



2026:DHC:4222



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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment delivered on: 13.05.2026*

+ BAIL APPLN. 439/2026

BRIJESH KOTHIA

.....Petitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen Panwar, Ms. Kajol Garg and Mr. Mohd. Yasir, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Akhand Pratap Singh, SPP for the State with Ms. Samidhi Dobhal, Mr. Krishna M. Chandel, Mr. Hritwik Maurya, Mr. Utkarsh Singh and Mr. Apoorv Paliya, Advocates.
SI Dinesh Kumar, P.S.: Special Cell.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**J U D G M E N T****ANUP JAIRAM BHAMBHANI, J.**

Can a weighty constitutional safeguard be diluted to an optional procedural nicety? It is this cardinal question that presents itself for consideration in the present case.

2. By way of this petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No.455/2024 dated 02.10.2024 registered under sections 8/20/21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Special Cell, Delhi. Consequent upon completion of investigation, offences under sections 22/27A of the NDPS Act and sections 238B/209 of the Bharatiya

Signature Not Verified

Signed By: VIKAS

RAWAT

Signing

Date: 13.05.2026 15:05

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Nyaya Sanhita, 2023 have been added *vidé* chargesheet dated 10.06.2025.

3. Notice on this petition was issued on 02.02.2026.
4. Status Report dated 27.02.2026 has been filed on behalf of the State.
5. Nominal Roll dated 25.02.2026 has been received from the Jail Superintendent.
6. This court has heard Mr. Aditya Aggarwal, learned counsel for the petitioner; as well as Mr. Akhand Pratap Singh, learned SPP for the State, on 23.04.2026 and 27.04.2026 at length.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. Though much was argued on behalf of the petitioner on 23.04.2026, at the hearing on 27.04.2026, Mr. Aggarwal confined his submissions *solely* to the issue that ‘grounds of arrest’ were never supplied to the petitioner *in writing* and that accordingly the petitioner’s arrest and subsequent detention are illegal.
8. Mr. Aggarwal has submitted that, as is evident from Arrest Memo dated 13.10.2024, a copy of which is appended as Annexure P-29 to the petition, the petitioner was arrested from Ankleshwar, Bharuch, Gujarat on 13.10.2024; and no grounds of arrest were supplied to him in writing *at that time*. Counsel has further pointed-out, that a perusal of the arrest memo would show that in fact there is no mention of any ‘grounds of arrest’ in that document; and the arrest memo only narrates the reasons for the petitioner’s arrest.
9. In support of his submission that non-supply of the ‘grounds of arrest in writing’ is fatal to an arrest, learned counsel for the petitioner has



placed reliance on the following paras of a recent decision of the Supreme Court in ***Dr. Rajinder Rajan vs. Union of India & Anr.***¹

“8. The appellant-Dr. Rajinder Rajan, who is a senior orthopaedic surgeon and owner of the hospital, and the appellant-Dr. Jatinder Malhotra being the proprietor of the pharmacy (Corporate Medicos) were initially summoned under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and after recording their statements, both were arrested and remanded to judicial custody on 3rd May, 2025.

“20. It is no longer res integra that supplying the grounds of arrest to the accused in writing before the arrest or, in a given case, under exceptional circumstances, immediately thereafter, is the mandate of the constitutional guarantees provided under Article 22(1) read with Article 21 of the Constitution of India. The ratio of the judgment in Mihir Rajesh Shah (supra) conclusively holds that any deviation from the above principle would lead to the arrest of the accused being declared illegal entitling such accused to be released forthwith.

“21. Shri Kaushik tried to convince the Court that the grounds of arrest were orally explained to the accused at the time of preparation of the arrest memo. We have perused the arrest memo placed on record by Shri Kaushik and extract the same for the sake of ready reference:-

“Arrest Memo Consequent upon the recovery/seizure of 2000 Tablets of Tramadol on 02/05/2025 from Corporate Chemist inside Corporate Hospital, Batola Road, Amritsar - 14300/ and on the basis of voluntarily statement dated 02/05/2025 of Rajinder Rajan S/O Janak Raj R/o D-84, Ranjit Avenue, Amritsar, Punjab recorded u/s 67 of NDPS Act, 1985 having reasons to believe that Rajinder Rajan has violated section 8 and 22 of NDPS act and committed offence punishable u/s 8 and 22 of NDPS Act; accordingly, I place Rajinder Rajan under arrest on 02/05/2025 at 2300 hrs. I have explained the ground of arrest to him/her before arrest.

(SD)”

¹ Order dated 01.04.2026 in SLP (Crl.) Nos.3326/2026 and 3327/2026



“22. On going through the arrest memo, we find that it has been prepared in a template format and contains a statement to the effect that the arresting officer had explained the grounds of arrest to the accused before the arrest. Thus, the arrest memo, by itself, reflects that the grounds of arrest had been orally explained to the accused before the process of formal arrest was undertaken. Consequently, it was incumbent upon the arresting officer to have supplied the memo of grounds of arrest in writing to the accused two hours prior to producing them before the Magistrate as per the mandate of Mihir Rajesh Shah (supra) which apparently has not been followed in this case.

“23. In the wake of the above discussion, we are of the firm view that the appellants are entitled to be released from custody by giving them the benefit of the ratio laid down in *Mihir Rajesh Shah (supra)*. Accordingly, it is hereby directed that the appellants shall be released on bail forthwith, subject to furnishing bail bonds to the satisfaction of the trial Court and such other conditions as it may deem fit to impose.”

(emphasis supplied)

10. Furthermore, it has been submitted, that in manifest violation of the dictum laid-down by the Supreme Court in *Mihir Rajesh Shah vs. State of Maharashtra & Anr.*,² the grounds of arrest were not furnished to the petitioner in writing even 02 hours prior to his production before the learned Additional Chief Judicial Magistrate, Ankleshwar, Distt.: Bharuch, Gujarat when his transit remand was sought. The relevant extract of the said judgment reads as follows:

“62. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed

² (2026) 1 SCC 500



*in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. **Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings.*** The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.

*“63. **The above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively.*** This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. ***Any shorter interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee’s constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations.***

*“64. In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) **provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings.***

*“65. **It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee.*** On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the



Explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the Magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

“66. In conclusion, it is held that:

*66.1. The constitutional mandate of informing the arrestee the grounds of arrest **is mandatory in all offences under all statutes including offences under IPC, 1860 (now BNS 2023)**;*

*66.2. The grounds of arrest must be communicated in writing to the arrestee **in the language he/she understands**;*

*66.3. In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. **The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the Magistrate.***

*66.4. **In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.**”*

(emphasis supplied)

11. It has been submitted that the arrest of the petitioner is therefore vitiated; and the petitioner deserves to be enlarged on bail during the pendency of the trial.
12. Mr. Aggarwal has also submitted, that as evidenced from the nominal roll, as of 25.02.2026 the petitioner has spent more than 01 year and 04 months in judicial custody; that his overall jail conduct has been ‘satisfactory’; and that he has no other criminal implications.

SUBMISSIONS ON BEHALF OF THE STATE

13. Opposing the grant of bail, learned SPP appearing for the State has argued that since the petitioner was *arrested on 13.10.2024*, there was no requirement in law at that time to furnish upon him the grounds of



arrest in writing, since in *Mihir Rajesh Shah*, the Supreme Court has observed that the grounds of arrest have to be communicated to the arrestee in writing ‘henceforth,’ that is to say *after the date of pronouncement of the verdict in Mihir Rajesh Shah*, which judgment was pronounced on 06.11.2025. In support of this submission, learned SPP has drawn attention to the following paras of the said judgment:

“67. After having come to the above conclusion, it is pertinent to note that the provision of law under Section 50 CrPC (Section 47 of BNSS 2023) does not provide for a specific mode of or time-frame for communication of the grounds of arrest to the person arrested. This Court in *Prabir Purkayastha* [*Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573], held that the grounds of arrest be conveyed to the arrestee in writing in all offences at the earliest, which means it need not be given at the time of arrest but within a reasonable time thereafter, for offences under all the statutes, which period would be as has been laid down above in this order.

“68. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. **The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth.**”

(emphasis supplied)

14. Furthermore, Mr. Singh has relied upon a decision of the Division Bench of this court in *Karan Singh vs. State NCT of Delhi*,³ to point-out that the petitioner in that case was arrested on 07.02.2024, and

³ 2026 SCC OnLine Del 282



proceeding on the basis of the decision of the Supreme Court in *Mihir Rajesh Shah* which was pronounced on 06.11.2025, the Division Bench has declined to quash the arrest *inter-alia* observing that the decision in *Mihir Rajesh Shah* operates prospectively.

15. Learned SPP has also relied upon the verdict of the Supreme Court in *State of Karnataka vs. Sri Darshan Etc.*,⁴ to submit that the petitioner has failed to show any ‘demonstrable prejudice’ caused to him on account of the non-supply of grounds of arrest in writing; and the same, being a mere procedural lapse, does not *ipso-facto* vitiate the arrest or entitle the petitioner to grant of bail. The relevant extract of *Sri Darshan Etc.* is as follows:

“20.1. Delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for grant of bail.”

20.1.1. The learned counsel for the respondents - accused contended that the arrest was illegal as the grounds of arrest were not furnished immediately in writing, thereby violating Article 22(1) of the Constitution and Section 50 Cr.P.C. (now Section 47 of the Bharatiya Nagarik Suraksha Sanhita). This submission, however, is devoid of merit.

20.1.2. Article 22(1) of the Constitution mandates that “no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”. Similarly, Section 50(1) Cr.P.C. requires that “every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

⁴ 2025 SCC OnLine SC 1702



20.1.3. *The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest - **but neither provision prescribes a specific form or insists upon written communication in every case.** Judicial precedents have clarified that **substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.***

20.1.4. *In Vihaan Kumar v. State of Haryana [2025 SCC OnLine SC 456], it was reiterated that Article 22(1) is satisfied **if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing.** Similarly, in Kasireddy Upender Reddy v. State of Andhra Pradesh [2025 INSC 768], it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. **Both these post-Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.***

20.1.5. ***While Section 50 Cr. P.C. is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses.** The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.*

20.1.6. *The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a prima facie case. It noted, inter alia, that there was no mention in the remand orders about service of memo of grounds of arrest (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on Pankaj Bansal v. Union of India [(2024) 7 SCC 576] and Prabir Purkayastha v. State (NCT of Delhi) (supra), it concluded (paras 43, 49 - 50) that from 03.10.2023 onwards, failure to serve detailed, written,*



and individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.

20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents **were aware of the reasons for their arrest**. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. **No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail.** As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. **Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail.**"

(emphasis supplied)

16. Learned SPP has further submitted, that in any event, the grounds of arrest were duly furnished to the petitioner in writing by way of application dated 14.10.2024 seeking transit remand filed before the learned Additional Chief Judicial Magistrate, Ankleshwar, Distt.: Bharuch, Gujarat; as also in application dated 16.10.2024 seeking police custody remand filed before the learned ASJ/Special Judge/NDPS, Patiala House Courts, New Delhi. It has been submitted, that both the remand applications contained all the relevant information and particulars, and effectively served as written communication of the grounds of arrest to the petitioner.



REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

17. Rejoining to the arguments advanced by the learned SPP, Mr. Aggarwal has submitted, that the requirement of furnishing grounds of arrest in writing to an arrestee flows directly from Article 22(1) of the Constitution; and that the police are obligated to comply with such constitutional mandate with effect from the date of pronouncement of the judgment in *Pankaj Bansal vs. Union of India & Ors.*,⁵ i.e., w.e.f. 03.10.2023. Counsel has submitted that any non-compliance by the police with such requirement would render the arrest illegal; and consequently enure to the benefit of the petitioner. In this regard, counsel has placed reliance on decisions of the Supreme Court in *Pankaj Bansal*, *Prabir Purkayastha vs. State (NCT of Delhi)*,⁶ *Vihaan Kumar vs. State of Haryana & Anr.*,⁷ *Mihir Rajesh Shah*, and *Dr. Rajinder Rajan*.
18. In particular, Mr. Aggarwal has invited the attention of this court to the order of the Supreme Court in *Dr. Rajinder Rajan* dated 01.04.2026. In the said case, the persons arrested on 03.05.2025 were directed to be released from custody on the ground that grounds of arrest had not been furnished to them in writing at least two hours prior to their production before the Magistrate. It has further been pointed-out, that in *Dr. Rajinder Rajan*, the Supreme Court has placed reliance on the dictum in *Mihir Rajesh Shah* notwithstanding the fact that the said

⁵ (2024) 7 SCC 576

⁶ (2024) 8 SCC 254

⁷ (2025) 5 SCC 799



decision was rendered subsequently on 06.11.2025, i.e., after the date of arrest in *Dr. Rajinder Rajan* and has granted relief.

19. Learned counsel has accordingly submitted, that this clearly demonstrates that the observations in *Mihir Rajesh Shah* are not prospective in operation, but merely reiterate and reaffirm the settled position of law as it existed prior thereto.
20. Insofar as the reliance placed by the State on *Sri Darshan Etc.* is concerned, it has been submitted on behalf of the petitioner that in its subsequent decision in *Ahmed Mansoor & Ors. vs. The State rep. by Assistant Commissioner of Police & Anr.*⁸ the Supreme Court has observed as under:

“In State of Karnataka v. Sri Darshan Etc.(supra) the facts governing are quite different. It was a case dealing with the cancellation of bail where the charge sheet had been filed and the grounds of detention were served immediately. This Court has, in fact, given its approval to the decision in Vihaan Kumar v. State of Haryana & Anr.(supra). Similarly, in Kasireddy Upender Reddy v. State of Andhra Pradesh and Ors. (supra), this Court was pleased to hold in para 27 that the object underlying the provision that the grounds of arrest should be communicated has been explained by this Court in Vihaan Kumar v. State of Haryana & Anr (supra). Therefore, the law as laid down in Vihaan Kumar v. State of Haryana & Anr (supra) has been approved and reiterated in the abovesaid decisions.

“In such view of the matter, we are inclined to hold that the present appeal deserves to succeed only on the ground that the mandate of furnishing the grounds of arrest at the time of securing the appellants has not been complied with. Therefore, we are not inclined to go into the merits of the case. However, while setting aside the order passed by the High Court and consequently setting

⁸ Order dated 14.10.2025 in Criminal Appeal No.4505/2025



aside the order of arrest and remand, we would only say that liberty is granted to the respondents to take recourse to law, to arrest, if a case is made out.

“Suffice it is to state that the explanation by the Court before whom the arrestees are produced can never be an adequate compliance of furnishing the grounds of arrest at the time of securing an accused.”

(emphasis supplied)

21. Furthermore, counsel has submitted, that insofar as the contention of furnishing grounds of arrest to the petitioner by way of application dated 14.10.2024 seeking transit remand is concerned, *firstly* the said application was never served upon the petitioner; and *secondly*, a perusal of the said application would show that it is entirely bereft of any ‘grounds of arrest’ relating to the petitioner.
22. Mr. Aggarwal has also pointed-out that *even if* it is the prosecution case that grounds of arrest were supplied to the petitioner by way of application dated 16.10.2024 filed before the learned ASJ/Special Judge/NDPS, Patiala House Courts, New Delhi while seeking police custody remand, that would still fall foul of the requirement laid-down by the Supreme Court in *Mihir Rajesh Shah viz.*, that grounds of arrest are to be communicated in writing *at least 02 hours prior* to the arrestee being produced for remand before the Magistrate. It is also submitted that what has been recorded by the learned Special Judge in the said order, to the effect that grounds of arrest had already been supplied to the accused persons, is merely on the say-so of the I.O., since the record does not support that narration.
23. Counsel has submitted that in view of the above submissions, the petitioner is entitled to the discretionary relief of grant of bail.



DISCUSSION & CONCLUSIONS

24. Having considered the rival submissions and the legal position as crystallised by the Supreme Court, this court is of the view that the petitioner's arrest and subsequent detention fall foul of the constitutional mandate under Article 22(1) of the Constitution as judicially expounded. The consistent thread running through *Pankaj Bansal*, *Prabir Purkayastha*, *Vihaan Kumar*, *Mihir Rajesh Shah*, and *Dr. Rajinder Rajan* is that the requirement of informing an arrestee of the grounds of arrest is not a technical formality but a substantive, sacrosanct safeguard of personal liberty. These decisions unequivocally hold that such grounds must be communicated in writing, in a language understood by the arrestee, at the earliest, and in any event within a time-frame which ensures that the arrestee has a fair and effective opportunity to consult counsel, oppose remand, and seek bail. They further draw a clear distinction between generic "reasons for arrest" as routinely recorded in arrest memos and "grounds of arrest" which are personal and specific to the accused; observing that the former cannot be treated as a substitute for the latter.
25. In *Mihir Rajesh Shah*, the Supreme Court has authoritatively laid-down that where the police are already in possession of documentary material furnishing a cogent basis for arrest, the written grounds of arrest must be furnished to the arrestee on his arrest; and, even in exceptional cases where immediate service of written communication is impracticable, a written copy of the grounds of arrest must in any event be supplied within a reasonable time and "in no event later than two hours prior" to production of the arrestee before the Magistrate for remand



proceedings, failing which the arrest is rendered illegal and the arrestee is entitled to be released.

26. In its most recent pronouncement dated 01.04.2026 in *Dr. Rajinder Rajan*, the Supreme Court has applied this dictum to arrests made on 03.05.2025 – *i.e.*, before *Mihir Rajesh Shah* came to be pronounced on 06.11.2025 – namely, to arrests effected *prior* to the decision in *Mihir Rajesh Shah*. In *Dr. Rajinder Rajan* the Supreme Court has directed the release of the arrestees on bail, since the arrest memos merely recorded that grounds of arrest were orally explained but written grounds were not furnished (at least) two hours before remand. In the opinion of this court, a reading of *Dr. Rajinder Rajan* shows that *Mihir Rajesh Shah* does not create a fresh prospective regime but merely re-affirms the constitutional requirement inherent in Article 22(1) *as earlier elucidated, inter-alia* in *Pankaj Bansal*, *Prabir Purkayastha*, and *Vihaan Kumar*.
27. The decision in *Mihir Rajesh Shah* possibly cannot, and does not, move forward the date from which the verdict in *Pankaj Bansal* takes effect *i.e.*, 03.10.2023, which position is reiterated in *Prabir Purkayastha* and *Vihaan Kumar*.
28. Read together, these authorities leave no room for doubt that non-supply of written grounds of arrest within the stipulated window vitiates the arrest and the remand, irrespective of the statute under which the arrest is made, though without invalidating the investigation or the trial.
29. Tested on the anvil of the above principles, the State's defence of the arrest in the present case is unsustainable since:



- 29.1. The arrest memo dated 13.10.2024 pertaining to the petitioner does not record any person-specific “grounds of arrest” but only recites general “reasons for arrest” of the kind that have been held by the Supreme Court to be insufficient;
- 29.2. There is no material to show that any separate written grounds of arrest were furnished to the petitioner at the time of his arrest in Gujarat or soon thereafter. On the State’s own showing, the application dated 14.10.2024 for transit remand, was not served on the petitioner; in any event, it does not disclose any personalised grounds of arrest *qua* him. Even if the prosecution’s response is taken at its highest, *viz.*, that application dated 16.10.2024 seeking police custody remand in Delhi contained adequate particulars, that document was filed at the time when the petitioner was produced before the learned Special Judge in Delhi and the ‘grounds of arrest’ were *not* supplied to the petitioner *at least two hours prior* to his production. In other words, at no stage *prior* to the remand proceedings in Gujarat or in Delhi was the petitioner provided a written articulation of the grounds on which he was being arrested in Gujarat, brought to Delhi, and thereafter sought to be remanded to police custody in Delhi;
- 29.3. This omission is *not* a curable procedural irregularity but a *substantive constitutional infraction* which has caused demonstrable prejudice to the petitioner. Deprived of written grounds of arrest in advance, the petitioner was effectively disabled from instructing counsel and meaningfully resisting the



prayer for transit remand before the learned Additional Chief Judicial Magistrate, Ankleshwar, Distt.: Bharuch, Gujarat; and later from effectively opposing police custody remand before the learned ASJ/Special Judge/NDPS, Patiala House Courts, New Delhi. The very purpose for which Article 22(1) insists on timely written communication of grounds of arrest, viz. – to equip the arrestee with sufficient knowledge to challenge the deprivation of liberty – stood frustrated in this case; and

- 29.4. To be sure, the prejudice caused to the petitioner was not abstract or speculative: the petitioner was first subjected to a transit remand from Gujarat to Delhi and thereafter to police custody remand in Delhi, without *ever* having been furnished, in writing and in advance, the concrete and specific allegations and basis that would constitute the grounds of *his* arrest. *It is important to observe that the petitioner was 'arrested' first when he was served with an arrest memo which did not contain any grounds of arrest and his transit remand was taken by the I.O. from the court in Bharuch, Gujarat. Thereafter, the petitioner continued to remain in custody. Therefore, the constitutional and statutory mandate of serving the petitioner with grounds of arrest in writing, was violated at the very first step, namely at the time of his arrest in Bharuch, Gujarat.* It is to be noted that while granting transit remand to the petitioner on 14.10.2024, the learned ACJM, Ankleshwar, Distt.: Bharuch, Gujarat nowhere records that grounds of arrests were served upon the petitioner. In these circumstances, the State's contention that absence of



written grounds is a “mere procedural lapse” stands negated both by the binding constitutional exposition and by the manifest prejudice that is evident in this case.

30. In such circumstances, this court is bound by the mandate spelt-out in *Prabir Purkayastha, Vihaan Kumar, Mihir Rajesh Shah, and Dr. Rajinder Rajan* to hold that the arrest and consequential remand orders relating to the petitioner suffer from constitutional infirmity; and therefore, the petitioner’s continued incarceration cannot be justified merely based on the gravity of the accusations or the rigours of the NDPS Act.
31. At the same time, it is well-settled that though illegality in arrest and remand warrants that an arrestee be released from custody, it does not by itself nullify the investigation or bar further action in accordance with law. Accordingly, the investigating agency remains at liberty to take such steps as may be permissible, including, if so advised, effecting fresh arrest in strict compliance with the requirements of Article 22(1), and of the provisions of the BNSS and the NDPS Act.
32. For the present purposes however, the constitutional violation in not supplying the written grounds of arrest within the time and manner mandated by the Supreme Court is sufficient to entitle the petitioner to be set at liberty on bail, particularly when he has already spent more than 01 year and 04 months in judicial custody, his jail conduct is reported to be ‘satisfactory’, and no criminal antecedents have been cited against him.



33. In the totality of circumstances, this court is persuaded to grant to the petitioner – ***Brijesh Kothia s/o Jayantilal Kothia*** – *regular bail* in the present case, on the following terms and conditions:
- 33.1. The petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- (Rs. One Lac Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 33.2. The petitioner shall furnish to the Investigating Officer/S.H.O., Special Cell, Delhi a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 33.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 33.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case;
- 33.5. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 33.6. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
34. Since the petitioner is facing trial and would therefore be appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.



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35. It is clarified however, that nothing contained in this judgment shall be construed as an expression by this court of any opinion on the merits of the prosecution case at trial.
36. The present petition is disposed-of in the above terms.
37. Pending applications, if any, also stand disposed-of.
38. A copy of this judgment be forwarded to the concerned jail superintendent *forthwith*.

ANUP JAIRAM BHAMBHANI, J.

MAY 13, 2026

HJ