

Written Grounds of Arrest: From Formality to Constitutional Imperative



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The Supreme Court's recent ruling in *Mihir Rajesh Shah v. State of Maharashtra*¹ marks a decisive constitutional shift: grounds of arrest must now be furnished in writing, in a language understood by the arrestee, as an uncompromising requirement of Article 22(1)² of the Constitution of India, 1950. Non-compliance is not a curable irregularity; it renders the arrest and subsequent remand illegal, entitling the person to immediate release. This requirement is no longer confined to special statutes but applies across the board to all offences covered under the ambit of *Bharatiya Nyaya Sanhita, 2023* (BNS), the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS) and all special laws.

This article traces the evolution of this mandate, situates *Mihir Rajesh Shah* in the broader constitutional landscape, and analyses its implications for policing and rights protection in India.

Constitutional Foundation: Article 22(1) as a safeguard

Article 22(1) of the Constitution guarantees that no person arrested shall be detained in custody without being informed, as soon as may be, of the grounds of arrest and shall not be denied the right to consult and be defended by a legal practitioner of their choice. Read with Article 21's guarantee that no person shall be deprived of life or personal liberty except according to procedure established by law, the obligation to inform grounds of arrest is no longer a procedural nicety, but it is part of the substantive content of due process.

The Constituent Assembly consciously included Article 22 to check the legacy of arbitrary colonial policing. Dr B.R. Ambedkar underlined that a citizen must know why he is being arrested, thereby enabling him to challenge the arrest and seek legal assistance. This vision, initially diluted in practice, has progressively been restored and strengthened by the Supreme Court's jurisprudence.

From Oral Intimation to Written Communication; Early Foundations and Restraint on Arbitrary Arrests

In *Gauri Shankar Jha v. State of Bihar*³, the Supreme Court stressed that timely disclosure of grounds was necessary to enable the arrestee to exercise the right to legal consultation. Though the focus was still on promptness rather than form, the Court began to move away from a purely formalistic view of Article 22(1).

A major turning point came with *Joginder Kumar v. State of U.P.*⁴, where the Court held that arrest is not to be made in a routine manner

¹2025 SCC OnLine SC 2356

²https://ddashboard.legislative.gov.in/sites/default/files/coi/COI_2024.pdf (Page 82)

³(1972) 1 SCC 573

⁴(1994) 4 SCC 260

and that the person arrested must be informed of the grounds “forthwith”. While the Court did not yet insist on written communication, it recognised that meaningful intimation of grounds is integral to preventing harassment and arbitrary detention.

The D.K. Basu Framework: Procedural Safeguards with Teeth

The transformative judgment in *D.K. Basu v. State of West Bengal*⁵ responded to systemic custodial violence by laying down binding guidelines for arrest and detention. Among these was the insistence on a memo of arrest attested by a witness, recorded with date and time, and countersigned by the arrestee where possible. Though Article 22(1) was not yet read as an absolute written requirement, *D.K. Basu* effectively constitutionalised written documentation of arrest events, warning that non-compliance would attract contempt.

These guidelines, integrated into police manuals nationwide, signalled that documentation is a constitutional tool of accountability, not a mere bureaucratic formality.

Curbing Mechanical Arrests: Arnesh Kumar

With *Arnesh Kumar v. State of Bihar*⁶, the Court confronted the widespread abuse of arrest powers in offences punishable with imprisonment up to seven years. It mandated strict compliance with Section 41 and Section 41A of the Code of Criminal Procedure, 1973, and held that the police must record reasons for arrest as well as reasons for not arresting.

Significantly, *Arnesh Kumar* emphasised that the arrestee must be informed of the grounds of arrest in a language he understands, and that this intimation should be specific and not mechanical. While it still treated written communication as preferable rather than absolute, the logic of the judgment clearly foreshadowed that oral reading alone is inadequate in a rights-centric framework.

The Special Statute Phase: PMLA and UAPA

The next phase of the Court’s evolution came through special statutes perceived as “draconian”, particularly the Prevention of Money Laundering Act, 2002 (PMLA) and the Unlawful Activities (Prevention) Act, 1967 (UAPA).

In *Pankaj Bansal v. Union of India*⁷, considering Section 19 of PMLA, the Supreme Court held that mere oral reading of grounds of arrest is insufficient. The Court reasoned that such a practice leaves compliance vulnerable to factual disputes and undermines the arrestee’s ability to effectively challenge the arrest or seek bail under the stringent twin

⁵(1997) 1 SCC 416

⁶(2014) 8 SCC 273

⁷(2024) 7 SCC 576

conditions of PMLA. Written grounds were, therefore, held to be mandatory, not optional.

This reasoning was extended and sharpened in *Prabir Purkayastha v. State (NCT of Delhi)*⁸, dealing with arrests under the UAPA. The Court unequivocally held that Article 22(1) “admits of no exception”, and that non-supply of written grounds at the earliest opportunity renders the arrest and detention illegal, even if the arrestee is later produced before a magistrate. The Court quashed the detention, affirming that production before a court cannot cure the foundational illegality of non-compliance with Article 22(1).

Transitional Nuance: Vihaan Kumar

In *Vihaan Kumar v. State of Haryana*⁹, the Court appeared to adopt an intermediate position. It held that while written communication of grounds is the ideal mode to secure the object of Article 22(1), minor practical delays in reducing grounds to writing may not automatically vitiate the arrest, provided the arrestee is informed “forthwith” and written grounds follow within a reasonable period, particularly before remand.

Although *Vihaan Kumar* did not dilute the normative force of written communication, it left some room for argument on what constitutes “reasonable time,” thereby preserving a narrow window for police exigencies.

The Mihir Rajesh Shah Ruling: Universal and Uncompromising

The judgment in *Mihir Rajesh Shah v. State of Maharashtra* closes that window and universalises the written mandate. A two-judge bench comprising B.R. Gavai, C.J.I. and Augustine George Masih, J. examined arrests made under Section 47 of the BNSS (successor to Section 50 of the CrPC, 1973) and held as follows:

- Written grounds of arrest are mandatory in all cases, irrespective of the nature of the offence or the statute invoked – whether under BNS, BNSS or special laws such as UAPA, PMLA, etc.
- Grounds must be supplied in writing, in a language understood by the arrestee, so that the right to consult and be defended by a legal practitioner is effectively realised.
- Mere oral reading of grounds, even if contemporaneous with arrest, does not satisfy Article 22(1), because it fosters “word against word” disputes, undermining judicial scrutiny.
- The requirement must be complied with “forthwith”, which the Court interprets as within a reasonable time, ordinarily prior to the first remand hearing. Failure to do so vitiates the arrest

⁸(2024) 8 SCC 254

⁹(2025) 5 SCC 799

and remand, entitling the arrestee to immediate release.

- While the arrest in the lead case concerning a fatal accident was held illegal due to non-supply of written grounds, the Court tailored relief in connected matters (including bail) without invalidating the entire investigation, thus avoiding collateral prejudice to legitimate probes.

Crucially, Mihir Rajesh Shah explicitly rejects any offence-based or statute-based carve-outs. What began as a strict requirement in special laws like PMLA and UAPA is now entrenched as a universal constitutional command for all arrests in India.

Implications for Police, Magistrates and Accused Persons

The decision has profound operational and normative consequences.

First, for law enforcement, it elevates documentation from a procedural obligation to a constitutional duty. Police officers must:

- Prepare written grounds of arrest as a matter of course, tailored to the specific facts and statutory provisions.
- Ensure that the grounds are translated or explained in a language the arrestee understands, with acknowledgment or endorsement wherever possible.
- Supply such written grounds well before remand so that magistrates can meaningfully assess legality and necessity of custody.

Second, magistrates can no longer treat production of an accused as curing earlier lapses. They must insist on seeing and recording that written grounds have been supplied, and treat absence or inadequacy as a serious constitutional defect.

Third, for arrestees and defence counsel, written grounds become a powerful tool:

- They strengthen challenges to remand under provisions akin to Section 47(2) BNSS.
- They provide concrete material to argue that the arrest did not meet thresholds of necessity or reasonable suspicion, informed by precedents like *Joginder Kumar* [(1994) 4 SCC 260], *D.K. Basu* [(1997) 1 SCC 416] and *Arnesh Kumar* [(2014) 8 SCC 273].
- They enhance transparency in special law cases governed by *Pankaj Bansal* [(2024) 7 SCC 576] and *Prabir Purkayastha* [(2024) 8 SCC 254], where liberty stakes are particularly high.

Operationally, challenges will arise, especially in multilingual and resource-constrained settings. Police units will need training, templates and translation support to comply meaningfully. However, this is a structural adjustment mandated by constitutional supremacy, not an optional reform.

A Rights-Centric Policing Paradigm

Viewed in its entirety, the jurisprudence from Joginder Kumar through D.K. Basu, Arnesh Kumar, Pankaj Bansal, Prabir Purkayastha, Vihaan Kumar and now Mihir Rajesh Shah charts a clear trajectory: from discretionary, informal practices to strict, record-based, rights-centric arrest procedures.

The insistence on written grounds:

- Reduces information asymmetry between the State and the individual.
- Facilitates judicial oversight, by allowing courts to examine contemporaneous material rather than relying on ex post facto justifications.
- Protects vulnerable and marginalised groups, who are disproportionately subjected to arbitrary arrests and custodial abuse.
- Aligns India with global due process norms, which increasingly favour documented notification of rights and grounds of detention, moving beyond purely oral warnings.

Ultimately, the requirement to furnish written grounds of arrest is no longer a matter of police convenience or judicial discretion. It stands as a non-negotiable constitutional imperative, central to the protection of personal liberty in Indian criminal procedure. The onus now lies on investigative agencies and courts to internalise and enforce this mandate, ensuring that the promise of Article 22(1) is not confined to the constitutional text, but is realised in every arrest across the country.