

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

CRM (DB) No. 194 of 2025
Nabarun Nayak
Vs.
The State of West Bengal

With

CRM (DB) No. 350 of 2025

Tanushree Roy Nayek @ Tanushree Nayak Roy @ Tanushree Roy

Vs.
The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Petitioner in CRM (DB) 194/2025	: Mr. Sabyasachi Banerjee, Sr. Adv., Mr. Pinak Kumar Mitra Adv. Mr. Vivek Sharma Adv. Ms. Subhanwita Ghosh Adv. Ms. Nahid Ahmed Adv. Mr. Debraj Porey Adv.
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For the Petitioner in CRM (DB) 350/2025	: Mr. Ayan Bhattacharyya, Sr. Adv. Mr. Pinak Kumar Mitra Adv. Mr. Vivek Sharma Adv. Ms. Subhanwita Ghosh Adv. Ms. Nahid Ahmed Adv. Mr. Debraj Porey Adv.
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For the State in CRM (DB) 194/2025	: Mr. Debasish Roy, Ld. P.P., Ms. Sayanti Santra Adv. Ms. Mamata Jana Adv.
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For the State : Ms. Anasuya Sinha, APP
in CRM (DB) Mr. Soumya Basu Roychoudhury Adv.
350/2025

For the defacto : Mr. Soubhik Mitter Adv.
complainant Mr. Sabir Ahmed Adv.
Mr. Somnath Adhikary Adv.
Mr. Ezaz Ahmed Adv.

CAV On : 28.03.2025

Judgment On : 25.04.2025

Apurba Sinha Ray, J. :-

1. The petitioners in the above noted cases have claimed that they have been falsely implicated by the defacto complainant. Investigation is complete and charge-sheet has been submitted in the relevant case being Tamluk Police Station Case No. 894/24 dated 10.10.2024 under Sections 336(1)/ 336(2)/ 338/ 340(2)/ 318(4)/ 316(2)/ 61(2) of the Bharatiya Nyaya Sanhita, 2023 and as such the relevant case being a Magistrate triable case, there is no need for further detention of the petitioners in custody.

2. Learned Senior Advocate appearing for the petitioner Nabarun Nayak has submitted that at the time of arrest the concerned police personnel violated judicial dictum of the Hon'ble Supreme Court in connection with **Prabir Purkayastha Vs. State (NCT) of Delhi reported in (2024) 8 SCC 254 and Vihaan Kumar Vs. State of Haryana & Anr. reported in 2025 SCC Online SC 269** by not informing the ground of arrest to the petitioners.

3. The learned counsel has also submitted that the person who allegedly took the commission money to the tune of Rs. 1,60,00,000/- was not made an accused nor a witness in the charge-sheet. As the petitioner Nabarun Nayak has political affinity with the rival party in opposition, both the said petitioner and his wife Tanushree Nayek Roy have been falsely implicated in this case.

4. The learned counsel for the defacto complainant Mr. Soubhik Mitter has submitted that even a gullible person is entitled to seek redress from the Hon'ble Court. The materials on record show that the complainant has been duped by the petitioners by arranging forged documents purportedly to be documents of Boro Land Territorial Council, Kokrajhar, Guwahati. If the petitioners are enlarged on bail the defacto complainant will not be able to get justice.

5. The learned counsel for the State, Mrs. Sinha has opposed the prayer for bail. It is submitted that the petitioners were duly informed about the grounds of arrest at the time of their apprehension. The learned counsel has drawn our attention to the specific portions of the case diary in support of her contention.

6. Mrs. Sinha has categorically submitted that the mode and method of such communication must be such that the constitutional safeguard is achieved. However, it is not mandatory that the said communication must be in writing only. There is no requirement of a written communication

under Article 22(1) of the Constitution of India. The said Article, according to learned counsel of the State, incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. Even the provisions of Section 50 of Cr.P.C./Section 47 of BNSS do not make it mandatory that the communication must be in writing. Therefore, according to her, even oral communication does not violate the legal provisions if such communication effectively helps the arrestee to take recourse to his legal remedies and to enable him to be represented by an advocate. In the case of **Pankaj Bansal Vs. Union of India & Ors. reported in (2024) 7 SCC 576**, the Hon'ble Apex Court dealt with section 19 of the PMLA under which the reasons should be recorded in writing. It is further submitted that paragraph 15 of Vihaan Kumar's case (supra) states that although there is no requirement to communicate the ground of arrest in writing, there is no harm if the same is done in the written form.

7. Mrs. Sinha has further drawn our attention to the fact that both the accused persons concealed actual facts and gave their statements contradictorily. From their statements, their involvement primarily transpired in this case. The learned counsel for the State has also drawn our attention to the relevant entries in the case diary and submitted that the two accused persons were arrested after observing all legal formalities. The memo of arrest of Tanushree Roy Nayak at page 133 indicates that one Tapan Kumar Samanta had signed as a witness of the family or a respectable person of the locality. The memo of arrest of Nabarun Nayak at page 134 also indicates that one Tapan Kumar Roy had signed as a witness

of the family or a respectable person of the locality. The date and time of arrest as reflected in the memo of arrest is 26.11.2024 at 16:45 hrs. Forwarding report of both the accused persons at page 138 records, (at 3rd last paragraph) that all guidelines of Hon'ble Apex Court have been adhered to.

8. The learned counsel for the State has further submitted that the entry made by the investigating agency at page 130 of the case diary shows that the accused persons were informed about their ground of arrest at 15:55 hours while they were arrested finally at 16:35 hrs. and 16:45 hours respectively when their advocate Tapan Kumar Samanta was present. In the instant case the entry in the case diary is very clear and not vague and is placed before the Hon'ble Court at the earliest. Hence, it is not an afterthought and the same is different from the facts of Vihaan Kumar's case (supra). Furthermore, it is clear that the accused persons were effectively represented on the date of their first production by their advocate who had taken steps for their release on bail and the same was rejected. According to State counsel, there are sufficient incriminating materials against the present petitioners and as such their prayer for bail should be rejected.

9. We have considered the materials on record including the Memo of arrest and we do not find any whisper in the printed form of Memo of arrest indicating that the petitioners were informed about the ground of arrest.

10. It appears from the case law of ***Prabir Purkayastha (supra)*** that the Hon'ble Supreme Court has observed that the ground of arrest, as enshrined in Article 22(1) of the Constitution of India, as a matter of right has to be communicated with the full particulars of the offence for which the person is arrested or other grounds for arrest. The Hon'ble Supreme Court has been pleased to observe as 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.

20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in Roy V.D. v. State of Kerala: (2000) 8 SCC 590 at page 593, para 7)

"7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens."

Thus, any attempt to violate such a fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly."

11. In **Vihaan Kumar's case (supra)**, the main issue involved in the said case was whether the appellant who was not informed of the grounds of his arrest, is sufficient to hold that there is a violation of his right under Article 22(1) of the Constitution or not.

12. The Hon'ble Apex Court has been pleased to hold that Article 22(1) of the Constitution provides 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. This being the fundamental right guaranteed to the arrested person, the mode of conveying the information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. In the said decision it is further held that there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why it should be the advisable course of action to be followed

as a matter of principle. Firstly, in the event such grounds of arrest are orally read to the accused person or read by such person with nothing further and this fact in a given case it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due compliance in this regard. The second reason as to why this should be the proper course to adopt such Constitutional objectives is that conveyance of this information is not only to apprise the arrested person as to why he/she is being arrested but also to enable such person to seek legal counseling and thereafter present a case before the Court under Section 45 to seek release on bail.

13. The Hon'ble Court has been pleased to quote para 29 of the judicial decision of ***Prabir Purkayastha's case (supra)*** which is as hereunder:-

"29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22 (5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be."

14. We have examined the Memo of arrest but we do not find that the concerned Police Officers have complied with the direction of the Hon'ble Supreme Court as required in ***Prabir Purkayastha (supra)*** and ***Vihaan***

Kumar (supra) at the time of arrest of both the petitioners in writing. Needless to mention, even alleged oral communication of grounds of arrest or through any other indirect mode of conveying the grounds to the petitioners would not suffice since when the law, as interpreted by the Hon'ble Supreme Court, dictates one thing to be done in a particular manner, the same is to be done in the same manner only, and not in any other manner or mode. Therefore, non-compliance of such provision is sufficient to hold that the arrest made without informing the concerned persons the grounds of arrest was in utter violation of the law postulated by the Hon'ble Apex Court, and accordingly the petitioners are entitled to be released on bail on certain conditions:-

The petitioners namely, Nabarun Nayak and Tanushree Roy Nayek may find bail of Rs. 1,00,000/- each with two sureties of Rs. 50,000/- each out of which one must be local subject to the satisfaction of the Learned Chief Judicial Magistrate, Tamluk and also on condition that the petitioners shall not influence, intimidate the witnesses or tamper any evidence in connection with this case and further both of them shall remain within the jurisdiction of Tamluk Police Station excepting for the purpose of attending court proceedings. The petitioner Nabarun Nayak is further directed to meet the I.C. Tamluk Police Station once in a week until further order. The petitioners shall attend the court on each date of hearing without fail. If the petitioners or any of the petitioners fail/fails to comply with any of the above conditions as stipulated herein above, the bail granted to them or the

concerned petitioner shall be cancelled by the concerned court without further reference to this Court.

15. CRM (DB) 194 of 2025 with CRM (DB) 350 of 2025 are accordingly disposed of.

16. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)