

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

Present:

The Hon'ble Justice Tirthankar Ghosh

CRM (NDPS) 235 of 2025

Shahalam Shikdar @ Sahalom Sikdar
versus
The State of West Bengal & Ors.

With

CRM (NDPS) 237 of 2025

Asadul Mondal @ Ashadul Mandal @ Pacha @ Pocha
Versus
The State of West Bengal

For the Petitioner	: Mr. Sourav Ganguly Mr. Bibek Tarafder Mr. Gopal Roy Ms. Rishita Chakraborty Ms. Deblina Ray Mr. Bibhash Kr. Nandi [in CRM (NDPS) 235/25]
For the Petitioner	: Dr. Arjun Chowdhury Ms. P.D.Chowdhury Ms. S. Parveen Ms. Riya Agarwal Mr. Mantu Mandal Mr. Bappaditya Roy [in CRM(NDPS) 237/25]
For the State	: Mr. A. S. Chakraborty, ld. APP Mr. Nilay Chakraborty, ld. APP Mr. Kallol Nag [in CRM (NDPS) 235/25]
For the State	: Mr. A. S. Chakraborty, ld. APP Mr. Abhijit Sarkar Ms. Sukanya Adhikari [in CRM(NDPS) 237/25]

Heard On : 19.06.2025

Judgement On : 20.06.2025

Tirthankar Ghosh, J. :

The present bail applications are taken up together as in both the applications, the petitioners have challenged the non-compliance in respect of the communication of 'reasons of arrest' and 'grounds of arrest' to the respective petitioners.

In CRM (NDPS) 235 of 2025, the prosecution's case related to Sahebganj P.S. Case No. 563 of 2024 dated 23.09.2024 under Sections 21(c)/29 of the NDPS Act, wherein, the investigating agency alleged to have recovered 197 bottles of phensedyl cough syrup from the possession of the present petitioner.

So far as CRM (NDPS) 237 of 2025 is concerned, the accusations which have been made, relate to Tufanganj P.S. Case No. 29 of 2025 under Section 21(c) of the NDPS Act. The investigating agency, in this case, arraigned the petitioner for recovery of 50 bottles of phensedyl (100 ml each bottle) and consequently, arrested him and proceeded with the case.

Learned advocate for the petitioner in CRM (NDPS) 235 of 2025 submitted Written Notes of Argument narrating Historical Basis of Article 22(1); Colonial Legal Context and Arbitrary Detentions; Bengal

Regulation Act III of 1818; Rowlatt Act, 1919; Defense of India Act, 1939; Core Principles relating to Article 22 of the Constitution of India and, also referred to the issues relating to Judicial Oversight and Accountability. Referring to different provisions which are appearing under the Prevention of Money Laundering Act, 2002, the Unlawful Activities (Prevention and Atrocities) Act, 1967 and the NDPS Act, 1985, it was submitted that since the provisions of bail in these legislations are stringent, it is the duty of the State to strictly adhere to the provisions of law.

To that effect, emphasis was made on Section 52(1) of the NDPS Act; Section 19(1) of the PMLA and Section 43B(1) of the UAPA Act and it was submitted that the provisions being mandatory and the same having been not applied by the investigating agency and/or the State, the petitioner is entitled to be released on bail as has been held by the Hon'ble Apex Court in *Pankaj Bansal –v- Union of India* reported in [(2024) 7 SCC 576; *Prabir Purakayastha –v- State (NCT of Delhi)* reported in [(2024) 3 SCC (Cri) 573], *Vihan Kumar –v- State of Haryana* reported in [(2025) INSC 162] as also the recent Judgment passed by the Co-ordinate Bench in CRM (NDPS) 146 of 2025 dated 11.06.2025.

Learned advocate for the petitioner in CRM (NDPS) 237 of 2025 emphasized that the 'grounds of arrest' were not supplied to the petitioner after his arrest which disentitles his advocate at the time of

opposing the first remand application. Petitioner also relied upon the same series of judgments referred to above for release of the petitioner for violation of the provisions of Article 22 of the Constitution of India.

Learned advocate for the State has also forwarded Written Notes of Arguments narrating statutory framework governing arrest; communication of grounds referring to Section 35 and 37 of the NDPS Act; judicial interpretation of grounds of arrest and compliance.

Reference has also been made by the learned advocate for the State in respect of *Neeraj Singal -v- Directorate of Enforcement, BAIL A PPLN. 2356 of 2023*, which was decided on 08.01.2024 and reference has also been made upon the *Ram Kishore Arora -v- ED* reported in (2024) 7 SCC 599, *Moin Akhtar Qureshi* as also the judgment of the Hon'ble Supreme Court in *Vihan Kumar* (supra). Reliance was further placed on *Mihir Rajesh Shah-v- State of Maharashtra* in Criminal Writ Petition No. 3529 of 2024 passed by the Hon'ble Bombay High Court as also *Sudhar Mangar -v- State of West Bengal* in CRM (NDPS) 146 of 2025.

Learned advocate for State has also referred to the issues relating to Conscious Possession and Culpable Mental State relying upon the judgment of *Rakesh Kumar Raghuvanshi -v- The State of Madhya Pradesh* decided in Criminal Appeal No. 1953 of 2014.

There are other issues which have been canvassed. But for the purpose of the application for bail, this Court restricts itself to the

principal issues which have been canvassed relating to non-supply of grounds of arrest in writing to the accused, memorandum of arrest and the effect of its violation under Article 226 of the Constitution of India.

A Co-ordinate Bench of this Hon'ble Court in CRM (NDPS) 169 of 2025; CRM (NDPS) 230 of 2025; CRM (NDPS) 235 of 2025; CRM (NDPS) 242 of 2025; CRM (NDPS) 290 of 2025; CRM (NDPS) 295 of 2025; CRM (NDPS) 312 of 2025; CRM (NDPS) 337 of 2025; CRM (NDPS) 345 of 2025; CRM (NDPS) 350 of 2025; CRM (NDPS) 356 of 2025; CRM (NDPS) 373 of 2025; CRM (NDPS) 377 of 2025; CRM (NDPS) 394 of 2025; CRM (NDPS) 401 of 2025; CRM (NDPS) 412 of 2025; CRM (NDPS) 423 of 2025; CRM (NDPS) 490 of 2025; CRM (NDPS) 501 of 2025; CRM (NDPS) 516 of 2025; CRM (NDPS) 518 of 2025; CRM (NDPS) 520 of 2025; CRM (NDPS) 521 of 2025; CRM (NDPS) 524 of 2025; CRM (NDPS) 528 of 2025; CRM (NDPS) 548 of 2025; CRM (NDPS) 549 of 2025; CRM (NDPS) 552 of 2025 by a Judgment and Order dated 22.05.2025 after taking into account the judgment of *Vihan Kumar (supra)*, *Harikishan v- State of Maharashtra & Ors.* reported in AIR 1962 SC 911, *Madhu Limaye & Ors.* Reported in 1969 (1) SCC 292, *Pankaj Bansal (supra)*, *Ram Kishor Arora (supra)*, *Vijay Madan Lal Chowdhury -v- Union of India* reported in (2023) 12 SCC 1, *Prabir Purkayastha (supra)* also referred to the Preamble of the NDPS Act. The same for the purpose of convenience is quoted below:

“31. An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and

regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.”

Reliance was placed upon the judgment of *Narayanaswamy Ravishankar –v- Asstt. Director, Directorate Revenue Intelligence* reported in (2002) 8 SCC 7. Paragraph 6 of the said judgment is quoted below:

“6. It was also contended by the learned Senior Counsel that the ground on which the appellant was arrested was not communicated to him. We find no merit in this because the arrest memo clearly indicates the offence stated to have been committed by the appellant under the NDPS Act. Further, the record also shows that copy of the arrest memo Ext. P-20 was received by the appellant.”

The aforesaid observations in *Narayanaswamy Ravishankar (supra)* still holds the field as the same has not been overruled.

It is categorically stated and observed by the Hon’ble Apex Court in the said judgment that when the contention relating to ground on which the appellant was arrested was not communicated to him was canvassed before the Hon’ble Apex Court, the same was answered by the Hon’ble Apex Court holding that there was no merit in such contention.

The Larger Bench judgment in *Narayanaswamy Ravishankar (supra)* till date has not been overruled, subsequently, by the Hon’ble Supreme Court and still holds to be a good law, so far as the cases under the NDPS Act are concerned. Since the judgment passed in the

aforesaid set of revisional applications by a Co-ordinate Bench was not taken into account in CRM (NDPS) 146 of 2025, I am of the view that the doctrine of *sub silentio* would apply in such circumstances for appreciating the verdict in CRM (NDPS) 146 of 2025. The petitioner in CRM (NDPS) 146 of 2025 was released on bail, which should be considered to be restrictively only on the ground that no counsel represented the petitioner and the learned Special Court also did not offer any legal aid to the petitioner when the accused was produced before the Court.

Having considered that the law in this respect has already been settled by the Hon'ble High Court, Calcutta, no fresh principle is required to be enunciated in cases under the NDPS Act afresh. Consequently, the bail applications being CRM (NDPS) 235 of 2025 and CRM (NDPS) 237 of 2025 are dismissed.

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

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)