

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

Present:

The Hon'ble Justice Md. Shabbar Rashidi

CRM (NDPS) 464 of 2025

Md. Shabir @ Sabir Khamn

Vs.

The State of West Bengal

For the Petitioner : Ms. Anjana Medhi, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P.
Mr. Chattu Roy, Adv.
Mr. Subhasish Misra, Adv.

Heard on : 19.11.2025

Judgment on : 24.11.2025

MD. SHABBAR RASHIDI, J.:-

1. Bail prayer of the petitioner is taken up for consideration.
2. The petitioner was arrested in connection with Phansidewa Police Station Case No. 232 of 2025 dated May 30, 2025 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS' Act). The petitioner was arrested in

connection with the said case on May 30, 2025 along with a car through which, it is alleged, contraband narcotic substances were being transported from Assam. Commercial quantity of narcotic in the nature of *brown sugar* was recovered, concealed under the car in which the petitioner was travelling.

3. At the time of hearing, learned advocate for the petitioner did not make any submission on the merits of the case. It was submitted by the learned advocate that the petitioner, when arrested, was not informed of the grounds of his arrest which is in violation of the provisions of Bharatiya Nagarik Suraksha Sanhita (for short, 'BNSS'). It was further submitted that no family member or relatives/friends of the petitioner were informed about his arrest by the police. According to learned advocate for the petitioner such an action on the part of the arresting officer was in violation of the Fundamental Rights of the petitioner enshrined under Article 22 of the Constitution of India. Learned advocate of the petitioner submits that since arrest of the petitioner was made in violation of Article 22 of the Constitution of India as well as the provisions contained in BNSS, the petitioner is entitled to be released on bail.

4. In support of such contention, learned advocate for the petitioner relied upon **GAHC010190362025 (*Firoj Alom And Anr. vs. State of Assam*)**, **GAHC010141092025 (*National Investigation***

Agency vs. Thangminlen Mate @ Lenin Mate) and (2025) 5 SCC 799 (Vihaan Kumar vs. State of Haryana And Another).

5. Learned advocate representing the State opposes the prayer for bail of the petitioner. It was submitted on behalf of the learned advocate for the State that arrest of the petitioner was made in compliance of the provision of BNSS. There is no violation of the established laws governing arrest. The Fundamental Rights of the petitioner cannot be said to have been violated. The petitioner was arrested and was found in possession of commercial quantity of narcotic drugs.

6. Heard the submissions made on behalf of the parties. I have gone through the materials on record including the materials contained in the case diary. The case diary contains the memo of arrest in respect of the petitioner in connection with the instant case. Such memo of arrest shows that the petitioner was produced before the learned Court on May 31, 2025 at 10:05 hours. The memo of arrest appears to have been signed by witness. It was countersigned by the petitioner on May 30, 2025 itself.

7. Section 36 of the BNSS mandates the procedure of arrest by a police officer which is as follows:-

*“36. Every police officer while making an arrest shall—
(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;*

- (b) prepare a memorandum of arrest which shall be—*
 - (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;*
 - (ii) countersigned by the person arrested; and*
- (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest.”*

8. The memo of arrest, as is evident, was prepared by the arresting officer which contains sufficient identification of the petitioner. In accordance with the established law or the subject it was signed by a witness which includes a member of the family of the person arrested or a respectable member of the locality where the arrest was made. It was duly countersigned by the arrested person.

9. Apparently, the memo of arrest, on the basis of which the petitioner was arrested, seems to be quite consonance with the provision of Section 36 of the BNSS.

10. In ***Firoj Alom*** (supra), it was observed by the Gauhati High Court that noting the the observations made in the case of ***Vihaan Kumar*** (supra) to the effect that

“The Apex Court has observed in the case of “Vihaan Kumar Vs. the State of Haryana and Another” (supra) that the the requirement of communicating the grounds of arrest, in writing, is not only to the arrested persons, but also to the

friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution of India meaningful and effective failing which, such arrest may be rendered illegal.”

11. Similarly, in ***Thangminlen Mate @ Lenin Mate*** (supra), the Gauhati High Court noted as follows:-

“As can be seen from the records, bail had been granted by the Special Court, NIA, Assam to the accused respondent only on the ground of non-communication of the grounds of arrest in writing to the family members of the accused respondent and as such, bail was granted by the learned Special Court, NIA, Assam due to violation of Section 48 of the BNSS, 2023 and in view of the decision in Vihaan Kumar (supra).”

12. In such case, the accused therein was released on bail by the Special Court, NIA on the ground that the grounds of arrest were not communicated to the father of the accused. Such grant of bail was upheld by the Gauhati High Court in ***Thangminlen Mate @ Lenin Mate*** (supra) when the National Investigation Agency moved before the High Court seeking cancellation of such bail.

13. In the case at hand, the petitioner was on transit apparently in possession of commercial quantity of narcotic drugs which were being carried from the State of Assam. The petitioner was apprehended in the State of West Bengal. The raiding officer arrested the petitioner complying all legal formalities. A memo of arrest was

drawn up at the time of arrest. It bears the signature of the witness, presumably, a respectable person of the locality from where the arrest was made. The arrest memo was countersigned by the petitioner himself.

14. The petitioner received a copy of memo of arrest. There is nothing in such memo of arrest that the petitioner nominated any members of his family or a friend for the purpose of communicating the grounds of his arrest.

15. The materials annexed with the application for bail also demonstrates that the search and seizure was conduct by the raiding team on May 30, 2025. Contraband articles in the nature of *brown sugar* were recovered from joint possession of the petitioner. The vehicle, a four wheeler Tata Nexon was seized. The petitioner also signed on such seizure list and a copy of the same was received by him. The petitioner was produced before the learned Court on the day following his arrest, i.e., May 31, 2025. There is nothing on record to show that the petitioner raised such point that he was not intimated with the ground of his arrest by the arresting officer before the Court where he was produced. In such circumstances, the materials on record go to show that there was sufficient compliance of Section 36 of the BNSS.

16. Moreover, in the case of *Vihaan Kumar* (supra), it was laid down by the Hon'ble Supreme Court that,

“23. In the present case, the first respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10-06-2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the first respondent. If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.”

17. The principle laid down by the Hon'ble Supreme Court to the effect that, ‘when an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police’. I have noted hereinbefore that the memo of arrest was duly drawn up in accordance with the provision of Section 36 of the BNSS. Such memo of arrest does contain specific ground of detention to be noted as ‘suspect to be carrying/possessing of NDPS articles’. The memo of arrest was countersigned by the

petitioner and a copy thereof was duly received by him. Such an action on the part of the police, to my understanding, discharges the onus upon the police with regard to communication of the grounds of arrest.

18. So far as the intimation of grounds of arrest upon the relatives/friends of the arrested person is concerned, I find no averment to that effect in the pleadings put in by the petitioner. Besides, the application for bail appears to have been affirmed by the brother-in-law of the petitioner who has made a candid statement he is well-aware of the facts and circumstances of the case. In the teeth of such statement by a relative of the petitioner and also in absence of any pleading to that effect, I do not think, the petitioner is entitled to state that the grounds of detention has not been communicated to the family members/friends of the petitioner.

19. Insofar as the facts and circumstances of the case is concerned, although, the petitioner has not pressed his application on merits. Nevertheless, the petitioner was found in possession of commercial quantity of narcotics and was detained for such possession of contraband articles. In that view of the matter, I am not in a position to return a finding that the petitioner has been able to overcome the restrictions under Section 37 of the NDPS Act. On this

score also, I would not have been in a position to grant bail to the petitioner.

20. Consequently, in the facts and circumstances of the case, I am of the opinion that the petitioner does not deserve to be enlarged on bail.

21. Accordingly, bail prayer of the petitioner is rejected.

22. **C.R.M. (NDPS) 464 of 2025** is, thus, disposed of.

23. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]