



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 20th OF APRIL, 2026

MISC. CRIMINAL CASE No. 53777 of 2025

DHEERAJ KUSHWAH

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Mr. Lokendra Sharivastava - Advocate for the applicant.

Mr. Dinesh Savita - Govt. Advocate for respondent/Sate.

.....
WITH

MISC. CRIMINAL CASE No. 14834 of 2026

SANJAY KUSHWAH

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Mr. Poonam Chandra Soni - Advocate for the applicant.

Mr. Dinesh Savita - Govt. Advocate for respondent/Sate.

.....
ORDER

Since both these applications are arising out of same crime number registered at same police station, therefore, they have been heard together and are being disposed of by this common order.

2. Applicant Dheeraj has filed this first bail application, while applicant Sanjay Kushwaha has filed second bail application



respectively under Section 483 of BNSS for grant of bail relating to Crime No.201/2025 registered at Police Station Lateri, District Vidisha (M.P.) for the offence under Sections 103(1), 238(A) and 61(2)(a) of BNS. First application of applicant Sanjay Kushwaha has been dismissed as withdrawn vide order dated 07.01.2026 passed in M.Cr.C.No.54359/2025.

3. As per the prosecution's story, on 15.07.2025, Sub-Inspector Banwari Lal Siloria of Lateri Police Station acted on a tip-off and reached the forest of village Govindpura, near Sojni Kheda Road. Upon being informed that the deceased, Sanju Lodhi, was a resident of Madhusudangarh, a Merg Intimation (No. 0/25) was recorded on the spot under Section 194 of the BNSS, based on the report of the deceased's brother, Sonu Lodhi.

4. The informant stated that his younger brother, Sanju Lodhi, worked as a conductor on the Bhopal-Chhindwara bus and had been on leave since 02.07.2025 for a wedding. On 12.07.2025, the deceased left home at 10:30 a.m. for the Kamkheda Hanuman Ji Temple. That same evening, at approximately 7:00 p.m., the informant was alerted that a motorcycle resembling his brother's was parked near the Panchmukhi Balaji Temple.

5. Despite a search and a missing person's report filed at Madhusudangarh Police Station, Sanju remained untraceable until 15.07.2025, when his body was discovered under a teak (sago) tree in



the Govindpura forest. The body was found in a mutilated state—specifically the head and chest—with the right toes missing. On the basis of which, aforesaid crime was registered against the present applicants and other co-accused persons.

6. Learned counsel for the applicants submits that the applicants are innocent and have been falsely implicated in the present case. Both applicants have been in custody since 17.07.2025. As the investigation is complete and the charge-sheet has been filed, their further incarceration is unnecessary.

7. The learned counsel presses for bail primarily on three grounds: **firstly**, the grounds of arrest were not mentioned in the arrest memo; **secondly**, the 'last seen' theory is extremely weak and lacks corroboration; and **lastly**, there is no CCTV footage available in the entire case diary to support the prosecution's case.

8. Counsel for the applicants has relied upon the judgment passed by Hon'ble Supreme Court in the case of **Dr. Rajinder Rajan Vs. Union of India and Anr**, passed in SLP (Crl.) No. 3326 of 2026, wherein, Hon'ble Supreme Court, relied the case of **Mihir Rajesh Shah Vs. State of Maharashtra and Anr**, passed in Criminal Appeal No. 2195 of 2025 and **Vihaan Kumar Vs. State of Haryana and Anr**. passed in SLP (Crl.) 13320 of 2024, wherein, the Court has held that *failure to furnish the 'grounds of arrest' to an accused in writing amounts to violation of the fundamental rights guaranteed under Articles 21 and 22 of the*



Constitution of India. It was submitted that where the arrested person has not been informed of the grounds of arrest, the inevitable consequence would be that the arrest is illegal and such person is entitled to be released from custody.

9. In particular, learned senior counsel relied upon the following conclusions recorded in **Mihir Rajesh Shah (supra)**:-

"66. In conclusion, it is held that:

66.1. The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC, 1860 (now BNS 2023);

66.2. The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

66.3. In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the Magistrate.

66.4. In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

10. In such circumstances, they pray for grant bail to the applicants.

11. It is further submitted that the 'last seen' theory is untenable, as no CCTV footage is available in the case diary. This is evidenced by the notice issued under Section 94 of the BNSS by the Office of the SHO, Lateri, District Vidisha. While the notice states that on 12.07.2025 at approximately 10:30 AM, the deceased was seen with the accused persons (including the present applicants), it further admits that the



footage could not be retrieved or saved.

12. It is further submitted that there are no eyewitnesses to the incident, and the applicants have been implicated solely on the basis of last-seen evidence. However, the chain of circumstances is broken; after the applicants were allegedly seen with the deceased, the deceased was seen alive by his brother, Sonu Lodhi, at approximately 11:30 AM, and subsequently by Sonu Kushwaha at around 4:00–5:00 PM on 12.07.2025.

13. Looking to the fact that the deceased was seen alive with other persons after his interaction with the applicants, the 'last seen' theory is not established. In light of these circumstances, the applicants pray for the grant of bail.

14. Counsel for the applicants have drawn the attention of this Court to the query report received from the Forensic Medicine Office. The report provides the following opinions:

1. The skull injuries found during the autopsy do not appear to have been caused by the seized beer bottle.

2. Due to the advanced decomposition of the deceased's neck, only the cervical bones remained intact; the soft tissues were absent. Consequently, it is impossible to determine whether the deceased's neck was stabbed with a knife, though the possibility cannot be entirely ruled out.

3. Stones were recovered that could have caused the



skull injuries. Hair samples were found on one of the stones, which are to be examined by the FSL.

The glass bottle fragments and stones were sealed and handed over to the constable concerned.

15. In the present case, DNA profile was not obtained as the body was found in a dilapidated (highly decomposed) condition. The body was identified solely on the basis of the deceased's clothing, which creates significant doubt regarding the prosecution's case and the identity of the deceased. Upon these grounds, they prayed for bail to the applicants.

16. Per contra, Counsel for the State vehemently opposed the bail application, asserting that there is sufficient material available in the case diary to implicate the present applicants. Counsel drew the Court's attention to the statement of Sonu Lodhi (the brother of the deceased), who stated that on 12.07.2025, while heading home for lunch around 12:00 PM, he observed the deceased, Sanju, riding a motorcycle with Dheeraj Kushwaha and Sanjay Kushwaha. Although Sonu called out to them, they did not respond.

17. He further stated that later that day, his brother Golu informed him that Sanju's phone had been unreachable since 1:00 PM. Despite multiple attempts to contact him throughout the night, the phone remained off. On 13.07.2025, after discovering that Sanju had not reached his destination in Khamkheda, the family commenced a search.



At approximately 8:00 PM that evening, they were informed by Dinesh Bheel that a motorcycle matching theirs had been spotted in the forest. Upon reaching the spot, Golu confirmed the bike belonged to Sanju, though Sanju remained missing.

18. Following the lodgement of the police complaint, the body of the deceased, Sanju Lodhi, was discovered in a decomposed condition. During the subsequent investigation, the present applicants were arrested. Pursuant to their disclosure memorandums, a weapon (a knife consisting of a blade and handle) was recovered. In these statements, the applicants admitted to accompanying the deceased into the forest, where a dispute over money arose during the consumption of alcohol, leading to a fatal altercation. This chain of events demonstrates their active involvement in the murder. Furthermore, the mere non-mentioning of the grounds of arrest does not constitute a valid reason for bail when there is substantial evidence to corroborate the prosecution's case. Looking to the gravity of the offense and the supporting material on record, the applicants should not be released at this stage. In support of his contention, Counsel for the State relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Sri Darshan etc.** (Cr.A. No. 3538-3543 of 2025), wherein it was held that a delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for the grant of bail.

19. Heard learned counsel for the parties and perused the case



diary.

20. The Hon'ble Supreme Court, in the case of **Sri Darshan (Supra)**, has held as under:-

"...20.1. **Delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for grant of bail.**

20.1.1. The learned counsel for the respondents – accused contended that the arrest was illegal as the grounds of arrest were not furnished immediately in writing, thereby violating Article 22 (1) of the Constitution and Section 50 Cr.P.C (now Section 47 of the Bharatiya Nagarik Suraksha Sanhita). This submission, however, is devoid of merit.

20.1.2. Article 22(1) of the Constitution mandates 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 37 be defended by, a legal practitioner of his choice”. Similarly, Section 50 (1) Cr.P.C. requires 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.

20.1.3. The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest – but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.

20.1.4. In **Vihaan Kumar (Supra)**, it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in **Kasireddy Upender Reddy v. State of Andhra Pradesh**, it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post- Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.

20.1.5. While Section 50 Cr.P.C is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence



of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.

20.1.6. The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a prima facie case. It noted, inter alia, that there was no mention in the remand orders about service of memo of grounds of arrest (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on *Pankaj Bansal v. Union of India* and *Prabir Purkayastha v. State (NCT of Delhi)* (supra), it concluded (paras 43, 49 – 50) that from 03.10.2023 onwards, failure to serve detailed, written, and individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.

20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally 24 (2024) 7 SCC 576 39 represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on *Pankaj Bansal* and *Prabir Purkayastha* is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail."

20.2. Appreciation of evidence at the bail stage is impermissible.

20.2.1. In *State of Orissa v. Mahimananda Mishra* (AIR 2008 SC 2318), this Court observed:

"11. It is common knowledge that generally direct evidence



may not be available to prove conspiracy, inasmuch as the act of conspiracy takes place secretly. Only the conspirators would be knowing about the conspiracy. However, the Court, while evaluating the material, may rely upon other material which suggests conspiracy. Such material will be on record during the course of trial. However, at this stage, prima facie, the Court needs to take into consideration the overall material while considering the prayer for bail.

12. Though this Court may not ordinarily interfere with the orders of the High Court granting or rejecting bail to the accused, it is open for this Court to set aside the order of the High Court, where it is apparent that the High Court has not exercised its discretion judiciously and in accordance with the basic principles governing the grant of bail. It is by now well settled that at the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused.”

21. In *Imran v. Mohammed Bhava* (Criminal Appeal Nos. 658 and 659 of 2022 (@ SLP (Cri) Nos. 27 and 1242 of 2022) dated 22.04.2022), a three- Judge Bench held as follows:

“32. This court in *Neeru Yadav Vs. State of U.P. & Anr.*, *has reiterated that it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge.*” 33. *Applying the ratio of the decisions of this court referred to*



above to the facts of the case in hand, we have no hesitation in observing that the High Court erred in not considering the basic principles for grant of bail, well established by various judicial pronouncements. The High Court lost sight of the fact that there exists sufficient material against the accused Respondents herein, so as to establish a prima facie case against them.”

22. Similarly, in *Ishwarji Nagaji Mali v. State of Gujarat* (Criminal Appeal No. 70 of 2022 dated 18.01.2022), this Court reiterated that the fact that the prosecution case rests on circumstantial evidence is not a valid ground to release the accused on bail, especially where a complete chain of circumstances has been *prima facie* established during investigation. In such circumstances, Hon'ble Supreme Court has held as under-:

“6. the High Court has not at all adverted to the material collected during the course of the investigation. The High Court has not at all considered the material/evidence collected during the course of the investigation even prima facie and has directed to release respondent no.2 in such a serious offence of hatching conspiracy to kill his wife, by simply observing that as it is a case of circumstantial evidence, which is a weak piece of evidence, it is not legal and proper to deny bail to respondent no.2. *Merely because the prosecution case rests on circumstantial evidence cannot be a ground to release the accused on bail, if during the course of the investigation the evidence/material has been collected and prima facie the complete chain of events is established.* As observed hereinabove, while releasing respondent no.2 on bail, the learned Single Judge of the High Court has not at all adverted to and/or considered any of the material/evidence collected during the course of the investigation, which is a part of the charge-sheet.

7. One another reason given by the High Court to release respondent no.2 on bail is that the accused has deep root in the



society and no apprehension as to flee away or escape trial or tampering with the evidence/witnesses is expressed. In a case of committing the offence under Section 302 read with 120B IPC and in a case of hatching conspiracy to kill his wife and looking to the seriousness of the offence, the aforesaid can hardly be a ground to release the accused on bail.”

23. Having considered the rival contentions and the material available on record, this Court finds that while the applicants have raised significant points regarding the forensic discrepancies and the perceived gaps in the 'last seen' theory, the gravity of the offense under Section 103(1) of the BNS cannot be overlooked.

24. Regarding the procedural challenge concerning the "grounds of arrest," this Court is guided by the recent observation of the Hon'ble Supreme Court in the case of **Sri Darshan (Supra)**, which clarifies that a procedural lapse in furnishing written grounds does not automatically entitle an accused to bail unless demonstrable prejudice is shown. In the present case, the applicants were produced before the Magistrate and have been legally represented, suggesting an informed understanding of the charges.

25. Furthermore, the prosecution has pointed to the statement of the deceased's brother, Sonu Lodhi, which *prima facie* places the applicants with the deceased shortly before he went missing, as well as the subsequent recovery of a weapon based on disclosure memorandums. At this stage of bail, a mini-trial to assess the weight of the forensic query report against the oral evidence is not permissible.



Looking to the heinous nature of the crime and the existence of a *prima facie* case supported by the case diary, this Court is not inclined to grant bail to the present applicants at this juncture.

26. Accordingly, the first bail application of **Dheeraj Kushwaha** and the second bail application of **Sanjay Kushwaha** are hereby **dismissed**.

(RAJESH KUMAR GUPTA)
JUDGE

(LJ*)