

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

APPELLATE SIDE

CRM (DB) No. 62 of 2025

Somnath Banerjee
Vs.
The State of West Bengal

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

For the Petitioner : Mr. Soumen Dutta, Adv.
 Mr. Subham Dutta, Adv.
 Mr. Partha Sarathi Basu, Adv.
 Ms. Juthika Barman, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.,
 Ms. Anasuya Sinha, APP
 Mr. Shiladitya Banerjee, Adv.

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 petitioner in the above case has claimed that he has been falsely implicated by the defacto complainant. He is not the principal accused. According to the FIR he was present at Guwahati and he did not play any

pivotal role in connection with the alleged offence. However, investigation is complete and chargesheet 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 petitioner in custody.

2. The learned counsel appearing for the petitioner 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 petitioner.

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. This goes to show that the petitioner has been falsely implicated in the 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 petitioner along with others by arranging forged documents purportedly to be documents of Boro Land Territorial Council, Kokrajhar,

Guwahati. If the petitioner is 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 petitioner was informed about the grounds of arrest at the time of his apprehension. The learned Counsel has also 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 relevant entries in the case diary and submitted that the petitioner was arrested after observing all legal formalities. The concerned police personnel intimated the grounds of arrest to the petitioner and further on the first day of production after arrest before the court, the learned counsel had taken steps for his release on bail but the same was rejected. According to State counsel, there are sufficient incriminating materials against the present petitioner and as such his bail prayer should be rejected.

8. 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 petitioner was informed about the ground of arrest.

9. 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.”

10. 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.

11. 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.

12. 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."

13. 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 the petitioner 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 petitioner 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 person the grounds of arrest was in utter violation of the law postulated by the Hon'ble Apex Court, and accordingly the petitioner is entitled to be released on bail on certain conditions:-

The petitioner namely, Somnath Banerjee may find bail of Rs. 1,00,000/- 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 petitioner shall not intimidate the witnesses or tamper any evidence in connection with this case and further he shall remain within the jurisdiction of Madhyamgram Police Station excepting for the purpose of attending court proceedings. The petitioner Somnath Banerjee is further directed to meet the I.C. Madhyamgram Police Station once in a week until further order. The petitioner shall attend the court on each date of hearing without fail. If the petitioner fails to comply with any of the above conditions as stipulated herein above, the bail granted to him shall be cancelled by the concerned court without further reference to the Hon'ble Court.

14. CRM (DB) 62 of 2025 is accordingly disposed of.

15. 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.)