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Crl.O.P.No.3318 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.3318 of 2026

1. Bablu Ghorai
2. Riya Bablu Ghorai

... Petitioners/ A1 & A2

Vs

The State Rep. By,
The Inspector of Police,
PEW – Tambaram Police Station,
Crime No.109 of 2025.

... Respondent/ Complainant

Prayer: Criminal Original Petitions filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioners/ accused in C.C.No.1212 of 2025 on the file of the I Additional Special Judge, Special Court under EC and NDPS Act, Chennai.

For Petitioners : Mr. K. Anandha Raja

For Respondent(s) : Mr. R. Muniyapparaj, APP
Mr. A. Gopinath, GA (Crl. Side)
Mr. M. Sylvester John

ORDER



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The petitioners, who were arrested and remanded to judicial custody on 03.07.2025 for the offences under Sections 8(c), 20(b)(ii)(C), 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 in C.C.No.1212 of 2025 on the file of the I Additional Special Judge, Special Court under EC and NDPS Act, Chennai, seek bail.

2. The allegation against the petitioners herein is that, the petitioners herein are husband and wife and they were found in joint possession of 25 kilograms of Ganja, which is a commercial quantity. Hence, this case.

3. The learned counsel appearing for the petitioners submitted that, the petitioners have been falsely implicated in this case; that the respondent has not complied the mandatory procedures and not circulated or explained the grounds of arrest to the petitioners herein and also to their relatives, as mandated under Section 47 of BNSS (Section 50 of the Code of Criminal Procedure), hence there is a clear violation of fundamental rights of the petitioners under the Constitution of India; that the petitioners are in judicial custody since 03.07.2025; and that the petitioners are ready to abide by any condition that may be imposed by this Court and sought for bail to the petitioners. He also relied on the judgments of the Apex Court in *Mihir Rajesh Shah vs. State of Maharashtra and another* [2025 LiveLaw (SC) 1066] and *Vihaan Kumar vs. State of Haryana and*



another [2025 INSC 162] in support of his contention.

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4. The learned Additional Public Prosecutor appearing for the respondent while opposing the bail to the petitioners reiterated the prosecution case and submitted that, the petitioners herein were intercepted with joint possession of 25 kilograms of Ganja; that after informing the petitioners regarding the grounds of their arrest, the petitioners were arrested and produced before the learned Magistrate, hence there is no violation of the fundamental rights under Article 21 of the Constitution of India; that the contraband seized in this case is a commercial quantity, hence the petitioners have to satisfy the Section 37 of NDPS Act; that the investigation of this case is pending. He also relied on the judgment of the Apex Court in ***State of Karnataka vs. Sri Darshan [2025 SCC OnLine SC 1702]*** and contended that, though furnishing the grounds of arrest is mandatory, the person, who seeks violation shall establish that there is demonstrable prejudice or denial of fair opportunity to defend. The mere absence of written grounds of arrest does not *ipso facto* render the arrest illegal and to substantiate the same, he further relied on the judgments of the High Court of Tripura in ***Md. Amran Hossain vs. Union of India [AIR 2017 SC 1362]*** and the Division Bench judgment of the High Court of Delhi in ***Karan Singh vs. State NCT of Delhi [2026 DHC 570-DB]***.



5. I have considered the submissions made on both sides and perused the materials available on record.

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6. Though the petitioners had raised various contentions, one of the main contention raised by the petitioners is that, they were not served with the grounds of arrest, which directly concern with the right of the petitioners alleging that there is violation of Article 22(1) and 22(5) of Constitution of India as contemplated in *Vihaan Kumar's case*.

7. The Apex Court in *Vihaan Kumar vs. State of Haryana and another [2025 INSC 162]* has held that, the Article 22(1) of the Constitution of India mandates that the information about the grounds of arrest to be provided to the arrested person in such a manner, that sufficient context of the basic facts constituting the grounds is important and communicated to the arrested person. It further reads that the burden of compliance of Article 22(1) is on the persons, who is exercising the power of arrest. Further elaborating the scope of Article 21, Article 22 and other connected provisions, the Apex Court had concluded as follows:

“11. The view taken in the case of Pankaj Bansal was reiterated by this Court in the case of Prabir Purkayastha. In paragraph nos. 28 and 29, this Court held thus:

“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.”

(emphasis added)

12. This Court held that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical, and therefore, this Court held that interpretation of Article 22(5) made by the Constitution Bench in the case of *Harikisan v. State of Maharashtra*³, shall ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the ground of arrest is concerned. We may also note here that in paragraph 21, in the case of *Prabir Purkayastha*², this Court also dealt with the effect of violation of Article 22(1) by holding that any infringement of this fundamental right would vitiate the process of arrest and remand. Paragraph 21 reads thus:

“21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.”

(emphasis added)

13. In the case of *Lallubhai Jogibhai Patel v. Union of India*, in paragraph 20, this Court held thus:

“20. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the



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detenu, have been drawn up in English. It is true that Shri C.L. Antali, Police Inspector, who served the grounds of detention on the detenu, has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. But, that is not a sufficient compliance with the mandate of Article 22(5) of the Constitution, which requires that the grounds of detention must be “communicated” to the detenu. “Communicate” is a strong word. It means that sufficient knowledge of the basic facts constituting the “grounds” should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the “ground” to the detenu is to enable him to make a purposeful and effective representation. If the “grounds” are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. If any authority is needed on this point, which is so obvious from Article 22(5), reference may be made to the decisions of this Court in Harikisan v. State of Maharashtra [1962 Supp 2 SCR 918 : AIR 1962 SC 911 : (1962) 1 Cri LJ 797] and Hadibandhu Das v. District Magistrate [(1969) 1 SCR 227 : AIR 1969 SC 43 : 1969 Cri LJ 274] .”

(emphasis added)

Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in the case of Pankaj Bansal, this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

....



“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 charge sheet 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.”*

8. In **Mihir Rajesh Shah vs. State of Maharashtra and Anr. [2025**



LiveLaw (SC) 1066], the Apex Court after observing the **Pankaj Bansal vs. Union of India [SLP(Crl) No.9220 -21 of 2023]** and the principles laid down in

Vihaan Kumar's case cited supra as observed in paragraph No.56 as follows:

“56. In conclusion, it is held that:

- (i) The constitutional mandate and informing the arrestee the grounds of arrest is mandatory in all offences under all statutes, including the offences under IPC, 1860 (now BNS, 2023)*
- (ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/ she understands*
- (iii) In case where, the arresting officer/ person is unable to communicate the grounds of arrest in writing on or soon after the arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the Magistrate*
- (iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to set free.”*

9. Further the Division Bench of High Court of Delhi in **Karan Singh's case** cited supra, after considering both **Mihir Rajesh Shah's case** and **Sri Darshan's case** has observed in paragraph No.19 as follows:

“19. There is one more aspect of the case. The grievance about the alleged procedural lapse has been raised very belatedly i.e., after more than one year and nine months of the arrest and there is no whisper of any prejudice being caused to the petitioner, who was represented by counsel from day one. Supreme Court in State of Karnataka vs. Sri Darshan has held that while compliance of Section 50 Cr.P.C is mandatory, the consistent judicial approach has been to adopt a “prejudice-oriented test” when examining alleged procedural



lapses and, further held that mere absence of written grounds does no ipso facto render the arrest illegal, unless it results in demonstrable prejudice by denial of a fair opportunity to the accused to defend themselves.”

10. In ***Sri Darshan's case***, it has been specifically observed by the Apex Court that the arrestee has to establish that there is a demonstrable prejudice. Considering the above line of judgments, this Court is of the view that, after passing of the judgment in ***Mihir Rajesh Shah's case***, it is mandatory on the part of the every arresting officer to intimate the grounds of arrest in writing in the language he/ she understands, it is a constitutional mandate and informing the arrestee the grounds of arrest is mandatory in all offences under all statutes. Further it is held that the communications of this grounds of arrest in all the offences has to be given to the arrestee at the earliest, which means that it need not be given at the time of arrest but within the reasonable time.

11. In ***Vihaan Kumar's case***, it is held that non-compliance of Article 22(1) of Constitution of India will be a violation of fundamental rights of the accused and vitiates in arrest of the accused and the orders passed by the Criminal Court of remand are also vitiated. It is also further added that, it will not vitiate the investigation, charge sheet and trial but at the same time, filing of the charge sheet will not validate the breach of the constitutional mandate under the said Article 22(1). This shows that if the petitioner/ accused is able to



establish that there is a violation of mandate of furnishing the grounds of arrest, it can be raised even after filing of the charge sheet.

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12. In *Ahmed Mansoor & Ors. vs. The State [Criminal Appeal No.4505 of 2025, dated 14.10.2025]* after considering the *Vihaan Kumar's case*, *Sri Darshan's case* and *Kasireddy Upender Reddy vs. State of Andhra Pradesh and Ors. [Criminal Appeal No.2808 of 2025 dated 23.05.2025]* has held as follows:

“In State of Karnataka vs. Sri Darshan etc., (supra) the facts governing are quite different. It was a case dealing with the cancellation of bail where the charge sheet had been filed and the grounds of detention were served immediately. This Court has, in fact, given its approval to the decision in Vihaan Kumar vs. State of Haryana & Anr. (supra). Similarly, in Kasireddy Upender Reddy vs. State of Andhra Pradesh and Ors. (supra), this Court was pleased to hold in para 27 that the object underlying the provision that the grounds of arrest should be communicated has been explained by this Court in Vihaan Kumar vs. State of Haryana & Anr. (supra). Therefore, the law as laid down in Vihaan Kumar vs. State of Haryana & Anr. (supra) has been approved and reiterated in the aforesaid decisions.

In such view of the matter, we are inclined to hold that the present appeal deserves to succeed only on the ground that the mandate of furnishing the grounds of arrest at the time of securing the appellants has not been complied with. Therefore, we are not inclined to go into the merits of the case. However, while setting aside the order passed by the High Court and consequently setting aside the order of arrest and remand, we would only say that liberty is granted to the respondent to take recourse to law, to arrest, if a case is made out.

Suffice it is to state that the explanation by the Court before whom the arrestees are produced can never be an adequate compliance of furnishing the grounds of arrest at the time of securing an accused.”

13. The above observations shows that, in *Sri Darshan's case*, the Apex



Court has approved the decision of *Vihaan Kumar's case* and the above order was passed concerned with the cancellation of bail and also the fact that the grounds of detention was served immediately on the person in that case.

14. Admittedly, the complaint was filed in the month of December 2025 and the copies of the complaint also not yet served on the petitioners herein till the filing of this bail petition and it is alleged by the petitioners that they have been prevented from approaching the Court seeking bail and to effectively argue the cases on merits, since grounds of arrest has not been properly served on them. I am of the view that the petitioners herein demonstrated that, they suffered prejudice by denial of fair opportunity to defend themselves, though complaint was filed by the respondent. Since, there was no proper compliance of informing the grounds of arrest to the petitioners herein and it resulted in causing prejudice to their interest in defending the case and prevented them from filing the bail petition and effectively submit their side case on merits, it is clear violation of Article 22(1) and which resulted in custody of the petitioners rendered illegal, hence this Court is inclined to grant bail to the petitioners with certain conditions.

15. Accordingly, the petitioners are ordered to be released on bail on their executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five**



Thousand only) with two sureties each, for a like sum to the satisfaction of the learned I Additional Special Judge, Special Court under EC and NDPS Act, Chennai and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the Application for Surety ship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned Magistrate shall obtain a copy of any one of the identity proofs to ensure their identity;

[b] **the petitioners shall report before the Trial Court concerned daily at 10:30 a.m., until further orders;**

[c] On breach of any of the aforementioned conditions, the learned Magistrate/Trial Court is entitled to pass appropriate orders against the petitioners in accordance with law as if the aforementioned conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)13 SCC 283]**;

[d] If the accused thereafter abscond, a fresh FIR can be registered under Section 269 of B.N.S.

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Note :

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1. Registry is directed to forthwith upload this order in the Official Website of this Court.

2. All concerned to act on this order being uploaded in Official Website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in the official website of this Court will be watermarked and will also have a QR code.

To

1. The I Additional Special Judge,
Special Court under EC and NDPS Act, Chennai.

K. RAJASEKAR, J.

stn

2. The Inspector of Police,
PEW – Tambaram Police Station,
Crime No.109 of 2025.

3. The Superintendent,
Central Prison - I, Puzhal.

4. The Superintendent,
Central Prison - III, Puzhal.

5. The Public Prosecutor,
High Court of Madras.

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K. RAJASEKAR, J.

After pronouncing the order in the open Court, Mr. R.Muniyapparaj, learned Additional Public Prosecutor submitted that, there is a question of law involved in this case regarding the stage on which the arrestee has to raise the ground of non furnishing the grounds of arrest and it requires further clarification from the Apex Court and it would be beneficial to all concerned, hence prays to grant leave under Article 134(1) r/w 134(6).

This Court is of the view that, the points raised by the Additional Public Prosecutor has already been answered by the Apex Court in number of judgments, which has been discussed in this bail order, hence this Court is not inclined to grant leave, as prayed by the learned Additional Public Prosecutor.



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