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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP No. 30502 of 2026

CNR: {HCMA012534312026}

Md.Rafishah
S/o Mohd Aaoddin,
No.19, 3rd Floor, Surya Complex,
Sparsha Hospital Road,
Near SRT Alphine Hotel,
Bommasandra, Bangalore.

Case QR

..Petitioner(s)

Vs

Union of India
Rep by Jr.Intelligence Officer,
Narcotics Control Bureau,
Chennai-77.

..Respondent(s)

PRAYER: Criminal Original Petition filed under Section 528 of BNSS, praying to set aside the remand order passed by the Judicial Magistrate Court, Ambattur, Chennai in RR No. 38 of 2024 dated 9-11-2024 on the file of respondent.

For Petitioner(s): Mr.S.Karthikeyan
for Mr.S.Kasirajan

For Respondent(s): V.Chandrasekaran
Special Public Prosecutor- NCB

ORDER

This Criminal Original Petition has been filed challenging the order of remand dated 09.11.2024 passed by the learned Judicial Magistrate Court, Ambattur, Chennai, thereby remanding the petitioner in connection with NCB F.No.48/1/16/2024/NCB/MDS.

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2. The petitioner is arrayed as accused/A4 in NCB F.No.48/1/16/2024/NCB/MDS, registered for the offences punishable under Sections 8(c), r/w Sections 22(c), 28, and 29(1) of the NDPS Act 1985. The allegation is that on 20.06.2024, the accused Nos.1 to 3 were intercepted by the respondent police and they were found in possession of 2.700 kilograms of white crystaline substance suspected to be Amphetamine. Based on the confession statements of A1 and A2, the petitioner/fourth accused has been implicated in this case. According to the prosecution, the contraband recovered from A1 and A2 was allegedly delivered to them by the petitioner at Bangalore and thereafter, it was transported by A1 and A2 to Chennai.

3.The petitioner has challenged the remand order dated 09.11.2024 in R.R No.38 of 2024 contending that he was not furnished with the grounds of arrest. While A1 to A3 were arrested and remanded to judicial custody on 22.06.2024, the petitioner/A4 was arrested and remanded to judicial custody only on 08.11.2024. However, the petitioner was not served with any grounds of arrest. Therefore, the failure to furnish the grounds of arrest to the petitioner, is clear violation of the Article 22(1) and 22(5) of the Constitution of India. Neither of the constitutional provisions require that the “grounds” of “arrest” or “detention”, as the case may be, must be communicated in writing. Therefore, the requirement to communicate the grounds of arrest or the grounds of

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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.

4. Heard the submissions made on either sides and perused the materials available on record.

5.On a perusal of the records, it is revealed that an arrest memo was issued to the petitioner,stating that he was arrested for procuring, possessing, entering criminal conspiracy for the illicit trafficking of 2.700 kg of white colour crystal substance known as Amphetamine. Accordingly, the petitioner was arrested and remanded to judicial custody. The purpose for serving or intimating grounds of arrest has been elaborately reiterated by the Hon'ble Supreme Court of India in the case of ***Vihaan Kumar v. State of Haryana & Another*** reported in ***[2025 INSC 162]***. Though the learned Special Public Prosecutor submits that the arrest memo contains the necessary information regarding the grounds of arrest, it does not disclose the specific grounds of arrest in their entirety or furnish the particulars necessary to enable the

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petitioner to effectively challenge his arrest. In fact, the petitioner was arrested and remanded to judicial custody only based on the confession statement of the co-accused.

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 Bansal1 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.*

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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)

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

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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. 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

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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

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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. 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?

8. 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 looks 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 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

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bail within the reasonable time for the purpose of establishing the grounds for seeking bail. Hence, this Court is of the view that, the arrest memo served, is in short form and gives only 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.

9. Considering the above facts, this Court is 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.

10. 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'].

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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.

11.In the result, this Criminal Original Petition stands allowed.

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

Uma
Note: Issue order copy on 12.11.2026

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To
1.The Judicial Magistrate Court, Ambattur, Chennai

2.The Principal Special Court under EC & NDPS Act,
Chennai.

3. Junior.Intelligence Officer,
Narcotics Control Bureau,
Chennai.
4.The Superintendent,
Central Prison, Puzhal-I

5.The Public Prosecutor
High Court of Madras.

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G.K.ILANTHIRAIYAN, J.

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