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Crl.O.P.No.17119 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-01-2026

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.17119 of 2025

Saikam Kiran Kumar

... Petitioner/ A1

Vs

Union of India Rep. by,
The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 600 017.
(R.R. No.19 of 2023)

... Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to grant bail to the petitioners/accused in C.C.No.230 of 2024 pending on the file of the learned II Additional Special Court under EC & NDPS Court at Chennai in connection with R.R.No.19 of 2023 on the file of the respondent.

For Petitioner(s) : Mr. Karthikeyan
For K. Subburaj

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 13.06.2023 in C.C.No.230 of 2024 pending on the file of the learned II Additional Special Court under EC & NDPS Court at Chennai, for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(c), 28 and 29(i) of NDPS Act, 1985 as amended under Sections 20(b)(ii)(c), 25, 27A, 28 and 29 of NDPS Act, seeks bail.

2. The case of the prosecution is that on 12.06.2023, based on a specific information regarding illicit trafficking of ganja from Andhra Pradesh to Chennai in a car bearing Registration No.AP-35-G-4546 on 13.06.2023 at about 01:00 hours to 03:00 hours, the respondent mounted a surveillance at Karanodai Toll Plaza, Chennai and intercepted the said car, which was driven by the petitioner herein; that after complying all the mandatory provisions under the NDPS Act, search and seizure was effected and found that the petitioner was involved in possession and trafficking of 160 kilograms of Ganja in the form of dark green colour dry leaves with flower tops; that thereafter summon under Section 67 of NDPS Act was issued to the petitioner, statement of the petitioner was recorded, which reveals the involvement of other accused namely Akkala Sivakottaiha, who was the owner of the seized Ganja and on his instruction, the petitioner herein had transported the Ganja to



Chennai, subsequently, arrest memo was issued and the petitioner was 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; that there is no proper compliance of Article 22(1) of the Constitution, no public witnesses were involved at the time of seizure and no ground of arrest was given to the petitioner herein. He also submitted that there is no progress in the trial and the petitioner is in judicial custody since 13.06.2023; 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.

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 was found in possession of 160 kilograms of Ganja in a car; that after complying all the mandatory provisions, the petitioner was served with summons, his statement under Section 67 of NDPS Act was recorded. The arrest memo was also issued to the petitioner herein, which explains the reasons for his arrest to the petitioner, hence there is no violation of his fundamental rights; that the contraband seized from the petitioner herein is a commercial quantity, hence the petitioner has to satisfy



the Section 37 of NDPS Act; and that the other accused involved in this case are the gang members, who are involved in illegal trafficking of Ganja all over South India.

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

6. 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)

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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



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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



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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.

7. In this case, 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 sufficiently explained to the petitioner, which is extracted hereunder:



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NCB F NO. 48186/2023-NCB/MRS
ARREST MEMO

Whereas, I have reason to believe that you, Shri. Saikam Kiran Kumar s/o Venkateshwararao s/o 8-252, Srinivasa Nagar, Tadipatri, Krishna, Andhra Pradesh are committed offences under Sec 3(c) and Sec 20(b)(i)(ii)(c), 28 and 29 of the NDPS Act 1985 as amended and punishable under Sec 20(c)(i)(ii)(c), 28 and 29 of the same Act, in as much as you have procured, possessed, transported and entered into criminal conspiracy in the illicit trafficking of seized 160 kgs. of dark green colour dry leaves along with flowering tops believed to be Ganja recovered from a chivukula brown coloured Bolero vehicle bearing registration no. AP 35 G 4546 at Karandai Toll Plaza, Nellore on 13.6.2023.

I, therefore, place you under arrest at 1800 hours on this day, the 13th of June, 2023 at Office of the Narcotics Control Bureau, Chennai Zonal Unit, PD-2, 3rd Avenue, TNHB Layout, Ayyakkam, Chennai -77 under the provisions of the above said Act.

(Signature)
13/06/2023
(ROUSHAL KUMAR)
INTELLIGENCE OFFICER,
NCB, CHENNAI

Copy to: Shri. Saikam Kiran Kumar s/o Venkateshwararao
R/o 8-252, Srinivasa Nagar, Tadipatri, Krishna, Andhra Pradesh
Understanded the reason of my arrest.
I informed to my brother namely Brahmaiah
mobile no. 9177012819 regarding arrest by NCB
on 14/06/2023 from NCB office phone. He
explained me in Hindi. 8504550600.

(Signature)
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4332
20 JUN 2023
CHENNAI ZONAL UNIT
N.C.B.

1995

12-781/5. RR.
Certified to be True Copy
(Signature)
14/06/2023

8. The above arrest memo recorded by the officer shows that, the petitioner herein was arrested for possession, transporting and entering criminal conspiracy of illicit trafficking of 160 kilograms of dark green colour dry leaves along with flower tops believed to be Ganja, in a car bearing Registration No.AP-35-G-4546 on 13.06.2023. It further reveals that the grounds of arrest has been explicitly stated that based on the seizure effected from him and involvement in the offence is made out, hence he has been arrested.



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9. 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 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?

10. 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 facts relating to 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.

11. In this case, the prosecution case starts that after receipt of specific information by the Intelligence Officer of the respondent to conduct search and seizure regarding transportation of Ganja from Andhra Pradesh to



Chennai, surveillance was also mounted. Thereafter on 12.06.2023 at about 23:30 hours, they engaged independent witnesses and at about 02:10 hours, intercepted the car entering at Karanodai Toll Plaza, Chennai; that after compliance of various mandatory provisions, search and seizure was effected and 160 kilograms of ganja was recovered; that thereafter summon was served on the petitioner herein and his statement under Section 67 of the NDPS Act was also recorded; that thereafter, the arresting officer has recorded the satisfied reasons for arresting the petitioner herein, therefore the arrest was made at about 18:00 hours on 13.06.2023.

11.1 The arrest memo served on the petitioner though refers about the nature of offence alleged to have been committed, punishable and also possession of 160 kilograms of Ganja. The memo has not disclosed or narrated the various facts, including the fact regarding search and seizure conducted on the arrested accused prior to service of summon 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 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, is 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.

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 **II Additional Special Court for EC & NDPS Cases, 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]**;

K. RAJASEKAR, J.

stn

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

30.01.2026

stn

To

1. The II Additional Special Judge,
II Additional Special Court under EC & NDPS Cases, Chennai.
2. The Intelligence Officer,
Narcotics Control Bureau,

13/14



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Chennai Zonal Unit,
Chennai – 600 017.
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3. The Superintendent,
Central Prison, Puzhal at Chennai.
4. The Public Prosecutor,
High Court of Madras.

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