

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Miscellaneous Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

CRM (NDPS) No. 153 of 2025

1. Kamal Lama

2. Bijay Sutradhar

Versus

The State of West Bengal

Mr. Sourav Ganguly

Mr. Bibek Tarafdar

Mr. Gopal Roy

Ms. Rishita Chakraborty

Mr. Bibhash Kumar Nandi

.....For the Petitioners.

Mr. Abhijit Sarkar

Mr. Subhasish Misra

.....For the State.

Hearing Concluded On : 22.05.2025

Judgment on : 11.06.2025

Krishna Rao, J.:

1. This is an application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of bail in connection with Madarihat P.S. Case No. 103 of 2024 dated 16th August, 2024 under Section 21(c) of the NDPS Act, pending before the Learned Court of Special Judge, (NDPS) Court, Alipurduar.
2. On the basis of credible information, the police of P.S. Madarihat apprehended the petitioners at Holong Bus Stop with the printed coloured plastic bag. On inquiry by the police personals, the petitioners stated that they are possessing “Contraband Drugs” which they have brought from Madarihat for selling the same at Jaigaon area for earning money. The petitioners have not produced any valid documents in support of possessing and transporting the said contraband narcotic substances to the police.
3. The Police after compliance of all formalities conducted a search of the said bag and found (i) 90 strips of SAMPLEX+ capsules, each strip contains 24 capsules total 2160 capsules having batch no. C19406-A, date of manufacture is February, 2024, expiry date January, 2026 and MRP Rs. 75.90 for 8 capsules. The police have seized the said capsules along with the bag and two mobile phones by preparing seizure memo.
4. After the seizure of the said contraband and other articles at 17:40 hrs. on 16th August, 2024, the petitioner no. 1 was arrested at 17:55

hrs. and the petitioner no.2 was arrested at 17:45 hrs. on 16th August, 2024 at the place of occurrence by preparing memo of arrest.

5. On the basis of written report of S.I. Samit Chakraborty, the instant case being FIR No. 103 of 2024 is initiated against the petitioners.
6. Mr. Saurav Ganguly, Learned Advocate representing the petitioners submits that the Police while arresting the petitioners have violated the provisions of Section 22(1) of the Constitution of India as well as Section 52 (1) of the NDPS Act by not informing the ground of arrest to the petitioners.
7. Mr. Ganguly further submits that the petitioners were produced before the Learned Court of Special Judge (NDPS) Alipurduar on 17th August, 2024 and at the time of production the petitioners were not represented by any Advocate. The Learned Judge has not also provided any Advocate from Legal Aid to the petitioners to defend the petitioners.
8. Mr. Ganguly further submits that on the date of production of the petitioners, the Investigating Officer has prayed for Police Remand and without appointing any Advocate from Legal Aid, the Learned Judge has granted police remand to the petitioners.
9. Mr. Ganguly submits that the petitioners are in custody since their arrest and the police has completed investigation and thus, there is no chance of hampering and tempering with the evidence.

10. Mr. Ganguly in support of his submissions relied upon the judgment in the case of ***Vihaan Kumar Vs. State of Haryana and Another*** reported in ***2025 SCC Online SC 269*** and submitted that in this case also the police has not communicated the grounds of arrest to the petitioners and have violated the provisions of Article 22(1) of the Constitution of India, thus the arrest of the petitioners is vitiated.
11. Mr. Abhijit Sarkar, Learned Advocate appearing for the State submits that the contraband seized from the possession of the petitioners are commercial quantity and the petitioners have not made out any case to come out from Section 37 of the NDPS Act.
12. Mr. Sarkar submits that from the arrest memo of the petitioners in Clause 9, it is clearly mentioned that after giving information to the petitioners with regard to the grounds of arrest and their legal rights, the petitioners were arrested by the police.
13. Mr. Sarkar submits that when the petitioners were produced before the Learned Special Judge (NDPS) Court, the Learned Judge personally heard the petitioners and the petitioners informed to the Court that they are nothing to say for police remand and they are fit.
14. Mr. Sarkar submits that after completion of investigation, the police has submitted charge sheet and the case is at the stage of evidence.
15. Mr. Sarkar submits that the judgments relied by the petitioners are not applicable in the case of the petitioners as in the present case, the

police have duly informed the grounds of arrest to the petitioners which is duly reflected in Clause 9 of the arrest memo.

- 16.** The petitioners have been arrested for the offence under Section 21(c) of the NDPS Act, 1985 on the allegation, the police has recovered commercial quantity of drugs from the joint possession of the petitioners.
- 17.** The main contention of the petitioners that the grounds of arrest were not communicated to the petitioners at the time of their arrest. The petitioners were arrested by Memo of Arrest. Clause 9 of Memo of Arrest reads as follows:

*“9. The accused after being informed of the grounds of arrest and his legal rights was duly taken into custody on 16th August, 2024 at 17:45 hours at place Hollong Bus stand, Near Hollong Forest. The following articles(s) was/were found on physical search, conducted on the person of the accused, and were taken into possession for which a receipt was given to the accused (i).
**Nil**..... (ii).
 **Nil** (iii).
 **Nil**”*

- 18.** In the case of **Vihaan Kumar (supra)**, the Hon’ble Court come to the conclusion that:

“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.”

- 19.** In the case of ***Prabir Purkayastha (supra)***, the Hon’ble Supreme Court held that:

“28. *The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the “grounds” of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.*

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.”*

- 20.** The requirement of communication of grounds of arrest to the arrested person/persons, as mandated under Article 22(1) of the Constitution of India also been incorporated in Section 52(1) of the NDPS Act, 1985.
- 21.** The petitioners have specifically alleged that the grounds of arrest were not informed to the petitioners. It is the burden upon the Investigating Officer or the Arresting Officer to prove the compliance of Article 22(1) of the Constitution of India. In the present case in the memo of arrest, it is stated *“after being informed of the grounds of arrest and his legal rights was duly taken into custody”*. The information of the grounds of arrest must be provided to the petitioners in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the petitioners effectively in the language which the petitioners understands.
- 22.** Clause 9 of the Memo of Arrest which the State is relying upon does not satisfied that how the Arresting Officer has informed the grounds to the petitioners before their arrest. It is also not clear how it was communicated and whether the petitioners have understood the communication as stated by the State.
- 23.** This Court finds that Clause 9 of the Memo of Arrest does not satisfied that the grounds of arrest was ever informed to the petitioners in compliance of the provisions of Article 22(1) of the Constitution of India and Section 52(1) of the NDPS Act, 1985.

- 24.** In view of the above, the petitioners may find bail of Rs. 20,000/- with two sureties of Rs. 10,000/- each and one surety must be local with the satisfaction of the Learned Special Judge (NDPS) Court, Alipurduar.
- 25.** If on bail, the petitioners shall appear before the Learned Trial Court on each and every date of hearing without fail and shall not hamper and temper with the evidence.
- 26.** This Court finds that the petitioners were produced before the Learned Special Judge (NDPS) Court, Alipurduar on 17th August, 2024 and the petitioners were not represented by any Advocate. Though the Learned Judge has heard the petitioners in person but has not provided/ offered any Advocate from Legal Aid to defend the petitioners.
- 27.** Considering the above, the Learned Judge is directed that hence forth, if any, of the accused produced before him and is not represented by any Advocate or has not engaged any Advocate, the Learned Judge or the Magistrate shall offer the accused person to provide Advocate from Legal Aid Panel.
- 28. CRM (NDPS) No. 153 of 2025 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

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

(Krishna Rao, J.)