

News

Any accused person must be given written grounds for arrest in their native tongue: The Supreme Court



If written justifications cannot be provided right away, they must be provided no later than two hours prior to the accused being brought before the magistrate for custody.

In the case of *Mihir Rajesh Shah v. State of Maharashtra & Anr.*, the Supreme Court ruled on Thursday that police and investigative agencies are required to submit written grounds of arrest to all apprehended individuals as quickly as practicable, regardless of the offense or statute under which the arrest is made.

According to a bench of Chief Justice of India BR Gavai and Justice AG Masih, the right to know the reasons for an arrest is a fundamental and required protection under Article 22(1) of the Constitution, and it covers all offenses, including those covered under the Bharatiya Nyaya Sanhita (BNS).

The accused should be informed of the grounds verbally in some extraordinary circumstances where it is not possible to provide written explanations right away.

Even in these situations, the Court mandated that written justifications be provided to the accused within a reasonable timeframe and no later than two hours prior to the accused's appearance before the magistrate for remand proceedings.

The ruling was made in a series of appeals related to the Worli BMW crash case in Mumbai in 2024.

The appeals brought up a legal question: does failing to provide documented cause for an arrest violate Article 22(1) and make it unlawful?

According to the Bench, the State is required by Article 22(1) to promptly notify a person of the reasons behind their detention.

"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)," the Supreme Court said.

The Court emphasized that an arrest undertaken without adhering to this precaution is unconstitutional, describing this privilege as an essential component of personal liberty under Article 21.

"If a person is not informed of the grounds of his arrest as soon as may be, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal," the court ruling stated.

The Court concluded that each arrested person must be given written notice of the reasons for their arrest in a language they can comprehend in order for them to exercise their right.

"The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands," the court stated.

The justices also stated that the constitutional obligation is not met by simply stating the reasons for the arrest.

"The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1)," the court ruling stated.

The Court pointed out that written correspondence is crucial for both safeguarding the arrested person's rights and assisting investigative authorities in demonstrating that correct protocol was followed in the event that it is later contested.

However, the Bench acknowledged that in some extraordinary situations, such as when a crime is committed in front of a police officer and an instant arrest is necessary, it might not be practicable to turn up a written document right away.

"In exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same," the Court stated.

The Court stated that even in these situations, the written grounds must be provided within a reasonable timeframe and no later than two hours prior to the accused's appearance before the magistrate for remand proceedings.

"The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations," the Court stated.

According to the Court, this minimum amount of time would enable the arrested individual and their attorney to adequately prepare for the remand hearing.

It was made plain that the arrest and subsequent remand would be unlawful if written grounds were not provided within this time frame.

"If the above said schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee," the court stated.

The investigative agency may then request custody once more in such a case, but only after presenting written justifications for the delay, which the magistrate must determine within a week.

The Court summarized its rulings and established four legally obligatory guidelines for all future arrests:

(i) All offenses under all legislation, including those under IPC 1860 (now BNS 2023), are required by the constitution to notify the arrestee of the reasons for the arrest;

(ii) The arrestee must get written notice of the reasons for the arrest in a language they can comprehend;

(iii) If the arresting officer or person is unable to explain the reasons for the arrest in writing at the time of the arrest or shortly thereafter, it must be done verbally. The aforementioned justifications must be conveyed in writing within a reasonable timeframe, and in any event, at least two hours before the arrestee is brought before the magistrate for remand proceedings; and

(iv) Should the aforementioned not be followed, the arrest and subsequent remand would be deemed unlawful, and the individual would be free to be released.

To ensure consistent implementation, the Court ordered its registry to distribute copies of the ruling to all Chief Secretaries of States and Union Territories as well as Registrar Generals of High Courts.

Senior Advocates Abhishek Manu Singhvi and Vikram Chaudhri, as well as Siddharth Sharma, Ishika Chauhan, Aishwarya, Smriti Churiwal, Akshada Pasi, Vishesh Vijay Kalra, Sonia Sharma, Jaiveer Kant, Rishi Sehgal, Nikhil Jain, Muskaan Khurana, Divya Jain, Karl P. Rustomkhan, Vaibhav Jagtap, Shubham Saxena, and Ashish Pandey represented the appellants.

Advocates Rukhmini Bobde, Aaditya Aniruddha Pande, Sourav Singh, Siddharth Dharmadhikari, Shrirang B. Varma, Amlaan Kumar, Jatin Dhamija, and Vinayak Aren represented the respondents.

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