

22.04.2025

Sl. No. 11

Court No.3

BM

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION**

CRM (NDPS) 110 of 2025

In re: An application for bail under Section 439 of
the Code of Criminal Procedure/under Section
483 of the Bhartiya Nagarik Suraksha
Sanhita, 2023

And

In the matter of : Anju Begum & Anr.

Ms. Rima Sarkar
Mr. Sidhi Sethia
Ms. Suparna Paul

.. for the petitioners

Mr. Aditi Shankar Chakraborty, Id A.P.P.
Mr. Kallol Acharya
Mr. Kallol Nag

... for the State

1. Prayer for bail in the present case arises out of an order no.2 dated 03.01.2025 passed by the learned Additional District & Session Judge, 2nd Court (Special Court under NDPS Act) at Siliguri in connection with C.R (NDPS) Case No.92 of 2024 under Section 21(b) (c), 29 of the NDPS Act, 1985 arising out of Kharibari P.S Case No.389 of 2024 dated 19.12.2024, rejecting the prayer for bail of the petitioner herein.

2. The prosecution case in short is that the accused persons including the petitioners herein were found in possession of brown sugar and cough syrup without any authority. Search, seizure and arrest was made, on alleged recovery. The petitioners are in custody for about 122 days.

3. Learned counsel for the petitioner has submitted by way of a supplementary affidavit that the mandatory provision of Section 52(1) of the NDPS Act has not been complied with and as such there has been clear violation of Article 22(1) of the Constitution of India.

4. Learned counsel for the petitioner has relied upon the following judgments:-

i) ***Prabir Purakayastha vs. State (NCT of Delhi) reported in (2024) 8 SCC 254 (Para 14,16,17,46,47 & 48).***

ii) Order dated 8.4.2025, passed in CRM (NDPS) 144 of 2024 by a Co-ordinate Bench in ***Ramkrishna vs. State of West Bengal***, wherein the court held as follows:-

*“10) The same principle was also followed in the subsequent judgments passed by the Hon’ble Apex Court, however, the ratio is that **non-compliance** of the mandate under Section 52(1) of the **Narcotic Drugs & Psychotropic Substances Act**, which has been introduced to give effect to Article 22(1) of the Constitution of India. In such cases, the legislative hurdle of Section 37 of the NDPS Act cannot stand in the way of releasing the petitioner/accused on bail.*

11) Considering all the facts and circumstances, no option is left to this Court but, to grant bail to the petitioner without going into the merit of the case.”

5. The Supreme Court in ***Pankaj Bansal vs. Union of India & Ors. reported in 2024 (7) SCC 576***, held as follows :-

“21. In terms of Section 19(3) PMLA and the law laid down in the above decisions,

Section 167CrPC would necessarily have to be complied with once an arrest is made under Section 19 PMLA. The court seized of the exercise under Section 167CrPC of remanding the person arrested by ED under Section 19(1) PMLA has a duty to verify and ensure that the conditions in Section 19 are duly satisfied and that the arrest is valid and lawful. In the event the court fails to discharge this duty in right earnest and with the proper perspective, as pointed out hereinbefore, the order of remand would have to fail on that ground and the same cannot, by any stretch of imagination, validate an unlawful arrest made under Section 19 PMLA.

22.*Madhu Limaye, In re [Madhu Limaye, In re, (1969) 1 SCC 292] was a three-Judge Bench decision of this Court wherein it was observed that it would be necessary for the State to establish that, at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest suffered on the ground of violation of Article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest.*

27.*In this regard, we may note that, though the appellants did not allege colourable exercise of power or mala fides or malice on the part of ED officials, they did assert in categorical terms that their arrests were a wanton abuse of power, authority and process by ED, which would tantamount to the same thing. On that subject, we may refer to the observations of this Court in State of Punjab v. Gurdial Singh [State of Punjab v. Gurdial Singh, (1980) 2 SCC 471] : (SCC p. 475, para 9)*

“9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a

legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: 'I repeat ... that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist'. Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act."

35. Section 19 does not specify in clear terms as to how the arrested person is to be "informed" of the grounds of arrest and this aspect has not been dealt with or delineated in *Vijay Madanlal Choudhary* [*Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929 : (2022) 10 Scale 577] . Similarly, in *V. Senthil Balaji* [*V. Senthil Balaji v. State*, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] , this Court merely noted that the information of the grounds of arrest should be "served" on the arrestee, but did not elaborate on that issue. Pertinent to note, the grounds of arrest were furnished in writing to the arrested person in that case. Surprisingly, no consistent and uniform practice seems to be followed by ED in this regard, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are

either read out to them or allowed to be read by them.

37. No doubt, in *Vijay Madanlal Choudhary* [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929 : (2022) 10 Scale 577], this Court held that non-supply of the ECIR in a given case cannot be found fault with, as the ECIR may contain details of the material in ED's possession and revealing the same may have a deleterious impact on the final outcome of the investigation or inquiry. Having held so, this Court affirmed that so long as the person is "informed" of the grounds of his/her arrest, that would be sufficient compliance with the mandate of Article 22(1) of the Constitution.

38. In this regard, we may note that Article 22(1) of the Constitution provides, *inter alia*, 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 information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's "reason to believe" that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of

bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

39. We may also note that the language of Section 19 PMLA puts it beyond doubt that the authorised officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the 2002 Act. Section 19(2) requires the authorised officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the adjudicating authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the adjudicating authority under Section 19(2), he/she has a constitutional and statutory right to be “informed” of the grounds of arrest, which are compulsorily recorded in writing by the authorised officer in keeping with the mandate of Section 19(1) PMLA. As already noted hereinbefore, it seems that the mode of informing this to the persons arrested is left to the option of ED's authorised officers in different parts of the country i.e. to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

40. That apart, Rule 6 of the Prevention of Money Laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person Along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005, titled “Forms of Records”, provides to the effect that the arresting officer while exercising powers under Section 19(1) PMLA, shall sign the arrest order in Form III appended to those Rules. Form III, being the prescribed format of the arrest order, reads as under:

“ARREST ORDER

**Whereas, I..... Director/Deputy
Director/Assistant Director/Officer
authorised in this behalf by the Central
Government, have reason to believe that
..... (name of the person arrested)**

resident of has been guilty of an offence punishable under the provisions of the Prevention of Money-laundering Act, 2002 (15 of 2003);

Now, therefore, in exercise of the powers conferred on me under sub-section (1) of Section 19 of the Prevention of Money-laundering Act, 2002 (15 of 2003), I hereby arrest the said (name of the person arrested) at hours on and he has been informed of the grounds for such arrest.

Dated at on this day of Two thousand

**Arresting Officer
(Signature with Seal)**

To

.....

.....

(Name and complete address of the person arrested)”

6. In *Vihaan Kumar v. State of Haryana & Anr.*, reported in 2025 SCC OnLine SC 269, the Supreme Court held as follows:-

“CONCLUSIONS

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.

33. Hence, the appeal is allowed, and we pass the following order:

- a) The arrest of the appellant shown on 10th June 2024 in connection with FIR no. 121 of 2023 dated 25th March 2023 registered at Police Station DLF, Sector-29, Gurugram stands vitiated;
- b) Therefore, the appellant shall be forthwith released and set at liberty;
- c) We clarify that the finding of this Court that the arrest of the appellant stands vitiated will not affect the merits of the chargesheet and the pending case;
- d) We direct the appellant to regularly and punctually attend the trial court unless his presence is exempted, and cooperate with the trial court for early disposal of the trial. We direct the appellant to furnish a bond in accordance with Section 91 of the BNSS to the satisfaction of the Trial Court within a period of two weeks from his release;
- e) **The State of Haryana shall issue guidelines/departmental instructions to the police (i) to ensure that the act of handcuffing an accused while he is on a hospital bed and tying him to the hospital bed is not committed again. (ii) to ensure that the constitutional safeguards under Article 22 are strictly followed. If necessary, the State Government shall amend the existing Rules/guidelines; and**

f) A copy of the judgment shall be forwarded to the Home Secretary of the State of Haryana.”

7. It appears from the materials in the case diary placed by the prosecution, that the memo of arrest does not mention the grounds of arrest nor the fact that the accused has been informed of the grounds of arrest. It appears from the memo of arrest that the case reference with the offence committed has been left blank by the Arresting Officer in respect of the petitioner herein and only GD number has been mentioned.

8. By way of supplementary affidavit the petitioner has annexed copies of the memo of arrest in respect of her contention.

9. On hearing the learned counsel for the parties and on perusal of the material on record, it is clear that in the present case the mandatory compliance of Section 52(1) of the NDPS has admittedly not being complied with.

10. It appears that the arresting officers in such cases on regular basis are not filling up the mandatory columns nor are they complying with the mandatory provision of Section 52(1) of the NDPS Act in spite of several judgments and guidelines and directions of the Apex Court.

11. In spite of being aware of such directions of the Supreme Court in cases of such serious nature, the arresting officers are committing such errors by leaving out the mandatory compliance as required under the Act for reasons best known to them.

12. Non-compliance of such mandatory provisions gives an opportunity to the accused and the benefit of doubt and this causes severe prejudice to cases relating to such heinous crimes, which clearly is

against the principle of natural justice and is an abuse of the process of law.

13. Thus relying upon the judgment of the Supreme Court in ***Vihaan Kumar v. State of Haryana & Anr.(Supra)***, and ***Pankaj Bansal vs. Union of India & Ors. (Supra)***, this court draws the attention of the Director General of Police, West Bengal and the learned Advocate General, West Bengal to issue guidelines (departmental) instruction to the appropriate officials to ensure that the mandatory provision of Section 52(1) of NDPS Act is complied with diligently and for such purpose, the present printed form of memo of arrest be amended accordingly as per the existing rules and guidelines.

14. For guidance, the authorities can refer to the format in **Para 40 in *Pankaj Bansal (Supra)*** and also to the format and specimen used by the Narcotics Control Bureau, which clearly informs the grounds of arrest to the accused persons arrested in such cases in compliance of Section 52(1) of the NDPS Act.

15. Accordingly, this court finds that admittedly there has been no compliance of Section 52(1) of the NDPS Act, in the present case in respect of the petitioners herein.

16. Thus relying upon the judgment in ***Pankaj Bansal (Supra)***, ***Vihaan Kumar (Supra)*** and ***Ramkrishna (Supra)***, the petitioners **Anju Begum** and **Umeda Khatun** are granted bail and be released on bail on furnishing bond of Rs.20,000/- each with two sureties of Rs.10,000/- each, **one of which must be local** to the satisfaction of the learned Judge, Special Court(NDPS) Siliguri and on further condition that the petitioner shall appear

before the trial Judge in course of trial on every date of hearing fixed by the court, unless exempted and shall not tamper with evidence or threaten witnesses in any manner whatsoever.

17. The petitioners are further directed not to leave the District of Darjeeling without prior permission of the trial Judge till completion of trial.

18. In case of any violation of conditions the trial Court is at liberty to act in accordance with law.

19. CRM (NDPS) 110 of 2025 stands disposed of.

20. Learned Registrar, Circuit Bench at Jalpaiguri to send a copy of this order to the Director General of Police and the learned Advocate General, West Bengal.

21. Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Shampa Dutt (Paul), J.)