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Crl.O.P.No.7908 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12-02-2026

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THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.7908 of 2025

Abdul Gaffar

... Petitioner / A2

Vs

Union of India,
Through The Senior Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 600 077.
(NCB F.No.48/1/16/2024NCB/MDS)

... Respondent

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/accused in C.C.No.45 of 2025 pending trial on the file of the Learned Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr. G. Prabhakaran

For Respondent(s) : Mr. N.P. Kumar
Special Public Prosecutor



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ORDER

The petitioner was arrested and remanded to judicial custody on 20.06.2024 in C.C.No.45 of 2025 pending trial on the file of the Principal Special Court under EC & NDPS Act, Chennai, for the offences punishable under Section 8(c) r/w 22(c), 28 and 29 of NDPS Act, 1985, seeks bail. The earlier bail application of the petitioner was dismissed by this Court, vide order dated 04.09.2024 in Crl.O.P.No.19372 of 2024.

2. The case of the prosecution is that on 20.06.2024 at about 22:40 hours, based on a specific information, the officers of Narcotics Control Bureau, Chennai Zonal Unit went to new College Road Fly over, Royapettah, Chennai and intercepted a car bearing Registration No.TN-03-Z-8176, in which A1-Ramesh, A2-Abdul Gaffar and A3-Mohamed Noog Musharf were travelling; that after complying all the mandatory provisions of the Act, the said vehicle was searched and 2.700 kilograms of white crystal substance believed to be Amphetamine were seized from A1 to A3; that the seizure proceedings were concluded at about 02:10 hours on 21.06.2024; that thereafter A1 to A3 were summoned, they appeared before the NCB officer concerned and their voluntary statements were recorded under Section 67 of the NDPS Act on 21/22.06.2024 and subsequently, A1 to A3 were arrested on 22.06.2024 at 09:30 hours, 10:00



hours and 10:30 hours, respectively and remanded to judicial custody; that the statements recorded from A1 to A3 revealed that, the seized contraband was given to A2 by A4-Rafishah in Bangalore; that thereafter, surveillance was made regarding the movement of A4 and the respondent had identified A4, conducted preliminary enquiry with him and thereafter, A4 was directed to call A5-Shaike Fareed Pasha to come to A4's hotel; that on arrival of A5, both A4 and A5 were summoned and they were taken to NCB office and their statements under Section 67 of the NDPS Act were recorded, which revealed the involvement of them in the aforesaid offence; that thereafter, A4 and A5 were also arrested and remanded to judicial custody. Hence, this case.

3. The learned counsel appearing for the petitioner submitted that the petitioner has been falsely implicated in this case and he has been abducted by the respondent nearby his house at about 11:30 p.m. on 20.06.2024; that initially, a complaint was lodged by the A2's family member that, A2 was found missing on 20.06.2024 at about 11:30 p.m., and in this regard, a case was also registered in Crime No.649 of 2024 dated 21.06.2024 on the file of the RK Nagar Police Station, Washermenpet; that there are CCTV footages to show that the petitioner was present outside of his house on 20.06.2023 at about 23:13 hours; that while so, the seizure said to have been recovered from this petitioner is highly doubtful, since the petitioner was present nearby his house at the time of alleged seizure



said to have been recovered from this petitioner and other accused in a car bearing Registration No.TN-03-Z-8176; that the investigation of the case is also completed and final report filed in C.C.No.45 of 2025 and the trial is not yet commenced; that at the time of arresting the petitioner herein, the respondent had failed to comply the mandatory procedures to be followed during the course of arrest both under NDPS Act and Code of Criminal Procedure and the respondent have not intimated the grounds of arrest as observed by the Apex Court in ***Vihaan Kumar vs. State of Haryana and another [2025 INSC 162]***; and that the petitioner is ready to abide by any conditions that may be imposed by this Court and sought for bail to the petitioner.

4. The learned Special Public Prosecutor appearing for the respondent while opposing the bail to the petitioner, reiterated the prosecution case and submitted that the petitioner herein is arrayed as A2 in this case; that the contraband seized from the petitioner and other accused is of commercial quantity, hence rigours of Section 37 of the NDPS Act is applicable to the case of the petitioner herein; that the CCTV pictures showcased by the petitioner to support his contention is not clear; and that the investigation of this case has been completed and final report filed.

5. I have considered the submissions made on either sides and perused



the materials available on record.

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6. It is the case of the petitioner herein that he has been abducted by the respondent near his house at about 11:00 PM on 20.06.2024 and falsely implicated in this case, as if he was travelled along with other accused in a car with the contraband seized in this case and to substantiate his case, he has also produced the pictures of CCTV footages before this Court. The CCTV footage produced before this Court shows that the petitioner was walking in the road with another person and the time stated digitally shows 11:00 PM on 20.06.2024. However this Court is of the view that, to accept the CCTV footage pictures, it requires recording of evidence and forensic examination that the time stamp mentioned therein is authentic or not. Further, the CCTV footage does not demonstrate the contention of the petitioner that he was abducted by the respondent while he was walking in the road, hence this Court is not able to accept the said contentions of the petitioner herein.

7. The other contention argued by the learned counsel for the petitioner is that, the respondent had failed to comply the mandatory procedures to be followed during the course of arrest both under NDPS Act and Code of Criminal Procedure, hence there is a violation in the arrest of the petitioner herein. Section 52(1) of the NDPS Act mandates that any officer arresting a person under



Sections 41, 42, 43, or 44 must inform that person regarding the grounds for such arrest. Similarly, Section 50 of the Code of Criminal Procedure (CrPC) mandates that any police officer or person arresting someone without a warrant must immediately inform the arrested person of the full particulars of the offence and the grounds for such arrest. Hence, this Court is inclined to consider the next point regarding non informing the grounds of arrest to the petitioner, which directly concern with the right of the petitioner alleging that there is violation of Article 22(1) and 22(5) of Constitution of India.

8. 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



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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 Maharashtra³, 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 Purkayastha², 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)

WEB COPY 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 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*



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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



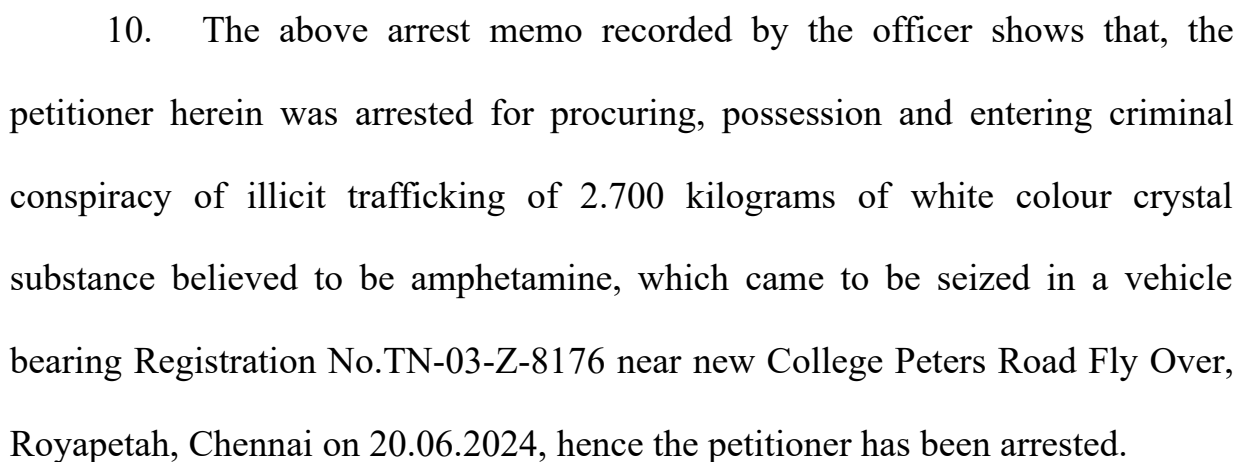
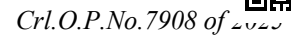
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22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of charge sheet 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.

9. In this case, it is argued by the prosecution that, the petitioner was served with the arrest memo and by relying the arrest memo, it is contended that, grounds of arrest was sufficiently explained to the petitioner, which is extracted hereunder:





11. The purpose for serving or intimating grounds of arrest has been elaborately reiterated in the judgment of Apex Court in ***Vihaan Kumar's case*** cited supra and now the question arises, whether this arrest memo/ grounds of arrest stated herein served the intended purpose of providing knowledge of the facts of the case for which the petitioner was arrested and whether, was he in a position to plead and prove before the Trial Court that, there are reasons to believe that he or she is not guilty of the offence or not?

12. Though the learned Special Public Prosecutor argued that the information regarding the grounds of arrest in the arrest memo contains every information for the arrest of the petitioner herein. From the outside view, it might look like the arrest memo gives the place of seizure, dates on which the seizure was effected and the overtacts attributed against the petitioner, etc., but the closer scrutiny of the memo, it does not disclose or narrate the various facts, including the fact regarding search and seizure conducted on the arrested accused prior to service of summons and recording his statement under Section 67 of the NDPS Act, etc., the incriminating statement made by the petitioner herein and also reasons for arresting him. Without these facts, the petitioner could not be able to defend his case at the time of remand and also could not plead bail within the reasonable time for the purpose of establishing the grounds for seeking bail. Hence I am of the view that, the arrest memo served, in short form gives some



facts, however for the purpose of enabling the petitioner to raise the grounds for getting bail, the entire facts required to be furnished to the petitioner in compliance of Article 22(1), so as to satisfy his right to seek relief of bail and other reliefs.

13. Considering the above facts, I am of the view that, as held by the Apex Court in *Vihaan Kumar's case*, there was no proper compliance of informing the grounds of arrest to the petitioner herein and there is violation of Article 22(1), hence the custody of the petitioner is rendered illegal on account of failure to communicate the grounds of arrest to the petitioner herein, hence this Court is inclined to grant bail to the petitioner with certain conditions.

14. Accordingly, the petitioner is ordered to be released on bail on his 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 Principal Special Court under EC & 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;



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[b] the petitioner 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 petitioner in accordance with law as if the aforementioned conditions have been imposed and the petitioner 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 absconds, a fresh FIR can be registered under Section 269 of B.N.S.

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Note :

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

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1. The Principal Special Judge,
Principal Special Court under EC & NDPS Act Cases, Chennai.
2. The Senior Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 600 077.
(NCB F.No.48/1/16/2024/NCB/MDS)
3. The Superintendent,
Central Prison, Puzhal.
4. The Public Prosecutor,
High Court of Madras.

K. RAJASEKAR, J.

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