

**HIGH COURT OF TRIPURA
AGARTALA**

BA No.06 of 2026

Sri Sujit Sarkar,

S/o Sri Rajkumar Sarkar, resident of Baishanab Tilla (Near SB School), South Badharghat, P.O. ONGC – 799014, P.S. Amtali, District- West Tripura.

The accused person being lodged in judicial custody, the present petition is preferred and presented by the son of accused person, named above.

.....Applicant on behalf of
accused person in custody(s);

Sri Rajkumar Sarkar,

S/o Late Sudhan Sarkar, resident of Baishanab Tilla (Near SB School), South Badharghat, P.O. ONGC – 799014, P.S. Amtali, District- West Tripura.

..... Accused person In-custody;

V E R S U S

The State of Tripura

.....Respondent(s);

For Applicant(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : Mr. Rajib Saha, Addl. Public Prosecutor.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

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12/01/2026

Heard learned counsel of both sides.

[2] Learned Additional Public Prosecutor, Mr. Rajib Saha, has produced the Case Diary.

[3] An FIR was lodged by the Assistant Sub Inspector of Police namely, E. Subrata Singha on 21.02.2025 that on receipt of secret information of bringing of certain contraband items by some unknown persons in Agartala-Dharmanagar Local train and after complying the provisions of Section 42(2) of NDPS Act, 1985, he detained one person at Agartala Railway Station carrying one hand

bag, one backpack and one trolley bag with him who disclosed his name to be Rajkumar Sarkar i.e. the present accused applicant and on search, total 21 kg 750 grams (approx) of dry cannabis (ganja) was recovered from him. He was, thereafter, arrested on the same date i.e. on 21.02.2025 and since then he is in custody.

[4] The police after investigation also submitted the charge-sheet against him under Section 20(b)(ii)(C) of the NDPS Act, 1985.

[5] Learned counsel, Mr. Sankar Lodh, for the applicant submits that despite series of decisions passed by the Hon'ble Supreme Court and also by this Court, the arrest was made in utter violation of the same, and the ground of arrest was not informed to the accused rendering his arrest and detention thereafter illegal and ultra-vires. Learned counsel, therefore, has prayed for bail stating that with any stringent condition bail may be granted to him.

[6] Learned Additional Public Prosecutor, Mr. R. Saha, however, opposes the bail prayer submitting that there are sufficient incriminating materials against the accused person for which he was charge-sheeted by the police and trial has also commenced. Learned Additional Public Prosecutor has also submitted that on earlier occasion at the initial stage of his arrest he never raised any such plea before the learned Special Judge.

[7] However, regarding the point as raised by the learned counsel for the applicant, the learned Additional Public Prosecutor,

submits that except the arrest memo, there is no other material to show that the ground of arrest was communicated in any other form to the present accused.

[8] According to the learned Additional Public Prosecutor, the arrest memo itself shows that ground of arrest was illegal possession of contraband goods and therefore, the IO has complied with the provisions of Article 22(1) of the Constitution of India.

[9] Considered the submissions of both sides.

[10] Earlier in several decisions of the Hon'ble Supreme Court it was held that ground of arrest must be communicated to the accused in writing and even in **Mihir Rajesh Shah versus State of Maharashtra and another [2025 LiveLaw (SC) 1066]** it has been categorically held that constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all the statutes including offences of IPC, 1860 and such grounds of arrest must be communicated in writing to the arrestee in the language he/she understands. It was also held that in cases where the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be done orally and then it should be communicated in writing within a reasonable time and latest before two hours of his production before the magistrate.

[11] On perusal of the arrest memo it appears that no separate communication was made with the accused informing him

about the grounds of arrest. Rather in the arrest memo following words were only mentioned - "illegal possession of the contraband goods". Even it is not mentioned as to when, from where and also what sort of item was recovered from the accused. The arrest memo further shows that the accused is completely illiterate person. Therefore, the onus upon the arresting authority was heavier to show as to in which manner such communication was made that the accused became aware of the same to defend him during remand proceedings.

[12] Considering all these aspects, the arrest of the accused is held to be illegal and ultra-vires, and therefore the application for bail is allowed. It is ordered that the accused-Sri Rajkumar Sarkar, shall be released on bail on furnishing a bond of Rs.2,00,000/- [Rupees two lakh] only with one surety of the like amount to the satisfaction of the learned Special Judge, West Tripura, Agartala with the following conditions that:

- (a) the surety should be a resident of Tripura;
- (b) the accused shall not leave the territorial jurisdiction of West Tripura Judicial District except with the permission of the learned Special Judge;
- (c) he will not try to influence or terrorize any of the witnesses of the case;
- (d) he will regularly attend the Court to face trial;

[13] The instant application is, accordingly, allowed and disposed of.

Immediately communicate a copy of this order to the learned Special Judge, West Tripura, Agartala.

JUDGE

