

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.331/2024

Reserved on: 12/02/2025

Pronounced on: 19/02/2025

Mian Abdul Qayoom aged 74 years S/o Mian Abdul Rahim R/o Bulbul Bagh, Barzulla, Srinagar, through his wife Mrs. Aisha Bano, aged 72 years

.....Petitioner(s)

Through: Mr Sakal Bhushan, Advocate
Mr. Rahul Sharma, Advocate
Mr. Bhavesh Bhushan, Advocate
Mr. M. Rouf, Advocate
Mr. M. Tufail, Advocate

Versus

1. Union Territory of J&K through Principal Secretary to Govt., Home Deptt. Civil Sectt. Srinagar
2. Sr. Superintendent of Police (FIU), CID Headquarters, near Arts Emporium, Srinagar, J&K (Chief Investigating Officer)

.....Respondent(s)

Through: Mr Mohsin Qadiri, Sr.AAG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

1. A young budding lawyer, *Syed Babar Qadri*, was shot dead by unknown terrorists on 24.09.2020, leaving: his wife as destitute/widow; his two small kids as orphans; and his parents shattered for rest of their life.
2. Assassination led to registration of FIR No.62/2020 in police station Lal Bazar. Investigation was set into motion. Various persons were

rounded up to know who were the culprits involved in killing of the advocate.

Petitioner's case:

3. In the instant writ petition, filed under Section 226 of the Constitution of India, following relief is being prayed for:

- (a) Declare the arrest dated 25.06.2024 of the Petitioner by respondent No.2 in relation to FIR No.62 of 2020 dated 24.09.2020, P/S Lal Bazar, Srinagar under Sections 307 IPC (later converted into Section 302 IPC), Section 7/27 Arms Act and Sections 16 & 18 of the UAPA, 1967, as illegal being in complete violation of the constitutional mandates including failure to furnish the grounds of arrest as required under Article 22(l) of the Constitution of India read with Section 43B(1) of the Unlawful Activities (Prevention) Act, 1967;
- (b) Declare and set aside the first remand order dated 26.06.2024 passed by learned Special Judge (NIA), Jammu, along with all the subsequent remand orders dated 01.07.2024, 06.07.2024, 20.07.2024, 08.08.2024, 22.08.2024, 04.09.2024, 14.09.2024 and 19.09.2024 as null and void having been passed pursuant to the above illegal arrest and also being perverse, a result of total non-application of mind and arbitrary infringing Article 14 of the Constitution of India and affecting the Petitioner's right to life and personal liberty enshrined under Article 21 of the Constitution of India;
- (c) Direct immediate release of the petitioner from custody; and
- (d) Award appropriate damages under public law jurisdiction for infringement of fundamental rights of life and personal liberty of petitioner.

4. The petitioner is aggrieved of the arrest dated 25.06.2024 and his continued custody by virtue of the remand orders dated 26.06.2024, 01.07.2024, 06.07.2024, 27.07.2024, 08.08.2024, 22.08.2024, 04.09.2024, 14.09.2024 and 19.09.2024, passed by the court of Special Judge (NIA), Jammu ("*Trial Court*" hereinafter).

5. The case set up by the petitioner is that an FIR no.62/2020 came to be registered at police station Lal Bazar, Srinagar, under Section 307 IPC, 7/27 Arms Act and 16 & 18 UAPA in connection with attack on Advocate *Babar Qadri*, in Srinagar, on 24.09.2020. The offence of Section 307 IPC was converted into Section 302 IPC on the demise of

Advocate *Babar Qadri* on the same day. During investigation, many advocates and other people had been called by the police from time to time for questioning. The petitioner had been called once who attended the investigation in police station Lal Bazar.

6. It is also the case of the petitioner that after the completion of the investigation by an SIT, a charge-sheet under Section 302/120B IPC, 7/27 Arms Act, and 13, 16, 18, 18B, 20, 38 and 39 UAPA was presented by the police before the court of Special Judge (NIA) Srinagar, on 06.05.2021, against six accused, and not against the petitioner as a matter of record. According to petitioner the trial had commenced against five accused as one accused died in the meanwhile. The said case stood transferred to the Trial Court by this Court vide order dated 31.01.2024. During pendency of the trial, another SIT was constituted on 06.08.2022, (almost 23 months after the registration of FIR and 15 months after the presentation of charge-sheet), which started conducting further investigation in the matter.

7. It is being claimed by the petitioner that during the investigation, the house of the petitioner was searched on 24.08.2022 and one mobile phone and two Wi-Fi routers were seized. On 17.07.2023 (almost 34 months after the registration of the FIR and almost 26 months after the presentation of the charge-sheet), the Special Judge, NIA, Srinagar, directed further investigation on the application of the father of the deceased Advocate Babar Qadri, while rejecting his plea for transfer of investigation to another agency. However, vide order No.2152 of 2023 dated: 20.07.2023, the investigation was transferred from District Police, Srinagar, to the SIA J&K by the PHQ J&K and consequently

the Directorate of SIA, J&K, vide its order dated 24.07.2023 constituted a SIT headed by the respondent No.2. These facts have become known to the petitioner from the alleged grounds of arrest furnished to him on 26.06.2024.

8. It is being also stated by the petitioner that during further investigation conducted by respondent No.2, the petitioner was issued a notice dated 20.01.2024 under Section 41A of the Code of Criminal Procedure seeking his appearance on 24.01.2024. On some time having been sought on his health grounds by the petitioner as he had undergone a surgery in the first week of January and was still recovering, he was issued further notice dated 30.01.2024 under section 41A Cr.P.C. seeking his appearance on 27.02.2024. The petitioner appeared before the respondent No.2 (Chief Investigating Officer) and thereafter the petitioner was issued further notice dated 01.03.2024 under section 41A Cr.P.C. again for his appearance on 05.03.2024, and the Petitioner, accordingly, complied with the same. The petitioner was issued with a further notice dated 14.06.2024 under section 41A Cr.P.C. for his appearance on 20.06.2024. He attended the investigation on 20.06.2024. He was orally told by respondent No.2 to again appear before him on 22.06.2024. However, later on, the respondent No.2 sent a WhatsApp message on the phone number of the nephew of the petitioner informing that he would not be available on 22.06.2024 and so conveyed that the petitioner should appear before him on Tuesday, i.e., 25.06.2024; on which date the petitioner appeared before the respondent No.2. The petitioner was told to accompany the respondent No.2 to an alternative location for investigation and took the petitioner

to police post Humhama, Budgam. After a few minutes, the petitioner was told that he had been arrested while no written grounds of arrest were served at that time; rather than producing him to the nearest Judicial Magistrate/ Special judge (NIA) Srinagar as required under Section 167 Cr.P.C. read with Section 43D UAPA, the petitioner was taken to Jammu in violation of the said provisions of law and produced before the Trial court on 26.06.2024, where he complained that he had not been provided the grounds of arrest as required under Article 22(1) of the Constitution of India read with Section 43B(1) of UAPA. Accordingly, on the instructions of the Trial Court, the grounds of arrest were provided to him in the Court itself as recorded in the first remand order dated 26.06.2024. According to petitioner, no reason for arrest have been recorded by respondent no.2 which is against the specific statutory requirement of Section 41A (3) Cr.P.C. and that there are no grounds of arrest as per the standards laid down by the Supreme Court in ***Prabir Purkayastha v. State, 2024 SCC online SC 934***.

9. It is also being stated by the petitioner that the spirit of the law laid down by the Supreme Court right from ***Re. Madhu Limaye (1969) 1 SCC 292***, to ***Pankaj Bansal v. Union of India (2024) 7 SCC 576***, and ***Prabir Purkayastha*** (supra), interpreting the valuable constitutional and statutory safeguards/rights of an arrested person is that if the initial arrest is bad at law on account of violation of the mandatory constitutional and statutory provisions, all the remand orders get vitiated and even a charge-sheet when filed would not validate the illegality and the unconstitutionality committed at the time of arresting the accused as specifically held in ***Prabir Purkayastha*** (supra), the first

remand order dated 26.06.2024 along with all the subsequent remand orders also get vitiated as per the law laid down by the Supreme Court.

Grounds of challenge:

10.The alleged grounds of arrest were served on the petitioner on 26.06.2024 after he had complained before the court below that he had not been furnished any grounds of arrest at the time of his arrest on 25.06.2024. Despite appearance before respondent no.2/CIO, in compliance with the various notices issued under Section 41A Cr.P.C. from time to time, no reasons for arrest of have been recorded by him which is against the specific requirement of Section 41A(3) Cr.P.C., which had been introduced in the year 2010 in order to curb the arbitrary arrests by the police. Not only that, the specific reasons for arrest have not been mentioned in the alleged grounds of arrest but there is not even reference to the issuance of any notice under Section 41A Cr.P.C. to the petitioner and his appearances in compliance thereof. Such an arrest is ex facie arbitrary and against the purpose behind introducing Section 41A(3) Cr.P.C. in the year 2010 which is to curb arbitrary arrests by police.

11.The Supreme Court had 30 years ago also in Joginder Kumar v. State of UP (1994) 4 SCC 240, held that the existence of the power to arrest was one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. There is no legal justification appearing from the alleged grounds of arrest for arresting the petitioner. Reference is also being made to Kranti Associates v. Masood Ahmad Khan (2010) 9 SCC 496,

wherein the importance of giving reasons was highlighted. The alleged grounds of arrest do not satisfy the standard laid down by the Supreme Court.

12. The alleged grounds of arrest also show that these are in fact not the grounds of arrest as per the standards laid down by the Supreme Court in its recent judgement in ***Prabir Purkayastha*** (supra). The grounds of arrest also do not fulfil the requirement of 43B(1) of UAPA as well as Article 22(1) of the Constitution of India. Reference is also being made by the petitioner to ***Re. Madhu Limaye (1969) 1 SCC 292***, wherein it was held that the two requirements Article 22(1) are meant to afford at the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and also to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him.

13. The spirit of law laid down in ***Re. Madhu Limaye*** (supra) to ***Pankaj Bansal*** and ***Prabir Purkayastha***, interpreting the valuable constitutional and statutory safeguards/rights of an arrested person is that if the initial arrest is bad at law on account of violation of the mandatory constitutional and statutory provisions, all remand orders get vitiated and even a charge-sheet when filed, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused as specifically held in ***Prabir Purkayastha*** (supra) and therefore, the first remand order dated 26.06.2024 along with all the subsequent remand orders also get vitiated as per the law laid down by the Supreme Court.

14. The provisions of Section 19(1) of the Prevention of Money Laundering Act are equivalent to Section 43B(1) of UAPA and both require furnishing of the grounds of arrest to the accused. This similarity has been recognised by the Supreme Court in ***Prabir Purkayastha*** (supra). The right to be informed about the grounds of arrest flows from Article 22(1). Any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that charge sheet has been filed in the matter would not validate the illegality and unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

Respondent's Objections:

15. The objections have been filed by the respondent No.2, wherein he states that the writ petition is not maintainable against the orders passed by the Trial Court in view of Circular No.6 dated 18.12.2010 read with order No.325 dated 20.05.2021, which clearly demarcates and defines the territorial jurisdiction of both the wings of the High Court of J&K and Ladakh and as such the present petition challenging the orders passed by the Special Judge, NIA Court, Jammu, cannot be entertained.

16. It is also being stated by the respondent No.2 in his objections that an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of Habeas Corpus. It is further submitted that the petition filed by the petitioner to challenge the arrest as also remand orders, is liable to be outrightly rejected because the orders sought to be impugned do not suffer from any illegality. There was a legal arrest following which the petitioner was

produced before the Trial Court and the orders granting the remand were passed after hearing both the parties.

17. It is being also stated that SHO police station Lal Bazar, Srinagar, received an information through reliable sources that on 24.09.2020 at about 1830 hours, some unknown terrorists fired upon one Advocate, namely, Babar Qadri at his residence Zahidpora, who was shifted in injured condition to Soura Hospital. The terrorists involved in the crime had fled from the spot. Based on the information, an FIR no.62/2020 under Section 307 IPC, 7/27 A. Act, 16, 18, ULA(P) Act was registered in police station Lal Bazar and the case was entrusted to SDPO, Hazratbal (Zadibal). During course of investigation, the police arrested six accused persons and filed charge-sheet before the designated court under NIA, Srinagar, against six accused persons on 05.06.2021 for judicial determination under Section 16, 18, 20, 39 UAPA and Section 302 IPC, 7/27 Arms Act.

18. It is being contended by the respondent No.2 that the father of the deceased subsequently moved an application for further investigation before the Trial Court, which was allowed vide order dated 17.07.2023. During further investigation, supplementary statements of the father of the deceased, namely, Mohammad Yaseen Qadri, and his brother, Zaffar Qadri, were recorded and the investigation was transferred to SIA J&K vide PHQ J&K's Order No.2152 of 2023 dated 20.07.2023 which was followed by SIA, J&K Hqr's Order NO.DIS/SIA/FIR-62/2020/23/ 1754-63 dated 24.07.2023 under which a team of officers/officials were formed to further investigate the case. The accused/petitioner did not cooperate during the investigation and as

such the respondents were constrained to arrest him and subsequently produced him before the competent court and sought his physical remand.

19. It is being maintained by the respondents that petitioner never believed in the Constitution of India nor considered himself to be a citizen of India, which fact is borne out from the fact that petitioner is involved in a case FIR No.81/2010 of police station Shaheed Gunj, wherein he had in categoric terms made a deposition that he does not believe in the Constitution of India. It is also submitted by respondents that for all those years the petitioner has remained as the President, Bar Association. He has only propagated for breaking of J&K from the Union of India and also encouraged armed uprising in J&K against India. He being President of Bar Association ought to have alleviated the issues of young lawyers rather than to brainwash them for his separatist goals, which is common knowledge. The fact that he continued as President for twenty years is only because of the fear and intimidation that he unleashed which never allowed youngsters to flourish. The grounds of arrest were provided to the petitioner at the time of his arrest. The fact of the matter is that SIT had taken over the investigation of the case on 26.07.2023. After investigating various aspects for about six months, the SIT gathered sufficient evidence that established beyond doubt the involvement of the petitioner in the case. It was only at that stage that the petitioner was served with a notice under section 41-A Cr.P.C. vide No.27/2024 dated 20.01.2024 with a direction to appear before the respondent on 24.01.2024 at Directorate of SIA, CID Hqrs, J&K, Srinagar at 11.30 AM. The petitioner in

response to the said notice sent a written reply dated 13.01.2024 requesting that the date of his required appearance be deferred by at least one month on health grounds. Conceding to the petitioner's request, a second notice under Section 41-A Cr.P.C. was served upon him vide No.42/2024 dated 30.01.2024, with a direction to appear on 27.02.2024 at the same venue. In his written reply to the first notice, the petitioner nowhere questioned the validity of the notice even by a passing reference and rather asked only for its deferment on health grounds. He was questioned thrice for hours on 27.02.2024, 05.03.2024 and 20.06.2024, but he remained not only defiant and unrevealing but, on most occasions, he remained evasive, non-cooperative and misleading. Besides after his arrest, he never questioned notices that were issued to him under Section 41-A Cr.P.C., before the remand court as and when he was produced for remand. This fact is clearly ex facie from the remand orders issued from time to time by the competent court of law. The petitioner was investigated for offences under UAPA and IPC, carrying punishment for more than seven years and only after substantial evidence of his involvement and coupled with his non-cooperation with the investigating agency he was formally arrested with due procedures. It is being also stated by the respondents that petitioner has in para 8 himself admitted that he was made aware about the further investigation based on the application of the father of the deceased Advocate *Babar Qadri* through 'grounds of arrest' furnished to him. The whole procedure was video-graphed and all the necessary documents including IIF Forms were prepared and enclosed with the CD File. It is also submitted by respondents that it is a fact that expert

opinions/report are required to be obtained from CFSL, New Delhi as well as CERT-IN New Delhi and despite their efforts, the reports are not being received as both the laboratories are overburdened and even the Priority Letters have been written. It is also assertion of the respondents that the analysis of the reports could lead them to the vital clues which may also require the petitioner to be confronted with them. The investigating officer has a reasonable belief that the digital analysis of the data received from the electronic examiners notified under Section 79-A IT Act will offer credible leads in terms of corroborative direct or indirect links with the terrorists in the killing of Advocate Babar Qadri, which comes sine quo non for proper investigation of the case. The Financial Investigation of the assets of the accused is also very important as lot of money is suspected to have exchanged hands directly in cash or otherwise and needs to be thoroughly probed, which is important to rule out the possibility of terror funding qua the killing of Advocate Babar Qadri and also other related offences. It is also stated by the respondents that just because the petitioner happens to be a big name among the lawyers does not make him amenable to a special treatment contrary to an ordinary accused.

Respondents' Status Report:

20. In compliance to the Order dated 16.12.2024 passed by this Court in CM No.7425/2024, the respondents have filed the status report, wherein it is being reported that the petitioner is facing the trial in a murder case of a young and energetic *Advocate Babar Qadri*. As per the investigation, clinching evidence is against the petitioner which shows that he entered into a criminal conspiracy with the members of

Proscribed Terror Outfits across the border to eliminate the *Advocate Babar Qadri*.

21. It is being also stated by the respondents that the Charge-Sheet against the petitioner has been presented before the Trial Court on 19.12.2024 and all the applications, including the application for grant of bail on the health grounds, can be filed by the petitioner before the Trial Court, where the petitioner will be tried for the charges brought against him. Insofar as the health report of the petitioner is concerned, the Jail Superintendent on the basis of the medical opinion of the doctors nursing the petitioner has clearly stated that the sufficient medical facility is available at District Jail, Jammu, to take care of the petitioner's health condition and that the health condition of the petitioner can be managed at District Jail, Jammu. There is deployment of sufficient medical officers and paramedical at the Jail, who regularly monitor the health of the petitioner and in case of any emergency, the petitioner can be taken to the Government Hospital/ Supers Speciality Hospital, Jammu. It is being also stated by the respondents that in the past also, the petitioner had been taken to Super Speciality Hospital, Jammu, as and when it has been advised by the doctors treating the petitioner at District Jail, Jammu. The implantation of pacemaker to the petitioner goes to show that the Jail Authorities are very much concerned about the life of the petitioner and are providing him the best possible treatment.

22. I have heard the learned counsel for the parties and considered the matter.

Arguments by petitioner's counsel:

23.The petitioner's counsels' vehement contention is that arrest of the petitioner is illegal. According to them, the arrest of the petitioner is illegal because of non-compliance of Section 41A(3) Cr.P.C. as it requires recording the reasons of arrest and also non-compliance of Article 22(1) of the Constitution of India read with Section 43B(1) of UAPA, vide which it is required to furnish the grounds of arrest to the arrestee, more particularly in view of the standards laid down by the Supreme Court in ***Prabir Purakayastha*** (supra).

24.It is being also stated by the counsels for the petitioner that no reasons for arrest have been recorded by CIO which is against specific statutory requirement of Section 41A(3) Cr.P.C. and that 'grounds of arrest' are in fact no 'grounds of arrest'. It is being also stated that remand orders passed by the court below are without application of mind.

25.The counsels for the petitioners have submitted Written Submission wherein it is stated:

(a) Whether the arrest of petitioner is illegal for non-compliance with Section 41A (3) Cr.P.C., requiring recording of the reasons of arrest, and noncompliance with Article 22(1) of Constitution of India read with Section 43B(1) of UAPA, requiring furnishing of grounds of arrest to the arrestee, as per standards laid down by the Supreme Court in ***Prabir Purkayastha*** (supra).

If answer to above question is in the affirmative, the consequence thereof is that the subsequent remand orders, which are otherwise ex facie perverse on account of non-application of mind, would also get vitiated and would not validate the unlawful arrest. This has been

clearly held by the Supreme Court in ***Re. Madhu Limaye*** (supra), Pankaj Bansal (supra) and ***Prabir Purkayastha*** (supra).

- (b) Writ petition is based upon the clear expositions of law laid down by the Supreme Court in the abovementioned cases, amongst others.
- (c) Almost 34 months after registration of FIR and almost 26 months after presentation of charge-sheet, the Special Judge, NIA, Srinagar, ordered further investigation on the application of the father of the deceased Advocate Babar Qadri, while rejecting his plea for transfer of investigation to another agency.
- (d) Vide order no.2152/2023, investigation was transferred from District Srinagar to SIA J&K by PHQ J&K.
- (e) Consequently, Directorate of SIA, J&K, constituted an SIT headed by the respondent no.2 (CIO).
- (f) During further investigation conducted by respondent no.2, the petitioner was issued a notice under Section 41A Cr.P.C. seeking his appearance on 24.01.2024. The petitioner replied to the said notice requesting respondent no.2 to defer the date of his required appearance by at least a month on health grounds as he had undergone a surgery in the first week of January and was still recovering.
- (g) The petitioner was issued with further notice under Section 41A Cr.P.C. for his appearance on 27.02.2024. In the meanwhile, the trial which had commenced against five accused (one being dead in the meanwhile) was transferred to the court below by the High Court. The petitioner appeared before the respondent no.2/CIO in compliance to the terms of the notice dated 30.01.2024. The petitioner was issued with further notice on 05.03.2024. The petitioner was again issued notice under

Section 41A Cr.P.C. on 20.06.2024. the petitioner attended the investigation and he was orally told by the respondent no.2 to again appear before him on 22.06.2024. However, later on, the respondent no.2 sent a WhatsApp message on the phone number of the nephew of the petitioner informing that he would not be available on 22.06.2024 and so conveyed that the petitioner should appear before him on Tuesday, i.e., 25.06.2024. Accordingly, the petitioner appeared before the respondent no.2/CIO. The respondent no.2 told the petitioner to accompany in to an alternative location for investigation and took the petitioner to police station Humhama, Budgam. After a few minutes, the petitioner was told that he has been arrested while no written grounds of arrest were served at that time. Rather than producing him to the nearest Judicial Magistrate/ Special NIA Court, as required under Section 167 Cr.P.C. read with Section 43D UAPA, the petitioner was taken to Jammu in violation of the said provisions of law, and produced before the court below on the next day, i.e., 26.06.2024.

(h) On complaining to the court below that the petitioner was not provided the grounds of arrest, the court below mechanically remanded the accused to police custody till 01.07.2024, without applying his judicial mind to the legality of the arrest and necessity for remand as per the mandate of law laid down by the Supreme Court in *Re. Madhu Limaye* (supra); and *Manubhai Ratilal Patel v. State of Gujarat* (2013) 1 SCC 314.

(i) Highlighting the importance of the role of the Judicial Magistrate/Special Judge at the stage when the accused is produced before him after his arrest by police, it has been held by the Supreme

Court in *Re Madhu Limaye* that Clause (2) of Article 22 provides the next and most material safeguard that the arrested person must be produced before a Magistrate (Judicial Officer) within 24 hours of such arrest so that an independent authority exercising judicial power may without delay apply its mind to his case.

- (j) The court below also did not apply his mind to the basic fact that the petitioner had been complying with all the notices issued to him under Section 41A Cr.P.C., and had admittedly appeared before the CIO, but still he had been arrested by respondent no.2 on 25.06.2024 in complete violation of the statutory requirement of recording the reasons of arrest under Section 41A(3) Cr.P.C., which had been introduced in the Code of Criminal Procedure in the year 2009 to curb the malaise of arbitrary arrests by the police. Reference in this regard is being made to ***Satender Kumar Antil v. CBI (2022) 10 SCC 51***; and ***Satender Kumar Antil v. CBI, 2023 SCC OnLine SC 452***.

- (k) Since the court below did not apply his mind on non-compliance by IO with Section 41A(3) Cr.P.C., the arrest of the petitioner is bad in law. Moreover, the court below did not apply his mind to the fact that the alleged grounds of arrest were in fact not the grounds of arrest as per the standards laid down by the Supreme Court in ***Prabir Purkayastha*** (supra). The alleged grounds of arrest furnished to the petitioner do not fulfill the requirement of Article 22(1) of the Constitution of India read with Section 43B(1) of the Unlawful Activities Prevention Act, 1967 as interpreted by the Supreme Court. The petitioner could not know as to what exactly was the accusation against him so as to defend himself against the custodial remand.

- (l) Thereafter the court below granted further remand of the petitioner to the police custody till 06.07.2024. On being produced before the court below, the petitioner was further remanded to judicial custody till 20.07.2024. Vide subsequent remand orders, the judicial remand of the petitioner was extended till 19.09.2024 in a casual and mechanical manner without application of mind by the court below which is demonstrated from the very fact that there is a verbatim reproduction of contents in the remand orders. Further the respondent no.2/CIO introduced an altogether new excuse regarding the pendency of the expert opinions in respect of the gadgets/mobiles seized in the case in the remand application dated 22.08.2024 for the very first time after two years of the seizure, but the court below passed the remand order dated 22.08.2024 in a mechanical manner, not even noticing this fact against the duties cast upon him by the law of the land.
- (m) Moreover, the remand order dated 08.08.2024 was passed without even noticing the fact that the investigation in the instant case is about the murder of Babar Qadri, and there was no justification for seeking further remand by introducing a new unconnected ground of financial assets of the petitioner in the remand application dated 08.08.2024 for the very first time after 44 days of the custody as a matter of record.
- (n) Granting remand is a judicial function and cannot be performed so casually by simply rubber-stamping the application of the IO thereby depriving someone of his personal liberty in such a cavalier manner against the duties cast upon the judicial officer.
- (o) The period of 90 days since the first days of remand dated 26.06.2024, after arrest on 25.06.2024, was to expire on 23.09.2024. Accordingly,

an application came to be filed on 12.09.2024 by the respondent no.2 before the court below seeking extension beyond 90 days. The grounds stated in the said application were merely the repetition of the grounds stated in the earlier applications.

- (p) The extension application was decided in a totally mechanical way without application of independent judicial mind by simply endorsing the report of the PP who in turn had acted merely as a post-office/forwarding agency of the Investigating Agency in violation of the law laid down by the Supreme Court in *Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602*. The period of investigation and detention was thus extended beyond 90 days with effect from 22.09.2024 to 21.10.2024 even though the earlier remand was only up to 19.09.2024. This approach adopted by the court below loudly conveyed to the Investigating Agency that when the petitioner would be produced before him on 19.09.2024, he would mechanically grant his remand for the intervening days, i.e., 20.09.2024 and 21.09.2024.
- (q) On an application of the respondent no.2, the court below exhibited total non-application of mind and granted remand of the petitioner till 03.10.2024, when remand till 21.10.2024 had already been granted vide order dated 14.09.2024. There cannot be a worse case of non-application of mind than this. Moreover, it is a matter of record emerging from the perusal of the remand orders that the petitioner had not been provided the copies of the remand applications before passing these orders, thereby vitiating these orders.
- (r) It is also stated by the counsels for the petitioners on merits of the case that the case of the petitioner is based upon his illegal arrest by the

respondent no.2 on 25.06.2024. No reasons for arrest have been recorded by CIO, which is against the specific statutory requirement of Section 41A(3) Cr.P.C. The grounds of arrest are in fact not the grounds of arrest as per the standards laid down by the Supreme Court in **Prabir Purkayastha** (supra). The respondents in their reply have simply stated that the reasons of the arrest have been specifically recorded in detail in the case diary and were also communicated to the petitioner as mandated under law.

- (s) This Court is to simply peruse the alleged grounds of arrest handed over the petitioner on 26.06.2024 in the court below and find out itself whether the said document dated 26.06.2024 satisfies the legal requirement of recording the reasons for arrest, when an accused complies with the notices issued under Section 41A Cr.P.C. and also the standards of law laid down by the Supreme Court in **Prabir Purkayastha** (supra).
- (t) The petitioner had admittedly appeared before CIO in response to the notices but still there is not even a mention of this fact in the alleged grounds of arrest. Therefore, such an arrest is *ex facie* arbitrary and against the purpose behind introducing Section 41A(3) Cr.P.C. The ground of arrest contain merely the general history of the case since 24.09.2020 and the constitution of various SITs from time to time and transfer of the trial to Jammu and in any case the grounds of arrest do not qualify either as specific reasons under Section 41A(3) Cr.P.C. when the petitioner had been admittedly complying with all the four notices issued to him nor as specific grounds of arrest personal to the petitioner in terms of para 49 of **Prabir Purkayastha** (supra) which

would have enable him to know what exactly was the material against him so as to defend himself against his custodial remand and seek release on bail, rather the reading of the relevant parts of the remand application dated 08.08.2024 and remand application dated 22.08.2024 clearly shows that the respondents had no plausible ground for arresting the petitioner even as late as on these dates (about two months after the actual arrest dated 25.06.2024) as by these dates even the forensic report regarding the gadgets seized from the petitioner's house two years ago on 24.08.2022 had admittedly not been received and the investigation into the case was still underway and evidence against him regarding his role was still being collected. The grounds of arrest do not at all satisfy the legal requirement of Section 41A (3) Cr.P.C. and also the standards of law laid down by the Supreme Court in ***Prabir Purkayastha*** (supra), thereby rendering the said arrest illegal.

- (u) Even if for the sake of the arguments, it is assumed that Section 41A Cr.P.C. is not applicable to the cases under UAPA (though it is squarely applicable under law), even then the said Section would still be applicable in the present case where the arrest of the petitioner has been made admittedly also for offences under Section 302 IPC and 7/25 Arms Act. There cannot be any doubt that Section 41A Cr.P.C. is applicable to offences under the Indian Penal Code, Arms Act, Section 4(1), 4(2) Cr.P.C. If the initial arrest is illegal on account of violation of the mandatory, constitutional and statutory provisions, all remand orders get vitiated as a consequence thereof and even a charge-sheet when filed would not validate the illegality and unconstitutionality committed at the time of arresting the accused. The remand orders are

otherwise bad at law having been passed in a mechanical manner as a result of total non-application of mind. There was no evidence available with the CIO against the petitioner in murder case already pending trial against some other accused persons and not against the petitioner since 2021. The custodial interrogation is not for the purpose of confession as the right against self-incrimination is provided by Article 20(3) of the Constitution and that because an accused did not confess, it cannot be said that he was not cooperating with the investigation. Reference has been made to ***Santosh v. State of Maharashtra (2017) 9 SCC 714***; judgement dated 18.11.2024, passed by the High Court of Delhi in ***Pranav Kuckreja v. State*** WP(Crl) 3476/2024; judgement dated 07.02.2025, passed by the Supreme Court in ***Vihaan Kumar v. State of Haryana*** (Criminal Appeal no.621/2005); ***Ichhu Devi Choraria v. Union of India (1980) 4 SCC 531***.

Section 41&41A Cr.P.C.:

26. In view of the case set up and arguments advanced at length by both the parties, it would be appropriate to have, at first instance, advertence to the provisions of the Code of Criminal Procedure concerning arrests of persons. Chapter V of the Code of Criminal Procedure relates to ‘arrest of persons’. Section 41 thereunder reads:

“41. When police may arrest without warrant. —

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

- (a) who commits, in the presence of a police officer, a cognisable offence;
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognisable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely: -

(i) the police has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary –

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reason in writing.

Provided that a police officer shall, in all the cases where the arrest of a person is not required under the provision of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognisable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or (g)

(g) who has been concerned in, or against whom reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule, made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 42, no person concerned in a non-cognisable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.”

27. Section 41(1)(a) provides that a police officer may arrest a person without warrant when a cognizable offence is committed by a person in the presence of a police officer.

Section 41(1)(b) Cr.P.C. provides for arrest by police on receiving a reasonable complaint/information or has reasonable suspicion of a cognizable offence having been committed, which is punishable with imprisonment of less than seven years, or which may be extended to seven years if the given set of conditions are satisfied, which include that the police has reason to believe on the basis of such complaint, information, or suspicion that such a person has committed the said offence; or the police officer is satisfied that such arrest is necessary aiming at to prevent such person from committing any further offence, or for proper investigation of the offence, or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner, or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or as unless such person is arrested, his presence in the Court whenever required cannot be ensured. The police officer shall record while making such arrest, his reason in writing.

Section 41(1) (ba) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person against whom credible information has been received that he has committed a cognisable offence punishable with imprisonment for a

term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence.

Section 41(1) (c) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person who has been proclaimed as an offender either under this Code or by order of the State Government; or

Section 41(1) (d) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing.

Section 41(1) (e) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody.

Section 41(1) (f) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

Section 41(1) (g) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person who has been concerned in, or against whom reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at

any place out of India which if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India.

Section 41(1) (h) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person who, being a released convict, commits a breach of any rule, made under subsection (5) of section 356.

Section 41(1) (i) provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

28. Section 41A Cr.P.C. has been the main focus of the learned counsels for the petitioners that according to them has not been followed and complied with by the respondents when arrest of the petitioner was effected. Section 41A Cr.P.C. provides:

“41A. Notice of appearance before police officer. —

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

29. Section 41A Cr.P.C. deals with the procedure for appearance of a person before the police officer. The police officer is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1) Cr.P.C.

30. Subsection (1) of Section 41A Cr.P.C. first of all says that if the arrest of a person is not required under Section 41 (1) Cr.P.C., then what is to be done by the police officer is to issue notice under Subsection (1) of Section 41A Cr.P.C. when the following situations arise:

- (i) if a complaint is made against a person, the police officer can issue a notice asking the person to appear before him or at such other place as may be specified in the notice;
- (ii) if a credible information has been received against a person, the police officer can issue notice asking the person to appear before him or at such other place as may be specified in the notice;
- (iii) if there is a reasonable suspicion existing that a person has committed a cognizable offence, the police officer can issue notice asking the person to appear before him or at such other place as may be specified in the notice;

31. Subsection (2) of Section 41A Cr.P.C. says that when a notice under Section 41A Cr.P.C. is issued upon any person, it shall be his duty to comply with the terms of the notice. Subsection (3) provides that when a person, upon whom notice under Section 41A Cr.P.C. is issued, complies and continues to comply with such a notice, he shall not be

arrested unless, for the reasons to be recorded, the police officer is of the opinion that such a person is to be arrested. Subsection (4) provides that if a person, upon whom a notice under Section 41A Cr.P.C. is issued, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer can, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.

Law as to Section 41 & 41A Cr.P.C.:

32. The scope of Section 41 and 41A Cr.P.C. has been ornately discussed and deliberated upon by the Supreme Court in a landmark judgement in the case of ***Arnesh Kumar v. State of Bihar (2014) 8 SCC 273.***

Relevant portion thereof is reads as under:

“7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more

purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. ...The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii) ;

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”

33. The Supreme Court in **Arnesh Kumar** (supra) has laid down guidelines for preventing the arbitrary arrests and to protect individual liberties protected under the Article 21 of the Constitution of India. The Supreme Court ordered all the State Governments and Union

Territories to facilitate the Standing Orders in accordance with the requirements under Section 41A Cr.P.C. However, the Supreme court has made it clear that the directions issued by it shall relate to cases under Section 498-A IPC, Section 4 of Dowry Prohibition Act as also those cases where offence is punishable with imprisonment for a term which may be less than seven year or which may extend to seven years.

Law on concept of bail:

34. In the case of ***Satender Kumar v. CBI, (2022) 10 SCC 51***, the concept of bail was dealt with. It emphasized the norm that the bail is the rule and jail is the exception. From the said judgement, it is evident that a Special Leave Petition (SLP) was filed before the Supreme Court. The shortcomings of the system of bail in India, particularly with respect to the issues of the persons under trial, was discussed. In addition to the guidelines already given in ***Arnesh Kumar*** (supra), some major guidelines for the courts and investigating agencies were laid down. The case of Satender Kumar Antil was preceded by two judgements on the matter in 2021. Shri Satender Kumar Antil was an accused as an FIR was filed against him by CBI, in which investigation was completed without arresting him and the charge sheet was filed in the court. The concerned court after taking charge-sheet on record, issued summons against Shri Satender Kumar Antil for his appearance in the court. He opted to file an anticipatory bail application. He did not appear before the court concerned on the required date. The court rejected his anticipatory bail and issued non-bailable warrant against him. The Supreme Court while hearing the case questioned Shri

Satneder Kumar Antil about the need for an anticipatory bail as there should exist no fear of being taken into custody and moreover, it was him, who was not appearing before the court. His case was that the system which was generally followed was that despite not being arrested during the investigation, if charge sheet was filed, in such cases of the CBI, the accused was sent to custody and, therefore, his appearance and application for bail would have led him to custody. The Supreme Court found this to be unacceptable and decided to clarify the matter. The Supreme court categorized numerous offences and laid down guidelines with respect to the cases wherein no arrest must have taken place during the investigation and the concerned person must have shown cooperating during the investigation, including appearing before the court when asked to do so.

35. What has been said by the Supreme Court about the provisions of Section 41 and 41A Cr.P.C. is reproduced here:

"21. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest.

Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

22. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons.

23. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

24. Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41B deals with the procedure of arrest along with mandatory duty on the part of the officer.

25. On the scope and objective of Section 41 and 41A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in *Arnesh Kumar v. State of Bihar*.....

26. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the Court, which is expected to be reflected in the orders.

27. Despite the dictum of this Court in *Arnesh Kumar* (supra), no concrete step has been taken to comply with the mandate of Section 41A of the Code. This Court has clearly interpreted Section 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of 'reason to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the police officer.

28. It is also brought to our notice that there are no specific guidelines with respect to the mandatory compliance of Section 41A of the Code. An endeavour was made by the Delhi High Court while deciding Writ Petition (C) No. 7608 of 2017 vide order dated 07.02.2018, followed by order dated 28.10.2021 in Contempt Case (C) No. 480 of 2020 & CM Application No. 25054 of 2020, wherein not only the need for guidelines but also the effect of non-compliance towards taking action against the officers concerned was discussed. We also take note of the fact that a standing order has been passed by the Delhi Police viz., Standing Order No. 109 of 2020, which provides for a set of guidelines in the form of procedure for issuance of notices or orders by the police officers.

Considering the aforesaid action taken, in due compliance with the order passed by the Delhi High Court in Writ Petition (C) No.7608 of 2017 dated 07.02.2018, this Court has also passed an order in Writ Petition (Crl.) 420 of 2021 dated 10.05.2021 directing the State of Bihar to look into the said aspect of an appropriate modification to give effect to the mandate of Section 41A. A recent judgment has also been rendered on the same lines by the High Court of Jharkhand in Cr.M.P. No. 1291 of 2021 dated 16.06.2022.

29. Thus, we deem it appropriate to direct all the State Governments and the Union Territories to facilitate standing orders while taking note of the standing order issued by the Delhi Police i.e., Standing Order No. 109 of 2020, to comply with the mandate of Section 41A. We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various Courts as they may not even be required for the offences up to seven years.

30. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41A. We express our hope that the Investigating Agencies would keep in mind the law laid down in *Arnesh Kumar* (Supra), the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory.

If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision under Section 60A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code.

Section 50 Cr.P.C.:

36. Section 50 is about informing the person arrested of grounds of arrest and of right to bail, which is reproduced hereunder:

“50. 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.”

37. Subsection (1) of Section 50 Cr.P.C. provides that every police officer or other person, who arrest any person without warrant shall forthwith communicate to him the full particulars of the offence for which he is arrested or other grounds for such arrest. Subsection (2) of Section 50 Cr.P.C. says that 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 43A of UAPA:

38. Another contention of the counsels appearing for the petitioner is that Section 43A of UAPA has not been followed. Section 43A reads:

“43A. Power to arrest, search, etc.—

Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.”

39. Thus, Section 43A of UAPA provides that an officer empowered under the UAPA can authorise any officer subordinate to him to “arrest a person” or “search a building, conveyance or place” whether by day or by night or himself arrest such a person or search a such building,

conveyance or place, if knowing of a design to commit any offence under UAPA; if he has a reason to believe from personal knowledge or information given by any person and taken in writing that the person has committed an offence punishable under this Act; if from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture is kept or concealed in any building, conveyance or place.

Section 43B of UAPA:

40. The provisions of Section 43B of UAPA, as vehemently argued by the counsels for the petitioner, have also not been followed by the respondents. Section 43B reads as under: -

“43B. Procedure of arrest, seizure, etc.-

(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.”

41. When a person is arrested under UAPA, he is to be, as soon as may be, informed of the grounds of arrest; it is so provided in Subsection (1) of Section 43B of UAPA.

42. Since the learned counsels appearing for the petitioners have relied upon ***Prabir Purkayastha***, relevant portion of the said judgement as regards provisions of Section 43A, 43B and 43C of UAPA, is as follows:

“17. Upon a careful perusal of the statutory provisions (reproduced supra), we find that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the UAPA which can persuade us to take a view that the interpretation of the phrase 'inform him of the grounds for such arrest' made by this Court in the case of Pankaj Bansal(supra) should not be applied to an accused arrested under the provisions of the UAPA.

18. We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of the UAPA is verbatim the same as that in Section 19(1) of the PMLA. The contention advanced by learned ASG that there are some variations in the overall provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of the UAPA at the earliest because as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes.

As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied.

19. We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of Pankaj Bansal(supra) on the aspect of informing the arrested person 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.

20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest.

The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.”

Section 43C of UAPA:

43. Section 43C of UAPA reads as under:

“The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of the Act, to all arrests, searches and seizures made under this Act.”

44. Section 43C, thus, says that all that is provided in the Code of Criminal Procedure shall be used for all arrests, searches and seizures related to the UAPA, as long as they do not conflict with any specific provision in the UAPA.

Section 167 Cr.P.C.:

45. According to petitioner's counsels, there is non-compliance of the provisions of Section 167 Cr.P.C. It would be appropriate to reproduce Section 167 Cr.P.C. hereunder:

"Section 167. Procedure when investigation cannot be completed in twenty-four hours.

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.]

Explanation II. — If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."

46. Section 167 (1) Cr.P.C. provides that after a person is arrested and kept in custody, if investigation cannot be completed within 24 hours as fixed by Section 57, besides there are grounds to believe that accusation or information is well-founded, then copy of entries in diary relating to the case is to be transmitted to the nearest Judicial Magistrate and forward the accused to the Magistrate. Subsection (2) of Section 167 provides that when a person is brought before the Magistrate whether

that Magistrate has or has no jurisdiction to try the case, it can authorize detention of accused in such custody, the Magistrate thinks fit for a term not exceeding 15 days and if he has no jurisdiction to try the case, or considers further detention unnecessary, the Magistrate can forward the accused to a Magistrate having jurisdiction. However, there is a proviso to subsection (2) of Section 167 Cr.P.C., which provides that the Magistrate can authorize detention of accused beyond 15 days if Magistrate is satisfied that adequate grounds exist to do so. However, no Magistrate shall authorize detention of accused person in custody for a total period exceeding 90 days where investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years. Where investigation relates to any other offence, the Magistrate can authorize detention of accused person for 60 days and on expiry of said period of 60 days or 90 days as the case may be, the accused person can be released on bail under Subsection (2). However, no Magistrate shall authorize detention of accused person in police custody unless accused is produced in person before the Magistrate for the first time and subsequently every time till the accused persons remains in custody of police, but Magistrate can extend further judicial custody on production of accused person either in person or through medium of electronic video linkage. The Explanation-I to Subsection (2) indicates that despite expiry of the period specified in the paragraph (a) of Proviso to Subsection (2), the accused person shall be detained in custody so long as he does not furnish bail. Subsection (3) of Section 167 says that Magistrate shall record his reasons while authorizing police custody of an accused

person. Subsection (4) provides that a Magistrate is to forward a copy of his order with his reasons to Chief Judicial Magistrate.

Law on Section 167 Cr.P.C.:-

47. The Supreme Court in ***Satender Kumar v. CBI, (2022) 10 SCC 51***, has also discussed the provisions of Section 167(2) Cr.P.C.:-

“34. Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of innocence is also inbuilt in this provision.

An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect. Such a right cannot be taken away even during any unforeseen circumstances, such as the recent pandemic, as held by this court in *M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485*:

“II. Section 167(2) and the Fundamental Right to Life and Personal Liberty
17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in *Uday Mohanlal Acharya [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760]* on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows:

“13. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.”

17.1. Article 21 of the Constitution of India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". It has been settled by a Constitution Bench of this Court in *Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248]*, that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of "default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 ("the 1898 Code") which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a

practice arose wherein investigating officers would file "preliminary charge-sheets" after the expiry of the remand period.

The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

.....
17.6. It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused.

Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in *Rakesh Kumar Paul v. State of Assam* [*Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401], which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case.

The questions before the three-Judge Bench in *Rakesh Kumar Paul* [*Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail.

The majority opinion held that the 90-day limit is only available in respect of offences where a minimum ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows:

"29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has

also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature.

32. Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in *S. Kasi v. State* [*S. Kasi v. State*, (2021) 12 SCC 1 : 2020 SCC OnLine SC 529], wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (*supra*) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case."

35. As a consequence of the right flowing from the said provision, courts will have to give due effect to it, and thus any detention beyond this period would certainly be illegal, being an affront to the liberty of the person concerned. Therefore, it is not only the duty of the investigating agency but also the courts to see to it that an accused gets the benefit of Section 167 (2)."

48. The respondents have made a reference to Section 43D of UAPA, which reads as under: -

“43D. Modified application of certain provisions of the Code. —

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

PROVIDED FURTHER that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days.....”

49. Subsection (2) of Section 43D of UAPA says that Section 167 Cr.P.C.

shall apply to a case involving an offence punishable under UAPA, but, subject to the modification that in subsection (2) thereof the reference to 15 days, 90 days and 60 days wherever they occur, shall be construed as reference to 30 days, 90 days and 90 days respectively. First Proviso to Subsection (2) of Section 43D makes it clear that if it is not possible to complete the investigation within 90 days, the Court may extend the said period up to 180 days. Thus, a person arrested in connection with the activities insinuated in UAPA can be send to police/judicial upto 180 days.

Present case:

50. In the case in hand, it was on 24.09.2020, when Advocate *Babar Qadri* was assassinated by terrorists that an FIR no.62/2020 under Section 307 IPC, 7/27 Arms Act, 16, 18 UAPA was registered by police station Lal Bazar. The six accused persons, during the course of investigation, were arrested and charge-sheet was filed against those six persons on 05.06.2021 before the Designated Court under NIA, Srinagar, under

Section 16, 18, 20, 39 UAPA and under Section 302 IPC, 7/27 Arms Act.

51. However, the matter did not end here, because the father of the deceased Advocate preferred an application seeking further investigation. The said application was allowed by virtue of the Order dated 17.07.2023. In view of this order, permitting further investigation, the supplementary statements of the father and brother of the deceased Advocate were recorded. In addition to this, an order no.2152 of 2023 dated 20.07.2023 was issued transferring investigation to SIA J&K and in compliance thereof, a team of officers/officials vide order dated 24.07.2023 was formed to conduct further investigation into the killing of *Advocate Babar Qadri*.

52. Sufficient evidence, as is claimed by the respondents, has been gathered during the investigation by SIT, which establishes, beyond doubt, that the petitioner is involved in the case.

It is pertinent to mention here that all that has been gathered/collected by the respondent-SIT is neither the subject-matter of determination in this writ petition nor it can be tried here. Not only that, this Court in the present proceedings cannot make any comment about FIR No.61/2020 or about the provisions of Section 302 IPC; 7/27 Arms Act; 16, 18, 20, 39 UAPA, because those are the subject-matter of the trial before the appropriate forum/court.

53. It is only after the respondents have had a firm belief about the involvement of the petitioner in the case FIR No.61/2020, that the notice under Section 41A Cr.P.C. vide no.27/2024 dated 20.01.2024 was served upon him, asking him to appear before the respondents on

24.01.2024 at Directorate of SIA, CID, Headquarters, J&K, Srinagar at 11.30 AM. In that notice of 20.01.2024, the petitioner was informed that during investigation of the case FIR No.62/2020, it was revealed that there were reasonable grounds to question him to ascertain the facts and circumstances in relation to the investigation of the case. For facility of reference, the notice dated 20.01.2024 is reproduced as under:

“Notice Under Section 41A CrPC

Sr.No.27/2024

Police Station: SIA Kashmir

Date: 20.01.2024

To,

Shri Mian Abdul Qayoom
S/O Shri Mian Abdul Rahim
R/O Sanat Nagar Srinagar
A/P Bulbul Bagh, Barzullah, Srinagar

Notice under Section 41A CrPC

In exercise of the powers conferred under subsection (1) of section 41 A Cr.PC, I hereby inform you that during the investigation of the Case FIR No.62/2020 dated 24.09.2020 U/S 302 IPC 7/25 IAA 16/18/20/39 UAPA at Police Station Lalbazar Srinagar now SIA Kashmir, it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances, from you in relation to the present investigation. Hence you are directed to appear before me at Directorate of SIA, CID Hqrs. J&K, near Arts Emporium Srinagar on 24.01.2020 at 11:30 AM.

You are directed to comply with all and/or the following directions:

- a) You will not commit any offence in future
- b) You will not tamper with the evidences in the case in any manner whatsoever.
- c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.
- d) You will appear before the Court as and when required/directed.
- e) You will join the investigation of the case as and when required and will cooperate in the investigation.
- f) You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.
- g) You will produce all relevant documents/material required for the purpose of investigation.
- h) You will render your full co-operation/material required for the purpose of investigation.
- i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.
- j) Any other conditions, which may be imposed by the Investigating Officer as per the facts of the case.

Failure to the attend/comply with the terms of this Notice can render you liable for arrest under section 41A(3) and (4) of CrPC.”

54.The petitioner, however, did not appear in response to Notice under Section 41 Cr.P.C. He made a Reply to the Notice dated 20.01.2024. He sought deferment of the date of fixed his required appearance by at least one month so that he could be able to fully recover and travel back to Srinagar post his surgery.

55.There is force in the submission of the respondents that when the first notice dated 20.01.2024 was issued upon the petitioner, he did not question or challenge it; instead, he replied it and sought deferring his appearance on the health grounds.

56.Thereafter again on 30.01.2024 notice under Section 41A Cr.P.C. was issued and served upon the petitioner, seeking his appearance on 27.02.2024. The said notice is reproduced hereunder:

"Notice Under Section 41A CrPC

Sr.No.42/2024

Police Station: SIA Kashmir

Date: 30.01.2024

To,

Shri Mian Abdul Qayoom
S/O Shri Mian Abdul Rahim
R/O Sanat Nagar Srinagar
A/P Bulbul Bagh, Barzullah, Srinagar

Notice under Section 41A CrPC

Please refer this office Notice under section 41A CrPC issued under Sr. No.27/2024 dated 20.01.2024 whereby you were directed to appear before the undersigned at Directorate of SIA, CID Hqrs. J&K, near Arts Emporium Srinagar on 24.01.2020 at 11:30 AM. In reply to the said notice dated 23.01.2024 submitted by you, you have requested for deferring the date of your required presence by atleast one month on health grounds.

As such conceding to your request, you are now directed to appear before me at Directorate of SIA, CID Hqrs. J&K, near Arts Emporium Srinagar on 27th of February-2024 at 11:30 AM.

You are directed to comply with all and/or the following directions:

- a) You will not commit any offence in future
- b) You will not tamper with the evidences in the case in any manner whatsoever.
- c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.
- d) You will appear before the Court as and when required/directed.

- e) You will join the investigation of the case as and when required and will cooperate in the investigation.
- f) You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.
- g) You will produce all relevant documents/material required for the purpose of investigation.
- h) You will render your full co-operation/material required for the purpose of investigation.
- i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.
- j) Any other conditions, which may be imposed by the Investigating Officer as per the facts of the case.

Failure to attend/comply with the terms of this Notice can render you liable for arrest under section 41A(3) and (4) of CrPC.”

57. It is being said that on 27.02.2024, the petitioner was questioned.

58. On 01.03.2024, another notice under Section 41A Cr.P.C. was served upon the petitioner to appear before SSP (FIU) CID Headquarters, near Arts Emporium, Srinagar, on 05.03.2024 at 11.30 AM, which is relevant to be reproduced herein:

“Notice Under Section 41A CrPC

Sr.No.163/2024 Police Station: SIA Kashmir

Date: 01.03.2024

To,

Shri Mian Abdul Qayoom
S/O Shri Mian Abdul Rahim
R/O Sanat Nagar Srinagar
A/P Bulbul Bagh, Barzullah, Srinagar

Notice under Section 41A CrPC

In exercise of the powers conferred under subsection (1) of section 41 A Cr.PC, I hereby inform you that during the investigation of the Case FIR No.62/2020 dated 24.09.2020 U/S 302 IPC 7/25 IAA 16/18/20/39 UAPA at Police Station Lalbazar Srinagar now SIA Kashmir, it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances, from you in relation to the present investigation. Hence you are directed to appear before me at Directorate of SIA, CID Hqrs. J&K, near Arts Emporium Srinagar on 05.03.2024 at 11:30 AM.

You are directed to comply with all and/or the following directions:

- a) You will not commit any offence in future
- b) You will not tamper with the evidences in the case in any manner whatsoever.
- c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.
- d) You will appear before the Court as and when required/directed.
- e) You will join the investigation of the case as and when required and will cooperate in the investigation.
- f) You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.
- g) You will produce all relevant documents/material required for the purpose of investigation.

- h) You will render your full co-operation/material required for the purpose of investigation.
- i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.
- j) Any other conditions, which may be imposed by the Investigating Officer as per the facts of the case.

Failure to attend/comply with the terms of this Notice can render you liable for arrest under section 41A(3) and (4) of CrPC.”

59. On 30.01.2024, the petitioner is stated to have been quizzed.

60. On 14.06.2024, one more notice was issued to the petitioner, requiring him to cause his appearance before the respondents on 20.06.2024.

“Notice Under Section 41A CrPC

Sr.No.409/2024

Police Station: SIA Kashmir

Date: 20.01.2024

To,

Shri Mian Abdul Qayoom
S/O Shri Mian Abdul Rahim
R/O Sanat Nagar Srinagar
A/P Bulbul Bagh, Barzullah, Srinagar

Notice under Section 41A CrPC

In exercise of the powers conferred under subsection (1) of section 41 A Cr.PC, I hereby inform you that during the investigation of the Case FIR No.62/2020 dated 24.09.2020 U/S 302 IPC 7/25 IAA 16/18/20/39 UAPA at Police Station Lalbazar Srinagar now SIA Kashmir, it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances, from you in relation to the present investigation. Hence you are directed to appear before me at Directorate of SIA, CID Hqrs. J&K, near Arts Emporium Srinagar on 20.06.2024 at 11:30 AM.

You are directed to comply with all and/or the following directions:

- a) You will not commit any offence in future
- b) You will not tamper with the evidences in the case in any manner whatsoever.
- c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.
- d) You will appear before the Court as and when required/directed.
- e) You will join the investigation of the case as and when required and will cooperate in the investigation.
- f) You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.
- g) You will produce all relevant documents/material required for the purpose of investigation.
- h) You will render your full co-operation/material required for the purpose of investigation.
- i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.

- j) Any other conditions, which may be imposed by the Investigating Officer as per the facts of the case.
Failure to attend/comply with the terms of this Notice can render you liable for arrest under section 41A(3) and (4) of CrPC."

61. According to the respondents, on 20.06.2024 the petitioner was questioned, but he remained defiant, non-cooperative and unrevealing.

62. Finally, the petitioner was arrested on 25.06.2024. The grounds of arrest, which is part of the writ petition, was communicated to him, giving therein the grounds for his arrest. It would be appropriate to reproduce certain portion of the 'Grounds of Arrest' hereunder:

"Grounds of arrest

Case FIR No.62/2020 U/S 302 IPC 7/27 IAA 13/16/18/20/39 UAPA P/S Lal Bazar/ Now SIA Kashmir.

- i) Whereas, the instant case was registered upon a reliable information received by SHO P/S Lal Bazar Srinagar that on 24.09.2020 about 1830 hrs, some unknown terrorists fired upon one, Advocate Babar Qadri S/O Mohammad Yaseen Qadri R/O Zahidpora Hawal at his residence Zahidpora who has been shifted in injured condition to SKIMS Soura and that the said terrorists have fled from spot. Initially the investigation was taken over Finally, the case was transferred from Distt Police Srinagar to SIA J&K By PHQ J&K Srinagar
- ii) Whereas, during the course of investigation, Some of the important witnesses were apprehensive about their security and as such, their statements were recorded as Protected Witnesses. Moreover, keeping the security scenario in Kashmir and apprehensions of the victim family, we approached the Hon'ble High Court of J&K and got the trial of the case and other connected proceedings transferred from NIA Court Srinagar to NIA Court Jammu.
- iii) Whereas, on the basis of the investigation so far conducted, offences U/S 302/120-B IPC, 13, 18, 18-B, 38, 39 UAPA stand established against you Mian Abdul Qayoom for the murder of Advocate Babar Qadri on 24.09.2020. There is evidence in support of your involvement in this case.
- iv) Whereas, your arrest is necessary for investigation of the case....."

63. On 26.06.2024, the petitioner was produced before the court of Special Judge NIA (3rd Additional Sessions Judge) J&K at Jammu (court below) in connection with the aforesaid FIR No.62/2020, for remanding him to police custody for 15 days. The court below, after perusing the case diary, found that the accused was involved in the case FIR no.62/2020 of police station Lal Bazar/SIA for commission of

offences punishable under Section 302 IPC, 7/27 Arms Act, 13, 16,18,20,39, UA(P) Act. When petitioner/accused stated that he was not provided the grounds of arrest, the Chief Investigating Officer (CIO) contested this submission of accused/petitioner by averring that the entire proceedings had been video-graphed wherein it was evident that the accused had been informed regarding the grounds of arrest and the recording of the same was part of the case file. Upon this, the court below perused the CD file, which revealed that the entire arrest proceedings had been video-graphed and was part of the record and the grounds of arrest had also been provided to the accused in the open court. The court below observed that since the investigation of the case was at a crucial stage, as such, the accused was remanded to police custody till 01.07.2024.

If that being the position, then the respondents have followed and complied with the requirements as enshrined under Article 22(1) of the Constitution of India, read with Section 50 Cr.P.C., Section 43B of UAPA.

64. When on 01.07.2024, the accused/petitioner was produced before the court below, the respondent/CIO sought further ten days' police remand of the accused. The accused/petitioner refused the services of the Legal Aid Defence Counsel because he stated that he being himself a practicing lawyer, would himself oppose the application for extension of the police remand. Resultantly, the accused/petitioner was provided copy of the application in the open court and he was also given sufficient time to go through it. He resisted the extension application of the police remand. All the contentions of the accused/petitioner were refuted by prosecution. The court below, upon going through the case-

diary, noticed that investigation of the case vis-à-vis accused/petitioner was still at initial stage and, therefore, his further detention in the custody of police was necessary as investigation agency was required to be afforded an opportunity to elicit the possible information from accused for further progress of the investigation. The court below remanded the accused to the police custody till 06.07.2024. The court below, however, also directed the respondent/SIA to subject the accused/petitioner to the medical-examination and provide him the adequate medical-care.

65. On 06.07.2024, the respondent/SIA sought further 15 days' judicial remand of accused. The accused/petitioner did not oppose the prayer of respondent/SIA for remanding him to judicial custody, but he insisted that his lodgment should be at Central Jail, Kot Bhalwal, Jammu, for the reason that the better medical-care facilities were available in the said jail. The CIO tendered the assurance that the adequate medical care would be provided to the accused/petitioner. The accused/petitioner was, accordingly, remanded to the judicial custody till 20.07.2024.

This important aspect of the matter is to be looked into. The petitioner has not objected prayer of respondents for remanding him to judicial custody. He even insisted that his lodgement should be at Central Jail, Kot Bhalwal, Jammu, so as to have a better medical-care facilities. On this plea of the petitioner, the CIO assured that adequate medical care would be provided to the accused/petitioner.

66. On 20.07.2024, the accused/petitioner was further remanded to judicial custody till 08.08.2024. On the said date, the accused/petitioner was further remanded to judicial custody till 22.08.2024, on which date judicial remand was further extended till 04.09.2024, which was again extended up to 19.09.2024.

67. It is vehemently argued by the learned counsels for the petitioner that when the petitioner was complying with the notices issued to him under Section 41A Cr.P.C., the respondents were not justified in arresting him that too without recording any reason against the specific requirement of subsection (3) of Section 41A Cr.P.C., thereby rendering his arrest illegal and bad at law.

68. Reference has been made by the counsels for petitioner to the judgment of the Supreme Court in ***Prabir Purkayastha*** (supra) as according to them respondents have not followed the standards laid down therein while making arrest of petitioner in connection with the case FIR no.62/2020 which relates to death of an Advocate. According to petitioner, the grounds of arrest do not show any basic facts to arrest him. There is no doubt that the judgement in ***Prabir Purkayastha*** (supra) has laid down standards as is being vehemently argued by the learned counsels for the petitioners. In that case the Supreme Court at paragraph 15 has made reference to another judgement of the Supreme Court passed in the case of ***Pankaj Bansal*** (supra), and reproduced its paragraph 32, 36 to 39, which are reproduced hereafter:

“15. In the case of Pankaj Bansal(supra), this Court after an elaborate consideration of the provisions contained in PMLA, CrPC and the constitutional mandate as provided under Article 22 held as below: -

“32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, 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. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose.

It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail.

The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail.

To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002.

It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

36. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle.

Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned.

Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Noncompliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* (supra).

Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.

37. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji* (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but

it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose.

Further, in the event their grounds of arrest were equally voluminous, it would be wellnigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her.

The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.

38. We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation.

In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.

The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants.

As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002.

Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained."

69. The Supreme Court in **Pankaj Bansal** (supra) has said 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 as this being the fundamental right guaranteed to the arrested person and that the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose.

It cannot be heard saying from the petitioner that he was not informed as soon as he was arrested about the grounds of arrest.

70. It was found by the Supreme Court in ***Prabir Purkayastha*** (supra) that the 'memo of arrest' in that case did not indicate the grounds of arrest as 'memo of arrest' simply set out the reasons for arrest which were formal in nature and could be generally attributed to any person arrested on accusation of an offence whereas the 'grounds of arrest' would be personal in nature and specific to the person arrested. The Supreme Court reproduced the memo of arrest in paragraph 38, which for facility of reference is hereunder:

"38. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column No. 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the 'reasons for arrest' which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the 'grounds of arrest' would be personal in nature and specific to the person arrested.

"9. Reason for arrest

- a. Prevent accused person from committing any further offence.
- b. For proper investigation of the offence.
- c. To prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner.
- d. To prevent such person from making any inducement threat or promise to any person acquainted the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer.
- e. As unless such person is arrested, his presence in the Court whenever required cannot be ensured."

71. In the context of above, insofar as case in hand is concerned, it is worthwhile to be seen that when first notice under section 41A Cr.P.C.

dated 20.01.2024 was issued and served upon the petitioner, it was so issued in the following manner:

“Notice Under Section 41A CrPC

Sr.No.27/2024

Police Station: SIA Kashmir

Date: 20.01.2024

To,

Shri Mian Abdul Qayoom
S/O Shri Mian Abdul Rahim
R/O Sanat Nagar Srinagar
A/P Bulbul Bagh, Barzullah, Srinagar

Notice under Section 41A CrPC

In exercise of the powers conferred under subsection (1) of section 41 A Cr.PC, I hereby inform you that during the investigation of the Case FIR No.62/2020 dated 24.09.2020 U/S 302 IPC 7/25 IAA 16/18/20/39 UAPA at Police Station Lalbazar Srinagar now SIA Kashmir, it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances, from you in relation to the present investigation. Hence you are directed to appear before me at Directorate of SIA, CID Hqrs. J&K, near Arts Emporium Srinagar on 24.01.2024 at 11:30 AM.

You are directed to comply with all and/or the following directions:

- a) You will not commit any offence in future
- b) You will not tamper with the evidences in the case in any manner whatsoever.
- c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.
- d) You will appear before the Court as and when required/directed.
- e) You will join the investigation of the case as and when required and will cooperate in the investigation.
- f) You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.
- g) You will produce all relevant documents/material required for the purpose of investigation.
- h) You will render your full co-operation/material required for the purpose of investigation.
- i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.
- j) Any other conditions, which may be imposed by the Investigating Officer as per the facts of the case.

Failure to attend/comply with the terms of this Notice can render you liable for arrest under section 41A(3) and (4) of CrPC.”

72.If we compare the ‘*arrest of memo*’ issued in the case of ***Prabir Purkayastha*** (supra), already reproduced herein before, even with the first ‘*notice under section 41A Cr.P.C.*’ issued by respondents in the present case to the petitioner, it can be seen and unhesitatingly said that, in the instant case, the respondents have had followed and complied

with the provisions of law governed under and in terms of the Code of Criminal Procedure.

73. Besides that, in the case in hand, when the petitioner was arrested, he was conveyed and furnished the elaborate ‘grounds of arrest’, which on its perusal are self-explanatory and need not be deliberated upon here as being personal to the petitioner and sensitive, albeit certain portion thereof has been reproduced hereinbefore for facility of reference to show that grounds of arrest are not similar to the ***Prabir Purkayastha*** (supra) relied upon by the learned counsels for the petitioner and/or the grounds of arrest are not merely containing general allegations as had been done in the case of ***Prabir Purkayastha*** (supra).

74. The reason of conveying grounds of arrest is to enable the person to be prepared for further course of action including seeking bail.

75. In paragraph 38 in ***Pankaj Bansal*** (supra), it is noted by the Supreme Court that the grounds of arrest recorded by the officer would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

76. In the present case, perusal of ‘grounds of arrest’ give sensitive information, that is why all the words/expressions have not been given/ reproduced elsewhere in this judgement.

77. Article 22(1) of the Constitution of India provides 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 nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. Article 22(1), thus, envisages conveying of information to the person, who is arrested, about the grounds for such arrest at the earliest possible moment.

78. Another contention raised by them is that the grounds of arrest served on petitioner are not the 'grounds of arrest' as per standards laid down by the Supreme Court in ***Prabir Purkayastha*** (supra).

79. The counsels for the petitioners have also placed reliance on the case of ***Vihaan Kumar*** (supra). In the said case, the Supreme Court has rendered its judgement on 7th February 2025. The said case revolved around Vihaan Kumar's arrest in connection with FIR No.121/2023 registered under Section 409, 420, 467, 468, 471, 120-B of IPC. He contended that he was neither informed of the grounds of his arrest nor produced before a Magistrate within 24 hours violating Article 22(2) and Section 57 Cr.P.C. The Supreme Court observed that Vihaan Kumar was not informed of the grounds of his arrest, which was a mandatory constitutional requirement. The Supreme Court cited the precedents of ***Pankaj Bansal*** and ***Prabir Purkayastha*** (supra) reaffirming the arrest as illegal if grounds of arrest not communicated. In the aforesaid case of Vihaan Kumar, he was handcuffed and chained to hospital bed while undergoing treatment at PGIMS, following his arrest.

80. On the contention of arresting a person without warrant, the Supreme Court in **Vihan Kumar** (supra) after referring to the provisions of Section 41 Cr.P.C., made the following observations in the paragraph 08:

“8. In this case, a commission of a cognizable offence punishable with imprisonment for a term which may extend to more than seven years has been alleged against the appellant. Hence, clause (ba) of sub-Section (1) of Section 41[clause (c) of sub-Section (1) of Section 35 of the BNSS] will apply. Therefore, a police officer can arrest a person without an order of a Magistrate or warrant subject to the following conditions:

- a) Credible information has been received against the person that he has committed a cognizable offence punishable with imprisonment for more than seven years and
- b) The police officer has reason to believe on the basis of the information received that such a person has committed the offence.

Hence, a police officer cannot casually arrest a person against whom the commission of an offence punishable with imprisonment for more than seven years is alleged. He can arrest provided twin conditions in clause (ba) are satisfied. The emphasis is on “credible information”. He cannot arrest a person under clause (ba) unless credible information is received.”

81. The Supreme Court observed that clause (ba) of Subsection (1) of Section 41 Cr.P.C. would apply and therefore a police officer can make arrest of a person without an order of a Magistrate or without a warrant, but such arrest should be made after following twin conditions, which are that there should be credible information received against the person that he has committed a cognizable offence punishable with imprisonment for more than seven years; and the police office has reason to believe on the basis of the information received that such a person has committed the offence. Consequently, it has been held by the Supreme Cour that a police officer cannot casually arrest a person against whom the commission of offence punishable with imprisonment for more than seven years is alleged. The police officer can arrest a person provided the conditions contained in clause (ba) are satisfied and the emphasis is on “credible information” and that the

police officer cannot make arrest of a person under clause (ba) unless the credible information is received.

82.If we examine the instant case under the prism of the paragraph 08 of ***Vihaan Kumar's*** case, it is palpably evident that the respondents have had firm and credible information against the petitioner. In this regard, appropriate it would be to reproduce the certain averments of the Objections filed by the respondents on 30.10.2024 hereunder:

"5. During further investigation supplementary statements of the father of the deceased Mohammad Yaseen Qadri and his brother Zaffar Qadri were recorded and the investigation was transferred to SIA J&K vide PHQ J&K's order No. 2152 of 2023 dated 20-07-2023 which was followed by SIA J&K Hqr's order No. DIG/ SIA/ FIR-62 / 2020/23/ 1754-63 dated 24.07.2023 under which a team of officers/officials were formed to further investigate the case. The accused petitioner did not cooperate during the investigation and as such the respondents were constrained to arrest him and subsequently produce him before the competent court and seek his physical remand.

.....

9.....The fact of the matter is that this SIT had taken over the investigation of the case on 26/07/2023. After investigating various aspects for about 6 months, the SIT gathered sufficient evidence that established beyond doubt the involvement of the petitioner in the case. It was only at that stage that the petitioner was served with a Notice U/S 41-A CrPC vide No.27/2024 dated 20.01.2024 with the directions to appear before the respondent on 24/01/2024 at Directorate of SIA, CID Hqrs, J&K, Srinagar at 11:30 AM.

10-12It is submitted that the Petitioner was arrested on 25/06/2024, however, the grounds of arrest were communicated to him at the time of his arrest. The petitioner has in Para No.8 himself admitted of being made aware about the further investigation based on the application of father of deceased advocate Baber Qadiri through 'grounds of arrest' furnished to him. the whole procedure was video-graphed and all the necessary documents, including IIF Forms, were prepared and enclosed with the CD File. The Petitioner was got medically examined and was produced before the Special Judge (NIA) as required under rules. Furthermore, the petitioner was within a period of 24 hours as mandated under Section 167 CrPC read with 43 D UAPA produced before NIA Judge Jammu.

Reply to Grounds

.....The investigating officer has a reasonable belief that the digital analysis of the data received from the "electronic examiners" notified under Section 79-A I.T. Act will offer credible leads in terms of corroborative direct or indirect links with the terrorists in the killing of Adv. Baber Qadiri, which comes sine-quo-non for proper investigation of the case. Similarly, the Financial investigation of the assets of the accused is also very important as lot of money is suspected to have exchanged hands directly in cash or otherwise and needs to be thoroughly probed. This is important to rule out the possibility of terror funding qua the killing of Adv. Baber Qadiri and also other related offences...."

83.The stand of the respondents in their objections is that SIT had taken over the investigation of the case on 26.07.2023. After investigating

various aspects, the SIT gathered sufficient evidence that established beyond doubt the involvement of the petitioner in the case. It was only at that stage that the petitioner was served with a Notice U/S 41-A CrPC vide No.27/2024 dated 20.01.2024 with the directions to appear before the respondent on 24/01/2024 at Directorate of SIA, CID Hqrs, J&K, Srinagar at 11:30 AM. The respondents' further stand is that petitioner was arrested on 25.06.2024. The grounds of arrest were communicated to him at the time of his arrest and that the petitioner has himself in Para 8 of his petition admitted that he was made aware about the further investigation based on the application of the father of deceased Advocate *Babar Qadiri* through 'grounds of arrest' furnished to him. It is the claim of the respondents that the whole procedure was video-graphed. The petitioner was got medically examined and was produced before the Special Judge (NIA). Furthermore, the petitioner was within a period of 24 hours as mandated under Section 167 Cr.P.C. read with Section 43 D of UAPA produced before NIA Judge Jammu.

84. It is vehement submission of the respondents in their Objections that the investigating officer has a reasonable belief that the digital analysis of the data received from the "electronic examiners" notified under Section 79-A I.T. Act will offer credible leads in terms of corroborative direct or indirect links with the terrorists in the killing of Advocate *Babar Qadri*, which comes sine-quo-non for proper investigation of the case. The financial investigation of the assets of the accused is also very important as lot of money is suspected to have exchanged the hands directly in cash or otherwise and needs to be thoroughly probed as this

is important to rule out the possibility of terror funding qua the killing of Advocate Babar Qadiri and also other related offences.

85.A contention during the course of arguments of the case was made that as to how the petitioner was connected with the allegations made mention of in FIR in question is not coming to fore from perusal of grounds of arrest or remand orders. It had also been stated during course of arguments that CIO has introduced a new excuse, “viz. financial investigation regarding assets allegedly acquired by the accused” for the very first time in the remand application dated 08.08.2024 and the Trial Court passed the remand order dated 08.08.2024 in a mechanical manner not even applying hind mind to the fact that the investigation of the case is about the murder of the advocate and there was no justification for remand by introducing a new unconnected ground of financial assets of the petitioner in the remand application dated 08.08.2024 for the very first time after 44 days of custody.

86.It is true that the respondents in their objections have, inter alia, stated that the financial investigation of the assets of the accused is also very important as lot of money is suspected to have exchanged the hands directly in cash or otherwise and needs to be thoroughly probed as this is important to rule out the possibility of terror funding qua the killing of Advocate Babar Qadiri and also other related offences.

87.At this stage, it would not be appropriate to deep delve into the merits/facts of the case because it is within the domain of the Trial Court to examine the matter as the charge-sheet against the present petitioner has been filed before the Trial court on 19.12.2024 and all these aspects of the matter can very well be taken up by the petitioner

before the Trial Court. Reference in this regard is appropriate to be made to paragraphs 43 and 44 of ***Prabir Purkayastha*** (supra) which are reproduced hereunder: -

“43. Shri Sibal had also argued that the appellant was arrested without any indication as to how he was connected with the alleged incorrect map of India. He also urged that the FIR refers to farmers' agitation without justifying as to how the appellant was connected with those incidents. He contended that not a single incident is mentioned in the FIR or the remand application which can give rise to the offences alleged and that the FIR was registered without any plausible reason or basis just to victimise the appellant.

44. We do not feel persuaded to examine these aspects at this stage because the same would require entering into the merits of the case. This would be within the domain of the Court examining the matter after the filing of the charge sheet. The core issue in this appeal is regarding the illegality of the process whereby the appellant was arrested and remanded to police custody which does not require examining the merits of the case.” (emphasis supplied)

88. From the above discussion, it is deducible that the case of ***Prabir Purkayastha*** (supra) and all other cases relied upon by the counsels for the parties elicit an important issue requiring the ways and means to be followed for protecting personal liberty at the time of arrest, particularly when the proceedings are governed by special statutes like PMLA and UAPA. Article 22(1) of the Constitution of India provides 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. Section 19(1) of PMLA provides that the authority concerned may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. Section 43B(1) of UAPA provides that any officer arresting a person under Section 43A shall, as soon as may be inform him of the grounds for such arrest. Article 22(5) of the Constitution of India envisages that when any person is preventively detained, the authority making the preventive detention shall, as soon as may be, communicated to such person the grounds on which the order has been made. Section 50(1) Cr.P.C. says 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 for such arrest.

89. In the present case, there has been disagreement between the counsel for the parties about the application, non-application or similarity of Article 22(1), Article 22(2) of the Constitution of India, Section 19(1) PMLA, 43A, 43B of UAPA, 41, 41A of the Code of Criminal Procedure. This contention of counsel for parties has already been set at rest by the Supreme Court in the ***Prabir Purkayastha*** (supra), by saying that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the UAPA that can persuade it to take a view that the interpretation of the phrase ‘inform him of the grounds for such arrest’ made by the Supreme Court in the case of ***Pankaj Bansal*** (supra) should not be applied to an accused arrested under the provisions of the UAPA. The Supreme Court has also observed that the provision regarding communication of grounds of arrest to a person arrested contained in Section 43B(1) of UAPA is verbatim to Section 19(1) of PMLA. As regards the plea that there are some variations in the overall provisions contained in Section 19 of PMLA and Section 43A and 43B of UAPA, the Supreme Court has said that it would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of UAPA at the earliest because the requirement to communicate grounds of arrest is the same in both the statutes. In point of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the

Constitution of India. Thus, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on the charges of committing an offence either under PMLA or under UAPA, have to be uniformly construed and applied. The Supreme Court has also noted that the modified application of Section 167 Cr.P.C. is also common to both the statutes. It has been held by the Supreme Court that the interpretation of the statutory mandate laid down in the case of **Pankaj Bansal** (supra) on the aspect of informing the arrested person the grounds of arrest in writing has to be applied simultaneously to a person arrested in a case registered under the provisions of the UAPA. Any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to arrested person as a matter of course and without exception at the earliest because the purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

90. The Supreme Court has also in **Prabir Purkayastha** (supra) (2024 INSC 414), at paragraph 29, ruled that the language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds are exactly identical. Neither of the constitutional

provisions require that the ‘grounds’ of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned.

91.If the above findings and rulings of the Supreme Court are applied to the case in hand, there is no denial to the fact that the petitioner has been informed of the grounds of arrest in writing and it is the petitioner, who has himself placed on record copy of the grounds of arrest. Besides, providing of grounds of arrest is also evident from the first remand order of the court below. Therefore, writ petition insofar as it throws challenge to his arrest or to the grounds of arrest is liable to be dismissed.

92. There had been a contention that investigation cannot be permitted to continue after submission of charge-sheet. It is pertinent to mention here that there is no restriction or bar for further investigation even after filing of a charge sheet. The hands of the investigating agency or the Court should not be tied down on the ground that further investigation may delay the trial as the ultimate object is to arrive at the truth. Subsection (8) of Section 173 Cr.P.C. permits further investigation and even de hors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted. Reference is made to ***Hasanbhai Valibhai Qureshi v. State of Gujarat***

and others, (2004) 5 SCC 347. Recently in SLP(Criminal) No.7968 of 2016 titled as *Rampal Gautam and others v. State by Mahadevapura police station and another*, vide judgement dated 28th January 2025, the Supreme Court has said that further investigation even after filing of charge sheet and commencement of the trial is permissible in law, because prime consideration for further investigation is to arrive at the truth and to do real substantial justice. Even de hors any direction from the Court, it is open to the police to conduct a proper investigation notwithstanding the fact that the Court has already taken cognizance on the strength of a police report submitted earlier.

93.Insofar as remand orders are concerned, those have been reproduced and discussed in detail herein before. They are well reasoned, need not be interfered with.

94.Otherwise also, the instant writ petition has become infructuous the moment charge-sheet against the petitioner came to be filed.

95.In view of above, the instant writ petition is **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

96.The petitioner shall be at liberty to seek bail before the court below.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
19/02/2025
'Manzoor'

Whether approved for reporting? Yes/No.