



2026:CGHC:25361-DB
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPHC No. 15 of 2026

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Pradip Raoji Musadwale S/o Late Shri Sudam Musadawale Aged About 44 Years R/o Plot No. 24, Malkapur Road District Buldhana Maharashtra (Current Father Name Mention)

... Petitioner

versus

- 1 - State of Chhattisgarh Through- Secretary Home Department Mantralaya Mahanadi Bhawan Naya Raipur Atal Nagar Raipur District Raipur Chhattisgarh.
- 2 - Superintendent of Police Office of The Superintendent of Police District Mahasamund Chhattisgarh 493445.
- 3 - Station House Officer Komakhan Police Station District Mahasamund Chhattisgarh.

... Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Mr. Sanchit Bhatt and Mr. Amar Mahadevrao Kale, Advocates
For State/Respondents	:	Mr. Priyank Rathi, Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

22.06.2026

- 1. Heard Mr. Sanchit Bhatt and Mr. Amar Mahadevrao Kale, learned counsel appearing for the petitioner as well as Mr. Priyank Rathi, learned Government Advocate, appearing for the State/respondent.

2. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *Habeas Corpus* for release of the petitioner/detenué, who is stated to have been arrested and is presently in the custody of the respondent authorities in connection with FIR No. 0008/2026 registered at Police Station Komakhan, District Mahasamund (Chhattisgarh) for offences punishable under Section 20(b)(ii)(C) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"). The petitioner has prayed for following relief(s):-

"10.1 This Hon'ble Court may kindly be pleased to call for the entire records of the case pertaining to the arrest of the petitioner.

10.2 This Hon'ble Court may declare the arrest of the Petitioner in relation to C.R.No. 08/2026 registered at Komakhan Police Station as illegal, constituting a gross violation of the fundamental rights of the Petitioner guaranteed under Articles 21 and Article 22 of the Constitution of India, as well as a violation of Section 50 and Section 50A of Cr.P.C.

10.3 This Hon'ble Court be pleased to direct the release of the Petitioner in C.R.No. 08/2026 registered at Komakhan Police Station.

10.4 This Hon'ble Court may be pleased to Set aside the order dated 22/04/2026 passed by the Learned Special Judge in Bail Application No. 372 of 2026.

10.5 Cost of the petition may also be granted to the petitioner.

10.6 This Hon'ble Court be pleased to grant such other relief(s) in favour of the petitioner,

as it may deem fit and proper in the interest of justice.”

3. The facts, in brief, are that FIR No. 0008/2026 came to be registered at Police Station Komakhan, District Mahasamund, for offences punishable under Section 20(b)(ii)(C) read with Section 29 of the NDPS Act. As per the prosecution case, on 19.01.2026, a police party intercepted an Isuzu truck bearing registration No. MH-20-EL-3969 near Temari Naka on National Highway No. 353 and allegedly recovered 38 plastic sacks containing contraband ganja weighing about 950 kilograms. The vehicle and the contraband were seized and the occupants of the vehicle were apprehended. The petitioner was arrested on 29.01.2026 in connection with the aforesaid crime and was produced before the competent Court at Mahasamund. Initially, police remand was granted and thereafter the petitioner was remanded to judicial custody, where he continues to remain.

4. The petitioner preferred a bail application before the Special Court constituted under the NDPS Act, which was withdrawn with liberty to file a fresh application. Subsequently, a second bail application was filed, inter alia, raising the plea that the arrest and detention of the petitioner were illegal. The said bail application came to be rejected by the trial Court on merits by order dated 22.04.2026.

5. Aggrieved thereby and contending that his arrest and continued detention are illegal, the petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking issuance of a writ of Habeas Corpus and his release from custody.

6. Learned counsel for the petitioner submits that the arrest of the petitioner on 29.01.2026 is ex facie illegal and unconstitutional as the mandatory requirement of communicating the grounds of arrest was not complied with by the arresting agency. It is contended that neither at the time of arrest nor thereafter were the grounds of arrest furnished to the petitioner in writing. According to learned counsel, the remand papers themselves reveal that only an intimation regarding the arrest was given to the petitioner's wife through a mobile phone call and there is no material on record to indicate that the petitioner was supplied with the grounds of arrest in the manner mandated by law. It is argued that such non-compliance strikes at the very root of the arrest and renders the subsequent detention unlawful.

7. Learned counsel further submits that the constitutional safeguards embodied in Articles 21 and 22(1) of the Constitution of India, as well as the statutory safeguards contained in Section 50 and Section 50A of the Code of Criminal Procedure, 1973 (corresponding provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023), have been violated. It is argued that every arrested person has a fundamental right to be informed of the grounds of arrest in a meaningful and effective manner so as to enable him to challenge the arrest, oppose custodial remand and seek appropriate legal remedies. According to the petitioner, mere disclosure of the offence or a telephonic intimation to a family member cannot be treated as compliance with the constitutional mandate. It is further submitted that even the procedure prescribed under Section 42 of the NDPS Act has not been followed in its true letter and spirit.

Learned counsel contends that though the FIR refers to information being conveyed to the superior officer, there is no material to demonstrate that the prior information allegedly received by the police was reduced into writing and transmitted to the competent superior officer in accordance with Section 42(2) of the NDPS Act. It is argued that the failure to comply with these mandatory procedural safeguards vitiates the entire action undertaken by the investigating agency and consequently affects the legality of the petitioner's arrest and detention.

8. Further, learned counsel submits that although the petitioner raised the plea of illegal arrest and detention before the learned Special Judge while seeking bail, the said contention was not adjudicated upon. It is argued that the rejection of the bail application on merits cannot operate as a determination of the issue relating to the legality of the arrest. According to learned counsel, the question whether the arrest was effected in compliance with the constitutional and statutory safeguards remains open and continues to survive notwithstanding the dismissal of the bail application. Therefore, the petitioner has rightly invoked the extraordinary jurisdiction of this Court by filing the present petition seeking issuance of a writ of Habeas Corpus.

9. Lastly, learned counsel submits that the petitioner's continued custody is rendered unlawful as it originates from an arrest which is constitutionally infirm. It is argued that successive remand orders do not validate an arrest effected in breach of fundamental rights and that the continued detention of the petitioner cannot be sustained merely

because he has been remanded to judicial custody from time to time. On the aforesaid grounds, learned counsel prays that the present petition be allowed and appropriate directions be issued for release of the petitioner from custody.

10. Placing reliance upon the decisions of the Hon'ble Supreme Court in ***Pankaj Bansal v. Union of India and others*, (2024) 7 SCC 576, *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254, *Dr. Rajinder Rajan v. Union of India and another*, 2026 LiveLaw (SC) 327, *Vihaan Kumar v. State of Haryana and another*, (2025) 5 SCC 799 and *Mihir Rajesh Shah v. State of Maharashtra and another*, (2026) 1 SCC 500**, learned counsel submits that communication of the grounds of arrest is not an empty formality but a valuable constitutional safeguard flowing from Articles 21 and 22(1) of the Constitution of India. Learned counsel would contend that the aforesaid decisions have consistently emphasized that an arrested person must be informed of the grounds of arrest in a meaningful, effective and intelligible manner so as to enable him to avail legal remedies, oppose custodial remand and seek appropriate relief before the competent court. It is submitted that the distinction between "grounds of arrest" and "reasons for arrest" has been specifically recognized by the Hon'ble Supreme Court and that mere disclosure of the offence alleged against the accused or the statutory provisions invoked would not amount to compliance with the constitutional mandate. Learned counsel argues that the grounds of arrest must contain the foundational facts which necessitated the arrest of the person concerned and such grounds must be furnished to the

arrestee in writing and in a language understood by him. He further submits that the aforesaid judgments unequivocally hold that the burden to establish compliance with Article 22(1) of the Constitution lies entirely upon the arresting agency and not upon the arrested person. It is contended that in the absence of any contemporaneous document demonstrating that the petitioner was supplied with the grounds of arrest, the respondents cannot be permitted to rely upon subsequent explanations or general recitals contained in remand papers. According to learned counsel, the legal consequence of such non-compliance is serious inasmuch as the arrest itself stands vitiated and any remand order founded upon such illegal arrest would also be rendered vulnerable. It is argued that once the initial arrest is shown to be in breach of the constitutional safeguards guaranteed under Articles 21 and 22 of the Constitution, the subsequent judicial remand orders cannot validate or cure the foundational illegality. Learned counsel, therefore, submits that the petitioner's continued detention is unconstitutional and deserves to be declared illegal.

11. Learned counsel for the petitioner also places reliance upon the judgment rendered by this Court in ***Akash Kumar Sahu v. State of Chhattisgarh and others*, 2026 NCCGHC 3546**, wherein, according to him, this Court reiterated the mandatory nature of the constitutional and statutory safeguards governing arrest and detention and underscored the obligation of the investigating agency to demonstrate strict compliance therewith. Learned counsel submits that this Court, while examining the legality of arrest, emphasized that personal liberty

occupies a paramount position in the constitutional framework and that procedural safeguards enacted for the protection of individual liberty cannot be diluted on the ground of the seriousness of the allegations. It is argued that the principles laid down therein squarely support the petitioner's contention that failure to communicate the grounds of arrest strikes at the validity of the arrest itself.

12. Learned counsel has also relied upon the judgment of the Allahabad High Court in ***Umang Rastogi and another v. State of U.P. and others, 2026 (1) All WC 704***, to contend that the constitutional guarantee under Article 22(1) is required to be scrupulously observed by the investigating agency and that non-compliance thereof cannot be treated as a curable irregularity. It is submitted that the Allahabad High Court, while examining the legality of arrest and detention, recognized that the right of an arrested person to know the precise grounds on which he is deprived of his liberty constitutes an essential facet of fair procedure under Articles 21 and 22 of the Constitution. Learned counsel submits that the ratio of the aforesaid decisions clearly establishes that where the prosecution fails to demonstrate compliance with the mandatory requirement of furnishing the grounds of arrest, the arrest becomes constitutionally suspect and the resultant detention cannot be sustained in law.

13. On the strength of these authorities, learned counsel reiterates that the petitioner is entitled to immediate relief in the present habeas corpus proceedings.

14. Per contra, learned Advocate General/learned State counsel appearing for the respondents vehemently opposes the writ petition and submits that the same is wholly misconceived, devoid of merit and not maintainable in law. It is contended that the petitioner is not in illegal or unauthorized custody so as to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ of Habeas Corpus. According to the respondents, the petitioner is presently in judicial custody pursuant to valid and subsisting remand orders passed by the competent court in connection with Crime No.08/2026 registered at Police Station Komakhan, District Mahasamund, for offences punishable under Sections 20(b)(ii)(C) and 29 of the NDPS Act. It is submitted that once the custody of an accused is sanctioned by a judicial order passed by a competent court, the same cannot be termed as illegal detention merely because the accused disputes the legality of his arrest. Therefore, the foundational requirement for issuance of a writ of Habeas Corpus is absent in the present case.

15. Learned State counsel submits that the prosecution case arises out of a major seizure involving commercial quantity of contraband. It is pointed out that on 19.01.2026, acting upon credible information, the police party intercepted a truck bearing registration No. MH20EL3969 and recovered approximately 950 kilograms of ganja concealed therein. Consequent thereto, FIR No.08/2026 was registered at Police Station Komakhan for offences punishable under Sections 20(b)(ii)(C) and 29 of the NDPS Act and investigation was set into motion. During the course

of investigation, statements of the arrested accused persons were recorded and material was collected regarding the involvement of various persons connected with the transportation and procurement of the contraband. According to the respondents, the petitioner was not randomly implicated but came to be arrayed as an accused on the basis of incriminating material collected during investigation.

16. Elaborating further, learned State counsel submits that during investigation, the memorandum statement of co-accused Akshay Bhorjae was recorded, wherein he disclosed that he had acted under the instructions of the present petitioner, Pradip Musadwale, and had taken the truck to Odisha and other locations as directed by him. It is further submitted that another accused, namely Rehmat Khan, was arrested and her memorandum statement was also recorded. In the said statement, she allegedly disclosed that she, along with one Abdul Mobin, had arranged the vehicle for transportation of the contraband at the instance of the present petitioner. According to the respondents, the said statements disclosed the active involvement of the petitioner in arranging logistics and facilitating transportation of the contraband. Learned counsel submits that these materials furnished sufficient grounds for the investigating agency to suspect the involvement of the petitioner in the offence and consequently to effect his arrest. Thus, the arrest was based upon material collected during investigation and cannot be described as arbitrary, mala fide or without basis. He further submits that the petitioner's contention that he was arrested without being informed of the reasons or grounds of arrest is factually incorrect

and contrary to the record. Drawing attention to the arrest memorandum dated 29.01.2026, learned counsel submits that the arrest memo specifically records that the petitioner was arrested in connection with Crime No.08/2026 registered for offences punishable under Sections 20(b)(ii)(C) and 29 of the NDPS Act. It is contended that the arrest memo clearly disclosed the crime number as well as the offences for which the petitioner was being arrested. According to the respondents, the petitioner was fully aware of the nature of accusations against him and there was substantial compliance with the constitutional and statutory requirements governing arrest.

17. Learned State counsel further submits that all procedural safeguards relating to arrest were duly observed by the investigating agency. It is pointed out that immediately after the arrest of the petitioner on 29.01.2026, information regarding his arrest was communicated to his wife, Smt. Geeta Musadwale, on her mobile phone number. The arrest intimation memo forms part of the record and demonstrates compliance with the requirement of informing a relative or family member regarding the arrest of the accused. It is argued that the allegation that the petitioner was clandestinely detained or deprived of procedural safeguards is therefore wholly unfounded. Learned counsel submits that the arrest was duly documented, the arrest memo was prepared and the factum of arrest was promptly communicated to the petitioner's wife, thereby ensuring adherence to the safeguards contemplated under law.

18. Learned State counsel also submits that immediately after his arrest, the petitioner was produced before the competent court within the prescribed period and appropriate orders of remand were obtained in accordance with law. Thereafter, the petitioner was remanded to judicial custody and continues to remain in custody under orders passed by competent courts. It is argued that the legality of such judicial custody cannot be questioned in a habeas corpus proceeding, particularly when the remand orders have not been set aside by any superior court. According to the respondents, the petitioner is attempting to challenge the correctness of the criminal proceedings through the medium of a writ petition, which is legally impermissible. He further points out that the petitioner himself has availed the statutory remedy of seeking bail before the Special Court constituted under the NDPS Act. Initially, the petitioner filed Bail Application No.189/2026 before the Special Judge (NDPS), Mahasamund, wherein he was duly represented through counsel. The said application was subsequently withdrawn with liberty to file a fresh application. Thereafter, the petitioner preferred a second bail application being Bail Application No.372/2026, which came to be considered on merits and was rejected by the learned Special Judge upon recording prima facie satisfaction regarding his involvement in the offence. Learned counsel submits that these facts unmistakably demonstrate that the petitioner was fully aware of the allegations against him, the nature of the offence and the circumstances leading to his arrest. Therefore, the plea that he was unaware of the grounds of arrest is wholly untenable.

19. Learned State counsel submits that the judgments relied upon by the petitioner regarding communication of grounds of arrest are distinguishable on facts and do not advance his case. It is argued that the petitioner seeks to expand the scope of habeas corpus proceedings by inviting this Court to undertake an enquiry into disputed factual questions relating to the investigation, arrest and sufficiency of compliance with procedural requirements. According to the respondents, such issues cannot be adjudicated in a summary writ proceeding, particularly when the petitioner is in lawful judicial custody pursuant to orders passed by competent criminal courts.

20. Learned State counsel lastly submits that the entire edifice of the present writ petition rests upon the erroneous assumption that every alleged irregularity in the process of arrest would automatically entitle an accused to a writ of Habeas Corpus. It is contended that the settled legal position is otherwise. Since the petitioner is in judicial custody pursuant to valid remand orders, has actively participated in the criminal proceedings, has availed the remedy of bail on more than one occasion and continues to be detained under the authority of law, no case of illegal detention is made out. The respondents, therefore, pray that the writ petition be dismissed as being devoid of substance and not maintainable in law.

21. We have heard learned counsel appearing for the parties at considerable length and have perused the material available on record with utmost circumspection.

22. The principal issue which arises for consideration in the present writ petition is whether the custody of the petitioner can be said to be illegal so as to warrant issuance of a writ of *Habeas Corpus* under Article 226 of the Constitution of India. The ancillary question that falls for determination is whether the alleged non-communication of the grounds of arrest to the petitioner vitiates the arrest and renders the subsequent detention unlawful notwithstanding the remand orders passed by the competent criminal court.

23. Before advertng to the rival contentions, it would be apposite to notice the settled principles governing the exercise of jurisdiction in a petition seeking a writ of *Habeas Corpus*. It is trite law that the writ is a prerogative remedy intended to secure the liberty of a person who is unlawfully or illegally detained. Equally well settled is the principle that where a person is in custody pursuant to an order passed by a competent court of jurisdiction, the writ court ordinarily does not examine the correctness of such order in proceedings for *Habeas Corpus* unless the order is shown to be absolutely without jurisdiction, wholly illegal or passed in flagrant violation of constitutional safeguards.

24. Since the entire edifice of the petitioner's case rests on the contention that the constitutional mandate contained in Article 22(1) of the Constitution was violated at the time of his arrest, it would be necessary to examine the legal position governing communication of the grounds of arrest and the consequences flowing from non-compliance thereof. It is in the backdrop of the aforesaid legal principles

that the submissions advanced on behalf of the parties are required to be considered.

25. At this stage, it would be profitable to notice the settled principles governing the exercise of jurisdiction in a petition seeking issuance of a writ of Habeas Corpus.

26. In ***Kanu Sanyal v. District Magistrate, Darjeeling and others***, (1973) 2 SCC 674, a Constitution Bench held as under:

“4. It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be enquired into, or to put it differently, “in the order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint”. the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed

from such restraint. The most characteristic element of the writ is its peremptoriness..... the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release, if the detention is found to be unlawful. That is the primary purpose of the writ, that is its substance and end. The production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained."

27. In ***Union of India v. Yumnam Anand M. alias Bocha alias Kora alias Suraj and another, (2007) 10 SCC 190***, while explaining the nature of writ of habeas corpus, Their Lordships of the Supreme Court held that though it is a writ of right, it is not a writ of course and the applicant must show a *prima facie* case of unlawful detention. Paragraph 7 of the decision reads as under:

"7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable ex debito

justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right.”

28. A writ of habeas corpus is maintainable only where a person is under illegal or unlawful detention. Where the custody of a person is lawful and is in accordance with statutory authority or for the welfare and protection of such person, the extraordinary jurisdiction under Article 226 cannot be invoked.

29. At the outset, it deserves to be noticed that the petitioner is not in police custody or in any form of unauthorized executive detention. The record reveals that after his arrest on 29.01.2026, the petitioner was produced before the competent Court within the prescribed period and orders of remand were passed from time to time. Presently, the petitioner is in judicial custody pursuant to orders passed by the competent Special Court exercising jurisdiction under the provisions of the NDPS Act. The legality of such remand orders is not under challenge before this Court in any substantive proceedings. Thus, the custody of the petitioner is traceable to judicial orders passed by a court of competent jurisdiction.

30. It is a settled principle of law that a writ of Habeas Corpus is maintainable only when the detention complained of is ex facie illegal, unauthorized or without authority of law. Once a person is committed to

custody by virtue of an order passed by a competent court, the scope of judicial review in habeas corpus proceedings becomes extremely limited. Unless the order of remand is shown to be absolutely without jurisdiction, nullity in the eye of law or demonstrably passed in flagrant disregard of fundamental constitutional safeguards, the writ court would ordinarily refrain from examining the legality of custody in a collateral proceeding.

31. The entire challenge raised by the petitioner revolves around the allegation that the grounds of arrest were not communicated to him and, therefore, the arrest itself stands vitiated. It is true that Article 22(1) of the Constitution guarantees that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. The importance of this constitutional safeguard has repeatedly been emphasized by the Hon'ble Supreme Court. Equally, however, the question whether there has been compliance or non-compliance with the constitutional requirement has to be determined on the facts of each individual case.

32. In the present case, the materials available on record reveal that the petitioner was arrested in connection with Crime No.08/2026 registered for offences punishable under Sections 20(b)(ii)(C) and 29 of the NDPS Act. The arrest memo specifically records the crime number and the offences for which the petitioner was arrested. The record further discloses that immediately after the arrest, information regarding the arrest was furnished to the petitioner's wife, Smt. Geeta Musadwale,

on her mobile number. Thereafter, the petitioner was produced before the competent court and remanded to custody in accordance with law. Significantly, the petitioner has not alleged that he was unaware of the crime in connection with which he was arrested or that he was prevented from availing legal remedies. On the contrary, the record demonstrates that he was represented through counsel and actively pursued his remedies before the Special Court by filing successive bail applications.

33. The contention of the petitioner that mere mention of the crime number and statutory provisions in the arrest memo cannot amount to communication of grounds of arrest undoubtedly deserves serious consideration in view of the law laid down by the Hon'ble Supreme Court. However, in the peculiar facts of the present case, this Court is not called upon to adjudicate the validity of the arrest in a criminal proceeding or while considering a prayer for bail. The issue before this Court is whether the petitioner's present custody can be characterized as illegal so as to justify issuance of a writ of Habeas Corpus. The distinction between the two assumes significance.

34. Much reliance has been placed by the learned counsel for the petitioner upon the decision of the Hon'ble Supreme Court in ***Vihaan Kumar*** (supra). In the said case, the Supreme Court was dealing with a situation where the State failed to plead and establish that the grounds of arrest had ever been communicated to the arrestee. On the contrary, the stand consistently taken before the Court was that information

regarding arrest had been communicated only to the wife of the accused. It was in that factual backdrop that the Supreme Court held that communication of grounds of arrest to the wife of the arrestee could never amount to compliance with Article 22(1) of the Constitution. The Court further found that there was no contemporaneous material on record indicating that the grounds of arrest had been furnished to the accused himself.

35. The facts of the present case stand on a materially different footing. Here, the petitioner was arrested in connection with a previously registered FIR involving recovery of commercial quantity of contraband. The arrest memo specifically disclosed the crime number and offences involved. The petitioner was produced before the competent court immediately after arrest. He participated in the remand proceedings through legal representation and thereafter pursued multiple bail applications. The present proceedings do not arise from a challenge to the arrest at the threshold stage but from a petition seeking a writ of Habeas Corpus after the petitioner has remained in judicial custody pursuant to valid remand orders. Therefore, the ratio of ***Vihaan Kumar*** (supra) cannot be applied mechanically divorced from its factual context.

36. Similarly, the decisions in ***Pankaj Bansal*** (supra), ***Prabir Purkayastha*** (supra), ***Dr. Rajinder Rajan*** (supra) and ***Mihir Rajesh Shah*** (supra) were rendered in entirely different factual settings while considering the legality of arrest and the consequences flowing

therefrom. The principles laid down therein regarding the mandatory nature of communication of grounds of arrest are beyond dispute. However, none of the aforesaid decisions lays down as an absolute proposition that every allegation regarding deficiency in communication of grounds of arrest would automatically justify issuance of a writ of Habeas Corpus irrespective of the subsequent judicial orders of remand and the stage of criminal proceedings.

37. Equally, the decisions relied upon by the petitioner in ***Akash Kumar Sahu*** (supra) and ***Umang Rastogi*** (supra) turned upon their own facts and were rendered in contexts where the courts were directly examining the legality of arrest and detention on the basis of the material placed before them. The ratio of those decisions cannot be construed to mean that a writ of Habeas Corpus would invariably lie whenever an accused alleges violation of Article 22(1), notwithstanding the fact that he is in judicial custody pursuant to valid remand orders passed by competent courts.

38. Another important aspect which cannot be overlooked is that the petitioner has already availed the statutory remedy of seeking bail before the competent Special Court. The second bail application specifically raised the contention regarding illegal arrest and detention. Though the learned Special Judge rejected the application on merits, the fact remains that the petitioner has already invoked the jurisdiction of the criminal court and continues to have efficacious remedies available under the criminal law. A writ of Habeas Corpus cannot be

permitted to be employed as a substitute for statutory remedies or as an alternative mechanism for securing release from judicial custody.

39. It is also relevant to note that the investigation revealed prima facie material indicating the involvement of the petitioner in the alleged offence. The memorandum statements of co-accused persons, according to the prosecution, disclosed the role attributed to the petitioner in arranging transportation and facilitating the movement of the contraband. Whether such material is ultimately admissible or sufficient for conviction is not a matter falling for consideration in the present proceedings. However, the existence of such material demonstrates that the arrest was not an act wholly devoid of basis or jurisdiction.

40. Having regard to the totality of the circumstances, this Court is of the considered opinion that the petitioner has failed to establish that his present detention is illegal or without authority of law. The petitioner is in custody pursuant to judicial orders passed by competent courts. The challenge raised in the present writ petition essentially pertains to the legality and propriety of the arrest and the sufficiency of compliance with procedural safeguards, which are matters capable of examination before the competent criminal courts in appropriate proceedings. Such issues do not furnish a valid foundation for issuance of a writ of Habeas Corpus in the facts of the present case.

41. Before parting with the matter, it is observed that this Court has examined the present case only from the standpoint of maintainability of

the writ petition and the legality of the petitioner's present custody in the context of a writ of *Habeas Corpus*. This Court has not expressed any opinion on the merits of the prosecution case, the evidentiary value of the material collected during investigation, or the petitioner's entitlement to bail. It is always open to the petitioner to avail such remedies as may be available to him under law. Accordingly, liberty is reserved in favour of the petitioner to file a regular bail application before the competent court, if so advised.

42. Consequently, for the reasons recorded hereinabove, no case for issuance of a writ of *Habeas Corpus* is made out. The writ petition, being devoid of merit, is accordingly **dismissed**.

43. There shall be no order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice