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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2026

Case QR

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP No. 31289 of 2026

CNR: {HCMA012534252026}

1. Dhanurjay Khara

2. Kamal Laichan Khila

..Petitioners

Vs

Inspector of Police,
Pallikaranai PEW,
Tambaram City PEW,
(Crime No. 93 of 2025)

..Respondent

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, yo set aside the remand order passed in Crime No.93 of 2025 on the file of respondent police and to pass such further or any other order as this court may deem fit and proper in the facts and circumstances of the case and thus render Justice.

For Petitioners: Mr.S.Kasirajan

For Respondent: Mr.R.Ganesh Kumar
Additional Public Prosecutor
Assisted by
Mr.M.Dinesh
Government Advocate (Crl.Side)

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ORDER

This Criminal Original Petition has been filed challenging the order of remand dated 03.09.2025 passed by the learned Judicial Magistrate No.II, Alandur, thereby remanding the petitioners in connection with Crime No.93 of 2025.

2. The petitioners are arrayed as A1 and A2 in Crime No.93 of 2025, registered for the offences punishable under Sections 8(c), r/w Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act"). The allegation against the petitioners is that they were found in possession of 51 Kilograms of Ganja, constituting commercial quantity. Pursuant to the registration of the FIR, the accused were arrested and remanded to judicial custody. The order of remand is now challenged primarily on the ground that the grounds of arrest were not furnished to the accused.

3. The learned counsel appearing for the petitioners submitted that there is a significant distinction between the expressions "reasons for arrest" and "grounds of arrest". He contended that the reasons for arrest set out in the arrest memos are merely formal and generic in nature, such as preventing the

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accused from committing any further offence, ensuring proper investigation, preventing the disappearance or tampering of evidence, and preventing the arrested persons from inducing, threatening or promising any person acquainted with the facts of the case so as to dissuade such person from disclosing those facts to the Court or the investigating officer. He therefore submitted that merely recording such reasons in the arrest memos would not amount to communicating the specific grounds of arrest to the petitioners.

3.1. The learned counsel further submitted that the grounds of arrest must contain the specific facts and particulars available with the investigating officer that necessitated the arrest of the accused. Such grounds must be communicated to the arrested person in writing, setting out the basic facts forming the basis of the arrest, so as to afford him a meaningful opportunity to defend himself against custodial remand and to seek bail. In the present case, though the petitioners were served with the arrest memos, the same did not contain the specific grounds of arrest. Therefore, the learned counsel contended that the arrest of the petitioners and their consequential remand were in violation of Article 22(1) of the Constitution of India and Section 47(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023. In support of his contention, he placed reliance upon the judgment of the Hon'ble Supreme Court in ***Prabir Purkayastha v. State (NCT of Delhi),*** reported in ***2024 INSC 414,*** wherein the

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Hon'ble Supreme Court held that failure to furnish the grounds of arrest in writing would vitiate the arrest as well as the consequential remand order.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent filed a counter-affidavit and submitted that all the petitioners were found in conscious possession of the contraband and were not arrested merely on the basis of the confession statement of a co-accused. Therefore, they had full knowledge of the circumstances that led to their arrest. He further submitted that, after the dismissal of their bail petitions, the petitioners approached this Court challenging the order of remand. According to the learned Additional Public Prosecutor, at the time of their arrest, the petitioners were orally informed of the reasons for their arrest and were aware of the allegations against them.

4.1. He further contended that the requirement of specifically communicating the grounds of arrest assumes significance in cases where the arrest is based on the confession statement of a co-accused, whereas, in the present case, the petitioners were apprehended in conscious possession of the contraband. He further submitted that the remand reports would demonstrate that the reasons and grounds for arrest had been duly communicated to the petitioners and that they were aware of the circumstances in which they were arrested and remanded to judicial custody.

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4.2. In support of his submissions, the learned Additional Public Prosecutor relied upon the judgment dated ***23.01.2026*** passed by the High Court of Delhi in ***Karan Singh v. State (NCT of Delhi),*** in ***W.P. (Crl.) No.4203 of 2025.*** In the said judgment, upon relying on the decisions of the Hon'ble Supreme Court of India, the Delhi High Court observed that the alleged procedural lapse had been raised belatedly, i.e., after more than one year and nine months from the date of arrest, and that no prejudice had been shown to have been caused to the accused, who had been represented by counsel from the very beginning.

4.3. The learned Additional Public Prosecutor also relied upon the judgment of the Hon'ble Supreme Court of India in ***State of Karnataka v. Sri Darshan,*** *reported in* ***2025 SCC OnLine SC 1702,*** wherein it was held that, while compliance with Section 50 of the Cr.P.C is mandatory, the consistent judicial approach has been to apply a prejudice-oriented test while examining alleged procedural lapses. It was further observed that the mere absence of written grounds of arrest does not ipso facto render the arrest illegal, unless such omission results in demonstrable prejudice by denying the accused a fair opportunity to defend himself.

4.4. He further submitted, in the present case the petitioners had failed

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to demonstrate the prejudice caused to them by the alleged failure to furnish the reasons and grounds of arrest in writing. He further contended that, since the petitioners were allegedly found in conscious possession of the contraband, they were fully aware of the circumstances that led to their arrest and remand to judicial custody. He also pointed out that the petitioners had approached this Court challenging the order of remand only after the dismissal of their respective bail applications. On these grounds, the learned Additional Public Prosecutor sought dismissal of the Criminal Original Petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the records, it is evident that the sole ground raised by the petitioners in the present petition is that the specific grounds of arrest were not furnished to them at the time of their arrest, thereby rendering the order of remand violative of the constitutional safeguards guaranteed under Article 22(1) of the Constitution of India. The records reveal that the petitioners were served with arrest memos stating that they had been arrested for the illegal possession of contraband substances, which constituted the basis for their arrest under the NDPS Act. The said information was also communicated to their respective relatives.

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7. As rightly pointed out by the learned counsel appearing for the petitioners, there is a significant distinction between the expressions "reasons for arrest" and "grounds of arrest". The reasons for arrest, as recorded in the arrest memos, are merely formal and generic in nature, such as preventing the accused from committing any further offence; ensuring proper investigation of the offence; preventing the disappearance of or tampering with evidence; and preventing the arrested person from making any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade such person from disclosing those facts to the Court or the investigating officer. These general reasons are distinct from the specific grounds of arrest, which must disclose the factual basis necessitating the arrest of the accused.

8. These reasons are commonly applicable to any person arrested on a criminal charge. In contrast, the "grounds of arrest" must contain the specific facts and particulars available with the investigating officer that necessitated the arrest of the accused. The grounds of arrest, when communicated in writing, must convey to the arrested person the basic facts forming the basis of the arrest, thereby enabling him to effectively oppose custodial remand and seek bail. Thus, the "grounds of arrest" are necessarily specific to the individual accused and cannot be equated with the "reasons for arrest", which are general in nature.

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9. At the same time, the communication of the fact of arrest is entirely distinct from furnishing the grounds of arrest and serving the arrest memo. An arrest memo ordinarily contains the names and addresses of the petitioners, particulars of the FIR and the provisions of law invoked, the place, date and time of arrest, the name of the arresting officer, and the name, address and telephone number of the person to whom the information regarding the arrest has been conveyed. These particulars are merely procedural details pertaining to the arrest and do not, by themselves, disclose the specific grounds on which the arrest has been effected or the reasons necessitating such arrest. Therefore, mere communication of the fact of arrest or service of the arrest memo cannot be construed as compliance with the constitutional requirement of furnishing the grounds of arrest to the accused. Failure to furnish such grounds would amount to a violation of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

10. In the case on hand, the petitioners were served only with the arrest memos, which merely conveyed the particulars of their arrest. Therefore, mere communication of the fact of arrest would not amount to furnishing the specific grounds of arrest. The failure to communicate the grounds of arrest in writing to the petitioners at the time of arrest or immediately thereafter would vitiate the arrest and the subsequent remand, as held by the Hon'ble Supreme Court of India in ***Prabir Purkayastha vs. State (NCT of Delhi),*** reported in ***2024 INSC***

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414. The aforesaid legal position was subsequently reaffirmed by the Hon'ble Supreme Court in ***Vihaan Kumar vs. State of Haryana,*** reported in ***2025 INSC 162***, wherein it reiterated that furnishing the arrest memo or communicating the fact of arrest would not satisfy the constitutional mandate under Article 22(1). The same principle was further reiterated in ***Mihir Rajesh Shah vs. State of Maharashtra and Another*****,** reported in ***2025 INSC 1288***, wherein the Hon'ble Supreme Court emphasised that the grounds of arrest must be communicated in writing to the arrestee in a language understood by him and that non-compliance with this requirement would render the arrest and the consequential remand illegal.

11. On perusal of the arrest memos, it is evident that they have been prepared in a template format and contain a statement to the effect that the arresting officer had explained the grounds of arrest to the accused before their arrest. However, the grounds of arrest were not furnished to the petitioners in writing. Therefore, the mere assertion that the grounds of arrest were orally explained to the accused cannot, by itself, establish compliance with the guidelines issued by the Hon'ble Supreme Court of India. In view of the failure to furnish the grounds of arrest in writing, the impugned order of remand cannot be sustained and is liable to be set aside.

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12. Accordingly, the order of remand dated 03.09.2025 passed by the learned Judicial Magistrate No.II, Alandur, in Crime No.93 of 2025, is hereby set aside. The petitioners shall deposit a sum of Rs.25,000/-(Rupees twenty five thousand only) each, directly to the Tamil Nadu Mediation and Conciliation Center, Madras High Court, Chennai, as non-refundable deposit and that the receipt of such payment shall be produced before the concerned Magistrate/Trial Court at the time of executing the bond. On such deposit the petitioners are ordered to be released on bail on executing a separate bond for a sum of Rs.25,000/- (Rupees twenty-five thousand only), with two sureties for a like sum each, of whom one shall be a blood relative, to the satisfaction of the learned II Additional District Judge, Special Court under the EC and NDPS Act, Chennai, subject to the following further conditions:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders.

[c] the petitioners shall not abscond either during investigation or trial.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and

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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) AIR SCW 5560].**

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

13. With the above directions, the Criminal Original Petition stands allowed.

12-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

Note: Issue Order Copy on or before 19.11.2026

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To

1. The II Additional District Judge,
Special Court under EC & NDPS Court,
Chennai.

2. The learned Judicial Magistrate No.II,
Alandur,
Chennai.

3. Inspector of Police,
Pallikaranai PEW,
Tambaram City PEW.

4. The Superintendent of Prison,
Central Prison, Puzhal.

5. The Public Prosecutor,
Madras High Court, Chennai.

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G.K.ILANTHIRAIYAN, J.

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CRL OP No. 31289 of 2026

12-11-2026

https://www.mhc.tn.gov.in/judis