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Crl.O.P.No.9226 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2026

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.9226 of 2025

Vijayakumar

... Petitioner/ Accused

Vs

Union of India,
Rep. By, The Intelligence Officer,
NCB, Chennai.
(R.R. No.48 of 2024)

... Respondent/ Complainant

Prayer: Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioner/ accused in CNR.No.TNCHOA-000912-2025 in R.R.No.48 of 2024 in NCB F.No.48/1/21/2024-NCB/MDS on the file of the respondent.

For Petitioner : Mr. S. Kasirajan

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



ORDER

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The petitioner, who was arrested and remanded to judicial custody on 25.10.2024 for the offences under Sections 8(c) r/w Sections 22(c), 23(c), 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 in CNR.No.TNCHOA-000912-2025 in R.R.No.48 of 2024 in NCB F.No.48/1/21/2024-NCB/MDS on the file of the respondent, seeks bail.

2. The case of the prosecution is that on 22.10.2024 based on a specific information, the respondent team went near Moolakadai Bus stop and intercepted the petitioner herein and other accused namely Manivannan: that after complying all the mandatory provisions under the NDPS Act, search and seizure was effected and found that the petitioner and other accused were jointly in possession of 1.8 kilograms of white color crystal substance believed to be Methamphetamine; that thereafter, summons under Section 67 of the NDPS Act were issued and their statements were recorded; that the statement of the co-accused namely Manivannan leads to further seizure of 0.9 kilograms of Methamphetamine from his house at Thiruvallur Nagar, Kodungaiyur, Chennai; that they were subsequently remanded to judicial custody.

3. The learned counsel appearing for the petitioner submitted that, the petitioner has been falsely implicated in this case; that the respondent has not



complied the mandatory procedures to be followed under Section 50 of the NDPS Act and 52A of the NDPS Act in respect of the preparation of the inventory and certification of the seized contraband; that the respondent had taken the petitioner into their custody on 22.10.2024 and he was only remanded to judicial custody on 25.10.2024, after the lapse of more than 72 hours from the time of such custody, hence there is a clear violation of his fundamental rights under Article 22(2) of the Constitution of India, as well as the mandatory provisions of Section 58 of BNSS; that the petitioner is in judicial custody since 25.10.2024 and his prolonged detention without trial, violates his fundamental right under Article 21 of the Constitution of India; that further the respondent did not communicate or explain the grounds of arrest to the petitioner, as mandated under Section 47 of BNSS, which is also a violation of his fundamental rights under Article 22(1) of the Constitution of India; and that the petitioner is ready to abide by any condition that may be imposed by this Court and sought for bail to the petitioner. He also relied on the judgments of the Apex Court in *Mihir Rajesh Shah vs. State of Maharashtra [2025 LiveLaw (SC) 1066]* and *Vihaan Kumar vs. State of Haryana and another [2025 INSC 162]* in support of his contention.

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 along with other accused was intercepted with possession of 1.8 kilograms of Methamphetamine; that after complying all the mandatory provisions, the seizure was effected, the statement of the petitioner and witnesses were recorded, the observation mahazar was prepared and the petitioner was produced before the learned Magistrate along with the seized contraband and thereafter remanded to judicial custody; that there is no violation of Section 50 and 52A of the NDPS Act as contended by the petitioner; that no custody was taken as alleged by the petitioner on 22.10.2024, only after serving of summons and recording the statement of the petitioner and other accused under Section 67 of the NDPS Act for two days, after informing the petitioner regarding the grounds of his arrest, the petitioner was arrested by the seizing officer on 24.10.2024 and produced before the learned Magistrate within 24 hours, 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 petitioner has to satisfy the Section 37 of NDPS Act; that the investigation of this case was completed and charge sheet filed in C.C.No.432 of 2025 on the file of the Principal Sessions Judge, NDPS Court, Chennai; and that the petitioner herein has also involved in an attempt murder case registered in Crime No.195 of 2017 on the file of the Kaliyakkavilai Police Station.



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

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6. Though the petitioner had raised various contentions, one of the main contention raised by the petitioner is that, he was not served with the grounds of arrest, 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 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 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



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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 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



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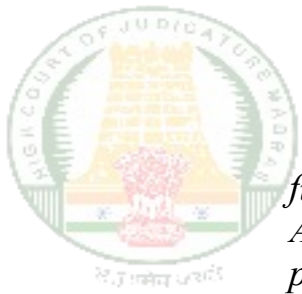
a language which the arrestee understands. That is how, in the case of Pankaj Bansal, this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds 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*



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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 this case, this is the first bail application before this court and it is argued that the petitioner was served with the arrest memo and by relying the arrest memo, it is contended that, grounds of arrest was not sufficiently explained to the petitioner, which is extracted hereunder:



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NCB F.NO. 48/121/2024-NCB/MDS

ARREST MEMO

Whereas, I have reason to believe that you, Vijaykumar D S/o David Seivu Aged 37 years, Male, 2752, Seilankan Refugee Camp, Kozhivilai, Kulappuram, Kanyakumari, Tamil Nadu-629153, have committed an offence under Section 84(c) r/w Sections 22 (v), 23(c), 28 & 29 of the NDPS Act 1985 as amended and punishable under Sec. 21 (c), 27, 28 and 29 of the same Act, in relation to the commissioning of an Offence to have procured, possession and entered into criminal conspiracy for the illicit trafficking of several a total 2.7 Kg (1.8Kg and 0.9 Kg) of white color crystal substance believed to be methamphetamine which came to be seized at Moolakadai Bus Stop, Chennai on 22.10.2024 and from Door No.33, 15 Cross Street, Thiruvalluvar Nagar, Kodungaiyur, Chennai-600118 on 23.10.2024 respectively.

I, therefore, place you under arrest at 1700 hours on this day, the 24.10.2024 at N/18, Chennai, Ayappakam under the provisions of the NDPS Act of 1985.

*The grounds of his arrest
is being kept to him instant*

Seized on 24/10/24

*Dep. Magistrate
Jr. Intelligence Officer
Narcotics Control Bureau
Chennai*

*Transltd in Tamil by me
L. Day
24/10/24*

TO,

Vijaykumar D S/o David Seivu
Aged 37 years, DOB-11.02.1987
Address: 2752, Seilankan Refugee Camp, Kozhivilai, Kulappuram, Kanyakumari,
Tamil Nadu-629153
Aadhar Number: 8693 2396 0921



9. The above arrest memo recorded by the officer shows that, the petitioner herein was arrested for procuring, possession and entering criminal conspiracy of illicit trafficking of 2.7 kilograms (1.8 kg and 0.9 kg) of white colour crystal substance believed to be methamphetamine, which came to be seized at Moolakadai Bus Stop, Chennai on 22.10.2024 and from Door No.33, 15 Cross Street, Thiruvallur Nagar, Kodungaiyur, Chennai, hence the petitioner



has been arrested.

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10. 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?

11. 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 same reveals it does not contain basic facts, which is necessary for the petitioner to defend himself from the allegations levelled at the time of exercising his right of seeking bail. It is to be noted that the petitioner herein was arrested based on series of events, the way in which the contrabands were recovered from the petitioner and the co-accused and also the contraband seized from the house of the co-accused, statement recorded from them and the



involvement of the petitioner herein in the aforesaid offence, but none of the facts stated in the arrest memo served on the petitioner herein.

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12. Admittedly, complaint was filed only in the month of April 2025 and so far charges not yet framed and it is alleged that the petitioner has been prevented from approaching this Court, since grounds of arrest has not been served on him, thereby the petitioner has been prejudiced. Further, copies of the complaint was served on the petitioner herein only on 08.08.2025 (i.e.,) during pendency of this bail petition. I am of the view that, the arrest memo served, is in short form though 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.

12. 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.



13. 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;

[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.

26.02.2026



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

1. The Principal Special Judge,
Principal Special Court under EC & NDPS Act, Chennai.
2. The Intelligence Officer,
NCB, Chennai.
(R.R. No.48 of 2024)
3. The Superintendent,
Central Prison, Puzhal.
4. The Public Prosecutor,
High Court of Madras.



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K. RAJASEKAR, J.

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