



**CASE COMMENT: PRABIR PURKAYASTHA V STATE (NCT OF DELHI) -
'UPHOLDING THE CONSTITUTIONAL MANDATE'**

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INTRODUCTION

“Man is born free, and everywhere he is in chains.”

– Jean-Jacques Rousseau

Prabir Purkayastha v. State (NCT of Delhi)¹ is a landmark case where the Hon'ble Supreme Court of India (SCI) upheld the personal freedom that the French philosopher had referred to. The case deals with the arrest and remand of Mr. Prabir Purkayastha (the appellant) under the Unlawful Activities Prevention Act (UAPA)² and the Indian Penal Code (IPC)³. It was authored by the division bench of Justice B.R. Gavai and Justice Sandeep Mehta. It dealt with the Constitutional safeguards enshrined under Article 22⁴ regarding 'grounds of arrest'. The SCI held the appellant's arrest illegal and ordered his immediate release from judicial custody. The fundamental right of personal liberty under Article 21⁵ was upheld. The case also provided clarification regarding provisions of UAPA and the Prevention of Money Laundering Act (PMLA)⁶ and made history to the context.

FACTS OF THE CASE

Following an FIR dated 17th August 2023, the officers of PS Special Cell, Lodhi Colony, New Delhi raided the residence and the office of the appellant and the company PPK Newsclick Studio Pvt. Ltd. ("said company"). This was due to allegations made in a New York Times

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¹ Prabir Purkayastha v State NCT of Delhi (2024) INSC 414

² Unlawful Activities Prevention Act 1967

³ Indian Penal Code 1860

⁴ Constitution of India 1950, art 22

⁵ Constitution of India 1950, art 21

⁶ Prevention of Money Laundering Act 2002

article that NewsClick was being paid to boost Chinese propaganda⁷. As per the FIR, the appellant allegedly received crores of rupees in foreign funds to disrupt the sovereignty, unity, and security of India.

FIR was registered under Sections 13, 16, 17, 18, and 22C of the Unlawful Activities (Prevention) Act, 1967(UAPA) read with Section 153A, 120B of the Indian Penal Code, 1860 (IPC). Several documents and digital devices belonging to the appellant, the company, and the employees of the company were seized. On 3rd October 2023, the appellant was arrested. The said arrest memo did not contain any column regarding the 'grounds of arrest' of the appellant. The appellant was presented in the Court of Learned Additional Sessions Judge-02, Patiala House Courts, New Delhi ('Remand Judge') on 4th October 2023, at around 6:00 a.m. and was remanded to seven days police custody vide order dated 4th October 2023. The appellant questioned his arrest and the police custody remand. The matter then preferred as a Criminal Miscellaneous Case in the High Court of Delhi, was rejected by the learned Single Judge of the High Court of Delhi. The said order was challenged in this appeal by special leave.⁸

ISSUES OF THE CASE

1. A copy of the said FIR was not provided to the appellant.
2. The grounds of arrest were not informed to the appellant.
3. The Court in *Ram Kishor Arora v. Directorate of Enforcement*⁹ held that the judgment in *Pankaj Bansal v. Union of India & Ors.*¹⁰ to be prospective in operation. Whether the applicability of *Pankaj Bansal*(supra) - language of the provisions of UAPA and Prevention of Money Laundering Act (PMLA) is *pari materia* or not?

ARGUMENTS

Appellant's Contention -

Violation of Fundamental Rights: The appellant side emphasized that the fundamental rights under Articles 20, 21 and 22 of the Indian Constitution were violated, as the copy of FIR was not supplied to the appellant until his arrest and remand. Further, the grounds of arrest were

⁷ Apoorva, 'Supreme Court sets aside arrest and remand of NewsClick chief editor Prabir Purkayastha in UAPA case' (SCC Online, 15 May 2024) <<https://www.sconline.com/blog/post/2024/05/15/supreme-court-sets-aside-arrest-remand-newsclick-chief-editor-prabir-purkayastha-uapa-case/>> accessed 19 Feb 2025

⁸ *Prabir Purkayastha v State NCT of Delhi* (2024) INSC 414

⁹ *Ram Kishor Arora v Directorate of Enforcement* 2023 SCC OnLine SC 1682

¹⁰ *Pankaj Bansal v Union of India & Ors* (2023) INSC 866

not informed to the appellant either orally or in writing violating the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure (CrPC)¹¹. The appellant was kept in police custody overnight by the Investigating Officer without informing him of the grounds of arrest.

Legal aid and due process of law not complied with - The appellant was provided with the legal counsel of his choice. He was presented in the Court of Remand Judge on 4th October, 2023 in the early morning without informing Shri Arshdeep Khurana, the Advocate engaged on behalf of the appellant. Instead, to procure a police custody remand, a remand Advocate Shri Umakant Kataria was informed, who had never been engaged by the appellant to plead his cause.¹²

The learned counsel urged that the Court in the case of Pankaj Bansal(supra) interpreted the provision of Section 19(1) of PMLA, which is pari materia to the provisions contained in Section 43B(1) of the UAPA. Submitting, hence that the said judgment fully applied to the case of the appellant. It was further submitted that the view taken by this Court in Ram Kishor Arora v. Directorate of Enforcement¹³ held the judgment in Pankaj Bansal(supra) to be prospective in operation. The law laid down in the Pankaj Bansal(supra) would be fully applicable as the judgment in the case of Pankaj Bansal(supra) was pronounced on 3rd October 2023 whereas the remand order of the appellant was passed on 4th October 2023.

RESPONDENT'S SUBMISSION

The respondent urged that the judgment in the case of Pankaj Bansal(supra) has been held to be prospective in operation in the case of Ram Kishor Arora(supra). It was further urged that the judgment in the case of Pankaj Bansal(supra) was uploaded on the website of this Court in the late hours of 4th October 2023 and hence, the arresting officer could not be expected to ensure compliance of the 14 directions given in the said judgment.

Learned ASG while referring to the provisions contained in Articles 22(1) and 22(5) of the Constitution of India, urged that there is no such mandate in either of the provisions that the grounds of arrest or detention should be conveyed in writing to the accused or the detenu.

¹¹ Code of Criminal Procedure 1973

¹² Prabir Purkayastha v State NCT of Delhi (2024) INSC 414

¹³ Ram Kishan Arora v Directorate of Enforcement 2023 SCC OnLine SC 1682

The respondent submitted that the right conferred upon the appellant by Article 22(1) of the Constitution of India to consult and to be defended by a legal practitioner was complied with in letter and spirit. The relative of the appellant, namely, Shri Rishabh Bailey, was informed before producing the appellant before the learned Remand Judge.

The respondent side vehemently urged that there are significant differences in the language employed in Section 19 of the PMLA and Section 43A and 43B of the UAPA and, thus, the law as laid down by this Court in Pankaj Bansal(supra) does not come to the aid of the appellant in laying challenge to the remand order.

JUDGEMENT AND RATIONALE

The Hon'ble Supreme Court declared the arrest of the appellant as illegal and in gross violation of fundamental rights guaranteed under Art 21 and 22 of the Constitution. The remand order dated 04.10.2023 was declared null and void, as it violated the Constitutional mandate and rights under Art 22 of the Constitution. Informing of the grounds of arrest and detention was held to be salutary and sacrosanct.

The court addressed the issue of the similarities/differences between the provisions contained in Section 19 of the PMLA and Sections 43A and 43B of the UAPA. It found that there was no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the UAPA. The court held the provisions of Section 43B (1) of the UAPA and Section 19(1) of the PMLA to be verbatim the same. Hence, the interpretation of the phrase 'inform him of the grounds for such arrest' made by this Court in the case of Pankaj Bansal(supra) can be applied to an accused arrested under the provisions of the UAPA. Both provisions find their source in the constitutional safeguard provided under Art 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions have to be uniformly construed and applied. It was held that the interpretation of the statutory mandate laid down by this Court in the case of Pankaj Bansal(supra) on the aspect of informing the arrested person of the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA.¹⁴

Any person arrested for offences under the provisions of UAPA or any other offence(s) has a fundamental as well as statutory right to be informed about the grounds of arrest in writing and

¹⁴ Prabir Purkayastha v State NCT of Delhi (2024) INSC 414

a copy of such written grounds of arrest has to be furnished to the arrested person, without exception, at the earliest.

The court emphasized that the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution and any infringement of this fundamental right would vitiate the process of arrest and remand.

The court held that when the appellant was presented before the learned Remand Judge, a remand Advocate, namely, Shri Umakant Kataria was kept present in the Court, instead of the appellant's appointed advocate, which was nothing but a blatant attempt to circumvent the due process of law. It was to confine the accused to police custody without informing him of the grounds of arrest; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice to oppose the prayer for police custody remand, seek bail, and also to mislead the Court.¹⁵

The Court, further, differentiated between the phrases 'reasons for arrest' and 'grounds of arrest'. It said that the 'reasons for arrest' in the arrest memo are purely formal parameters that would commonly apply to any person arrested on a charge of a crime, whereas the 'grounds of arrest' would be required to contain all such details in the hand of the Investigating Officer which necessitated the arrest of the accused.¹⁶

ANALYSIS

The above case highlights the sacrosanct nature of fundamental rights, especially Art 21 which protects the liberty of an individual. It is a landmark judgment as it brings to the fore the Constitutional rights and safeguards and the role of the judiciary in enforcing the same. Applying the golden rule of interpretation and thus ensuring the uniformity of the fundamental rights under Art 22, the apex court upheld the letter and spirit of the law as laid down by the forefathers of the Constitution.

The court also addressed procedural lapses, the clandestine attempt to circumvent the due process of law, and curbed arbitrary action to safeguard individual freedom.

¹⁵ Prabir Purkayastha v State NCT of Delhi (2024) INSC 414

¹⁶ Apoorva, 'Supreme Court sets aside arrest and remand of NewsClick chief editor Prabir Purkayastha in UAPA case' (SCC Online, 15 May 2024) <<https://www.sconline.com/blog/post/2024/05/15/supreme-court-sets-aside-arrest-remand-newslick-chief-editor-prabir-purkayastha-uapa-case/>> accessed 19 Feb 2025

By holding the provisions Section 43B (1) of the UAPA to be verbatim the same as that in Section 19(1) of the PMLA, the court set a crucial precedent regarding the procedure for arrest and seizure and subsequently safeguarding individual freedom.

The Court emphasized on the grounds of arrest being informed to the arrestee or detenu, in writing, and without an exception. Moreover, it also differentiated grounds of arrest from the reason of arrest, the former being more specific and providing the accused with any/all the facts needed to defend his arrest/detention, as the case may be.

CONCLUSION

In conclusion, it can be rightly said that in the aforementioned case, the court thoroughly examined the provisions of arrest under UAPA and PMLA and the similarity between the two, as well as the fundamental rights and safeguards provided to an individual. It reinforced the integrity of the legal system and the Hon'ble Supreme Court as a champion of the Constitutional mandate. The case set an example for future litigation. By giving utmost focus on individual liberty and curbing arbitrary State action, the apex court freed the individual of the chains (political) that Rousseau had contemplated.