



The guidelines of the Hon'ble Supreme Court will prove to be a milestone in curbing the illegal arrest of innocent and helpless people.

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Direction passed by Hon'ble Supreme Court of India in case **Vihaan Kumar Vs State of Haryana and Anr. In Criminal SLP No.13320 of 2024** Case it will prove to be a milestone for the poor and innocent people.

The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be Criminal Appeal @ SLP(Crl.) 13320 of 2024 Page 22 of 33 deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

Article 22(1) of Indian Constitution is a real protection from illegal arrest

- It deals with the protection against arrest and detention in certain cases.
- This article is applicable to both citizens and non-citizens.
- This provision extends certain procedural safeguards for individuals in case of an arrest.
- The idea behind this right is to prevent arbitrary arrests and detention.
- The article provides the following safeguards:
 - Article 22(1) – Any person who is in custody has to be informed as to why he has been arrested. Further, he cannot be denied the right to consult an advocate.

- Article 22(2) – The arrested individual should be produced before a judicial magistrate within 24 hours of his arrest.
- Article 22(3) – Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention
- These safeguards are, however, not applicable to
 - Enemy aliens
 - People arrested under preventive detention law.

In a significant ruling, the Supreme Court on Friday (February 7, 2025) said the requirement of informing grounds of arrest to an accused was not a "formality but a mandatory constitutional requirement".

A bench of Hon'ble Justices Abhay S. Oka and Nongmeikapam Kotiswar Singh said non-compliance by the police would amount to violation of fundamental right under Article 22 of the Constitution.

"The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible," it said.

The bench therefore held the arrest of one Vihaan Kumar, represented by senior advocate Kapil Sibal and advocate Vishal Gosain, in a financial fraud case as unconstitutional and violative of his fundamental rights under Article 22(1) of the Constitution.

Declaring the arrest illegal, the top court ordered Mr. Kumar's immediate release, underscoring the importance of procedural safeguards in criminal law.

"If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty...", Justice Oka said in the judgement.

Justice Singh concurred with Justice Oka and wrote a few pages to highlight the importance of Article 22 and the right of the accused.

Justice Oka concluded the verdict saying, "The requirement of informing a person arrested on grounds of arrest is a mandatory requirement of Article 22(1)." "The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved," the verdict held.

The judgment also referred to Article 21 and said no person could be deprived of their liberty except in accordance with the legal procedure.

"The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well," said Justice Oka.

Article 22 says, "Protection against arrest and detention in certain cases: (1) 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".

The court therefore said when an arrested accused alleged non-compliance of Article 22(1), the burden would always be on the police to prove compliance.

"When an arrested person is produced before a judicial magistrate for remand, it is the duty of the magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made," it added.

In case of violation, said the court, it was the court's duty to order the accused's release.

The bench also expressed a strong disapproval of chaining and handcuffing the accused in the hospital in the case at hand apart from the fact that his wife was informed about the grounds of arrest belatedly.

"We have no hesitation in holding the arrest of the appellant was rendered illegal on account of failure to communicate the grounds of arrest to the appellant as mandated by Article 22(1) of the Constitution," it said.

Calling it a violation of the appellant's fundamental right under Article 21, the court said, "Before we part with this judgment, we must refer to the shocking treatment given to the appellant by the police. He was taken to a hospital while he was handcuffed and he was chained to the hospital bed." The apex court said the right to live with dignity was a part of the rights guaranteed under Article 21 and directed the state government to issue necessary directions to ensure such illegalities were never committed.

The court was also critical of the high court's approach in the case and said, "All courts, including the high court, have a duty to uphold fundamental rights. Once a violation of a fundamental right under Article 22(1) was alleged, it was the duty of the high court to go into the said contention and decide in one way or the other." The court ordered the Haryana government to issue guidelines and departmental instructions to police to ensure the act of handcuffing an accused while he was on the hospital bed, and tying him, was never repeated.

It asked the State police to ensure constitutional safeguards under Article 22 were strictly followed and directed a copy of the judgement to be sent to the state home secretary.