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Crl.O.P.No.28748 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-02-2026

CORAM

THE HONOURABLE MR JUSTICE K. RAJASEKAR

CRL OP NO.28748 of 2025

Mohammed Yusuf

... Petitioner/ A8

Vs

Union of India, Rep. By,
The Junior Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai.
(R.R. No.24 of 2023)

... Respondent/ Complainant

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.203 of 2024 in R.R.No.24 of 2023 in NCB F.No.48/1/13/2023-NCB/ MDS on the filed of the respondent.

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

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

ORDER



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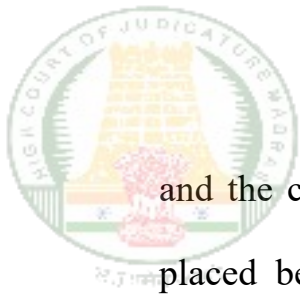
The petitioner, who was arrested and remanded to judicial custody on 25.02.2025 in C.C.No.203 of 2024 pending on the file of the II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, for the offences punishable under Sections 8(c) r/w 21(c), 22(c), 28 and 29 of the NDPS Act, 1985 in NCB F.No.48/1/13/2023-NCB/ MDS, registered on the file of the respondent police, seeks bail. This is the successive bail application of the petitioner herein and the earlier bail application of the petitioner was dismissed by this Court, vide order dated 01.07.2024 in Crl.O.P.No.10372 of 2025.

2. The case of the prosecution is that based on a specific information, the respondent police went to the place of occurrence and seized 7.45 grams of Cocaine and 7.20 grams of different color MDMA tablets at the main entrance of Circle Stationery Department, No.250, Peters Road, Royapettah and arrested a person named Matheen Ahmed (A1); that thereafter the statement under Section 67 of NDPS Act was recorded from him, which reveals that the seized contraband was given by the petitioner herein (A8) in a plastic bag to A1 near Begum Sahib Street, Royapettah, directing A1 to deliver the same to another person who will contact A1 around 09.30 hours at Circle Stationery Department at shop No.250 Peters Road, Royapettah, Chennai; that the statement of A1 further reveals the involvement of other accused (A2 to A7); that thereafter, the



respondent had mounted surveillance and arrested other accused (A2 to A7), who were all Nigerians and the contraband seized from them is of commercial quantity; that thereafter, the respondent had filed charge sheet showing the petitioner herein (A8) as absconding; that thereafter, the petitioner herein was arrested after issuance of LOC. Hence, this case.

3. The learned counsel for the petitioner submitted that in this case, the petitioner falsely arrayed as accused, solely on the confession of A1 who was in possession of narcotics of intermediate quantity. Except A1 confession, there is no other material against the petitioner. Three days after the arrest and confession of A1, other accused A2 to A7 arrested who are all Nigerians. From them, contraband seized which is of commercial quantity, hence a case of commercial quantity projected against the petitioner and other accused. He further submitted that the Hon'ble Apex Court in ***Tofan Singh v. State of Tamil Nadu reported in (2013) 16 SCC 31*** held that merely on the confession of co-accused, a person cannot be prosecuted and his statement under Section 67 of NDPS Act, is akin to Section 27 of Indian Evidence Act to prove recovery fact alone and nothing more. He further submitted that apart from the confession statement of A1, now the prosecution is started relying on the seizure of mobile phone of the petitioner without any forensic examination; that though the respondent had obtained permission to subject the seized mobile phone for forensic examination, there is no report received and produced before the Court



and the complaint in this case is also filed and so far no materials have been placed before the Court for the purpose of showing any legally acceptable evidence for implicating the petitioner herein in this case, hence there is no materials, hence the petitioner established reasonable grounds for believing that the petitioner is guilty of the offence. Apart from that the petitioner has also made an another ground that at the time of arrest, 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]***, hence prays to grant bail to the petitioner herein.

4. The learned Special Public Prosecutor appearing for the respondent filed counter, strongly opposed petitioner's contention and submitted that the above case registered on getting specific information that the petitioner herein handed over plastic bag containing cocaine and MDMA drug to A1 near Begum Sahib Street, Royapettah directing A1 to deliver the same to another person who will contact A1 around 09.30 hours at Circle Stationery Department at shop No.250 Peters Road, Royapettah, Chennai. The respondent recorded the information, informed superior officers, went to occurrence place, enlisted two private witnesses, explained to them about the case, thereafter kept watch over the place, identified A1. After ten minutes, when A1 was about to leave, he was apprehended, questioned and A1 produced 7.45 grams of cocaine and 7.20



grams of MDMA pills. After following Section 50, the contrabands seized. At that time, A1 revealed the person who handed over the drugs i.e., the petitioner and also gave petitioner's mobile number. The mobile number and contact details disclosed by A1 verified, thereafter search conducted in the house of A1. The petitioner gave a slip and he was unable to be apprehended. On getting further information from A1, A2 to A7 apprehended, from them contraband of commercial quantity seized. From A2, 203 grams of Amphetamine and 46 grams of MDMA pills and from A3, 204 grams of Amphetamine and 46 grams of MDMA pills seized and from A4, 46 grams of MDMA pills, were seized. In this case, accused gave confession statements, pursuant to which, contraband of commercial quantity seized. During investigation it was found that the petitioner purchased drugs from Bangalore and Goa and sold through his associate A1. The petitioner used to purchase the drugs from his friends A3, A4 & A5 who are all residing in Bangalore. The petitioner gave his residence address as 6th Cross Street, Kamarajapuram, Sembakkam, Kanchipuram District but this address was not traceable. On the other hand, the petitioner was having regular contact with other accused through his mobile sending and receiving instructions through Whatsapp, Telegram and other applications. Since the petitioner was absconding and investigation was to be completed within stipulated period, charge sheet filed on 174th day on 26.02.2024 by way of e-filing. Since the petitioner was absconding, the case against him split up and



C.C.No.203 of 2024 assigned; that subsequently, the petitioner herein was arrested by issuance of Look Out Circular and served the petitioner with Section 67 notice directing him to appear before the Investigating Officer on 24.02.2025. Thereafter, the petitioner appeared and gave his statement confirming that the petitioner conspired with A1 for illicit trafficking of 7.45 grams of cocaine and 7.20 grams of MDMA pills and handed over the same to A1. He further submits that arrest memo served to the accused under acknowledgment on 25.02.2025 and intimation of arrest sent to his father through speed post; that the petitioner is also having previous antecedents. He also further submitted that this Court, vide order dated 01.07.2025 in Crl.O.P.No.10372 of 2025 had considered the grounds raised by the petitioner herein in this case elaborately and dismissed the same on merits.

5. I have considered the submissions made on both sides, perused the materials available on record. This Court while dismissing the earlier bail petition of the petitioner, vide order dated 01.07.2025 in Crl.O.P.No.10372 of 2025 had elaborately considered the various grounds raised in this case in paragraph nos.10 to 12 as follows:

“10. In this case, there are totally eight accused, of whom petitioner is A8. A1 and A8 are Indians and other accused are all Nigerians who are settled in Bangalore for the present. On getting secret information, the Junior Intelligence Officer/respondent



forwarded the same to his Superior Officer. After getting approval, the respondent proceeded to Circle Stationery Store, Royapetah along with a team, secured independent witnesses, kept watch over the area, at that time found A1 waiting there for someone, after ten minutes, when A1 was about to leave the shop, he was apprehended and questioned A1. A1 produced cocaine and MDMA pills of intermediate quantity. Thereafter following Section 50, he was searched, followed by a search in his house, seizures made, Section 67 notice served. The statement of A1 confirms the active role played by the petitioner and the petitioner is the person who few minutes before handed over the narcotics/drugs to A1 who was to be handed over to the person who comes in contact with him. Thus, it is the petitioner who handed over the contraband to A1. Further, A1 gave mobile phone and other details of the petitioner. Furtherance to the information received from A1, the respondent arrested A2 to A7 who are all Nigerians who are possessing narcotics. They confessed sourcing of contrabands from abroad and selling to the petitioner who is one of the main contact person in India. Further, A2 to A7 used to sell these narcotics in the State of Karnataka, State of Goa and other places. For Tamil Nadu, it was through the petitioner. The petitioner absconded unable to be found in the address given.

11. In this case, there have been seizures which is of commercial quantity. Further, the involvement of Nigerians gives an angle for international ramification and detailed probe is required. In this case, initially the complaint filed on 26.02.2024 showing petitioner as absconding accused, thereafter LOC issued, arrested the petitioner on 25.02.2025 when he came from Singapore landed in Mumbai.

12. In view of the above, the petitioner's claim of parity for grant of bail similar to other accused would not arise. The petitioner, an absconding accused was arrested after issuance of LOC. Likewise, non seizure of contraband alone, would not entitle bail to the petitioner. The mobile phone seized contained lot of digital evidence confirming the petitioner's active role in the above offence with other accused. Apart from other charges, the petitioner is facing charges of abetment and conspiracy. Added to it, further investigation is in progress.”



6. Further now in this successive bail application, the petitioner had relied on two grounds, more particularly on the ground that there is no legally acceptable evidence placed on record, except the confession of the co-accused and without any acceptable evidence, the petitioner could not be prosecuted and the next ground is that, at the time of arrest, the respondent have not intimated the grounds of arrest as observed by the Apex Court in *Vihaan Kumar 's case*.

7. It has been countered by the learned Special Public Prosecutor that, apart from the statement recorded from the co-accused, the petitioner's mobile phone was also seized and the same is sent for forensic examination and the report is awaited. Though this Court had given several adjournments and opportunity to the prosecution to get and produce the forensic report, the prosecution is unable to produce the same. As on today, there is no legally acceptable evidence placed on record to show that the petitioner had actively participated in the alleged transactions in this offence, hence this Court is of the view that, the contention of the prosecution by relying the statement of the arrested accused and implicating the petitioner herein without any legally acceptable evidence is inadmissible as held by the judgment of the Apex Court in *Toofan Singh vs. The State of Tamil Nadu [AIR 2020 SCC 5592]*. However, since it is the stand of the respondent that they have sent the mobile phone for forensic examination and the report is awaited, this Court is not



inclined to consider this issue for granting bail to the petitioner and it is appropriate to consider this point after receiving the forensic examination report. Accordingly, this Court has considered 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 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:

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*“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 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.



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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*

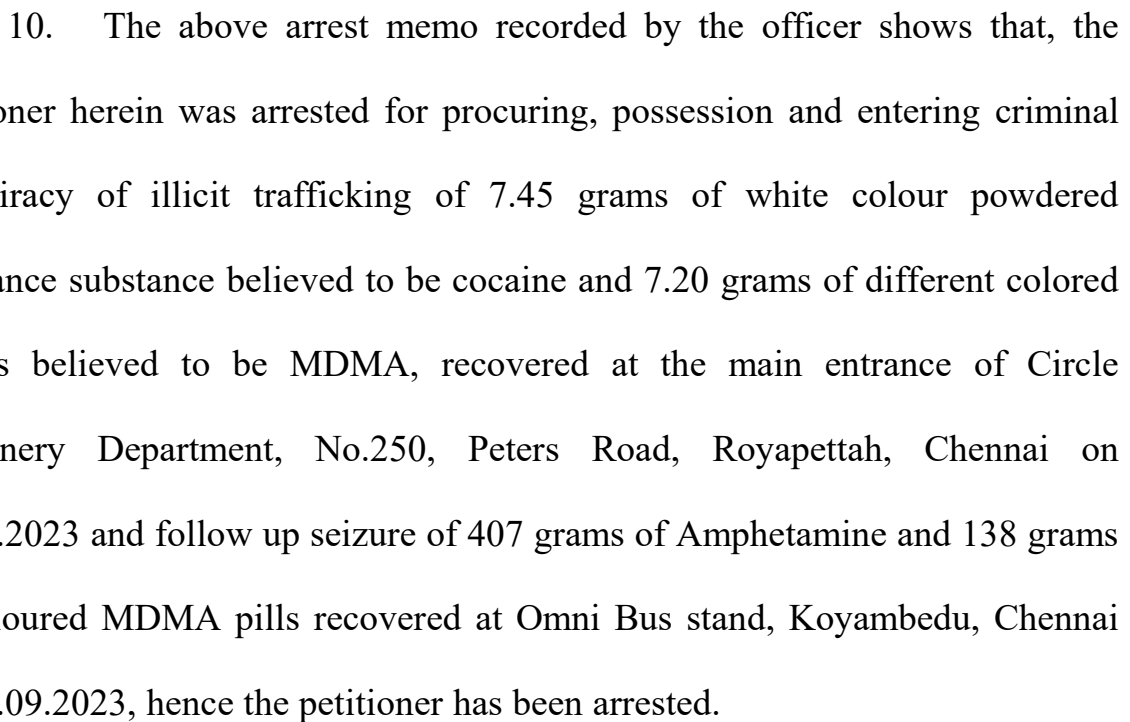


passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of charge sheet will not validate a breach of constitutional mandate under Article 22(1);

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.

9. 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:





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 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 transported and there are facts regarding the recovery from Accused No.1 and arrest of A2 to A7, 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. 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.

13. 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 II Additional EC & NDPS Special Judge for Special Court at 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'].



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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.

06.02.2026

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Note :

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

K. RAJASEKAR, J.

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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



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uploaded in the official website of this Court will be watermarked and will also have a QR code.

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To

1. The II Additional Special Judge,
Special Court under NDPS Act Cases, Chennai.
2. The Junior Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai.
(R.R. No.24 of 2023)
3. The Superintendent,
Central Prison, Puzhal -II.
4. The Public Prosecutor,
High Court of Madras.

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