case beyond the case diary entries, which first surfaced at the bail hearing stage.

11. It was further urged by the learned senior counsels that the mere refusal of the petitioner to sign the Memo of Arrest does not and cannot absolve the police of their constitutional and statutory obligation. It was stated that a person cannot be deprived of a fundamental constitutional right merely because he exercises another right, i.e. the right to refuse to sign a document prepared by the authority arresting him. Learned senior counsels for the Petitioner have contended that when an arrested person is produced before a Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) of the Constitution and other mandatory safeguards, as held in ***Vihaan Kumar*** (supra), have been duly complied with. In the present case however, both the Courts below have failed to discharge this duty.

12. Additionally, the learned senior counsels for the Petitioner also contend that the 'Memo of Arrest' furnished to him was not in the prescribed format mandated under the Odisha Information of Arrested Persons Rules, 2025, (hereinafter "Rules, 2025") framed by the State Government in exercise of powers under Section 48(3) of the BNSS, 2023. It was contended

that Section 62 of the BNSS clearly stipulates that no arrest shall be made except in accordance with the provisions of the BNSS, 2023 or any other law for the time being in force. The Rules, 2025 prescribe a specific format, at Annexure-A to the Rules, with a dedicated column for grounds of arrest, which was not followed in the present case. Moreover, learned senior counsels stated that, a conjoint reading of Sections 48 and 62 of BNSS, 2023 leads to the irresistible conclusion that the requirement is mandatory and not merely directory, for it is settled law that when a statute prescribes a particular thing to be done in a particular manner, it must be done in that manner alone, or not at all.

13. In this context, the learned senior counsels for the Petitioner distinguished the decision of the Hon'ble Apex Court in ***State of Karnataka v. Sri Darshan Etc.***, reported in ***2025 SCC OnLine SC 1072***, relied upon by the Courts below and by the prosecution, by drawing attention of this Court to the subsequent order of the Hon'ble Supreme Court dated 16.10.2025 in ***Ahmed Mansoor & Others v. The State*** bearing ***Criminal Appeal No. 4505 of 2025***, which expressly distinguished ***Sri Darshan***

(*supra*) on the ground that the said case dealt with cancellation of bail where the charge sheet had been filed and grounds of detention were served immediately, neither of which was the situation in the present case. It was also submitted that under the mandate of the *D.K. Basu guidelines* as affirmed by the Hon'ble Apex Court in ***D.K. Basu v. State of West Bengal***, reported in ***(1997) 1 SCC 416***, copies of all documents including the Memo of Arrest should be sent to the jurisdictional magistrate at the time of forwarding of the accused. Since the written grounds of arrest were never sent to the jurisdictional magistrate, learned senior counsels stated that there has been a flagrant violation of the said mandate and, that the learned Courts below ought to have drawn an adverse inference against the police and in favour of the Petitioner.

14. Next, the learned senior counsels have submitted that the Courts below have erred in relying upon the confessional statements of co-accused persons, specifically one Sunya Das and Malaya Bisoi, as a basis for denying bail to the Petitioner. to bolster their contention, the learned senior counsels have referred to the observations in ***P. Krishna Mohan Reddy v. State of***

Andhra Pradesh, reported in ***2025 SCC OnLine SC 1157***, wherein the Hon'ble Apex Court has categorically held that the confessional statements of co-accused persons cannot be taken into consideration at the pre-trial stage while deciding a bail application of an accused. In a similar vein, the learned senior counsels have also relied on the orders of this Court in ***Dolagobinda v. State of Odisha*** (BLAPL No. 7695 of 2022) and ***Surendra Panda v. State of Odisha*** (BLAPL No. 1259 of 2020), to the same effect.

15. Additionally, the learned senior counsels for the Petitioner have challenged the reliance placed by the Sessions Court on CDR (Call Detail Records) analysis as a ground for denying bail. It has been submitted that CDR data merely establishes contact between the petitioner and co-accused, a fact which may have numerous innocent explanations, and does not, in the absence of voice recordings, transcripts, or other corroborating material, constitute sufficient basis for denying bail at the pre-trial stage. To support such contention, the learned senior counsels have placed reliance on the Hon'ble Supreme Court pronouncement in ***M. Sambasiva Rao v. State of Andhra***

Pradesh, reported in **2025 SCC OnLine SC 1463**, and on the decision of the J&K High Court in ***Sareed Ahmed Ganie v. Union of India***, bearing ***Bail App No. 21 of 2025*** disposed of on 18.10.2025, wherein it has been clearly observed that CDR details showing mere contact between an accused and others, without voice recordings, cannot by themselves suffice to sustain a conviction or denial of bail.

16. Further, the learned senior counsels stated that the two successive FIRs, Baidyanathpur P.S. Case No. 558 dated 03.11.2025 and Baidyanathpur P.S. Case No. 568 dated 09.11.2025, have been registered against the Petitioner, after his arrest, for allegedly threatening of the son of the deceased. It was submitted that the Petitioner has been in continuous judicial custody since 22.10.2025, has not been taken on remand by the police in those cases, and the Prosecution has produced no material from those investigations connecting the petitioner to those acts. Therefore, it was submitted that the adverse inference drawn against the petitioner on the basis of such unconnected FIRs is highly unwarranted and not backed by any credible material on record.

17. On the question of motive and enmity, the learned senior counsels for the Petitioner, relying on ***Nand Lal v. State of Chhattisgarh***, reported in ***(2023) 10 SCC 470*****,** specifically para 27 thereof, have contended that previous enmity can be viewed as a double-edged sword which might provide motive on one hand, but also present the likelihood of false implication on the other hand. It was further contended that motive alone, without corroborating evidence, is wholly insufficient to sustain conviction or denial of bail since circumstantial evidence merely create a suspicion of motive (paragraphs 15 to 19 and 23 of ***State of U.P. v. Dr. Sanjay Singh***, reported in ***1994 Supp (2) SCC 707***). With respect to the charge of Organised Crime under Section 111 BNS, the learned senior counsels have referred to decision of the Punjab & Haryana High Court in ***Suraj Singh @ Noni v. State of Punjab***, bearing CRM-M-42577 of 2024, to urge that in order to establish an element of an 'organised crime' the prosecution is required to furnish legally admissible prima facie evidence establishing a prima facie case and justifying custodial interrogation. It was submitted that no such evidence has been put forth against the Petitioner.

18. Lastly, the learned senior counsels appearing on behalf of the Petitioner submit before this Court that the Petitioner, who is aged 54 years, has deep roots in the community and no history of flight risk. Any further continuation of his custody in the face of multiple illegalities vitiates his detention and violates his invaluable fundamental rights under Articles 21 and 22 of the Constitution read with the legal rights under Sections 47, 48 and 62 of the BNSS. In such view of the matter, it was prayed that the Petitioner be released on bail and his arrest be declared illegal and, the impugned rejection order dated 14.11.2025 refusing to release the Petitioner on bail be set aside.

CONTENTIONS OF THE PROSECUTION-STATE

19. Heard Mr. Partha Sarathi Nayak, Additional Government Advocate and perused the Objection Affidavit wherein the learned AGA appearing for the State and the Investigating Officer (SDPO, Berhampur Town) have strongly opposed the bail application of the Petitioner. The Prosecution-State, at the very outset, has strenuously disputed the allegation of non-supply of written grounds of arrest. It was submitted that the Investigating Officer duly prepared written grounds of arrest on

22.10.2025, i.e. the very date of arrest, and the same was read out to and communicated orally in Odia to the Petitioner before the formal arrest at 3.30 AM. It was stated that the Petitioner wilfully and deliberately refused to sign the Memo of Arrest, the grounds of arrest, and all other connected papers, in the presence of two independent witnesses, namely Badri Narayan Nayak (an Advocate), and Chandra Sekhar Gouda (Advocate). The learned AGA contended that a person cannot be permitted to take advantage of his own wrongs. The Petitioner's deliberate refusal to sign the duly constituted Memo of Arrest cannot be weaponized as a procedural shield to invalidate an otherwise lawful arrest.

20. The Prosecution-State further submitted that the grounds of arrest of the Petitioner were communicated to the family of the Petitioner as well. In fact, the father of the Petitioner, Kishore Chandra Panda, was informed telephonically about the arrest and the grounds thereof and was requested to receive copies of the arrest memo and grounds of arrest, which he also refused. The father did, however, request the I.O. to send police personnel to collect medicines for the petitioner. Accordingly, SI Dusmanta

Kumar Pradhan personally visited the residence and communicated the arrest and the grounds thereof to the father of the Petitioner. it is the stance of the Prosecution-State that the aforesaid conduct unequivocally satisfies the mandate of Section 48(1) of BNSS. The learned AGA further contended that all other fifteen accused persons arrested in the case have signed the memo of arrest and grounds of arrest without objection, which entirely negates the Petitioner's claim of non-preparation of these documents. Moreover, there was no occasion for the I.O to manufacture these documents belatedly since all the accused persons were already in judicial custody by then. Therefore, the Petitioner's stand is factually untenable.

21. In rebuttal to the Petitioner's contention that his rights under Articles 21 and 22(1) of the Constitution of India, as also the statutory mandates under Sections 47, 48 and 62 of the BNSS, 2023 have been violated due to the conduct of the Prosecution, the learned AGA, relying on ***State of Karnataka v. Sri Darshan Etc.***, reported in ***2025 SCC OnLine SC 1072***, has urged that the mere absence of written grounds does not *ipso facto* render an arrest illegal, unless there is demonstrable

prejudice or denial of a fair opportunity to defend. The petitioner was legally represented from the very inception, has filed detailed bail applications at multiple levels, and has suffered no demonstrable prejudice. Therefore, the learned Sessions Court has rightly arrived at such conclusion and rejected the bail application of the Petitioner.

22. In order to demonstrate the strength of the Prosecution's Case, the learned AGA submits that the prosecution case is built upon a formidable edifice of multiple independent strands of evidence pointing to the Petitioner as a prime conspirator. It was contended that the Supplementary Case Diary of Inspector Swarnalata Patra (Cyber PS, Berhampur) reveals that the Petitioner was in regular telephonic and WhatsApp contact with co-accused Pintu @ Shiva Shankar Das on 05.10.2025 (one day before the murder), 02.10.2025 (four days before the murder), and 11.09.2025 (during the reconnaissance period of the *supari* killers). All the accused persons, including the Petitioner, used secret mobile communication applications to keep the planning covert. It was stated that the CCTV footage identifies the suspects' movements in the area. Moreover, the CDRs establish a

communication network linking the petitioner to co-accused Madan Dalei, Malaya Bisoi, Uma Shankar Bisoi, Jogendra Rout, and others. Learned AGA submitted that a colour-coded communication flow chart has been provided in the CD which establishes the layered connectivity between the killers and top-level conspirators.

23. With regard to oral evidences and witness statements, it has been contended by the learned AGA that the statement of multiple witnesses recorded under Sections 180 and 183 of the BNSS establish motive, previous conduct, subsequent conduct, extra-judicial confessions of co-accused, and conspiracy. Referring to such witness statements in the CD, the learned AGA has submitted that one Lalit Mohan Mangaraj has deposed to the Petitioner, Malaya Bisoi, and Madan Dalei expressing their intent to kill the deceased-Victim. Similarly, one Susanta Kumar Samal has deposed to the deceased's apprehension of death at the hands of the Petitioner, which has been corroborated by the deposition of one Smt. Susmita Panda (wife of deceased). In fact, one Smt. Pragnya Panda has also deposed to the motive arising from blackmailing by the deceased regarding the Petitioner's illicit

affair. Likewise, the learned AGA has contended that statements under section 180 of the BNSS by Muna Sethy, Muna Das and Rudra Kumar Sethy reveal the extrajudicial confessions by certain unknown accused persons, Madan dalei and Pintu Das respectively.

24. Thereafter, it was stated on behalf of the Prosecution-State that eye-witness Naka Kiran Kumar has correctly identified the actual killers Kurupati Bhuyan and Chintu Pradhan in the TI Parade. In fact, other eye-witnesses have also identified the accused persons engaged in planning conspiracy at Alakapuri and Brahmanagar, Berhampur. Reference has also been made to confessional statements of several other witnesses, as available in the CD, to demonstrate that several key discoveries, viz. role of Bikram Panda, spot of occurrence, place of concealment of the weapon, mobile phones used in communication between accused persons etc., have been in the case which establish the guilt of the Petitioner and exhibit a clear case against his release on bail.

25. Next, the learned AGA has highlighted that the Petitioner has criminal antecedents, Berhampur Town PS Case No. 37 of 2009 under Section 188 IPC; and Nimakhandi PS Case No. 150

of 2024 under Sections 294/323/341/427/506/34 IPC read with Sections 25/26 of the Arms Act. He submitted that post-arrest, two FIRs have been registered, Baidyanathpur PS Case Nos. 558 and 568 of 2025, against the Petitioner based on reports of threatening calls received by the family of the deceased by associates of the Petitioner, evidencing a continuing criminal design.

26. Additionally, in support of his contentions, the learned AGA has also relied the following judgments on the principles governing bail: ***State of Karnataka v. Sri Darshan Etc.***, reported in ***2025 INSC 979***; ***Kalyan Sarkar v. Rajesh Ranjan @ Pappu Yadav***, reported in ***(2004) 7 SCC 528*** (specifically paragraphs 19 and 22); ***Aashish Yadav v. Yashpal & Others***, reported in ***2025 SCC OnLine SC 1100*** (specifically paragraphs 16 and 20); and ***Kum. Shubha @ Shubhashankar v. State of Karnataka***, reported in ***2025 SCC OnLine SC 1426*** (specifically paragraphs 60, 87, 92, 97 and 98) and ***CBI v. Amarnath Tripathy***, reported in ***(2005) 8 SCC 528*** (specifically paragraphs 13, 14, 18, 33 and 34).

27. Lastly, the Prosecution-State has emphasised that the Petitioner is a former MLA with deep political roots, considerable financial and muscle power, and a demonstrated network of associates. Given these circumstances, the very real danger of witness tampering and interference with the trial cannot be discounted. Therefore, it was contended that granting the Petitioner bail at this stage would send a deeply negative message to society and fundamentally undermine public confidence in the administration of criminal justice. As such, the Prosecution-State, via the learned AGA, has prayed for the regular bail application of the Petitioner to be dismissed forthwith.

CONTENTIONS OF THE INFORMANT

28. Heard Mr. B. K. Ragada learned counsel for the Informant. The learned Advocate appearing for the informant, Purna Chandra Panda (younger brother of the deceased), has filed a separate Objection Affidavit and Memo of Citations strongly opposing the bail application. The learned counsel for the Informant reiterates the factual matrix of the present case and emphasises that the Petitioner, who stands as the prime

conspirator at the apex of a seven-layered criminal conspiracy, wielded his considerable influence, money, and muscle power to engage career criminals and contract killers to execute the deceased-Victim, who is a sitting member of the Odisha State Bar Council, for a combination of political, personal, and professional reasons. The learned counsel has describe the incident as a premeditated assassination of the gravest kind, executed with remarkable criminal sophistication involving interstate coordination, clandestine digital communications, preliminary reconnaissance, and eventual successful execution by local killers.

29. The learned Counsel for the Informant has, at the outset, attempted to place before this Court the legal framework governing bail, by referring to the comprehensive principles laid down by the Hon'ble Supreme Court in ***Ashok Dhankad v. State of NCT of Delhi and Anr.***, reported in ***2025 INSC 974***, which sets out that the Court is required to balance the personal liberty of the accused against the gravity of the offence, the broader societal implications of release, the need to preserve the integrity of the trial process, and the influence wielded by the accused in

society. The relevant parameters as enumerated therein include the nature and seriousness of the charge, the strength of the prima facie case, the likelihood of the accused fleeing or tampering with evidence/witnesses, the interest in ensuring the trial proceeds without obstruction, and the societal implications of release of the accused-Petitioner.

30. With regard to the contention of the Petitioner that his valuable right under Article 22(1) of the Constitution has been violated, the informant adopts and supplements the contentions of the Prosecution-State. Additionally, it has been stated by the learned counsel for the Informant that grounds of arrest of the Petitioner were duly prepared contemporaneously and that the Petitioner's deliberate refusal to sign such document is a stratagem which cannot be raised as a defence. It was also submitted that the requirement of written communication as per the dictum in ***Mihir Rajesh Shah v. State of Maharashtra***, reported in ***(2026) 1 SCC 500***, operates prospectively as held by a judgement of a coordinate bench of this Court in ***Akash Kori @ Kasua v. State of Odisha***, bearing ***BLAPL No. 11721 of 2025***, and does not apply to an arrest made on 22.10.2025. In support,

the learned counsel has referred to a judgement of the Delhi High Court in ***Karan Singh v. State of NCT of Delhi***, bearing ***W.P.(Crl) No.4203 of 2025*** decided on 23.01.2026.

31. The learned counsel for the informant has underscored the danger of witness intimidation in the present case by noting that two FIRs have been registered based on unanimous threatening calls received by the family of the deceased. The learned counsel, in this respect, has placed reliance on ***Ashok Dhankad*** (supra), specifically Para 24, for the proposition that the Court cannot lose sight of the influence an accused wields in society when considering bail, particularly where allegations of pressurising witnesses have been made and witnesses have themselves apprehended threat to their lives. The informant also draws attention to the principle that criminal conspiracy is seldom proved by direct evidence and is legitimately inferred from conduct, communications, meeting of minds, and surrounding circumstances, relying on ***E.K. Chandrasenan v. State of Kerala***, reported in ***(1995) 2 SCC 99***. He has submitted that the digital evidence, comprising CDRs, IPDRs, CCTV, mobile handset data, and communication flow charts form a

continuous, unbroken chain connecting the Petitioner to the conspiracy and to the actual incident.

32. Next, the learned counsel has relied on ***Kasireddy Upender Reddy v. State of Andhra Pradesh & Others***, reported in ***2025 INSC 768***, for the proposition that the law does not require grounds of arrest to enumerate every piece of incriminating evidence. The grounds must merely give a broad idea of the accusations levelled, no more and no less. It has been contended that the arrest memo, which discloses the FIR number, police station, and the substantive offences charged, is more than sufficient to enable the Petitioner to understand the broad basis of his arrest. The learned counsel for the Informant, relying on ***Sunil Kumar v. State of Bihar***, bearing ***2022 INSC 99***, submitted that procedural compliance must be judged in a holistic manner and in light of the totality of circumstances. If the Petitioner's case is viewed from this angle, it would appear that there has been sufficient and material compliance with the procedural requirement so that no question of prejudice to the accused-Petitioner would arise.

33. It has been urged on behalf of the Informant that grant of bail to the prime conspirator at this stage, when the trial has not even commenced and the Prosecution's witnesses are exposed to his influence, would fundamentally undermine public confidence in the justice delivery system. The learned counsel for the Informant has cited ***Shahzad Hasan Khan v. Ishtiaq Hasan Khan & Anr.***, reported in ***1987 (2) SCC 684***, to advance the proposition that the interests of the family of the deceased, who feel helpless and believe there is no justice, and the collective interest of the community must also be taken into account at the bail stage. In such view of the matter, and relying upon a catena of judgements produced before this Court by means of a memo of citations, the Informant, via the learned counsel, has vehemently opposed the present regular bail application of the Petitioner.

ANALYSIS

34. After hearing the learned Senior Counsels appearing the Petitioners, the learned counsel appearing for the Informant, the learned Additional Government Advocate for the Prosecution-State and on a close scrutiny of the written note of submissions

submitted by the respective parties in the present case, this Court prima facie observed that the Petitioner being aggrieved by order dated 16.12.2025, at Annexure-7, passed in B.A. No.1309 of 2025 by the 3rd Additional Sessions Judge, Berhampur, has approached this Court under Section 483 of BNSS, 2023 with a prayer to release him on regular bail by holding that his arrest is in complete disregard to the principle enumerated in Article 22(1) of the Constitution of India read with Section 47, 48 and 62 of the BNSS, 2023 after setting aside the impugned order dated 16.12.2025 at Annexure-7. On a wholesome analysis of the entire prosecution case, this Court is of the prima facie view that the entire case of the prosecution against the present Petitioner is based on circumstantial evidence. Moreover, the prosecution has alleged that the present Petitioner is a party to the criminal conspiracy which has resulted in the homicide of the deceased. The Accused-Petitioner, on the other hand, while assailing the impugned order at Annexure-7 on the ground that there exists no ground to detain him further in custody, has also challenged his detention and his arrest by the local police as

violative of Article 21 and 22 of the Constitution of India read with Sections 47, 48 and 62 of the BNSS, 2023.

35. Much emphasis was led by the learned Senior Counsels representing the Petitioner on the ground that the arrest of the Petitioner is in violation of Article 21 and 22(1) of the Constitution of India read with Sections 47, 48 and 62 of the BNSS, 2023. The main plank of argument of the learned Senior Counsels representing the Petitioner is that in violation of the abovenoted specific provisions of both the Constitution as well as BNSS, the Petitioner was not communicated the grounds of arrest as is required under the aforesaid provisions. Along with the aforesaid grounds on merit, the Petitioner has also taken a stance that the statutory provision with regard to communication of the ground of arrest has been vitiated by the local police while arresting the Petitioner. Therefore, this Court while examining the validity and legality of order dated 16.12.2025, at Annexure-7, is required to consider as to whether the arrest of the Petitioner was in conformity with the provisions contained in Article 21 and 22(1) of the Constitution of India read with Sections-47, 48 and 62 of the BNSS, 2023.

36. Before proceeding to answer the question that has been formulated in the preceding paragraph, this Court deems it proper to refer to the provisions of the Constitution of India as well as the BNSS, 2023, as relied upon by the learned Senior Counsels appearing on behalf of the Petitioner.

Constitution of India

> **Article-21 - Protection of life and personal liberty**. – No person shall be deprived of his life or personal liberty except according to procedure established by law.
>
> **Article-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.

Bharatiya Nagarik Suraksha Sanhita, 2023

> **Section-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.
>
> (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.

Section-48 - Obligation of person making arrest to inform about arrest, etc., to relative or friend.- (1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

Section-62 - Arrest to be made strictly according to Sanhita. - No arrest shall be made except in accordance with the provisions of this Sanhita or any other law for the time being in force providing for arrest.

37. A bare reading of the aforesaid provisions conveys the legislative intention in enacting such a provision in the B.N.S.S., 2023. At the outset, this Court would like to observe that the provisions of the B.N.S.S., 2023 quoted hereinabove are in furtherance of the sacred objective to enforce the invaluable fundamental right as contained Article-21 and 22(1) of the

Constitution of India. Article-21 of the Constitution of India, which falls in Part-III thereof, lays down the fundamental rights guaranteed to every citizen in clear terms and aims to protect the life and personal liberty of every person. Such guarantee under the Constitution is fundamental to every citizen and such person shall not be deprived of such a right except according to the procedure established by law. Thus, it is very clear from Article-21 of the Constitution of India that a person can be deprived of his life or personal liberty strictly according to the procedure established by law only. Similarly, Article 22 of the Constitution of India has been engrafted into the Constitution of India to aid and assist the full implementation of the constitutional guarantee under Article 21 of the Constitution of India. Article-22 of the Constitution of India provides a protection to a person against arrest and detention. Article-22(1) of the Constitution of India specifically lays down that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. Such constitutional protection appearing in Part-III of the Constitution giving protection to a person against arrest has been incorporated in B.N.S.S., 2023,

more specifically in Section-47 thereof. Section-47 of the B.N.S.S., 2023 has already been quoted hereinabove for better appreciation.

38. While analysing the interpretation and impact of Article-22(1) read with Section 47 of the B.N.S.S., 2023, this Court would like to highlight the requirements under the aforesaid provisions. While Article-22(1) of the Constitution of India provides that no person who is arrested shall be detained in custody without being informed of the grounds of arrest. The B.N.S.S., 2023 puts such constitutional objective into action in the shape of Section-47, which recognizes the constitutional right of the person under Article 22(1) and makes it a mandatory procedure that 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 of such arrest. Moreover, Section-48 of the B.N.S.S., 2023 also makes it mandatory that every police officer or other person making any such arrest under the B.N.S.S., 2023 shall forthwith give the information regarding such arrest and the place where the arrested person is being held, to any of his relatives,

friends or such other persons as may be disclosed or nominated by the arrested person for this purpose. On a careful reading of both Article-22(1) of the Constitution of India as well as Section 47 & 48 of the B.N.S.S., 2023, this Court has no doubt in mind at all that it is a mandatory requirement which has to be followed by every police officer or other person making an arrest under B.N.S.S., 2023.

39. Before analysing the issue further, this Court would like to bring on record certain developments that had taken place during the pendency of the present bail application. After hearing of the bail application was concluded, the learned Senior Counsels appearing on behalf of the Accused-Petitioner mentioned the matter before this Court and sought for leave to file a copy of the supplementary charge sheet vide Charge Sheet No.2 dated 24.06.2026 filed by the Baidyanathpur Police Station in G.R. Case No.2774 of 2025, corresponding to S.T. Case No.18 of 2026 supported by a Memorandum dated 06.07.2026. He was granted leave to file such supplementary charge sheet. Accordingly, the supplementary charge sheet has been taken on record.

40. On perusal of the supplementary charge sheet containing 193 pages, it is observed that the prosecution, after further investigation into the matter has brought on record certain additional materials, although the basic allegation against the present Petitioner remains the same and it is entirely based on circumstantial evidence. Such position remains unaltered even after filing of the supplementary charge sheet. Although the allegations made in the supplementary charge sheet against the present Petitioner are of serious nature, it is not disputed that such allegations are based on circumstantial evidence collected in the course of the investigation.

41. Before delving into the merits of the issue raised on behalf of the Petitioner, it is apt to refer to a Notification of the Home Department of the Government of Odisha dated 28th February, 2025 which has been filed along with the bail application and marked as Annexure-8. On perusal of the aforesaid Notification, it appears that the Home Department, Government of Odisha in exercise of its power conferred by sub-section(3) of Section-48 of the B.N.S.S., 2023, read with Government of Odisha, Home Department Notification dated

30.06.2024, framed a rule which is called as "**Odisha Information of Arrested Persons Rules, 2025**" (hereinafter "Rules, 2025"). The preamble of the aforesaid Rules itself reveals that the State Government in exercise of the power conferred upon it under Section 48(3) of the B.N.S.S., 2023 has enacted such rule. Rule-3 of the aforesaid Rules, 2025 provides as follows:-

> **"3. Duties of the police officer regarding giving information as provided under section 48 of Sanhita. -**
>
> (i) the police officer or any other person making any arrest under this Sanhita is duty bound to provide information regarding the offence committed as specified in clause (e) of sub-section (1) of Section (2) of this Sanhita;
>
> (ii) every police officer or any other person making any arrest under this Sanhita shall give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information;
>
> (iii) an entry of the fact as to who has been informed of the arrest of such person shall be made in the Arrest Register to be kept in the police station in form i.e. Annexure "A" attached with these rules without any delay and shall send the information regarding arrest as specified under clause (d) of sub-section (1) of section 2 of this Sanhita; and

(iv) the information of arrest including complete particulars shall also be given to the designated police officer in control room at Police Station, District and State as notified vide Home Department, Government of Odisha Notification bearing No. 22523/ CP&M, PTI-HOME-CPM-MISC-0136-2024 dated 30.06.2024, who shall be duty bound to maintain a record of all such arrest. The record shall be maintained in the form as given in Annexure "B".”

On a careful reading of the said Rules, it is evident that the Rule-3 of the Rules, 2025 prescribes Annexure-A under sub-rule (iii) and Annexure-B under sub-rule (iv). Annexure-A prescribes a format wherein details regarding the person who has been informed of the arrest of the accused have to be entered in the Arrest Register which is to be kept in the Police Station. Similarly, Annexure-B prescribes another form where the complete particulars of arrested persons shall be given to the designated Police Officer in Control Room at Police Station, District and State, as notified in the Home Department Notification dated 30.06.2024. Thus, the procedural requirement of Section 47 and 48 of the B.N.S.S., 2023 was made clear by virtue of the Home Department, Government of Odisha Notification dated 28th February, 2025, which has been widely circulated among all concerned police officials for information

and necessary action in the State of Odisha. Clause-10 of such Form in Annexure-A of the Rules, 2025 clearly provides that the reasons/grounds of arrest are to be recorded in writing and the same is to be communicated pursuant to the aforesaid rules.

42. While analyzing and answering the question of law involved in the present bail application as has been raised by the learned Senior Counsels appearing on behalf of the Petitioner, this Court would like to allude to some of the judgments of the Hon'ble Supreme Court dealing with identical issues, i.e. communication of grounds of arrest to the arrested person. The issue came before the Hon'ble Supreme Court in ***Vihaan Kumar's*** case (*supra*), was considering the validity and legality of an arrest made under the provisions of the Prevention of Money Laundering Act, 2002 pursuant to commission of an economic offence. There, a ground was taken on behalf of the Accused-Appellant that the accused was not informed of the grounds of arrest before he was detained in custody. There exists a *pari materia* provision in the shape of Section-19(1) of the PMLA Act, which requires informing the arrestee of the grounds of arrest.

43. In ***Vihaan Kumar's*** case (*supra*), the Hon'ble Supreme Court was required to answer the issue canvased by the Appellant and to examine the validity of such arrest in the light of the provisions contained in Article-22(1) of the Constitution of India, read with Section-57 of the Cr.P.C., 1973. After taking note of the several provisions contained in PMLA Act as well as the Cr.P.C., the Hon'ble Supreme Court has concluded in para-26 of the judgment that the requirement of informing a person arrested of grounds of arrest is mandatory in nature. Such information regarding 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. Furthermore, the mode and method of communication must be such that the object of constitutional safeguard is achieved.

44. While answering the all important questions of law that is involved in the present application and the applicability of such legal issue to the facts of the present case, it would be apt to analyze the factual scenario involved in the judgment of the

Hon'ble Supreme Court in ***Vihaan Kumar's*** case (*supra*). In the said reported judgment, the Appellant was arrested in connection with F.I.R. No.121 of 2023 dated 25th March, 2023, registered for commission of the offences under Sections 409, 420, 467, 468 and 471 read with Section 120-B of the I.P.C. According to the Appellant's case, he was arrested on 10th June 2024 at about 10.30 A.M at his office premises. He was taken to DLF Police Station, Gurugram, Haryana and was allegedly produced before the learned Judicial Magistrate at Gurgaon on 11th June 2024 at 3.30 P.M. Thus, it was alleged by the Appellant that there exists a violation of Article 22(2) of the Constitution and Section 57 of the Code of Criminal Procedure Code, 1973. The allegation further reveals that neither in the remand report, nor in the order dated 11th June 2024 passed by the learned Magistrate was the time of arrest mentioned. According to the prosecution, the Appellant was arrested on 10th June 2024 at 6.00 P.M. and, as such, it was alleged that compliance to the requirement of Article 22(2) was made.

A specific allegation was made on behalf of the Appellant that the Appellant was not informed about the grounds of arrest

or reasons for arrest and, hence, there is a violation of Section 50 of the Cr.P.C and Article 22(1) of the Constitution of India. In fact, a specific ground was taken in the petition by the Appellant that the grounds of arrest were not informed to the Appellant, which has not been denied by the police. The Arresting Authority took a ground that the Appellant's wife was informed about the arrest.

In course of hearing of the above noted appeal, the attention of the Hon'ble Supreme Court was drawn to the arrest memo which contained details of the offence, time and date of arrest, etc. It was also submitted before the Hon'ble Supreme Court that the High Court examined the case diaries and that in the daily diary, an entry was made at 6:10 P.M. on 10th June, 2024, noting that the Appellant was arrested after informing him of the grounds of arrest. An attempt was made by the Arresting Authority to repeal the contention of the Appellant on the ground that the grounds of arrest have been set out in the remand report dated 11th June 2024. Moreover, it was also urged that there is a delay of more than two months in raising a contention regarding the violation of Article 22(1).

45. While answering the questions raised before it, the Hon'ble Supreme Court, referring to Article 22(1) and Article 22(5), has observed that the grounds urged concerning both the Articles are identical and, that the interpretation of the Constitution Bench in ***Harikisan v. State of Maharashtra,*** reported in ***1962 SCC OnLine SC 117***, shall ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the ground of arrest is concerned. A reference in the aforesaid context has also been made to the judgment of the Hon'ble Supreme Court in ***Prabir Purkayastha v. State (NCT of Delhi),*** reported in ***(2024) 8 SCC 254***, wherein it has been held that any infringement of the fundamental right under Article-22 would vitiate the process of arrest and remand. Further, with regard to the word 'communicate', the Hon'ble Supreme Court, while referring to the case of ***Lallubhai Jogibhai Patel v. Union of India,*** reported in ***(1981) 2 SCC 427***, observed that 'communicate' is a strong word. It means that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenue, in writing and in a language which he understands. Moreover, it has also been

observed that if the 'grounds' are only verbally explained to the detenue and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate enshrined in Article 22(5) is infringed.

Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the ground of arrest must be informed in a language which the arrestee understands. Reference has also been made to the judgment of the Hon'ble Supreme Court in ***Pankaj Bansal v. Union of India***, reported in ***(2024) 7 SCC 576,*** wherein it was held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. The Hon'ble Supreme Court has also held that if the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively

exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. As such, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. Unless such a practice is followed, the same would amount to not only infringement of the fundamental right of the arrestee guaranteed under Article 22(1) of the Constitution of India, but also deprivation of the arrestee's liberty.

Eventually, in ***Vihaan Kumar's*** case (*supra*), the Hon'ble Supreme Court, paragraph 26 onwards while discussing the

constitutional as well as the legal provisions had arrived at the following conclusions:-

> "***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*

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.*"

46. Keeping in view the aforesaid ratio laid down in ***Vihaan Kumar's*** case (supra), the Hon'ble Supreme Court proceeded with the examination of the allegation made at the behest of the Appellant with regard to non-compliance of the mandatory constitutional and statutory provisions. While analyzing the factual background of the case and the stand taken by the Investigating Agency that the grounds arrest was explained to wife of the arrestee in detail, the Hon'ble Supreme Court found that the same is an afterthought and that such compliance does not meet the standard laid down under Article 21(1) of the

Constitution of India as well as the provisions contained in the BNSS. It has been specifically held that communication of grounds of arrest to the wife of arrestee is no compliance with the mandate of Article 22(1). The Hon'ble Supreme Court, on the basis of the allegation made in the appeal memo, examined the arrest memo in detail. It was observed that the arrest memo incorporates the name of the arrested person, his permanent address, present address, particulars of FIR and Section applied, place of arrest, date and time of arrest, the name of the officer arresting the accused and name, address and phone number of the person to whom information about arrest has been given. After a detailed examination of the arrest memo, the Hon'ble Supreme Court has come to a conclusion that it contains only the information revealed therein and not grounds of arrest. Moreover, it has also observed that the information about the grounds of arrest is completely different from information on the ground of arrest. Mere information of arrest will not amount to furnishing grounds of arrest. Finally, in paragraphs-33 and 34, the Hon'ble Supreme Court has concluded as follows, which needs to be quoted herein below for reference :-

> "*33. Reliance was placed in this regard on the case diary entry of 10th June 2024 at 6.10 P.M., which records that the Appellant was arrested after informing him of the grounds of arrest. This was not pleaded before the High Court as well as in this Court in the reply of 1st respondent. This is an afterthought. Considering the stand taken in the reply filed before the High Court and this Court, only on the basis of a vague entry in the police diary, we cannot accept that compliance with Article 22(1) can be inferred. No contemporaneous documents have been put on record wherein the grounds of arrest have been noted. Therefore, reliance placed on the diary entries is completely irrelevant."*
>
> *"34. Therefore, in the facts of the case, we have no hesitation in holding that the arrest of the Appellant was rendered illegal on account of failure to communicate the grounds of arrest to the Appellant as mandated by Article 22(1) of the Constitution.*"

It would also be apt to quote para-37 of the judgment, which would assist this Court in analyzing the issue involved in the present application:-

> "*37. The learned Single Judge, unfortunately, has equated information given regarding the Appellant's arrest with the grounds of arrest. The observation that the allegation of non- supply of the grounds of arrest made by the Appellant is a bald allegation is completely uncalled for. All*

courts, including the High Court, have a duty to uphold fundamental rights. Once a violation of a fundamental right under Article 22(1) was alleged, it was the duty of the High Court to go into the said contention and decide in one way or the other. When a violation of Article 22(1) is alleged with respect to grounds of arrest, there can be possible two contentions raised: (a) that the arrested person was not informed of the grounds of arrest, or (b) purported information of grounds of arrest does not contain any ground of arrest. As far as the first contention is concerned, the person who is arrested can discharge his burden by simply alleging that grounds of arrest were not informed to him. If such an allegation is made in the pleadings, the entire burden is on the arresting agency or the State to satisfy the court that effective compliance was made with the requirement of Article 22(1). Therefore, the view taken by the High Court is completely erroneous."

47. In view of the aforesaid law laid down by the Hon'ble Supreme Court of India that when the 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 requirement of Article 22(1), non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused and his right to personal liberty guaranteed under Article 21 of the Constitution of India. Such

violation also vitiates the arrest of the accused. The Hon'ble Supreme Court further held that it is the duty of the Judicial Magistrate before whom the accused is produced to ascertain whether Article-22(1) and other mandatory safeguards have been complied and, when the violation of such constitutional safeguard is established, it is the duty of the court to order the release of the accused forthwith. Such power to grant bail in the aforesaid scenario shall overwrite any statutory restriction with regard to non-granting of bail.

48. While finally allowing the appeal, the Hon'ble Supreme Court has also laid down certain guidelines in para-39 of the judgment. It is relevant to note here that the judgment of the Hon'ble Supreme Court in ***Vihaan Kumar's*** case (*supra*) was delivered on 07.02.2025 and the rules framed by the Home Department, Government of Odisha, at Annexure-8, was notified on 28th February, 2025. Therefore, the procedure with regard to arrest of a person in the context of the provisions contained in B.N.S.S., 2023 was clear by end of February, 2025.

49. In ***Ashish Kakkar v. UT of Chandigarh***, reported in ***2025 LiveLaw (SC) 367***, arising out of ***Criminal Appeal No.1518 of***

2025, the Hon'ble Supreme Court, while deciding an identical issue, found that there is a clear non-compliance of the mandate under Section-50 of the Cr.P.C and violation of Article-22(1) of the Constitution of India. Accordingly, the impugned judgment was set aside by taking into consideration the judgment of the Hon'ble Supreme Court in ***Prabir Purkayastha*** (*supra*).

50. Learned Senior Counsels appearing on behalf of the Accused- Petitioner heavily relied upon the judgment of the Hon'ble Supreme Court in ***Mihir Rajesh Shah v. State of Maharashtra***, reported in ***(2026) 1 SCC 500***. In ***Mihir Rajesh Shah*** (*supra*), which was heard analogously with many similar appeals pending before the Hon'ble Supreme Court, the main issue that was raised by the Appellant was the violation of the Appellant's right under Article-22(1) of the Constitution of India and Section 50 of the Cr.P.C (now Section 47 of the B.N.S.S., 2023). The main plank of the argument on behalf of the Appellant therein was that he was not informed of the grounds of arrest in writing. The Hon'ble Supreme Court, after taking note of the judgments in ***Pankaj Bansal*** (*supra*), ***Prabir Purkayastha*** (*supra*), and ***Vihaan Kumar*** (*supra*), as well as the provisions

contained in Section 47 and 48 of the B.N.S.S., 2023 and on a threadbare analysis of the development of the jurisprudence with respect to proving information of the grounds of arrest over the years, made the following observations in para-39 of the judgment:-

> **"*39.*** *The obligation to inform the grounds of arrest to the arrestee is thus, not just a mere procedural formality, instead it flows from the fundamental right of personal liberty which sets the further course for protection from the oppressive restrictions imposed upon the free movement in the society of an arrestee during remand. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest….", it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22(1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty*

under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the Indian Penal Code 1860 (now BNS 2023)."

51. It is also relevant to refer to the observation made in para-42 of the judgment in the context of communication of grounds of arrest:-

"***42.*** *As mentioned above, it has been held while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the language used in Article 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall ipso facto apply to Article 22(1). The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1). Reference at this stage may be made to the Constitution Bench Judgment of this Court in Harikisan (supra) wherein while dealing with the Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person. The relevant portion thereof reads thus:*

*"**7.** It has not been found by the High Court that the Appellant knew enough*

English to understand the grounds of his detention. The High Court has only stated that 'he has studied up to 7th Hindi standard, which is equivalent to 3rd English standard'. The High Court negatived the contention raised on behalf of the Appellant not on the ground that the Appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the Order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the Appellant did not know enough English to understand the grounds, contained in many paragraphs, as indicated above, in order to be able effectively to make his representation against the Order of Detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detenue, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the Order of

Detention and the grounds would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in the case of State of Bombay v. Atma Ram Sridhar Vaidya [MANU/SC/0015/1951 : 1951 : INSC4 : 1951 SCC 43 : (1951) SCR 167] Clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenue as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenue should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenue should be in a position effectively to make his representation

against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenue sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the Appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenue would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenue effective knowledge of the facts and circumstances on which the Order of Detention is based.

8. *We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the*

gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenue must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person."

52. In ***Mihir Rajesh Shah's*** case (supra), a Coordinate Bench of the Hon'ble Supreme Court, while dealing with an identical issue with regard to furnishing grounds of arrest to the accused either before arrest or forthwith after arrest has also followed and referred to the judgment in ***Pankaj Bansal's*** case (*supra*), ***Prabir Purkayastha's*** case (*supra*) and more importantly in ***Vihaan Kumar's*** case (*supra*). After analyzing the law governing the field succinctly, the later Bench of the Hon'ble Supreme Court in para-66 of the judgment has drawn the following conclusion. For the purpose of reference, the same is quoted hereinbelow:-

> **"*66.1.*** *The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC, 1860 (now BNS 2023);*

66.2. *The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;*

66.3. *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 two hours prior to production of the arrestee for remand proceedings before the Magistrate.*

66.4. *In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.*"

While drawing the aforesaid conclusion in ***Mihir Rajesh Shah's*** case (*supra*), the Hon'ble Supreme Court has further observed that the provision of law under Section 50 Cr.P.C. (presently Section 47 of BNSS 2023) does not provide for a specific mode or time-frame for communication of the grounds of arrest to the person arrested. The Supreme Court in ***Prabir Purkayastha'*** (*supra*) held that the grounds of arrest be conveyed to the arrestee in writing, in all offences, at the earliest, as a matter of course and without exception. Which means, for offences under all the statutes, it need not necessarily be given at

the time of arrest but within a reasonable time, as laid down in that statute, thereafter. It has also been clarified that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Hon'ble Supreme Court was of the view that the law laid down in ***Mihir Rajesh Shah's*** case (*supra*) would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline, therefore, demand that this procedure as affirmed in the aforesaid judgment shall govern arrests henceforth.

In view of the conclusion drawn on in para-66 of the judgment of the Hon'ble Supreme Court in ***Mihir Rajesh Shah's*** case (*supra*) and the constitutional observation in para-68, the application of the provision contained in Article 22(1) with corresponding provisions in the Cr.P.C, as well as in the BNSS, cannot be interpreted in a restricted manner so as to effectively convey that non-communication of such grounds of arrest would only be applicable from the date of the judgment in ***Mihir Rajesh***

Shah's case (*supra*) by the Hon'ble Supreme Court. Needless to say, the requirement of communicating the grounds of arrest to the arrestee is a constitutional mandate, which has also been incorporated in the statute book to ensure the effective administration of the criminal justice system. The issue, being one of considerable constitutional significance and directly affecting the fundamental rights of an arrestee, has already been analysed and authoritatively settled in the earlier judgments of the Hon'ble Supreme Court, including by the Constitution Bench. It therefore cannot be given a restrictive interpretation so as to hold that the requirement would apply only from the date of the judgment in ***Mihir Rajesh Shah*** (*supra*). The intention of the Hon'ble Supreme Court, while making the observation in para-68 of ***Mihir Rajesh Shah*** (*supra*), was clearly to make it mandatory on the part of the Arresting Officers/Agencies to follow the conclusion drawn in para-66 thereof, while arresting a person henceforth. Thus, the observation in para-68 of the judgment in ***Mihir Rajesh Shah's*** case (*supra*) does not curtail or take away the fundamental right of an arrestee to be communicated with the grounds of arrest as has been guaranteed under the constitution as

well as under the statute. Thus, this Court respectfully disagrees with the view taken by a coordinate Bench in ***Akash Kori @ Kasua v. State of Odisha*** (***BLAPL No.11721 of 2025***, decided on 23.02.2026) with regard to written communication of grounds of arrest to the arrestee to the effect that such a provision of law would be applicable prospectively.

53. Returning to the facts of the instant case, it is observed that the Petitioner being aggrieved by the rejection of his bail application by the learned Magistrate and consequential remand order moved the bail application before the learned 3rd Additional District and Sessions Judge, Berhampur, primarily on two grounds; *firstly*, his arrest is illegal inasmuch as no grounds of arrest in writing has been communicated to him or his family members at the time of arrest and, *secondly*, confessional statement of the co-accused persons could not have been taken into consideration by the learned Magistrate. During hearing of the bail application by the learned Sessions Court, the chargesheet was filed on 3.01.2026 primarily arraigning the Petitioner therein on the ground of confessional statements, extra judicial confession, statements of chance witness, CDR and the

motive on basis of previous rivalry. Since the bail application was rejected by the learned Sessions Court, the Petitioner has approached this Court for his release on bail, primarily on the ground of non-compliance of the mandatory provision of communication of grounds of arrest in writing, apart from the other grounds taken on the merits of the matter like confessional statement of co accused is not admissible in evidence, extra judicial confession is a weak piece of evidence etc. With regard to the conspiracy theory, it has been explained in detail in the written notes of submission and argued by the learned Senior Counsels for the Petitioner that the same is based on the fact of previous rivalry which is basically a double-edged sword and there exists every possibility of a person being implicated falsely in a crime on such ground. The conspiracy theory is based on call records, the contents of which are yet to be proved and established. It was urged before this court that the Petitioner being a political activist and a former MLA, is expected to receive calls from multiple quarters including persons having criminal background. Thus, such calls alone cannot form the foundation for implicating the Petitioner in the conspiracy theory

unless some tangible and trustworthy evidence crops up to lend credence to such theory.

54. With regard to the main plank of argument of learned Senior Counsels appearing on behalf of the Petitioner, i.e. the grounds of arrest were not communicated in writing to the Petitioner as well as his family members, the learned Senior Counsels for the Petitioner have stated before this Court that from the very inception of his arrest, the Petitioner was not served with written grounds of arrest by the arresting officer. This, it is submitted, constitutes a flagrant violation of the constitutional safeguards guaranteed under Articles 21 and 22(1) of the Constitution of India, as also the statutory mandates under Sections 47, 48 and 62 of the BNSS, 2023. It is submitted that the Memo of Arrest furnished to the Petitioner only mentions "*In the strength of above noted case*" in the 'Grounds of Arrest' column, which is a wholly vague, non-specific, and constitutionally inadequate statement that does not disclose the nature of the accusations, the manner of the Petitioner's alleged involvement, or the specific acts attributed to him. Learned Senior Counsels have contended that the FIR being registered against unknown

accused persons, the obligation on the I.O was all the more heightened to provide specific, cogent grounds of arrest.

55. Per contra, The Prosecution-State led by the learned AGA, in course of his submission as well as in his written note of submission, disputed the allegation of non-supply of written grounds of arrest. It was submitted that the Investigating Officer duly prepared written grounds of arrest on 22.10.2025, i.e. the very date of arrest, and the same was read out to and communicated orally in Odia to the Petitioner before the formal arrest at 3:30 AM. It was stated that the Petitioner wilfully and deliberately refused to sign the Memo of Arrest, the grounds of arrest, and all other connected papers, in the presence of two independent witnesses, namely Badri Narayan Nayak (an Advocate), and Chandra Sekhar Gouda (Advocate). The learned AGA contended that a person cannot be permitted to take advantage of his own wrongs. The Petitioner's deliberate refusal to sign the duly constituted Memo of Arrest cannot be weaponized as a procedural shield to invalidate an otherwise lawful arrest.

56. The Prosecution-State further submitted that the grounds of arrest of the Petitioner were communicated to the family of the Petitioner as well. In fact, the father of the Petitioner, Kishore Chandra Panda, was informed telephonically about the arrest and the grounds thereof and was requested to receive copies of the arrest memo and grounds of arrest, which he also refused.

57. This Court, on a careful analysis of the rival contentions and on a careful scrutiny of the case diary as well as other documents placed on record during hearing of this application, found that the Arresting Officer had prepared an arrest memo. Admittedly, the same has not been received by the accused Petitioner. Although, the Prosecution has taken a stand that the same was refused to be received by the accused Petitioner. All other co-accused persons have received the arrest memo with due acknowledgement, which is evident from the copies of such arrest memos. Nothing was brought on record to demonstrate that the grounds of arrest in writing were ever communicated to the accused Petitioner. Moreover, a close scrutiny of the arrest memo in respect of the accused Petitioner doesn't clearly indicate the grounds of arrest or detention of the Petitioner. Additionally, the

‘Grounds of Arrest’ column in the arrest memo contains only the noting: “*In the strength of above noted case*”. Other than the above document no other document was placed on record to satisfy this court with regard to communication of grounds of arrest of the Accused-Petitioner. Such factual backdrop doesn’t inspire the confidence of this court with regard to communication of grounds of arrest to the accused Petitioner. Moreover, such procedure adopted by the investigating agency/ Arresting Officer falls short of the standard prescribed by the Hon’ble Supreme Court of India in ***Vihaan Kumar’s*** case (*supra*) as well as in ***Mihir Rajesh Shah’s*** case (*supra*). Thus, this Court, under the present fact and circumstances has no other option but to hold that the grounds of arrest have not been communicated to the Petitioner either at the time of arrest or immediately thereafter and such failure leads to infringement of the rights guaranteed to the Petitioner under the Constitution as well as in the BNSS, 2023.

58. On a further conspectus of the facts of the present case, upon a careful analysis of the submissions made by the learned Senior Counsels appearing for the Petitioner as well as the

arguments advanced by the learned Additional Government Advocate and on a careful reading of the written note of submissions filed by both sides, this Court observes that the present Petitioner has been implicated in the present crime as a co-conspirator. There is no evidence on record that the Petitioner participated directly in the commission of the crime. In the meantime, a final charge sheet has also been filed by the Investigating Agency, after a detailed investigation and, the Petitioner has been accused as a co-conspirator in the alleged crime. It is also a matter of record that the Petitioner has been implicated as a co-conspirator on the basis of the co-accused statement and the evidence of the co-accused persons to the effect that the Petitioner was known to the deceased, working together and doing business with him, which later fell apart due to a misunderstanding. It has also been specifically alleged that the present Petitioner, in collusion with accused Pintu Dash, hatched conspiracy and that the accused Pintu Dash had sent money to another accused to hire a killer. The Investigating Agency has alleged indirect nexus of the present Petitioner through some of the co-accused persons with the two principal accused persons,

who had executed the plan. From the materials collected in course of investigation, it is evident that though the Petitioner did not participate in the execution of the plan and in the killing of the deceased, however, on the basis of some of the co-accused statement he has been implicated as a co-conspirator in the present crime.

59. Learned Additional Government Advocate appearing for the State-Opposite Party, in course of his argument, in an attempt to sway this Court and to establish the fact that the present Petitioner is a party to the conspiracy, referred to the statement of some of the co-accused persons including an extra-judicial confession by one of the co-accused. In reply to the same, learned Senior Counsels appearing for the Petitioner contended that such statement of the co-accused persons are inadmissible in evidence. It was also argued on behalf of the Petitioner that the materials collected by the Investigating Agency, in course of investigation, are a very weak piece of evidence which would not conclusively prove the involvement of the Petitioner in the present crime.

60. On a careful examination of the submissions made by the learned Senior Counsels appearing for the Petitioner as well as

the learned Additional Government Advocate for the State-Prosecution, this Court is of the view that it would be pre-mature, at this stage, to make any observation on such co-accused statement with regard to the conspiracy theory as well as the involvement of the present Petitioner in the alleged crime. Especially, since it is best that the allegation regarding the conspiracy is to be proved and established during a full-fledged trial. Therefore, it would not be proper on the part of this Court to make any observation on such evidence collected by the Investigating Agency during investigation. Moreover, at the current stage of hearing of bail application, this Court is not required to delve into the details of such allegation and counter allegations, leaving it to the trial court to examine the same during trial, in detail. So far as the law relating to the communication of the grounds of arrest to the accused are concerned, the same is required to be considered keeping in view the law laid down by the Hon'ble Supreme Court in a catena of judgments which have been referred to and discussed threadbare in the present judgment. Two of the later judgments of the Hon'ble Supreme Court in ***Vihaan Kumar's*** case (*supra*) and

Mihir Rajesh Shah's case (*supra*), as discussed above, are of particular relevance for the purpose of the present case.

61. On a careful analysis of the submissions made by both sides, further on close scrutiny of the voluminous case diary which was produced before this Court in course of hearing of the bail application and in light of the foregoing analysis, this Court observes that the Arresting Officer/Agency has failed to discharge its obligation of satisfying this Court that the grounds of arrest were in fact informed to the Accused-Petitioner, either at the time of arrest or at a subsequent stage.

62. Likewise, considering the emphatic submissions of the Learned Senior Counsels appearing for the Petitioner that such ground of arrest have not been informed either to the Petitioner or his friends and relatives and the stout rebuttal of the same by the learned Additional Government Advocate, this Court, prima facie concludes that the grounds of arrest have not been communicated to the Petitioner in the manner mandated in Article 21(1) of the Constitution of India as well as the provisions contained in Sections 47 and 48 of the BNSS and in terms of the mandate of the Hon'ble Supreme Court in para 26 of ***Vihaan Kumar's*** case

(supra) and in Para-66 of ***Mihir Rajesh Shah's*** case (supra). As such, this Court holds that the non-communication of grounds of arrest, so far the present Petitioner is concerned, which is evident from the arrest memo and which remains unsubstantiated by the prosecution, violates the Petitioner's fundamental as well as legal rights.

63. In view of the foregoing analysis of the legal as well as the factual position involved in the present bail application, this court has no hesitation to hold that the Arresting Officer has not followed the mandatory provisions contained in the Section 47 and 48 of the BNSS, 2023 and, as such, the fundamental right of the Accused-Petitioner under Article 22(1) has been infringed. Accordingly, it is held that;

(i) The arrest of the Accused-Petitioner is held to be vitiated. Therefore, the Petitioner be forthwith set at liberty;

(ii) The finding of this court that the arrest of the Petitioner stands vitiated will not affect the merits of the chargesheet and the pending trial;

(iii) The aforesaid finding is confined to the case of the Accused-Petitioner only;

(iv) The Petitioner is directed to furnish a bail bond in accordance with Section 91 of the BNSS, 2023, subject to satisfaction of the learned trial court and;

(v) The release of the Petitioner shall be subject to such other terms and conditions as would be deemed just and proper by the learned trial court, which would include a condition that the Petitioner shall not harass, threaten, terrorize or influence the victim's family, the Informant or any other prosecution witnesses, in any manner whatsoever.

Violation of the conditions imposed either by this court or the leaned trial court would entail re-arrest of the Petitioner in accordance with law.

64. Before parting, this Court would further like to observe that, despite the judgments of the Supreme Court of India referred to hereinabove, particularly ***Vihaan Kumar's*** case (*supra*) and ***Mihir Rajesh Shah's*** case (*supra*), the police administration continues to fall short of complying with the

mandatory requirements governing the arrest of accused persons, particularly the directions issued by the Supreme Court in the aforesaid judgments. The Registry is directed to communicate a copy of this judgment, with the kind consent of the Hon'ble Chief Justice of Orissa, to the Additional Chief Secretary, Home Department, Government of Odisha as well as Director General of Police, Odisha, forthwith. Upon receiving a copy of this judgment, the authorities shall take necessary steps to communicate the principles/guidelines enumerated by the Hon'ble Supreme Court of India, and extracted hereinabove at paragraphs 45 and 52, to all the police stations in the State of Odisha and other authorities having power to arrest a person under any statute, with a specific direction to follow such directives strictly while arresting a person and curtailing his/her liberty.

65. Accordingly, the bail application stands disposed of with the observations made hereinabove.

(Aditya Kumar Mohapatra)
Judge

Signature Not Verified
Digitally Signed
Signed by: DEBASIS AECH
Designation: SECRETARY
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 31-Aug-2026 18:43:11

Orissa High Court, Cuttack.
The 31st August, 2026/Debasis Aech, Secretary