

Arrest, agencies, and criminal courts

The Hindu

Paper - II
(Polity)

Supreme Court did not mince words in May 2024, while delivering two significant judgments that impact the liberty of people accused of criminal offences. The first judgment says that the custody of an accused is not necessary prior to the filing of the charge sheet in certain criminal cases. If the lower courts strictly comply with the directives in this judgment, it would bring relief to investigating agencies.

The second judgment relates to informing an accused of the grounds of arrest in writing. This is a fundamental right under Article 22 of the Constitution. While this judgment was delivered in the context of special statutes — namely, the Prevention of Money Laundering Act (PMLA), 2002, and the Unlawful Activities (Prevention) Act (UAPA), 1967 — it will be relevant to see whether these directives can equally be extended to provisions of the Criminal Procedure Code (CrPC) as far as communication of grounds of arrest is concerned.

Filing of charge sheet:

In *Siddharth v. State of Uttar Pradesh and Another* (2021), the Supreme Court held that it is unnecessary for the investigating officer (IO) to present the accused in custody at the time of filing the charge sheet if the accused has been cooperating in the investigation and if the investigation can be completed without arresting the accused. The Court held that Section 170 of the CrPC does not impose an obligation on the officer-in-charge of a police station to arrest each and every accused at the time of filing the charge sheet. Therefore, it is not justified under law for criminal courts to refuse to accept the charge sheet without the accused person being produced before them. The Court further said that if the charge sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and a suitable order given.

This implies that in bailable cases and in those non-bailable cases in which the IO thinks that the accused will neither abscond nor disobey summons, the IO is not obliged to produce such an accused in custody while filing the charge sheet in court.

However, the reality is that the IOs sometimes struggle to file charge sheets in criminal courts. In cases of riots, when there are a large number of accused people and every accused person released on bail by the police is not present at the time of filing the charge sheet, the charge sheet is not accepted by the court. Sometimes, courts don't accept the charge sheet of cases beyond an arbitrarily fixed number in one day, or after a particular time in a day. The IOs are reluctant to complain about these issues to a Sessions Judge because this might prove counter-productive for other miscellaneous works at the ground level. Though the *Siddharth v. State of Uttar Pradesh* judgment was delivered more than two years ago, the situation does not seem to have changed much.

Grounds of arrest:

In *Pankaj Bansal v. Union of India and Others* (2023), the Supreme Court held that the grounds of arrest must be informed in writing to the accused as a matter of course and without exception, to give true meaning and purpose to the constitutional and statutory mandate of Section 19(1) of the PMLA. Similarly, recently in *Prabir Purkayastha v. State (NCT of Delhi)*, the Court reiterated the ratio of *Bansal* (supra) case and held that the provision of arrest, as far as informing grounds of arrest is concerned, is *pari passu* (equal footing) under the UAPA. The Court held that the 'reasons of arrest' are purely formal parameters which commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be invariably personal and required to contain details which necessitated the arrest of the accused. There-

fore, unless grounds of arrest are informed in writing, arrest and subsequent remand would become invalid in the eyes of law.

Importantly, Section 50(1) of the CrPC also provides that “every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds of arrest”. Therefore, even for offences registered under the Indian Penal Code (IPC), an accused is required to be informed about the grounds of arrest, along with important facts of the case. The burden lies on the prosecution to prove that the statutory provisions have been complied with.

The arrest memo prepared by the IO contains a note which says “the arrested person, after being informed of the grounds of arrest and his legal right, was duly taken into custody”. The arrest memo which is written separately for each accused contains inter alia all sections of offence(s) applied, date of offence, place, and time and date of arrest, and is signed by the IO. It is also counter signed by the arrestee. However, there is no provision in law to provide a copy of this memo to the accused person at the time of his arrest. This becomes more relevant for those who are not named in the First Information Report.

The Court has said that the grounds of arrest must be provided in writing so that the accused person can seek legal counsel and seek bail on the basis of unambiguously stated facts of the case by the investigating agency. If that be so, the ratio of the Bansal case (supra) must equally apply to Section 50(1) of the CrPC, particularly when such a right is held to flow from Article 22 of the Constitution. It will be apposite to amend the law and provide a copy of the arrest memo with some modification to fulfil the constitutional mandate towards an accused person.

Expected Question for Prelims

Que. Consider the following statements:

1. In *Siddharth vs. State of Uttar Pradesh and Others* (2021), the Supreme Court termed the immediate arrest of the accused in every case as an unnecessary step.
2. In *Pankaj Bansal vs. Union of India and Others* (2023), the Supreme Court ruled that the grounds of arrest should be given in writing to the accused.

Which of the statements given above is/are correct?

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| (a) Only 1 | (b) Only 2 |
| (c) Both 1 and 2 | (d) Neither 1 nor 2 |

Answer : C

Mains Expected Question & Format

Que.: Which two important decisions have been given by the Supreme Court recently regarding the custody of the accused in criminal cases? What impact will these decisions have on the liberty of accused persons in criminal cases? Discuss.

Answer's Approach:

- ❖ In the first part of the answer, discuss two important decisions given by the Supreme Court in May 2024 regarding the custody of the accused in criminal cases.
- ❖ In the second part, also discuss what impact these decisions will have on the liberty of persons accused in criminal cases.
- ❖ Finally give a conclusion giving suggestions.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.