



Crl.O.P.(MD) Nos.10345 & 10346 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	07.11.2025
Pronounced on	19.11.2025

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD) Nos.10345 & 10346 of 2025

Bava Bagurudeen @ Bagurudeen

... Petitioner in Crl.O.P.
(MD) No.10345/25

1.Silamparasan

2.Prakash

... Petitioners in Crl.O.P.
(MD) No.10346/25

Vs.

The State of Tamil Nadu rep. by
The Inspector of Police,
Jegathapattinam Police Station,
Pudukkottai District.
Crime No.2 of 2025

... Respondent in both
Crl.O.Ps.

Prayer in Crl.O.P.(MD) No.10345 of 2025 : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to set aside the order of remand passed as against the petitioner by the learned Judicial Magistrate, Manamelkudi in Crime No.2 of 2025, dated 12.01.2025, in the interest of justice.



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Prayer in Crl.O.P.(MD) No.10346 of 2025 : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to set aside the order of remand passed as against the petitioners by the learned Judicial Magistrate, Manamelkudi in Crime No.2 of 2025, dated 10.01.2025, in the interest of justice.

For Petitioners
in both Crl.O.Ps. : Mr.S.Karthikeyan
for Mr.K.Subburaj

For Respondent
in both Crl.O.Ps. : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed seeking to set aside the orders of remand passed by the learned Judicial Magistrate, Manamelkudi, against the petitioners in Crime No.2 of 2025 [renumbered as Crime No.7 of 2025, on the file of NIB-CID, Sivagangai] dated 10.01.2025 and 12.01.2025, respectively.

2. The petitioner in Crl.O.P.(MD) No.10345 of 2025 is the third accused, and the petitioners in Crl.O.P.(MD) No.10346 of 2025 are the first and second accused in Crime No.2 of 2025, registered for the



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offences punishable under Sections 8(c), 20(b)(ii)(C), 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The allegation in the FIR is that, on receipt of secret information that certain persons were attempting to illegally smuggle ganja to Sri Lanka, the respondent and the search party proceeded to the seashore and intercepted a container lorry on 10.01.2025 at about 5.45 a.m.; that when the persons inside the lorry, viz., the petitioners in Crl.O.P.(MD) No. 10346 of 2025/A1 and A2, gave evasive replies, and when the police party informed them about the search, they raised no objection to the search being conducted by the police party; that upon search of the lorry, 12 white sacks containing 170 bundles were found; that it was found that each bundle contained 2 kgs of ganja; and that when the police party enquired the petitioners in Crl.O.P.(MD) No.10346 of 2025, they stated that the contraband was meant to be handed over to one Bava Bagurudeen @ Bagurudeen, who is the petitioner in Crl.O.P.(MD) No.10345 of 2025/A3, and that he would, in turn, smuggle it to Sri Lanka.

4. The learned counsel for the petitioners would submit that the petitioners' remand is in violation of their fundamental rights under



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Articles 22(1) and 22(5) of the Constitution of India, inasmuch as the petitioners were not communicated the grounds of arrest in writing; that the arrest memo is not sufficient compliance with the requirement to communicate the grounds of arrest in writing; and that the grounds of arrest are different from the reasons for arrest mentioned in the arrest memo, and relied upon the judgment of the Hon'ble Supreme Court in ***Vihaan Kumar vs. State of Haryana and another***, Neutral Citation: 2025 INSC 162, and the recent judgment of the Hon'ble Supreme Court in ***Mihir Rajesh Shah vs. State of Maharashtra and another***, Neutral Citation: 2025 INSC 1288.

5. It is seen that the petitioners in Crl.O.P.(MD) No.10346 of 2025 were arrested along with the contraband on 10.01.2025, and the petitioner in Crl.O.P.(MD) No.10345 of 2025 was arrested on 12.01.2025 at about 6.00 a.m.

6. The respondent has filed a counter affidavit stating that the case was registered by the respondent, Inspector of Police, Jegathapatinam Police Station, in Crime No.2 of 2025, and the arrest was also effected by the police officials attached to the said police station; that later, the case



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was transferred to the NIB-CID, Sivagangai, and renumbered as Crime No.7 of 2025; that the final report has also been filed and taken on file as C.C.No.186 of 2025 on the file of the II Additional District and Sessions Court-cum-Special Court for EC and NDPS Act Cases, Pudukottai; that A1 and A2, the petitioners in Crl.O.P.(MD) No.10346 of 2025, were arrested on 10.01.2025, and A3, the petitioner in Crl.O.P.(MD) No.10345 of 2025, was arrested on 12.01.2025; that the reasons for their arrest were duly explained to them as mandated under Section 52 of the NDPS Act; that intimation of the arrest of the accused was also communicated to their respective family members; that since the petitioners were caught red-handed with the contraband and were in possession of commercial quantity of ganja, they were aware of the existing laws; and that since the petitioners were in possession of commercial quantity, the rigours of Section 37 of the NDPS Act would be applicable, and hence, the challenge to the remand orders cannot be sustained, and the petitions are liable to be dismissed.

7. The learned Additional Public Prosecutor for the respondent relied upon the observations made by the Hon'ble Supreme Court in ***Mihir Rajesh Shah*** [cited *supra*]; that the directions issued by the Hon'ble



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Supreme Court shall govern arrests henceforth, and therefore, the arrests made prior to the said order cannot be rendered illegal for non-communication of the grounds of arrest; that since the earlier judgments of the Hon'ble Supreme Court have been elaborately considered in ***Mihir Rajesh Shah*** [cited *supra*], this Court has to be governed only by the directions issued therein; and that, therefore, these Criminal Original Petitions are liable to be dismissed, especially considering the fact that A1 and A2 were found in possession of a huge quantity of ganja.

8. The counter affidavit does not refer to the communication of the grounds of arrest in writing. The respondent has only stated that the arrest memo contained the reasons and that the reasons for arrest were duly explained to the petitioners in terms of Section 52 of the NDPS Act. It is also seen that, in a copy application filed by the petitioner seeking the grounds of arrest under Section 52(1) of the NDPS Act, the Special Court has returned the said application stating that the grounds of arrest are available only for A9 and A10 and not for these petitioners. It is clear on facts that the grounds of arrest have not been communicated in writing.



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9. The question that arises is whether the remand order can be set aside for the above said reason.

10. The learned counsel for the petitioners relied upon various decisions in which the requirement of communicating the grounds of arrest has been dealt with. In a recent judgment delivered on 06.11.2025 in **Mihir Rajesh Shah** [cited *supra*], all the judgments relied upon by the learned counsel for the petitioners were considered, and the Hon'ble Supreme Court observed as follows:

*“33. The mandate contained in Article 22(1) of the Constitution of India is unambiguous and clear in nature, it provides that the arrested person must be informed of the grounds of arrest as soon as they can be. It further provides that the arrested person has the right to defend himself by consulting a legal practitioner of his choice. **This constitutional mandate has been effectuated by the legislature in Section 50 of CrPC 1973 (now Section 47 of BNSS 2023) which provides that an arrested person shall be forthwith communicated with the grounds of his arrest.***

*34. The objective enshrined in Article 22(1) of the Constitution of India for furnishing grounds of arrest stems from the fundamental principle of providing opportunity to a person to allow him to defend himself from the accusations that are levelled against him leading to his arrest. **The salutary purpose of informing the grounds of arrest is to enable the person to understand the basis of his arrest and engage legal***



counsel to challenge his arrest, remand or seek bail and/or avail of any other remedy as may be available to him/her under law.

....

38. *These above discussed principles embody the manifestation of the constitutional safeguard sought to be achieved in Article 22 of the Constitution of India which is that the arrested person must be well equipped with the information not only about his arrest but the reasons and grounds thereof prior to his production before the magistrate so as to enable him to effectively defend himself and oppose the police and judicial custody and even press for bail. The obligation to inform the grounds of arrest to the arrestee is thus, not just a mere procedural formality, instead it flows from the fundamental right of personal liberty which sets the further course for protection from the oppressive restrictions imposed upon the free movement in the society of an arrestee during remand.*

39. *A plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest....”, it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22 (1) is notwithstanding any exception. **This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to***



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all offences including those under the IPC 1860 (now BNS 2023).

40. *The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.*

.....

42. *As mentioned above, it has been held while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the language used in Article 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall ipso facto apply to Article 22(1). **The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1). Reference at this stage may be made to the Constitution Bench Judgment of this Court in Harikisan (supra) wherein while dealing with the Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person. The relevant portion thereof reads thus:***

“7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that ‘he has studied



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up to 7th Hindi standard, which is equivalent to 3rd English standard'. The High Court negated the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the Order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds, contained in many paragraphs, as indicated above, in order to be able effectively to make his representation against the Order of Detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detainee, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the Order of Detention and the grounds would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in the case of State of Bombay v. Atma Ram Sridhar Vaidya [1951 SCC 43 : (1951) SCR 167] clause (5) of Article 22 requires that the grounds of his detention should be made available to the detainee as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detainee should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detainee should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detainee sufficient knowledge of all the grounds on which the Order of Detention



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is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenue would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenue effective knowledge of the facts and circumstances on which the Order of Detention is based.

8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenue must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.””

(emphasis supplied)

11. Thus, from the above observations, it is very clear that the communication of the grounds of arrest is mandatory, and it is a constitutional right of the persons arrested that the grounds of arrest are informed to them. The mode of communication of the grounds of arrest has also been dealt with. The Hon’ble Supreme Court has held that the mode of communication must be in writing and in a language which can be understood by the arrestee, in order to satisfy the constitutional



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requirement under Article 22(1) of the Constitution of India. Therefore, the constitutional requirement to communicate the grounds of arrest, and that such communication has to be in writing, has been reiterated by the Hon'ble Supreme Court in the above said judgment.

12. The next issue that was dealt with by the Hon'ble Supreme Court was as to when the grounds of arrest have to be communicated. The Hon'ble Supreme Court held that Article 22 of the Constitution of India uses the expression “as soon as may be,” and the statute is also silent as regards the mode, nature, and time of communication of the grounds of arrest. The Hon'ble Supreme Court had also noted that there may be situations where it may not be practically possible to supply the grounds of arrest in writing to the arrested person at the time of arrest or immediately thereafter. Hence, the Hon'ble Supreme Court observed that a suitable method has to be evolved, and that a rigid insistence upon informing the written grounds of arrest before or at the time of effecting the arrest, or immediately thereafter, may result in the police officers not being able to discharge their duties and responsibilities efficiently and effectively. The relevant portion reads as follows:



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*“49. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this noncompliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says ‘as soon as may be’ which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. **There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.***

.....

52. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the magistrate.”

(emphasis supplied)



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13. In this case, it is seen that A1 and A2 were arrested with the contraband, and they were arrested based on secret information. Therefore, the respondent could not have immediately communicated the grounds of arrest to those two accused as the offence was committed in flagrante delicto (caught red-handed). The Hon'ble Supreme Court has also held that in such cases, the grounds of arrest have to be communicated at least two hours before the remand and that the said requirement would apply to arrests made henceforth. Hence, this Court is of the view that the non-communication of the grounds of arrest in the case of A1 and A2 would not vitiate the remand, as the arrests were made before the judgment of the Hon'ble Supreme Court on 06.11.2025. Therefore, Crl.O.P.(MD) No.10346 of 2025 is liable to be dismissed.

14. As regards the petitioner in Crl.O.P.(MD) No.10345 of 2025, it is seen that the petitioner/A3 was apprehended not based on secret information but on the basis of the confession made by A1 and A2 on 12.01.2025, i.e., two days after the arrest of A1 and A2. There was sufficient time for the respondent to prepare and communicate the grounds of arrest, and the respondent ought to have communicated the same to the said accused. Since, admittedly, the grounds of arrest have not been



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communicated to the petitioner in CrI.O.P.(MD) No.10345 of 2025/A3, this Court is of the view that the remand of the petitioner in CrI.O.P.(MD) No.10345 of 2025/A3 suffers from violation of the constitutional mandate. However, it is seen that in the connected cases in CrI.O.P.(MD) Nos.15094 and 16742 of 2025 challenging the extension of remand of A3 and also challenging the extension of time to file final report, this Court had quashed the orders extending the remand period beyond the statutory period of 180 days and extending the time for filing final report and granted bail to A4 to A6 and A3. Therefore, no further orders are required, in CrI.O.P.(MD) No.10345 of 2025.

15. In the result, CrI.O.P.(MD) No.10345 of 2025/A3 is disposed of, and CrI.O.P.(MD) No.10346 of 2025 is dismissed.

19.11.2025

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Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

Copy To:

1.The Judicial Magistrate,
Manamelkudi.



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- 2.The Inspector of Police,
Jegathapattinam Police Station,
Pudukkottai District.
- 3.The Inspector of Police,
NIB-CID, Sivagangai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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Pre-Delivery Common Order made
in
Crl.O.P.(MD) Nos.10345 & 10346 of 2025

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