



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

HABEAS CORPUS WRIT PETITION No. - 141 of 2026

Pritesh Khare Alias Krishna Thru. His Mother Laxmi Khare
.....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. (Home) Govt. of U.P. Lok Bhawan Lko.
and 3 others
.....Respondent(s)

Counsel for Petitioner(s) : Mohd.alf Mansoor, Aditya Vikram
Singh, Aviral Raj Singh, Tanay
Chaudhary
Counsel for Respondent(s) : G.A.,

Court No. - 11

**HON'BLE ABDUL MOIN, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.**

1. Heard Mohd. Altaf Mansoor, learned counsel for the petitioner, and learned AGA appearing for all the respondents.
2. Learned AGA has also produced the records under the signature of Shri Vivek Mishra, Sub-Inspector, Police Station–Chinhat, District–Lucknow, which have also been perused by the Court.
3. By means of the instant petition, the petitioner has prayed for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of Habeas Corpus, thereby commanding the Respondent(s) to forthwith release the detenu, i.e., Mr. Pritesh Khare alias Krishna, from unlawful custody;

(ii) Issue, a writ, order or direction in the nature of Certiorari, thereby setting aside the remand order dated 22.04.2026, passed by the Learned Remand Magistrate, Lucknow, in relation to Crime No. 203 / 2026, PS–Chinhat, District–Lucknow, U/s 57 / 137 (2) of the BNS, after summoning the same;

(iii) Direct the Respondents to pay compensation to the detenu, for their failure to protect the fundamental liberty of the detenu, which is guaranteed under the Constitution of India;

(iv) Issue, any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the Petitioner / detenu, and

(v) Award the cost of the instant Writ Petition in favour of Petitioner / detenu."

4. The contention of the learned counsel for the petitioner is that an FIR dated 16.04.2026, vide FIR No. 203 of 2026, was lodged at Police Station–Chinhat, District–Lucknow, under Sections 87 and 137(2) of the BNS, 2023 against the petitioner, alleging that he had enticed away and kidnapped the complainant's daughter. The petitioner claims to have been arrested on 22.04.2026 in pursuance of the said FIR. It is contended that the learned Remand Magistrate, vide order dated 22.04.2026, has granted remand. Being aggrieved by his alleged illegal detention and the subsequent remand order dated 22.04.2026, the instant petition has been filed.

5. A specific averment has been made in paragraph 11 of the writ petition that although the petitioner was arrested, no grounds of arrest were provided either to him or to his family/friends. It is also contended that the signature of the mother of the detenu was obtained by the police on certain documents, but the said documents were not provided to him.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah vs. State of Maharashtra, 2026 (1) SCC 500**, the contention is that the Hon'ble Supreme Court, with regard to the arrest of a person, has held that the grounds of arrest are to be mandatorily given to him in the light of Article 22(1) of the Constitution, inasmuch as the said Article is not a mere formality but a mandatory, binding constitutional safeguard included in Part III of the Constitution under the head "Fundamental Rights". Reliance has also been placed on the judgment of the Hon'ble Supreme Court in **Dr. Rajinder Rajan vs.**

Union of India and Others, 2026 LiveLaw (SC) 327, as well as on the **Division Bench judgment of this Court in Shivam Chaurasiya vs. State of U.P. and Others, 2026 SCC OnLine All 325**.

7. On the other hand, learned AGA has produced the arrest memo dated 22.04.2026 along with the separate grounds of arrest dated 22.04.2026 to contend that at the time of arrest of the petitioner, the arrest memo had been given indicating the reasons as to why it was found essential to arrest the petitioner. Learned AGA further contends that the said grounds of arrest strictly adhere to Section 36 of the BNSS, 2023. As such, no error has been committed by the respondent authorities in arresting the petitioner while supplying him with the grounds of arrest, and consequently even the remand order passed by the learned Magistrate dated 22.04.2026 is perfectly legal and valid in the eyes of law.

8. Learned AGA further states that a perusal of the grounds of arrest would indicate that the same duly bear the signature of the petitioner, 'Pritesh Khare', as well as the signature of the relative/friend/nominated person, namely Ms. Laxmi Khare, who happens to be the mother of the petitioner. Learned AGA further states that the separate grounds of arrest duly bear the signature of the petitioner, 'Pritesh Khare', but clearly states that the same do not contain the signature of any relative/friend/nominated person.

9. The said grounds of arrest alongwith with the arrest memo of the impugned arrest are taken on record.

10. We have heard the learned counsel for the parties and perused the record.

11. From a perusal of the arguments raised by learned counsel for the parties, it emerges that in pursuance of FIR No. 203 of 2026 dated 16.04.2026, lodged at Police Station–Chinhat, District–Lucknow, the petitioner has been arrested on 22.04.2026. Remand has also been

granted by the learned Magistrate vide order dated 22.04.2026, however, the same is not on record, and a prayer has been made for summoning of the same.

12. The specific case of the petitioner, as per the averment made in paragraph 11 of the petition, is that no grounds of arrest were provided to him, though the signature of the mother of the detinue was obtained by the police on certain documents.

13. The issue that the grounds of arrest are to be provided to an arrested person is no longer *res integra* having been considered by the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah (supra)**, wherein the Hon'ble Supreme Court has held as under:-

"28. It was said that any breach of the constitutional safeguards provided under Article 22 would vitiate the lawfulness of arrest and subsequent remand and entitle the arrested person to be set at liberty. The relevant portion in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] is reproduced herein: (SCC pp. 276 & 278, paras 19-21 & 28-29)

"19. 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.

20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in Roy V.D. v. State of Kerala [Roy V.D. v. State of Kerala, (2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p. 593, para 7) '7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution, Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.'

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the 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 as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be."

31. The relevant portion of Vihaan Kumar [Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799 : (2025) 2 SCC (Cri) 762] is reproduced herein: (SCC pp. 814-15, 817 & 822-23, paras 15, 21 & 40-42)

"15. The view taken in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] was reiterated by this Court in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] . In paras 28 and 29, this Court held thus: (Prabir Purkayastha case [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , SCC p. 278)

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21. An attempt was made by the learned Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

N. Kotiswar Singh, J. (supplementing)?I had the benefit of going through the draft opinion of my esteemed Brother Hon'ble Mr Justice Abhay S. Oka and I concur with the analysis and conclusions arrived at. However, I wish to add a few lines in supplement to the aforesaid opinion.

41. The issue on the requirement of communication of grounds of arrest to the person arrested, as mandated under Article 22(1) of the Constitution of India, which has also been incorporated in the Prevention of Money Laundering Act, 2002 under Section 19 thereof has been succinctly reiterated in this judgment. The constitutional mandate of informing the grounds of arrest to the person arrested in writing has been explained in *Pankaj Bansal* [*Pankaj Bansal v. Union of India*, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] so as to be meaningful to serve the intended purpose which has been reiterated in *Prabir Purkayastha* [*Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] . The said constitutional mandate has been incorporated in the statute under Section 50CrPC (Section 47 of the BNSS). It may also be noted that the aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50-ACrPC. As may be noted, this is in the addition of the requirement as provided under Section 50(1)CrPC.

42. The purpose of inserting Section 50-ACrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that

they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal."

(emphasis in original)

35. In Joginder Kumar v. State of U.P. [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , this Court while framing guidelines regarding the rights of an arrested person has observed that the existence of a power to arrest and the justification to use such power are two different aspects. The person making arrest must be able to justify the arrest with reasons apart from his power to do so. Arrest of a person can cause irreversible damage to his reputation in the society as well as his self-esteem, therefore, arrest cannot be made in a routine manner. The police officer making an arrest must be cautious while arresting a person and ought to satisfy himself after a reasonable investigation to justify the person's complicity and also the effect as well as the need of arrest. This Court has further observed that except in heinous offences, arrest must be avoided.

37. The mandate contained in Article 22(1) of the Constitution of India is unambiguous and clear in nature, it provides that the arrested person must be informed of the grounds of arrest as soon as they can be. It further provides that the arrested person has the right to defend himself by consulting a legal practitioner of his choice. This constitutional mandate has been effectuated by the legislature in Section 50CrPC (now Section 47 of BNSS 2023) which provides that an arrested person shall be forthwith communicated with the grounds of his arrest.

41. The purpose of securing legal assistance before remand is not merely symbolic, but it is to ensure that the accused is afforded an effective opportunity to oppose the prayer for police custody and to place before the Magistrate any circumstances that may warrant refusal or limitation of such custody. If the accused is not represented through a counsel,

he/she should be made aware that he/she is entitled for legal aid. As far as possible, it shall be ensured that every accused person is represented by an advocate, if he is not able to avail such assistance, he should be given free legal aid. A three-Judge Bench of this Court in Ashok v. State of U.P. [Ashok v. State of U.P., (2025) 2 SCC 381 : (2025) 1 SCC (Cri) 744] held that an accused who is not represented by an advocate is entitled for free legal aid at all material stages starting from remand.

43. Section 167CrPC (now Section 187 of BNSS 2023) while dealing with remand provides for a positive mandate on the police officer to forward the accused to the Magistrate before expiry of such period as fixed under Section 57CrPC (now Section 58 of BNSS 2023) when investigation cannot be completed in twenty-four hours. It further mandates that the Magistrate to not authorize the detention of accused unless he is physically produced before him. The purpose of this provision mandating the production of accused before Magistrate for exercise of the power of remanding him to custody under this section is with the dual purpose. First, ensuring physical presence of the accused and second to afford him an opportunity to be heard. The intent of this provision is not merely to be heard at the stage of remand but to be represented by the counsel of his choice. Thereafter, the duty is cast upon the Magistrate to apply his judicial mind to the material produced before him, hear the accused or the counsel representing him to determine whether the accused should be remanded to police custody or should be detained at all within the parameters prescribed in Section 167CrPC (Section 187 of BNSS 2023). The Magistrate is not acting as a post office simply putting a stamp of approval to the remand papers as presented before him. In Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] this Court held that it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand.

45. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the Constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest?.", it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22(1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the Penal Code, 1860 (now BNS 2023).

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in Part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of

his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

48. As mentioned above, it has been held while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall ipso facto apply to Article 22(1). The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1). Reference at this stage may be made to the Constitution Bench judgment of this Court in Harikisan [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117] wherein while dealing with Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person.

50. Further, the above judgment has been reiterated and followed by this Court in Lallubhai Jogibhai Patel v. Union of India [Lallubhai Jogibhai Patel v. Union of India, (1981) 2 SCC 427 : 1981 SCC (Cri) 463 : (1982) 52 Comp Cas 543] wherein it has been reaffirmed that grounds of detention must be communicated to the detenu in writing in a language which he understands.

51. On perusal of the above two judgments, it turns out that mere communication of the grounds in a language not understood by the person arrested does not fulfil the constitutional mandate under Article 22 of the Constitution of India. The failure to supply such grounds in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Articles 21 and 22 of the Constitution of India. The objective of the constitutional mandate is to place the person in a position to comprehend the basis of the allegations levelled against him and it can only be realised when the grounds are furnished in a language understood by the person, thereby enabling him to exercise his rights effectively.

52. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse.

55. *This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.*

57. *The second issue which requires consideration is when grounds of arrest are not furnished either prior to arrest or immediately after the arrest, would it vitiate the arrest for non-compliance of the provisions of Section 50CrPC (now Section 47 of BNSS 2023) irrespective of certain exigencies where furnishing such grounds would not be possible forthwith.*

58. *It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says "as soon as may be" which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.*

62. *We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.*

64. *In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings.*

68. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth."

14. From a perusal of the judgment of the Apex Court in the case of **Mihir Rajesh Shah (supra)** it clearly emerges that the Apex Court has categorically held, after considering Article 22 (1) of the Constitution of India, that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest meaning thereby that it casts a mandatory and unexceptional duty on the State to provide the arrested person with the grounds of such arrest. Supply of grounds of arrest have also been held to be grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India and that requirement of informing the arrested person the grounds of arrest is not a mere formality but a mandatory binding constitutional safeguard which has been included in Part III of the Constitution under the head of "Fundamental Rights".

15. The Apex Court has further held that the grounds of arrest must be furnished in writing in order to attend the true intended purpose of Article 22 (1) of the Constitution of India and have also held that supply of grounds of arrest is the Constitutional mandate. Thereafter, the Apex Court has held that if the grounds of arrest are not furnished to the arrestee in writing, the non compliance will result in breach of constitutional and statutory safeguards rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The aforesaid procedure has been directed to govern all arrest henceforth i.e with effect from the date of the judgment of the Apex Court which is dated 06.11.2025.

16. Thus, considering the aforesaid judgment it is apparent that the grounds of arrest are mandatorily to be given to the arrestee.

17. The arrest memo and the grounds of arrest, which have been taken on record, are quoted below for the sake of convenience:-

"गिरफ्तारी मेमो"

(प्र० स० रि० सं० 203/26 दिनांक..... धारा 87/137(2)BNS)

(थाना- चिनहट जनपद लखनऊ)

(भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 36 के अनुसार)

(माननीय सर्वोच्च न्यायालय के निर्देशानुसार)

1.	गिरफ्तार व्यक्ति का नाम, उपनाम तथा उम्र	प्रीतेश खरे, 24 वर्ष
2.	गिरफ्तार व्यक्ति के माता/पिता/पति का नाम	सुनील खरे
3.	गिरफ्तार व्यक्ति का मो० नं०/ आधार नम्बर	9161912279
4.	गिरफ्तार व्यक्ति का वर्तमान पता	डूडा कालोनी कस्बा थाना चिनहट लखनऊ
5.	गिरफ्तार व्यक्ति का स्थायी पता	उपरोक्त
6.	प्र० सू० रि० सं०.... धारांतर्गत..... थाना चिनहट	
7.	गिरफ्तारी का स्थान	सेमरा कट
8.	गिरफ्तारी की तारीख और समय	22/4/2026,08:05 बजे AM
9.	गिरफ्तारी एवं रखे जाने के स्थान के बारे में जिसे भी सूचित किया है उसका नाम, पता ईमेल आईडी और फोन नंबर/ सूचना का माध्यम (धारा (35(1) BNSS)	लक्ष्मी खरे (माँ) 9161912279
10.	नोडल पुलिस अधिकारी को सूचना देने का विवरण (धारा 48 (1) BNSS)	
11.	गिरफ्तार करने वाले अधिकारियों का नाम पद और PNO संख्या	उ०नि० विवेक मिश्रा 234116834
12.	गिरफ्तारी के कारण	
(A)	पुलिस अधिकारी की उपस्थिति में संज्ञेय अपराध कारित करने के कारण (धारा 35 (1) (a) BNSS	
(B)i	ऐसे व्यक्ति को कोई अग्रतर अपराध करने से	हां

	निवारित करने के लिए	
ii.	अपराध के उचित अन्वेषण के लिए	हां
iii.	ऐसे व्यक्ति को अपराध के किसी साक्ष्य को मिटाने या ऐसे साक्ष्य में किसी भी प्रकार का छेड़छाड़ निवारित करने के लिए	हां
iv.	ऐसे व्यक्ति को मामले के तथ्यों से परिचित किसी व्यक्ति को उत्प्रेरित करने, धमकी देने से निवारण करने के लिए ताकि उसे न्यायालय या पुलिस अधिकारी के समक्ष ऐसे तथ्य को प्रकट करने से रोका न, जा सके	हां
v.	क्यों कि जब ऐसा व्यक्ति गिरफ्तार नहीं किया जाता है तब उसकी उपस्थिति न्यायालय में जब कभी अपेक्षित हो सुनिश्चित नहीं की जा सकती है।	हां
13.	गिरफ्तारी के आधार	विवरण अंकित करें हां
i.	गिरफ्तार किये गये व्यक्ति का बयान एवं साक्ष्यों के साथ-साथ वादी मुकदमा दिये गये साक्ष्यों के आलोक में कैसे गिरफ्तारी आवश्यक है।	मुकदमा उपरोक्त में अन्तर्गत धारा के अन्तर्गत किया गया है।
ii.	वह समस्त सामग्री, जिससे गिरफ्तार व्यक्ति की अपराध में संलिप्तता स्पष्ट है	
iii.	वह समस्त सामग्री/ बरामदगी जिसके आधार पर उक्त अपराध में गिरफ्तार किये गये व्यक्ति की गिरफ्तारी की आवश्यकता है।	
iv.	विवेचनाधिकारी द्वारा गिरफ्तार किये गये व्यक्ति के सम्बन्ध में गिरफ्तारी के समय तक एकत्र की गयी समस्त सामग्री जिससे गिरफ्तार करने की आवश्यकता हुई।	
v.	अन्य ऐसी सामग्री दस्तावेजी साक्ष्य व इलेक्ट्रॉनिक साक्ष्य आदि जो कि गिरफ्तार किये गये व्यक्ति से सम्बन्धित है, का विवरण	
vi.	गिरफ्तार किये गये व्यक्ति के सम्बन्ध में बी.एन.एस. की किन किन धाराओं में सामग्री/ साक्ष्य है, जो कि गिरफ्तारी के लिये आवश्यक है, का विवरण।	
14.	संज्ञेय व जमानती मामलों में गिरफ्तारी पर जमानत के अधिकार से अवगत कराया गया या नहीं (धारा 47(2) BNSS)I	
15.	शरीर पर कोई चोट अथवा अभिघात आदि के निशाना	नहीं
A.	गिरफ्तारी के दौरान	नहीं

B.	या अन्यथा	नहीं
16.	यदि गिरफ्तार व्यक्ति को उसके विधिक अधिकारों/ उसका / उसकी पसन्द के अधिवक्ता से मिलने के बारे में बताया गया? (धारा 38 BNSS)	हाँ

अभियुक्त को गिरफ्तारी के कारण एवं आधारों व विधिक अधिकारों के बारे में अभियुक्त को समझ आने वाली भाषा में भली भाँति अवगत कराया गया तथा मा० सर्वोच्च न्यायालय के निर्देशों एवं BNSS के प्रावधानों का गिरफ्तारी के दौरान पालन किया।

गिरफ्तार करने वाले अधिकारी वाले अधिकारी के हस्ताक्षर

नाम व रैंक उ०नि० विवेक मिश्रा

थाना- चिनहट

दिनांक 22.4.2026.

प्राप्ति रसीद (एक प्रति प्राप्त की)

गिरफ्तार व्यक्ति के हस्ताक्षर/ अंगूठा निशान	रिश्तेदार / मित्र / नामित नामित व्यक्ति के हस्ताक्षर/ अंगूठा निशान
(हस्ताक्षर) Pritesh Khare	(हस्ताक्षर अपठनीय) 9695516574 लक्ष्मी खरे

गवाहों के नाम व हस्ताक्षर

क्र.सं.	नाम व पूरा पता व मोबाइल नं०	हस्ताक्षर
गवाह 1	म०का० 932 कु० हेमलता	हस्ताक्षर अपठनीय 22.04.26
गवाह 2		

गिरफ्तारी का आधार कारण

गिरफ्तारी का आधार / कारण अभियुक्त प्रीतेश खरे उर्फ कृष्णा पुत्र स्व० सुनील खरे निवासी डूडा कालोनी कस्बा थाना चिनहट लखनऊ उम्र 24 वर्ष सम्बन्धित मु० अ० सं० 203/2026 धारा 87/137(2) बी०एन०एस० थाना चिनहट जनपद लखनऊ मे गिरफ्तारी का पर्याप्त आधार क्रमशः

- (1) प्रथम दृष्टया अभियोग उपरोक्त में अंकित धारा के अपराध का साक्ष्य है।
- (2) अभियुक्त द्वारा पुनः अपराध करने की पूर्ण सम्भावना है।
- (3) अभियुक्त को उसके अधिकार व हिरासत में लेने के आधार की जानकारी दी गयी।
- (4) वादिनी के बयान अन्तर्गत धारा 180 बीएनएसएस से अभियुक्त के विरुद्ध पर्याप्त साक्ष्य पाये जा रहे हैं।

(5) अभियुक्त को उसके अधिवक्ता के माध्यम से मा० न्यायालय में अपना पक्ष रखने हेतु अवगत कराया गया।

गिरफ्तारी का कारण क्रमशः

- (1) अभियुक्त की उपस्थिति सुनिश्चित करने के लिए
- (2) अभियुक्त के भागने की सम्भावना है।
- (3) सबूत पर प्रभाव डालने व नष्ट करने की पूर्ण सम्भावना है।
- (4) गैर जमानतीय व महिला सम्बन्धी अपराध है जो गम्भीर प्रकृति का है।
- (5) अभियुक्त को छोड़ने से वादिनी मुकदमा की सुरक्षा प्रभावित होगी।

(हस्ताक्षर) Pritesh Khare

(हस्ताक्षर) vivek mishra

22.04.2026

(विवेक मिश्रा)

उपनिरीक्षक

थाना चिनहट लखनऊ"

18. From a perusal of the arrest memo, it emerges that the only ground of arrest, as indicated in column no. 13, is that in pursuance of Case No. 203 of 2026 under Sections 87 and 137(2) of the BNS, 2023, lodged at Police Station–Chinhat, District–Lucknow, the petitioner is being arrested. Thus, no specific grounds of arrest are indicated in the arrest memo. The said arrest memo contains the signatures of the petitioner as well as Ms. Laxmi Khare, who is stated to be the mother of the petitioner. However, the grounds of arrest are claimed to have been given separately by the authorities, containing in detail the grounds and reasons for arrest. As already indicated above, the said separately provided grounds and reasons of arrest contain only the signature of the petitioner and do not bear the signatures of any relative/friend/nominated person.

19. At this stage, the Court may refer to Section 36 of the BNSS, 2023, which pertains to the procedure of arrest and the duty of the officer making the arrest. For the sake of convenience, Section 36 of the BNSS, 2023 is reproduced below:-

"36. Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest."

20. From a perusal of Section 36 of the BNSS, 2023, it emerges that every police officer, while making an arrest, shall prepare a memorandum of arrest which shall be (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made, and (ii) **countersigned** by the person arrested.

21. As already indicated above, the arrest memo may adhere to the provisions of Section 36 of the BNSS, 2023, but the **reasons of arrest**, which are said to have been given separately to the petitioner, although bearing his signature, do not comply with the provisions of Section 36 of the BNSS, 2023. The reasons are that (a) the said reasons and grounds of arrest are not attested by a witness who is either a member of the family of the person arrested or a respectable member of the locality where the arrest is made; (b) the separate grounds and reasons of arrest are not **countersigned** by the person arrested & (c) the arrest memo nowhere indicates that the grounds of arrest are being given separately.

22. With regard to meaning of 'countersigned', the Court may quote the definition of "Countersign" as per Black's Law Dictionary, 9th Edition as under:-

"To write one's own name next to someone else's to verify the other signer's identity."

23. The Apex Court in the case of **M. Duraiswamy Vs. Sri Murugan Bus Service and ors- 1986 SCC OnLine Sc 385** has defined "countersign" as:-

"19.....To 'countersign' means 'to sign opposite to, alongside of or in addition to another signature 'or' to add one's signature to a document (already signed by another) for authentication or confirmation..."

24. From a perusal of Section 36 of B.N.S.S, 2023 and the judgment of the Apex Court in the case of **M. Duraiswamy (supra)** it clearly emerges that countersign would mean to sign opposite to, alongside of or in addition to another signature or to add one's signature to a document (already signed by another) for authentication or confirmation meaning thereby that the petitioner was only required to countersign on the grounds of arrest when the witness had signed the same and thus the mere fact that the signature of the petitioner appear on the grounds of arrest will not make the said grounds of arrest as contained on a separate sheet of paper to be in consonance with Section 36 of B.N.S.S, 2023.

25. Thus, in effect, it is apparent that the detailed reasons and grounds of arrest have been prepared subsequently by the authorities which do not adhere to the mandatory provisions of Section 36 of the BNSS, 2023.

26. Considering the aforesaid, it is thus apparent that the arrest of the petitioner on 22.04.2026 cannot be said to adhere to the directions issued by the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah (supra)**.

27. The learned Remand Magistrate, vide order dated 22.04.2026, has granted remand, but the said remand order also deserves to be set aside, keeping in view the law laid down by the Division Bench of this Court in the case of **Shivam Chaurasiya (supra)** wherein it has been held as under:-

"30. A perusal of the order passed by the learned Magistrate would indicate that the learned Magistrate though has considered the

material available on record yet he has failed to consider that the grounds/reasons of arrest, as detailed separately, do not form part of the arrest memo as they do not find mention anywhere in the arrest memo and further also do not conform to the mandatory provisions of Section 36 of B.N.S.S, 2023 and thus it is apparent that the remand order has been passed in an absolutely mechanical manner and consequently, even if the remand has been given by the learned Magistrate yet the instant writ petition in the nature of habeas corpus would be maintainable."

28. At this stage, the Court may also indicate that as the records have been produced by the learned AGA, consequently, there will not be any occasion for filing of a detailed counter affidavit by the respondents, keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Union of India and others vs. Shiv Raj and others reported in (2014) 6 SCC 564** wherein it has been held as under:-

"in a case where on the basis of submissions advanced in the court on behalf of the parties the court summons the original record to find out the truth, pleadings remain insignificant".

29. We also observe that despite the Hon'ble Supreme Court, in the case of **Mihir Rajesh Shah (supra)**, having directed that the directions issued by it shall have effect from the date of the judgment, i.e., 06.11.2025, yet day in and day out various habeas corpus petitions are being filed before this Court wherein it is found that the respondent authorities are not adhering to the directions issued by the Hon'ble Supreme Court, and arrests are being carried out left and right without furnishing the arrested person with the reasons and grounds of arrest. (See:- **Shivam Chaurasiya vs. State of U.P. and Others, 2026 SCC OnLine All 325 and Manoj Kumar thru His Son Mudit Kumar Vs. State of U.P and Ors- 2026:AHC-LKO:31073-DB.**

30. Keeping in view the above discussion and as an interim measure, a direction is issued to the respondents-authorities to set free the petitioner provided he is not wanted in other case.

31. Further considering that despite the judgment of the Apex Court in the case of **Mihir Rajesh Shah (supra)** and the Division Bench

judgment of this Court in the case of **Shivam Chaurasiya (supra)**, the arrest of the petitioner has been made without following the mandatory provisions as indicated above as such, we direct that the Principal Secretary/Additional Chief Secretary (Home), Government of U.P., i.e., respondent no.1, to file his personal affidavit showing cause as to why exemplary costs should not be awarded to the petitioner for the authorities having carried out the arrest in violation of the law laid down by the Hon'ble Supreme Court which has resulted in the petitioner being incarcerated in jail since 22.04.2026 and his personal life and liberty having been lost on account of the authorities having failed to adhere to the specific directions issued by the Apex Court.

32. Let the reply be filed within seven days.

33. List this case on 07.05.2026 at 02:15 PM.

34. In case the personal affidavit and reply is not filed, the Principal Secretary/Additional Chief Secretary (Home), Government of U.P, Lucknow shall appear in person, along with all relevant records, to assist the Court.

35. The learned AGA shall communicate this order forthwith to the Principal Secretary/Additional Principal Secretary (Home), Government of U.P forthwith, without waiting for a certified copy.

(Pramod Kumar Srivastava,J.) (Abdul Moin,J.)

April 28, 2026

Haseenuddin/Pachhere