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Supreme Court May Refer 'Written Grounds of Arrest' to a Larger Bench

11 July 2026 ·

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Supreme Court May Refer 'Written Grounds of Arrest' to a Larger Bench

11 July 2026 · 4 min read ·

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WHY IN NEWS

*In July 2026, the Supreme Court indicated that it may refer to a larger Constitution Bench the question of whether investigating agencies must furnish in all criminal cases. The issue surfaced in a matter where an arrest memo carried a **typographical error**, citing a wrong section of the Bharatiya Nyaya Sanhita.*

BACKGROUND: THE CONSTITUTIONAL GUARANTEE

The right against arbitrary arrest is anchored in **Article 22(1)** of the Constitution, which provides that no person who is arrested shall be **detained in custody without being informed of the grounds of arrest**, nor denied the right to consult and be defended by a legal practitioner of choice. This is read together with **Article 21**, which protects life and personal liberty, and cannot be taken away except by a fair, just and reasonable procedure established by law.

The practical question that courts have grappled with is **how** these grounds must be communicated. Oral communication is easy to dispute after the fact; a **written** statement of grounds gives the arrested person and the courts a verifiable record against which the legality of the arrest can be tested.

THE RECENT LINE OF PRECEDENT

Two recent judgments moved the law decisively toward **written** grounds.

In **Pankaj Bansal v. Union of India (2023)**, the Supreme Court held that the grounds of arrest must be furnished **in writing** to a person arrested under the **Prevention of Money Laundering Act (PMLA)**, so that the person can seek bail and challenge the arrest meaningfully. In **Prabir Purkayastha v. State (NCT**

of Delhi) (2024), the Court extended the same reasoning to arrests under the **Unlawful Activities (Prevention) Act (UAPA)** holding that failure to supply written grounds violated the arrest and the subsequent remand.

The open question the Court is now weighing is whether this written-grounds requirement, so far articulated for special statutes like PMLA and UAPA, should apply **universally to all arrests**, including ordinary offences under the new criminal codes.

CASE / PROVISION	WHAT IT ESTABLISHED
Article 22(1)	Right to be informed of grounds of arrest and to counsel
Pankaj Bansal (2023)	Written grounds mandatory under PMLA
Prabir Purkayastha (2024)	Written grounds mandatory under UAPA
Present reference (2026)	Whether written grounds apply to all arrests

THE NEW CRIMINAL CODES

The dispute unfolds under India's overhauled criminal law. From **July 1, 2024**, the **Bharatiya Nyaya Sanhita (BNS)** replaced the Indian Penal (<https://ujiyari.com/vocab/penal/>) Code, and the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** replaced the Code of Criminal Procedure. Because charging sections have been renumbered, an arrest memo that cites a **wrong section**, even through a typing slip, can raise the very question of whether the accused was correctly informed of the grounds. The present matter, arising from such an error, has become the vehicle for the broader constitutional issue.

WHY A LARGER BENCH

Under **Article 145(3)**, any case involving a **substantial question of law as to the interpretation of the Constitution** must be decided by a **Constitution Bench of at least five judges**. If a two- or three-judge bench feels an authoritative, binding answer is needed on a constitutional question of general importance, it may **refer** the matter to a larger bench. Referring the written-grounds question would let the Court settle, once and for all, the reach of Article 22(1) across the criminal-justice system rather than statute by statute.

ANALYSIS AND WAY FORWARD

At its core the issue balances **personal liberty** against **investigative expediency**. A universal written-grounds rule strengthens the citizen's ability to challenge an unlawful arrest and disciplines police paperwork, but agencies caution that rigid formality could be exploited to void otherwise valid arrests on technicalities. A **calibrated** (<https://ujiyari.com/vocab/calibrated/>) outcome, requiring written grounds as the norm while treating

harmless clerical errors as curable, would protect liberty without paralysing investigation. A Constitution Bench ruling, if it comes, would give police, magistrates and citizens a single clear standard under the new codes.

UPSC RELEVANCE

GS Paper 2: Fundamental rights, protection against arbitrary arrest, judicial process, criminal-law reform, the larger-bench reference mechanism.

Prelims pointers:

- Article 22(1) guarantees the right to be informed of the grounds of arrest and to consult a lawyer.
- Pankaj Bansal v. Union of India (2023) mandated written grounds of arrest under PMLA.
- Prabir Purkayastha v. State (NCT of Delhi) (2024) mandated written grounds under UAPA.
- The BNS and BNSS replaced the IPC and CrPC from July 1, 2024.
- A Constitution Bench has a minimum of five judges under Article 145(3).

Mains question: “The insistence on written grounds of arrest reflects the Supreme Court’s effort to make Article 22 a living safeguard. Discuss the tension between procedural safeguards for personal liberty and the operational needs of investigating agencies under India’s new criminal codes.” (15 marks, 250 words)

FACTS CORNER

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Article 22(1): Right to be informed of grounds of arrest and to consult a lawyer.

Article 21: Protection of life and personal liberty.

Pankaj Bansal (2023): Written grounds of arrest mandatory under PMLA.

Prabir Purkayastha (2024): Written grounds of arrest mandatory under UAPA.

BNS and BNSS: Replaced the IPC and CrPC from July 1, 2024.

Constitution Bench: Minimum of five judges under Article 145(3).

Sources: *Supreme Court of India* (<https://www.sci.gov.in/>), *The Hindu* (<https://www.thehindu.com/>), *LiveLaw* (<https://www.livelaw.in/>)

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