

**HIGH COURT OF TRIPURA
AGARTALA**

WP(Crl.) No.03 of 2025

Sri Shibu Chakraborty,
S/o. Sasadhar Chakraborty,
Resident of Kathaltali, Ranirkhamar,
P.O. Madhupur, P.S. Amtali,
District- West Tripura, PIN- 799003.

.....Petitioner(s)

For and on behalf of

Sri Rajesh Acharjee,
S/o. Lt. Chanu Acharjee,
Aged about 38 years,
Resident of Vill- Shibjoy Jamadar Para,
P.S. Budhjungnagar, Dist- West Tripura.

.....Accused Person

- V e r s u s -

1. The State of Tripura,

Represented by the Secretary, Home Department, Government of Tripura, New Capital Complex, Agartala, West Tripura.

2. The Investigation Officer of Agartala GRPS Case No.34 of 2025,
Agartala GRPS Police Station, Agartala Railway Station, Agartala,
West Tripura.

..... Respondent(s)

For the Petitioner(s)	:	Mr. Abhimanshu Dhyani, Advocate. Mr. Kundan Pandey, Advocate.
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For the Respondent(s)	:	Mr. Rajib Saha, Addl. P.P.
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Date of hearing and delivery of Judgment & Order	:	15th May, 2025.
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Whether fit for reporting	:	YES
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. Abhimanshu Dhyani, learned counsel and Mr. Kundan Pandey, learned counsel appearing for the petitioner and Mr. Rajib Saha, learned Addl. P.P. appearing for the State.

The Case Diary (for short, CD) has been produced by learned Addl. P.P.

[2] The petition is filed by the petitioner on behalf of Sri Rajesh Acharjee, who was arrested on 1.4.2025 in connection with GRPS case No.34 of 2025, registered under Sections 20(b)(ii)(C)/25/29 of the NDPS Act and since then he has been in custody. The allegations as borne in the FIR lodged by Sri Bishnu Pada Das, SIPF under GRPS is that on 1.4.2025 at around 08.55 hours, he received specific secret information regarding bringing of some contraband items by some unknown persons for loading the same inside the PARCEL VAN at Agartala Station. Then accordingly after obtaining permission from IPF/Agartala, he alongwith other officers and staffs of GRP Agartala, set on an ambush at Agartala Railway station and at around 11.45 hours, one goods carrier truck bearing No-AS 01 JC 4571 was found coming through the approaching road of unloading point Line No.13 of Agartala Railway Station yard. On arrival at Agartala Railway Station, 3 persons got down from the said vehicle and hurriedly unloaded some cartoon boxes from the said vehicle. Thereafter, the informant detained those 3 persons for verification. On spot interrogation, they disclosed their names as Prasenjit Nag, Rajat Debbarma and Rajesh Acharjee. According to the informant, on asking they offered contradictory and dissatisfactory statements regarding their presence there and finally admitted that they were carrying some contraband goods by said vehicle. It is also noted by the informant in the FIR that after complying necessary legal formalities, a search was conducted and ultimately they recovered total 58.535 kg of contraband Ganja from 28 Nos. of packets and then those persons were also arrested.

[3] Challenging the said arrest of Rajesh Acharjee, the present writ petition has been filed under Section 226 of the Constitution of

India, to declare said arrest to be illegal, ultra vires and in violation of Article 22(1) of the Constitution of India.

[4] Mr. Dhyani, learned counsel, challenged the arrest of the petitioner, mainly on two points: firstly, that written communication regarding grounds of such arrest was not made available to the arrestee; and secondly, that he was kept in detention for more than 24 hours, in violation of Article 22(2) of the Constitution of India. Learned counsel, referring to the arrest memo as submitted by the Investigating Officer in the Court below, submits that against the column for 'grounds of arrest', it was written as- "information was given to his" and nothing more. According to learned counsel, the ground of arrest ought to have been specifically mentioned in the said arrest memo, as it touches the very fundamental right of the arrestee to take his proper defence against such arrest and detention. In support of his submission, Mr. Dhyani, learned counsel also relies on a decision of the Hon'ble Supreme Court in the case of **Prabir Purkayastha vs. State (NCT OF DELHI), (2024) 8 SCC 254**, wherein the relevant paragraphs as relied on are extracted hereunder:

"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.

.....

24. A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in Harikisan v. State of Maharashtra [1962 SCC OnLine SC 117] and held that the communication of the grounds of detention to the detenu in writing and in a

language which he understands is imperative and essential to provide an opportunity to detenu of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted hereinbelow: (SCC OnLine SC para 7)

"7. ... clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the Order of Detention is based."

(emphasis supplied)

.....

25. Further, this Court in Lallubhai Jogibhai Patel v. Union of India, [(1981) 2 SCC 427 : 1981 SCC (Cri) 463], laid down that the grounds of detention must be communicated to the detenu in writing in a language which he understands and if the grounds are only verbally explained, the constitutional mandate of Article 22(5) is infringed. The relevant para is extracted hereunder: (SCC p.436, para 20)

"20. ... "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the "ground" to the detenu is to enable him to make a purposeful and effective representation. If the "grounds" are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed."

(emphasis supplied)

[5] Mr. Dhyani, learned counsel also relies on another decision of the Hon'ble Supreme Court in the case of **Ashish Kakkar vs. UT of Chandigarh, (Criminal Appeal No.1518/2025)**, decided on 25.3.2025, wherein the Hon'ble Supreme Court reiterated the ratio laid down in **Prabir Purkayastha (supra)**. In that case also it was held that the arrest of the concerned accused was illegal for non-communicating the grounds of arrest.

[6] Regarding the allegation of detention of more than 24 hours of the said arrested person, Mr. Dhyani, learned counsel also brought to the notice of the Court the paragraph No.16 of the counter affidavit submitted by the State, wherein it was mentioned that the accused person was intercepted on 1.4.2025 at about 11.30 hours. But in the arrest memo, learned counsel, submits, the arrest of said Rajesh Acharjee, was shown to be at 14.00 hours. In the order dated 2.4.2025 passed by Learned Special Judge in said case, it is mentioned that the Investigating Police Officer produced all the 4 accused persons before the Court Inspector, Sadar Police Court, Agartala for their production before the Court of law before 2 p.m. on 2.4.2025. Learned counsel relying on such observations, submits that in view of the above observation made by the Learned Special Judge, it is apparent that Rajesh Acharjee was produced before the Ld. Special Judge at 2 p.m. on that day, and therefore, such over detention of the arrested person has rendered the arrest illegal. Learned counsel on that point relies on another decision of the Hon'ble Supreme Court in the case of **Directorate of Enforcement vs. Subhash Sharma, 2025 SCC OnLine SC 240**. In that case, it appeared on factual aspects of the case, that the related arrested person was detained and taken into custody at 18.00 hours (6 p.m.) on 4.3.2022 at IGI Airport, New Delhi

by the Bureau of Immigration, on execution of one LOC issued against said person by the ED and took him into custody. Thereafter, the ED took said person in their own custody on the following day, i.e., on 5.3.2022 at 11.00 hours (11 a.m.) at IGI Airport and brought him to Raipur and on the following day, i.e., on 6.3 2022, they produced him before the remand Court. The ED showed that person to be arrested at 1.15 hours on 6.3.2022, despite the fact that the said person was into their custody on the previous day at around 11.00 hours. The Hon'ble Supreme Court in that situation observed the following at paragraph No.6:

"6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated."

[7] Learned Addl. P.P., however, opposes the prayer submitting that the written communication regarding the grounds of arrest was duly made to the arrested person just after his arrest and same was received by him under his own signature. Learned Addl. P.P. also refers to the said copy of the written communication as available in the CD.

Regarding the second point of challenge, learned Addl. P.P. submits that, as per the entry made in the CD, on 2.4.2025 at around 12.30 hours, the arrested person was forwarded to the Court of Learned Special Judge seeking police remand of the accused and the CD was also available before the Learned Special Judge at the time of hearing of the bail application of the petitioner as well as the petition of the IO for police remand.

[8] I have given due consideration to the submissions of learned counsel of both sides and have also perused the record and relevant portion of the CD as placed before this Court. It is found that in the arrest memo the grounds of arrest, was not mentioned but there is another copy of letter issued by the informant on the same day of arrest of said Rajesh Acharjee, showing the grounds of arrest and said Rajesh Acharjee appears to have received the same under his own signature.

[9] Mr. Dhyani, learned counsel, on that point submitted that no such copy was ever served upon the arrested person. Moreover, in the forwarding report while producing the said person before the Learned Special Judge, no such specific averments were made by the IO that such written letter was communicated to the accused person, and therefore, according to learned counsel, said document cannot be given much reliance.

[10] Keeping in mind the submissions of both the parties, this Court has also further perused the record and it is found that after such alleged recovery and arrest of the accused person, a letter was sent by the informant to the IPF, Agartala, wherein it was specifically mentioned that the grounds of arrest was duly intimated to the arrested persons and their family members. In the forwarding report, dated 2.4.2025 also

the IO mentioned that grounds of arrest was duly informed to the arrested person as well as their family members after the arrest. The only non-mentioning of the fact specifically that such communication was made in writing itself, in the said forwarding letter to this Court, is not sufficient enough to hold that no such communication was ever made. Another accused, namely Sri Prasenjit Nag, filed one bail application, in this Court bearing **B.A.No.25 of 2025**, wherein also similar plea of non-communication of grounds of arrest was made on his behalf. While disposing of the said bail application, a Coordinate Bench of this Court, vide order dated 17.4.2024, observed that it appeared that the grounds of arrest were duly communicated to the accused on the same day by supplying a copy of the same to him.

[11] Considering the above discussions, thus it cannot be held at this stage that no such communication of grounds of arrest was made to the accused person. Now, coming to the second point of challenge i.e., detention of the accused person beyond 24 hours without producing before the Court, it appears from the record that initially the arrested person was detained for verification at around 11.45 hours on 1.4.2025. As per the counter affidavit of the respondents in one paragraph, he was detained for such verification at 11.30 hours on that day (though in another paragraph of the counter affidavit, said time is mentioned as 11.45 hours). Be as it may, as per the arrest memo, the time of formal arrest of said Rajesh Acharjee after taking him into custody is reflected to be 2 p.m. and as per the note made in the CD, at around 12.30 hours on the following day, he was forwarded by the Investigating Officer for production before the Court, and therefore, it can also not be said that the accused person was produced before the Court beyond 24 hours. In **Subhash Sharma's case** as mentioned above, though the arrested

persons were detained by Bureau of Immigration on 4.3.2022 at around 6 p.m., but ultimately in paragraph No.6 of the judgment as extracted hereinabove observation was made that, the respondent was not produced before the nearest Magistrate within 24 hours from 11 a.m. of 5.3.2022, and therefore, practically his arrest was treated to be at 11 a.m. of 5.3.2022. Here according to the police, though for formal verification they detained him at 11.30 or 11.45 a.m., as the case may be, but actual arrest was effected at 2 p.m. Considering above said discussions, the second point of challenge also does not deserve consideration in favour of the petitioner.

[12] Considering all these aspects, and also in view of the above said discussions, this Court does not find merit in the petition, and accordingly, the same is dismissed.

With such observations, the writ petition stands disposed of.

Return the Case Diary to the learned Addl. P.P.

Pending application(s), if any, also stands disposed of.

JUDGE

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