

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRM (NDPS) 244 of 2025

**Serina Bibi
Vs.
The State of West Bengal**

For the petitioners : Mr. Souvik Mitter
Mr. Angshuman Chakraborty
Mr. Shashanka Sekhar Saha

For the state : Mr. Sanjay Banerjee
Mr. Arfeen Begum

Heard on : 24.04.2025

Judgment on : 13.05.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein, who is a lady accused, was arrested on 04.02.2025 in connection with NDPS Case No. 11 of 2025 and since then she is in custody and therefore prays for bail on any terms and condition.

2. Prosecution case in a nutshell is that on the basis of a credible source information that one woman will be coming at Khodar bazar Mondal Para to deal with huge quantity of heroin for money, the complainant along with other police personnel Baruipur Police Station had been to the spot near Ashma Hotel and met the source at 11.25 hrs. On the same day at about

16.25 hrs the complainant noticed a lady with a Nylon bag in hand was coming and on being identified by the source, the complainant and his team followed her. After a while they noticed that the lady entered inside a house and then the complainant and his team entered the house and detained the lady and another person, when the two detainees admitted that they have kept heroin inside the house. Then one Abdus Samad Mollah arrived and said it was his house and he became an independent witness. The said two detainees were served notices under section 50 NDPS Act. From the said house 909 gms. heroin like substance and Rs. 26.43 lakhs was recovered.

3. Mr. Sanjay Banerjee Id. Counsel appearing on behalf of the State strongly opposed the bail prayer contending that the search cum seizure process was done in between 16.50 hrs to 20.25 hrs on 04.02.2025. He further submits that entire process of search and seizure was videographed. Moreover, during the entire process LC/3437 Barnali Dutta of Baruipur P.S. was present with the petitioner and no male police personnel interacted with her. Whatever questioning was done to her was done by said lady constable and thereafter she was arrested after performing all legal formalities regarding arrest and seizure, the case was started. The petitioner Serina Bibi was found in joint possession 909 gms of heroin and Rs. 26,43,600/- cash inside the premises owned by her son in law. Relying upon the judgment reported in **(1994) 3 SCC 440** petitioners contended that imposition of restraint in the present case by physical act or apprehension of the petitioner completes the process of arrest.

4. Mr. Banerjee further submits that in the present case the informant along with his team and lady constable followed the petitioner into the

house of her son in law at around 16.25 hrs, when there was day light. Thereafter, the petitioner was in complete control of the police personnel and her movement was totally restricted and she had no option of leaving the premises and as such she can be deemed to have been arrested at 16.50 hrs, when the search and seizure started. In this context he further stated that the fact that thereafter contraband was recovered from the said premises and she was informed of her grounds of arrest, the subsequent arrest is formality. Accordingly he submits that there is no violation of article 21 or 22 of the Constitution of India. There is also no allegation of custodial torture. Mr. Banerjee thus submits that the provisions of sec 43(5) of Bharatiya Nagarik Suraksha Sanhita (BNSS) are merely procedural in nature and though they are expected to be followed honestly but there may be cases where there are difficulties to fulfil the requirements instantly and therefore merely because the arrest was formalised after sun set, it cannot be said that arrest was illegal. Considering the gravity of allegation and that conditions imposed in section 37 clearly attracts in this case the prayer for bail should be rejected.

5. Mr. Souvik Mitter learned Counsel appearing on behalf of the petitioners submits that the petitioner is a lady and had been arrested from inside the house of her son in law, from where the alleged contraband had been recovered but nothing had been seized from exclusive possession of the petitioner. Moreover, the arrest was done by male Sub-Inspector in violation to section 43(5) of BNSS) which states that save and except in exceptional circumstances no women shall be arrested after sunset and before sunrise and where exceptional circumstances exists the women police officer shall

by making any written report required to obtain the prior permission of the judicial magistrate of the 1st Class, within whose local jurisdiction, the offence is committed or the arrest is to be made. In the present case no such written permission was obtained from magistrate and as such, the arrest is *void ab initio*, since arrest was made between sunset and sunrise without any written permission from the local judicial magistrate.

6. Contradicting the argument advanced on behalf of the State of West Bengal, the petitioners submits that there cannot be any deemed arrest at 16.10hrs and thereafter in between 20.30 hrs and 20.35 hrs, when the petitioner were arrested after being communicated with the grounds of arrest. Seizure list shows the time is 16.50 hrs and 20.25 hrs. Thus the seizure was after the petitioner was kept under arrest, so the chance of planted seizure is apparent and hence the petitioner is entitled for bail. He further submits that the judgment relied by the State reported in **(1994) 3 SCC 440** has got no application in this case, since the judgement was passed in 1994 but section 46(4) of Cr.P.C, giving special protection about arrest of women accused came into force after 23.06.2006.

7. He further contended that even the notice under section 50 of the NDPS Act was allegedly served on the petitioner by a male officer at 16.10 hrs and that since then till the time of arrest at 20.30 hrs, no lady officer of SI rank was present and hence the same is bad in law and for that reasons also the petitioner is entitled to be released on bail. He further submits that in compliance of ratio laid down in **Vihaan Kumar (supra)**, neither the petitioner nor her friend relative or any nominated person was informed about the grounds of arrest in writing and as the arrest is not in accordance

with law the remand is illegal and the petitioner is entitled to be released on bail. In this context petitioner relied upon following judgments:-

- (i) ***Vihaan Kumar Vs. State of Haryana and Anr.*** reported in **2025 INSC 162**
- (ii) ***Ashish Kakkar Vs. UT of Chandigarh*** dated 25.03.2025 passed by the Hon'ble Supreme Court in **Criminal Appeal No. 1518 of 2025**
- (iii) ***Kavita Manikikar of Mumbai Vs. CBI BS and FC*** reported in **2018 SCC Online Bom 1095**
- (iv) ***Bharti S. Khandhar Vs. Maruti Govind Jadhav and others*** reported in **2012 SCC Online Bom 1901**

8. I have considered submissions made by both the parties.

9. Prosecution case is that informant along with one police personnel belonging to Special Task Force, West Bengal followed the petitioner into the house of her son in law at around 16.25 hrs. before sunset and such fact has not been denied or disputed by the petitioner. Accordingly it is the case of the prosecution that since that time the petitioner is on complete control of the police personnel and her movements were totally restricted within the house of her son in law and she was not allowed to leave the premises at any point of time. It is their further case that search and seizure process was done in between 16.50 hrs to 20.25 hrs on 04.02.2005 and that both the suspect were formally arrested at the time given in the arrest memo and the entire process of that search and seizure was videographed. It is further case of the prosecution that during entire search and seizure process lady constable was all along there with the lady detainee/petitioner and no male

police personnel was allowed to interact with her and the entire questioning was done to her by the lady constable. During search and seizure 909 gms of heroin was recovered in the possession of petitioner and the other accused in three transparent poly packets full of dry light brown colour substance from inside the Nylon hand bag. During search and seizure accused Mongaleswar Sk. handed over from metal tank containing huge amount of cash of Rs. 26,43,600/- and on further search, different types of golden colour ornaments seem to be gold were also recovered from there, which the accused persons allegedly confessed to be purchased from selling the illegal narcotics substance.

10. Therefore, the points for consideration in the present case is whether petitioner being a lady accused was lawfully arrested, as arrest memo shows that the time of arrest is 20.35 hrs.

11. The procedure of arrest is laid down in chapter V of Bhartiya Nagarik Suraksha Sanghita (in short BNSS) and section 43 of BNSS states how arrest can be made :-

“43. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action: Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency-notes, human trafficking, sexual offence against children, or offence against the State.

(4) *Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.*

(5) *Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made."*

12. In ***Directorate of Enforcement Vs. Deepak Mahajan and another*** reported in **(1994) 3 SCC 440** the meaning of the word 'arrest' was taken up for consideration by the Apex Court and in para 46 the court held

46. *The word 'arrest' is derived from the French word 'Arreter' meaning "to stop or stay" and signifies a restraint of the person. Lexicologically, the meaning of the word 'arrest' is given in various dictionaries depending upon the circumstances in which the said expression is used. One of us, (S. Ratnavel Pandian, J. as he then was being the Judge of the High Court of Madras) in *Roshan Beevi v. Joint Secretary, Government of T.N.* [1984 Cri LJ 134 : (1984) 15 ELT 289 : 1983 MLW (Cri) 289 (Mad)] had an occasion to go into the gamut of the meaning of the word 'arrest' with reference to various textbooks and dictionaries, the New Encyclopaedia Britannica, Halsbury's Laws of England, A Dictionary of Law by L.B. Curzon, Black's Law Dictionary and Words and Phrases. On the basis of the meaning given in those textbooks and lexicons, it has been held that:*

"[T]he word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested."

13. Accordingly the question of arrest is dependent upon the fact as to whether the person who was sought to be arrested was deprived of his personal liberty to go where he or she pleases. The court categorically held that the essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority accompanied by a

seizure or detention of the person in the manner known to law, which is so understood by the person arrested.

14. In the present context there is no dispute about the fact that the petitioner was deprived of her personal liberty to go where she pleases and she was confined within the house of her son-in-law from 16.50 hrs. i.e. before the sunset.

15. Learned Counsel appearing on behalf of the petitioner submits when the said judgment was passed in the year 1994 neither section 46 of the Cr.P.C. nor section 43 of the BNSS was in force which provides special protection about arrest of a female accused and as such the court had considered the issue of arrest of a lady accused in the context of the law that was prevailing at that relevant point of time. As such ratio laid down in the said case is not applicable in the present context.

16. I am not agreeable with the submissions made by the Mr. Mitter since what was discussed in the said judgment was the meaning of arrest for all purposes and for all times. The term arrest cannot be defined other than the definition given therein that the arrest means to restrict a person's movement and it signifies a restraint of the person depriving his personal liberty to move anywhere he or she pleases irrespective of the fact at what time it was recorded formally in the memo of arrest.

17. When similar question was raised in a NDPS Case before a co-ordinate of Orissa High Court in ***Sk Husain and others Vs. State of Orissa, CRLMC No. 3703 of 2022*** the court held in para 17 as follows:-

17. What had transpired at the spot at the relevant time as mentioned in the F.I.R. has already been referred to hereinbefore. Thus, there can be no manner of doubt that the Petitioners having been apprehended around 5 P.M. or thereabouts must be deemed to have been arrested at that time. The

effect of endorsing the time of arrest by the arresting officer in the memo of arrest was considered by a learned Single Judge of the Bombay High Court in the case of Ashfak Hussain Allah Detha @ Siddiqui v. The Asst. Collector of Customs, Bombay; reported in (1990) 1 Bom CR 451, wherein it was held as follows;

"10. It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences. [The Law Lexicon--P. Ramanatha Aiyar Reprint Edition 1987, page 85.] Whether a person is arrested or not does not depend on the legality of the act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases. [Section 37(1) of the N.O.P.S. Act.] It stands to reason, therefore, that what label the Investigating Officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest, The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers."

18. Accordingly, in the instant case I have no hesitation to say that the imposition of restrain undisputedly put on the petitioner at least from 16.50 hrs. from which time she was deprived of her personal liberty to go where she pleases and the police officer restrained her free movement and for which she must be deemed to have been arrested at 16.50 hrs. and in this case the effect of endorsing the time of arrest by the arresting officer in the memo of arrest is not an index to the actual time of arrest. In fact what has been done at the time mentioned in the arrest memo is only to formalize the arrest already effected long back. It is also the case of the petitioner that a lady officer was present there and the ground of arrest in written form was given to the petitioner and she was produced before the learned Magistrate on 05.02.2025 within 24 hrs.

19. Leaned counsel appearing on behalf of the petitioner relied upon the judgment of Bombay High court in ***Bharati S. Khandhar Vs. Maruti Govind Jadhav and Others*** reported in **2012 SCC Online Bom 1901** but on perusal of paragraph 13 it appears that the accused in that case was

brought to the police at 5.30 p.m., admittedly when the police officer was not having the copy of non bailable warrant of arrest by the court and for which arrest was not effected till 8.45 p.m. on the said night and the arrest was made at 8.45 p.m. and no prior permission of the judicial magistrate was taken. Accordingly said case is factually distinguishable. The other Bombay High Court judgment relied by the petitioner in reported in ***Kavita Manikikar of Mumbai Vs. Central Bureau of Investigation BS & FC, through its Standing Counsel of Bombay and Another*** reported in **2018 SCC Online Bom 1095** states that she was called on 20.02.2018 at 15.50 hrs. in the CBI office Mumbai for the purpose of investigation and she was placed under arrest formally at 20.00 hrs, as during investigation it revealed that she was not co-operating and there was a strong suspicion that she may abscond if not arrested and therefore, in order to unravel large conspiracy in the fraud, she was placed under arrest formally which was carried out on 20.00 hrs. Accordingly it is clear that when she was called for by CBI officer it was not in the mind of the CBI officers to arrest her but during course of interrogation she did not co-operate and there was apprehension of her absconsion, and due to development of situation CBI decided to arrest her after sunset which makes it clear that there was no intent of arrest before sunset and it developed later on and for which it is also factually distinguishable with the present case. In the case of ***Ashish Kakkar Vs. UT of Chandigarh***. Criminal appeal no. 1518 of 2025 there is a clear non-compliance of the mandate under section 41-A of the Code and the arrested person was not heard at the time of remand and the grounds of

arrest was not furnished to the arrested person which violated article 22 (1) of the constitution of India, which is not the case in the instant proceeding.

20. In such view of the matter I find that there is nothing to say that the arrest of the petitioner was made in violation of section 43 of the BNSS or for that matter it can be said that the arrest of the petitioner was not lawful.

21. Since from the facts and circumstances of the case, the conditions imposed in section 37 of the NDPS Act clearly attracts in the present case the prayer for bail is rejected.

22. CRM (NDPS) 244 of 2025 thus disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)