

SL.No.388
02.05.2025
Ct. no. 35

W.P.A.29660 of 2024

**Sampa Mohanto @ Sampa Hyde Gomes
Versus
The State of West Bengal & Others.**

Mr. Deepak Prahladka
Ms. Reshmi Khatun.

.... For the petitioner.

Mr. Kishore Datta, Ld.A.G.
Mr. Swapan Banerjee
Mrs.Sumita Shaw
Mr. Saumalya Ganguli.

.... For the State.

The petitioner has preferred the instant writ petition for a declaration that the arrest of the petitioner on 22.11.2024 in connection with Patuli P.S.Case No.438 of 2024 dated 22.11.2024 was illegal as the same was in violation of Article 22 of the Constitution of India and Section 47 of the Bharatiya Nayaya Suraksha Sanhita (B.N.S.S.), 2023.

The records of the case reflect that on 22.11.2024, police personnel of Anti Human Trafficking Unit (A.H.T.U.), Detective Department, Kolkata Police, along with others went to the rented flat of the petitioner at P-3, Southern Garden, Kolkata-700084. The petitioner was arrested on the allegation of rescuing two victim women, one of them was an adult while the other was a minor. Two rescue memos and one arrest memo was prepared

between 15:15 hrs and 18:45 hrs of 20.11.2024. As a result of the same, Patuli P.S. Case No.438 of 2024 was registered for investigation under Sections 61,64,96,143 and 144 of the B.N.S.S., 2023 and Section 4/17 of the POCSO Act along with Sections 3,4,5,6,7 of the Immoral Traffic (Prevention) Act. The petitioner was produced before the Learned ACJM, Alipore, 24 Parganas, South, on 23.11.2024. When she was sent to police custody with the direction for her production before the Learned Judge, Special Court (POCSO), Alipore, till 25.11.2024 and the case was registered as Special (A POCSO) case No.451 of 2024.

On 25.11.2024, the petitioner was sent to judicial custody till 27.11.2024 and subsequently in course of such custody the investigating authority further preferred for police custody till 02.12.2024 when such prayer was allowed. However, on 04.12.2024 she was sent to judicial custody till 18.12.2024.

The main grievance of the petitioner is that she was arrested on 22.12.2024 without being informed of the grounds of the arrest in writing, the petitioner as such submits that there has been a clear violation of Article 22(1) of the Constitution of India as well as the provision of Section 47 of the B.N.S.S., 2023 and she as such may be released from custody.

In order to substantiate such contention Learned Advocate relied upon a series of judgments.

Reliance was made by the Learned Advocate on ***Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254*** and the reference was drawn to paragraphs 44,45,46, 47, 48 and 49.

“45. We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the courts in the country by virtue of Article 141 of the Constitution of India.

46. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the investigating officer.

47. We have carefully perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a pro forma indicating the formal “reasons” for which the accused was being arrested.

48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase “reasons for arrest” and “grounds of arrest”. The “reasons for arrest” as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the “grounds of arrest” would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest

informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the “grounds of arrest” would invariably be personal to the accused and cannot be equated with the “reasons of arrest” which are general in nature.

49. From the detailed analysis made above, there is no hesitation in the mind of the court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the appellant-accused or his counsel before passing of the order of remand dated 4-10-2023 which vitiates the arrest and subsequent remand of the appellant.”

Attention of the Court was drawn to the judgment of **VihaanKumar Versus State of Haryana and Another 2025 SCC online SC 269** and reference was made to paragraphs 21 and 31 which reads as follows:

21. Therefore, we conclude:

- a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);*
- b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;*
- c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);*
- d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore,*

non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

31. The learned Single Judge, unfortunately, has equated information given regarding the appellant's arrest with the grounds of arrest. The observation that the allegation of non-supply of the grounds of arrest made by the appellant is a bald allegation is completely uncalled for. All courts, including the High Court, have a duty to uphold fundamental rights. Once a violation of a fundamental right under Article 22(1) was alleged, it was the duty of the High Court to go into the said contention and decide in one way or the other. When a violation of Article 22(1) is alleged with respect to grounds of arrest, there can be possible two contentions raised : (a) that the arrested person was not informed of the grounds of arrest, or (b) purported information of grounds of arrest does not contain any ground of arrest. As far as the first contention is concerned, the person who is arrested can discharge his burden by simply alleging that grounds of arrest were not informed to him. If such an allegation is made in the pleadings, the entire burden is on the arresting agency or the State to satisfy the court that effective compliance was made with the requirement of Article 22(1). Therefore, the view taken by the High Court is completely erroneous."

Learned Advocate for the petitioner also referred to a number of judgments of the different High Courts.

However, in view of the judgments of the Hon'ble Supreme Court and the ratio laid therein, the law presently seems to be well settled.

Mr. Swapan Banerjee appearing on behalf of the State produced the case diary and argued in respect of the gravity of the offence and the complicity of the present petitioner. It was also argued on behalf of the State that there is every possibility of the petitioner fleeing away from the process of law, once she is released on bail. State has also referred to a relevant part of the judgment in ***Vihaan Kumar (Supra)*** paragraph 17 has been relied upon which is as follows:

“17. Another argument canvassed on behalf of the respondents is that even if the appellant is released on the grounds of violating Article 22, the first respondent can arrest him again. At this stage, it is not necessary to decide the issue.”

Having regard to the dictum of the Hon'ble Apex Court that in case the grounds of arrest has not been communicated to an accused immediately after his arrest and prior to production before this Court. So, while exercising its jurisdiction as a Constitutional Court this Court cannot shy away if there is an infraction in respect of violation of the fundamental rights. Consequently, as the charge-sheet has already been submitted before the Jurisdictional Court and in view of the ratio laid down above by the Hon'ble Apex Court, the arrest of the petitioner stands vitiated. As

such she is entitled to be released. So far as the condition of the bond which are to be imposed, let the same be decided by the learned Special Court by exercising its discretion.

With the aforesaid directions WPA 29660 of 2024 is disposed of.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)