

GAHC010044902025



2025:GAU-AS:5385

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

BAIL APPLICATION NO.624 OF 2025

Azibur Rahman @ Aziz @ Ajibur,
S/o- Faizul Hoque,
R/o- Amgaon, Kherbari,
P.S- Pragjyotishpur,
District- Kamrup (M), Assam.

.....Petitioner

-Versus-

The State of Assam,
Represented by Public Prosecutor,
Assam.

.....Respondent

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Mr. Y. S. Mannan, Advocate.

For the Respondent(s) : Mr. R. R. Kaushik, Additional Public
Prosecutor, Assam.

Date of Hearing : 25.04.2025.

Date of Judgment : **02.05.2025.**

ORDER (CAV)

Heard Mr. Y. S. Mannan, learned Counsel appearing for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State respondent.

2. This is the third bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS") for granting regular bail to the accused/petitioner i.e. **Azibur Rahman @ Aziz @ Ajibur** who was arrested on 09.04.2023 in connection with **NDPS Case No. 103/2023** arising out of **Pragjyotishpur P.S. Case No. 48/2023** registered under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"). Presently the case is pending trial in the Court of learned Additional Sessions Judge (FTC) No.3 Kamrup (M) at Guwahati.

3. The case of the prosecution is that one Manmohan Chandra Roy, Sub-Inspector of Pragjyotishpur Police Station lodged an ejahar before the Pragjyotishpur Police Station alleging *inter alia* that on 08.04.2023 at 2 pm the Officer-in-charge of the said Police Station having received information that illegal business of *Ganja* (Cannabis) is going on in the room of the accused/petitioner, the police personnel proceeded to the location and started investigation and upon such investigation found the accused/petitioner in his room and

he led the team to the place where the Ganja was kept concealed in a drum. Accordingly, in the presence of independent witnesses, the police personnel weighed the drum along with Ganja and found the weight to be 22.225 kg and thereafter seized the same. Thereafter, the police personnel along with the accused/petitioner proceeded to a hotel from where one plastic white colour carry bag containing 720 grams of *Ganja* was recovered from the possession of the co-accused. Thereafter, another drum containing *Ganja* weighing 16.525 kg was seized from an abandoned school upon being shown by one Abdul Ali. Accordingly, a case was registered under Section 20(b)(ii)(c) of the NDPS Act and the contraband articles were all seized and the accused persons including the accused/petitioner were arrested. Upon completion of investigation, Charge-sheet was filed against the accused/petitioner and the other co-accused and the trial Court by order dated 09.08.2023 was pleased to take cognizance against the accused/petitioner as well as the other co-accused. Further, the trial Court by order dated 21.12.2023 framed charges against them. Accordingly, the trial commenced. The accused/petitioner having being denied bail earlier is facing the trial from behind the bar. Hence, the present bail petition has been filed.

4. Mr. Y. S. Mannan, learned Counsel for the accused/petitioner submits that the drums and contraband articles were not separately weighed and no drug detection kit test or colour test was conducted to identify whether

the seized articles were contraband articles or not. He further submits that the arresting authorities has not followed the mandatory procedure for search and seizure as mandated under Rule 3 (1)(2)(3)(4) and Rule 10 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022. In support of the aforesaid submission he relies upon the following decisions: -

(i) ***Altaf Hussain Vs. The State of Assam***, in ***B.A. No. 1048/2024***.

(ii) ***Yusuf @ Asif Vs. State***, in ***(Criminal Appeal No.3191/2023)*** arising out of ***SLP (CRL) 3010/2023***.

4.1. He further submits that the listed prosecution witnesses have not implicated the accused/petitioner. Therefore, there are reasonable grounds to believe that accused/petitioner is not guilty. In support of the aforesaid submission he relies upon the following decisions: -

(i) ***Md. Muslim Vs. State (NCT Delhi)***, reported in ***2023 (18) SCC 166***.

(ii) ***Rofiquel Islam Vs. The State of Assam***, reported in ***B.A. No.2013/2024***.

4.2. He further submits that the petitioner having been in custody since more than 2(two) years has suffered from procrastination and since only 6 witnesses out of the 19 listed prosecution witnesses have been examined till date, the chances of the trial to be completed in the near future is totally bleak. He accordingly submits that on this score alone, the accused/petitioner is entitled to be released on

bail. In support of the aforesaid submission he relies upon the following decisions: -

(i) ***Ravi Prakash Vs The State of Orrisa***, reported in ***2023 SCC Online SC 1109***.

(ii) ***Shariful Islam @ Sarif Vs The State of West Bengal***, reported in ***2022 SCC Online SC 2069***.

(iii) ***Zakirul Islam Vs. The State of Assam***, in ***SLP Criminal No. 3632/2024***.

(iv) ***Nitish Adhikary @ Bapan Vs. The State of West Bengal***, in ***2022 0 Supreme SC 1936***.

(v) ***Chitta Biswas @ Subhas Vs. The State of West Bengal***, in ***(Criminal Appeal No. 245/2020 @ SLP No. 8823/2019***.

(vi) ***Javed Gulam Nabi Sheikh Vs. The State of Maharashtra***, in ***Criminal Appeal No. 2787/2024 @ SLP (Crl) No. 3809/2024***.

(vii) ***Md. Abdul Kalam and another Vs. The State of Assam***, in ***B.A. No. 1364/2024***.

4.3. He further submits that the arresting authorities have not informed the grounds of arrest to the accused/petitioner at the time of arrest and hence, there is gross violation of Article 21 and 22 of the Constitution of India and also under Section 50 of the Criminal Procedure Code (hereinafter referred to as "Cr.P.C") corresponding to Section 47 of the BNSS. Accordingly, he submits that the arrest and subsequent remand is totally illegal and invalid and hence, the accused/petitioner is liable to be released

forthwith. In support of the aforesaid submission he relies upon the following decisions: -

(i) ***Madhu Ray Vs. Union of India (NCB)***, in ***B.A. No. 768/2025***.

(ii) ***Prabir Purkayastha Vs State (NCT Delhi)***, in ***SLP No. (D) 42896/2023***.

(iii) ***Vihaan Kumar Vs. State of Haryana***, in ***SLP Crl. No. 13320/2025***.

5. Per contra Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State respondent submits that since the contraband articles has been seized from the possession of the accused/petitioner, hence it is not necessary for the arresting authority to inform him the grounds of arrest as it would be deemed that he knows the consequences of possessing such contraband articles. In support of the aforesaid submission he relies upon the following decisions: -

(i) ***Christie and Another Vs. Leachinsky***, reported in ***1947 AELR 567***.

(ii) ***Madhu Limaye & Ors.***, reported in ***(1969) 3 SCC 154***.

(iii) ***Om Prakash Dwivedi Vs The State***, reported in ***1996 Cri LJ 603***.

5.1. He further submits that the judgment and order of the Apex Court in the case of ***Pankaj Bansal Vs. Union of India and Others***, reported in ***(2024) 7 SCC***

576, Prabir Purkayastha (Supra) and Vihaan Kumar (Supra) shall apply prospectively and therefore the same is not applicable in the facts of the present case. In support of the aforesaid submission he relies upon the following decisions: -

(i) **Ram Kishore Arora Vs. Directorate of Enforcement**, reported in **2023 INSC 1082**.

(ii) **Ravinder @ Tanni @ Taran Vs. State of Haryana**, in **CRM-M-62038-2024**.

(iii) **Saheer E P Vs. National Investigation Agency**, in **Crl. A. No. 673/2024**.

5.2. He further submits that since out of 19 witnesses only 6 witnesses have been examined by the trial Court it is not safe to conclude that there are reasonable grounds to believe that the accused/petitioner is not guilty for the alleged offence. He further submits that the length of the period of the custody and/or the fact that the trial is likely not to conclude in the near future themselves are not enough for granting relief to the petitioner under Section 37 of the NDPS Act. In support of the aforesaid submission he relies upon the following decisions: -

(i) **Narcotics Control Bureau Vs. Mohit Aggarwal**, in **Crl. A. No. 1001-1002 of 2022**, arising out of **SLP (Crl.) No. 6128-29 of 2021**.

(ii) **Bablu Pandey Vs. The State of Assam**, in **Bail Appln./2596/2024**.

6. I have given my prudent consideration to the submissions advanced by the learned counsels appearing on behalf of both the parties and also perused the materials available on record. I have also considered the case laws cited at the bar.

7. Pertinent to mention that this Court earlier by orders dated 19.12.2023 and 27.09.2024 passed in Bail Appln. No. 4279/2023 and Bail Appln. No. 2492/2024 respectively had rejected the bail application of the accused/petitioner.

8. It appears that the instant third bail application is primarily on the ground that the arresting authority having not informed the grounds of arrest to the accused/petitioner at the time of his arrest has contravened and violated the constitutional and fundamental rights under Article 22(1) of the Constitution of India as well as Section 47 of BNSS and the length of the period of the accused/petitioner's custody and that the trial is not likely to be concluded in the near future. Undoubtedly, third bail application is not a review of the earlier refusals and it is only when change of circumstances exist and if the facts and circumstances of the case so demands, the accused/petitioner may be released on bail.

9. Apt at the outset to refer to Article 21 of the Constitution of India, which reads as hereunder: -

“21. Protection of life and personal liberty.—No person shall be deprived of his

life or personal liberty except according to procedure established by law.”

10. Reading of the said Article, it is apparent that it is in relation to protection of life and personal liberty and that these two protections can only be taken away in accordance with procedure established by law. Therefore, no authority be it legislative, executive, or judicial can deprive a person of his life or personal liberty unless it can justify its action under a procedure established by law.

11. Apt also to refer to Article 22(1) of the Constitution of India, which reads as hereunder: -

“22. Protection against arrest and detention in certain cases.—(1) *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.”*

12. A perusal of the first part of the aforesaid Article, with which I am concerned in this case, it is apparent that no person shall be detained in custody without being informed of the grounds of such arrest and that it is the fundamental rights of an arrested person to be informed of the grounds of arrest at the time of his arrest. Therefore, whenever there is an arrest, the grounds of such arrest must be told to the arrestee. This right being guaranteed to the arrestee under the Constitution of India, the same if is taken away from the arrestee, it would be depriving him of his right to liberty, which being his precious and

fundamental right, such arrest would be in total violation of his fundamental rights. Reference is made to the decision of the Apex Court in the case of ***State of Madhya Pradesh Vs. Shobharam and Others.***, reported in ***AIR 1966 SC 1910***. Paragraph 20, 21, and 22 are reproduced hereunder for ready reference:

“20. Article 22(1) is in two parts and it gives to persons arrested a two-fold protection. The first is that an arrested person shall not be detained in custody without being told the grounds of such an arrest and the other is that he shall be entitled to consult and to be defended by a legal practitioner of his choice. Article 22(2) gives a third protection and it is that every person arrested and detained in custody must be produced before the nearest Magistrate within 24 hours excluding the time necessary for the Journey from the place of arrest to the Court of the Magistrate. In Ajaib Singh case it was held that by ‘arrest’ in the article is meant physical restraint put on a person as a result of an allegation or accusation that he has committed a crime or an offence of a quasi-criminal nature or that he has acted in a manner which is prejudicial to the State or public interest. It was further held that as arrests under warrants issued by courts almost always indicate the reasons for the arrest and require the person executing the warrant to produce the person arrested before the court, such arrests are outside Article 22(1) and (2). It was thus held that the article was designed to give protection against the act of the executive or other non-judicial authority. That case arose under the Abducted Persons (Recovery and Restoration) Act, 1949 (65 of 1949) under which persons abducted from Pakistan were rescued. Such persons were taken in custody and delivered to the custody of an officer-in-charge of a camp for the purpose of return to Pakistan. In deciding that this was not the kind of arrest contemplated by Article 22 the court examined what meaning could be given to the

word arrest. But the Bench guarded itself by observing as follows:

'...It is not, however, our purpose, nor do we consider it desirable, to attempt a precise and meticulous enunciation of the scope and ambit of this fundamental right or to enumerate exhaustively the cases that come within its protection.'

21. The case cannot be treated as having laid down the law finally or exhaustively. Similarly, in *State of Uttar Pradesh v. Abdul Sammed* involving arrest and deportation of a person it was held by majority that it was not necessary to produce such a person before the Magistrate if he was produced before the High Court and the High Court remitted the person back to the same custody. Mr Justice Subba Rao dissented with this view. Abdul Samad's case was also not exhaustive because the majority observed:

'In view of the very limited question before us we do not feel called upon to deal with the scope of Article 22(1) or 22(2) or of the two clauses read together in relation to the taking into custody of a person for the purpose of executing a lawful order of deportation....'

22. I consider that there is room for further deliberation on the point. I do not see how we can differentiate between arrests of different kinds. Arrest is arrest, whatever the reason. In so far as the first part of Article 22(1) is concerned it enacts a very simple safeguard for persons arrested. It merely says that an arrested person must be told the grounds of his arrest. In other words, a person's personal liberty cannot be curtailed by arrest without informing him, as soon as is possible, why he is arrested. Where the arrest is by warrant, the warrant itself must tell him, where it is by an order, the order must tell him and where there is no warrant or order the person making the arrest must give that information. However, the arrest is made, this must be done and that is all that the first part of Article 22(1) lays down. I find nothing in Article 22(1) to limit this requirement to arrests of any particular kind. A warrant of a court and an order of any authority must show on their

face the reason for arrest. Where there is no such warrant or order, the person making the arrest must inform the person the reason of his arrest. In other words, Article 22(1) means what it says in its first part.”

13. Apt now to refer to Section 47 of BNSS which reads as hereunder: -

“47. Person arrested to be informed of grounds of arrest and of right to bail-

(1) 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.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.”

14. Reading of the aforesaid provision, it is clear that, it is the duty of the police officer or arresting authority to inform the person arrested without warrant, the grounds of his arrest and his right to bail. In order to examine as whether the grounds of arrest in the case in hand has been informed to the accused/petitioner at the time of his arrest, apt to refer to the Notice issued to the petitioner under Section 50 of the Cr.P.C., (now Section 47 of the BNSS), which reads as hereunder: -

“NOTICE TO THE ARRESTEE

U/S-50 Cr.P.C.

Reference: PGR PS C/No 48/23 P.S. Code No.

U/s 20(b)(ii)(c) NDPS Act, 1985.

To, Ajibur Rahman @ Aziz (40 y)

So- Late Faizul Haque

R/O- Kherbari Amgaon

P.S. Pragjyotishpur

You are hereby informed that you have been arrested in connection with the above reference case. Since the case is nonbailable to Police, so you are forwarded to the Honourable Court. You may submit petition before Hon'ble Court for your bail.

Signature of accused

Signature of Police

Officer Causing

Arrest.

Name

Designation

Name of P.S."

15. Perusal of the aforesaid notice, it appears that the accused/petitioner is merely informed that he has been arrested in connection with the case under reference. However, no information whatsoever of the basic facts constituting the grounds of arrest is told to the accused/petitioner.

16. Apt also to refer to the Arrest Memo in relation to the arrest of the petitioner, which reads as hereunder:-

"ARREST MEMO

HON'BLE SUPREME COURT OF INDIA ORDER IN

WRIT PETITION NO. (CRL) 539 OF 1986

AND WRIT PETITION (CRL) No. 592 OF 1987

1. Name and particular of person arrested:

Ajibur Rahman @ Aziz (40 y)

So- Late Faizul Haque

R/O- Kherbari Amgaon

P.S. Pragjyotishpur

2. PS case Reference: PGR PS C/No. 48/23

U/s- 20(b)(ii)(c) NDPS Act, 1985.

3. Place of arrest: Pragjyotishpur P.S.

4. Date & time of arrest: 09/04/2023 @ 12.30 pm

5. Injury present at the time of arrest

*(If yes, Make Inspection Memo) :- As per inspection
memo*

6. Signature & Name of Relative/

Witness to arrest (At least one):-

7. Signature of arrested person:-

8. Signature full name of arresting

Officer:-

Signature of Investigating Officer"

17. Perusal of the Arrest Memo also indicates that except the name, address and the case reference, there is no mention about any other particulars of the offence as well as the grounds of arrest.

18. Apt also to refer to the Inspection Memo in relation to the arrest of the accused/petitioner, which reads as hereunder: -

"INSPECTION MEMO

Police Station:- PRAGJYOTISHPUR

Write petition (original) No:- 829 of 1986 and 592 of 1997

1. Date 12/04/2023

*2. Case reference:- PGR PS C/No. 48/23 u/s-
20(b)(ii)(c) NDPS Act.*

3. Name and address of accused:-

Ajibur Rahman @Aziz (40 y)

So- Late Faizul Haque

R/O- Kherbari Amgaon

P.S. Pragjyotishpur

4. Wound of the body at time of medical examination: No external injury seen.

5. Name and address of the Police Officer effecting arrest:- SI (P) Alakesh Das

6. Name and designation of M.O. on duty:- Dr. Subhajit Biswas.

7. Signature of the arrestee.

8. Signature of Police officer who escort the arrestee:-

Signature of I/O”

19. Perusal of the Inspection Memo also indicates that except the name, address and the Case reference there is no mention about any other particulars of the offence as well as the grounds of arrest.

20. Mr. R. R. Kaushik, learned Additional Public Prosecutor, Assam upon a pointed query by this Court as regard whether there is any material available in the case record indicating that information of the basic facts constituting the grounds of arrest is informed to the accused/petitioner, he admits that there is no such material available in the case record. Thus, it is an admitted position that the grounds of arrest were not informed to the accused/petitioner at the time of his arrest.

21. The short question therefore that falls for determination in this case before going into the merit of the other ground urged on behalf of the accused/petitioner

is whether non-informing of the grounds of arrest to the arrested person at the time of his arrest would make the arrest illegal and whether the further detention of such arrested person is justified.

22. As noted above, the requirement to communicate the grounds of arrest to the arrestee flows from Article 22(1) of the Constitution of India. Therefore, it is the very constitutional and fundamental rights of the arrestee to be told about the grounds of his arrest. Hence, any infringement of this fundamental right would necessarily vitiate the process of arrest. That apart, it will amount to a violation of Article 21 of the Constitution of India. When a violation of Article 21 and 22 of the Constitution of India is established, the statutory restrictions do not affect the power of the Court to grant bail. In fact, it is the duty of the Court to forthwith order the release of the accused when a violation of Article 22(1) is established.

23. Reference in this regard is made to the decision of the Apex Court in the case of **Vihaan Kumar (Supra)**. Paragraphs 12, 13, 14, 16 and 21 of the aforesaid decision are reproduced hereunder for ready reference: -

“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) 3 1962 SCC OnLine SC 117

13. In the case of Lallubhai Jogibhai Patel v. Union of India, in paragraph 20, this Court held thus:

‘20. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the detenu, have been drawn up in English. It is true that Shri C.L. Antali, Police Inspector, who served the grounds of detention on the detenu, has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. But, that is not a sufficient compliance with the mandate of Article 22(5) of the Constitution, which requires that the grounds of detention must be ‘communicated’ to the detenu. ‘Communicate’ is a strong word. It means that sufficient knowledge of the basic facts constituting the ‘grounds’ should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the ‘ground’ to the detenu is to enable him to make a purposeful and effective representation. If the ‘grounds’ are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that

purpose is not served, and the constitutional mandate in Article 22(5) is infringed. If any authority is needed on this point, which is so obvious from Article 22(5), reference may be made to the decisions of this Court in Harikisan v. State of Maharashtra [1962 Supp 2 SCR 918: AIR 1962 SC 911: (1962) 14 (1981) 2 SCC 427 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 Bansali, this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why

the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

14. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

16. An attempt was made by learned senior counsel appearing for 1st respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a chargesheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge sheet. Accepting such arguments, with great respect to the learned senior counsel, will amount to completely nullifying

Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

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 chargesheet 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.”

24. Reading of the aforesaid judgment of the Apex Court, it is clear that the requirement of informing a person arrested of grounds of his arrest is a mandatory requirement of Article 22(1) and when non-compliance with the aforesaid requirement is alleged, the burden will always be on the investigating officer/arresting officer to show compliance with the requirements of Article 22(1) and when a violation of Article 22(1) is established, it is the duty of the Court to forthwith order the release of the arrestee. It is further clear that the Apex Court has clearly held in that decision that the statutory restriction also shall not affect the power of the Court to grant bail when the violation of Article 21 and 22 of the Constitution is established. There cannot be any quarrel to the proposition that the constitutional court has a duty to uphold the Constitution and safeguard the fundamental rights of the citizens guaranteed under the Constitution of India. Hence, when violation of a fundamental right under Article 22(1) is alleged for the first time in the subsequent bail application after refusal of earlier bail application, the same cannot be

ignored and it would be the duty of such Court to go into the said contention and decide in one way or the other.

25. In the present case, it is an admitted position that the accused/petitioner was not informed of the grounds of his arrest. No documents whatsoever are available on record to indicate that the grounds of arrest have been told to the accused/petitioner. Moreover, the case record does not indicate any contemporaneous record indicating that the grounds of arrest were told/informed to the accused/petitioner at the time of his arrest. Hence, I have no hesitation in holding that the arrest of the accused/petitioner is totally illegal and invalid on account of failure to inform the grounds of arrest to the accused/petitioner as mandated by Article 22(1) of the Constitution of India.

26. This brings me to the contention of Mr. R.R Kaushik, learned Additional Public Prosecutor, Assam that the accused/petitioner having been caught red handed with the contraband articles, there is no need for the arresting authorities to inform him the grounds of his arrest as he is deemed to know the consequences of possessing the contraband articles. The aforesaid contention of Mr. Kaushik, cannot be accepted inasmuch as it is evident from the case records that the contraband articles in question was shown to the police personnel by the accused/petitioner, who was found in an abandoned washroom near the building of one Sadhir Kumar Roy upon being asked about the contraband articles, which he had

allegedly kept concealed in a drum outside the room. Therefore, it is not correct to say that the accused/petitioner was caught red handed with the contraband articles. Be that as it may, the right of informing the arrestee being a constitutional and fundamental right under the Constitution of India, the said mandatory obligation cannot be discharged merely on the inference that since the arrested person has led to the discovery of such contraband articles, he is presumed to know the consequences of possessing such contraband articles. To draw such inference, in the opinion of this Court would be an attempt to take away the fundamental and constitutional rights guaranteed to the arrestee, which would not only be a breach of the constitution but would also render the constitutional safeguard guaranteed under Article 22(1) totally obsolete.

27. The decision of the House of Lords in the case of ***Christie and Another (Supra)***, relied by the Mr. Kaushik, learned Additional Public Prosecutor, Assam, wherein the House of Lords have held that there is no need to explain the reasons of arrest if the arrested man is caught red handed and the crime is patent to high heaven is in the context of the Laws of England. Unlike India, England does not have a written constitution. Instead, its constitution is unwritten and un-codified, meaning thereby, it is a collection of statutes, common law, conventions and historical documents. It is worthwhile to mention that this includes laws passed by Parliament, judicial decisions

establishing precedents, unwritten rules guiding political behavior, and key historical documents like the Magna Carta and the Bill of Rights. Further, in England, the power of the Police to arrest is mainly regulated by the Police and Criminal Evidence Act, 1984 (PACE) and the Codes of Conduct. However, the position is not the same in India as it is the Constitution which provides the arrestee the right of being informed of the grounds of his arrest. Undoubtedly, foreign judgments are not binding upon this Court but are authorities of persuasive values to which this Court may legitimately turn for assistance. However, they must be judged in the context of India's own laws and legal procedure and the practical and ground realities in India. Therefore, the aforesaid decision of the House of Lords is not applicable in the context of the Indian Constitution and hence, is of no relevance in the case in hand.

28. Further, the argument of Mr. Kaushik, learned Additional Public Prosecutor, Assam that the Apex Court in ***Madhu Limaye & Ors.***, had endorsed the said view adopted by the House of Lords in ***Christie and Another (Supra)*** is totally misplaced inasmuch as in that case the circumstances were not such that the arrested persons must have known the general nature of the alleged offences for which they have been arrested. Hence, the said decision of the Apex Court is also of no support to the respondent.

29. Furthermore, the argument of Mr. Kaushik, learned Additional Public Prosecutor, Assam to the effect that the judgment & order of the Apex Court in the case of ***Pankaj Bansal (Supra)*** is prospective is of no relevance in the facts and circumstances of the instant case inasmuch as it is not the contention of the accused/petitioner that the arrest is vitiated for not communicating the grounds of arrest in writing. That apart, all the case laws cited by Mr. Kaushik, learned Additional Public Prosecutor, Assam have received due consideration from this Court, however, the same are not applicable in the facts of the instant case and hence are of no relevance.

30. It would also be worthwhile to mention that, it also cannot be denied that the accused/petitioner has been behind the bar for more than 2 years from the date of his arrest and till now the prosecution has been able to examine only 6 witnesses out of 19 nos. of listed witnesses and it also cannot be denied that the prosecution may take a considerable period for completion of the trial. That apart, none of the listed witnesses, who have been examined till date, have implicated the accused/petitioner.

31. Be that as it may, non-compliance of Article 22(1) of the Constitution of India being clearly established in the present case, the arrest of the accused/petitioner is totally illegal and is vitiated. That being so, the rigor of Section 37 of the NDPS Act, 1985 shall not affect the power of this Court to grant bail to the accused/petitioner. Hence, I shall be failing in my duty, if the accused/petitioner is not

released forthwith. Therefore, on this score alone, further detention of the accused/petitioner in the custody is totally unjustified.

32. Accordingly, the accused/petitioner namely, **Azibur Rahman @ Aziz @ Ajibur**, shall be released on bail in connection with the aforementioned case on furnishing bail bond of **Rs. 50,000/- (Rupees fifty thousand)** only, with **2 (two) sureties of like amount**, provided that one surety has to be a government servant, to the satisfaction of the learned Additional Sessions Judge, (FTC) No.3 Kamrup (M) at Guwahati, subject to the following conditions:

(i) that the accused/petitioner shall appear before the Court of learned Additional Sessions Judge, (FTC) No.3 Kamrup (M) at Guwahati, on each and every date to be fixed by the Court;

(ii) that the accused/petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the accused/petitioner shall submit his Aadhar Card and PAN Card before the learned Additional Sessions Judge, (FTC) No.3 Kamrup (M) at Guwahati; and

(iv) that the petitioner shall not leave the jurisdiction of the learned Additional Sessions Judge, (FTC) No.3 Kamrup (M) at Guwahati, without prior permission.

33. Before parting with the record of the case, I would like to pen down my dissatisfaction and displeasure as regards the non-compliance of the constitutional requirement of informing the arrestee his right under Article 22 of the Constitution of India by the investigating/arresting authority whereby the constitutional court is left with no option but to grant bail even in cases of heinous and serious offence and cases under the Special Act etc. I am thus of the firm opinion that unless and until such investigating/arresting authority are made liable for their lapses in complying with the mandatory requirements relating to arrest, the constitutional safeguards guaranteed to an arrestee shall continue being tinkered and violated. That apart, it cannot be ruled out that the compliance of the mandatory requirement relating to arrest is also capable of being misused by the arresting authority at times. I therefore, request the Chief Secretary to the Government of Assam to look into the matter and take appropriate steps not only for sensitizing strict compliance of the mandatory requirements relating to arrest but also for framing requisite guidelines making the concerned arresting/investigating officer liable for non-compliance of the requirement mandated under Article 22 of the Constitution of India.

34. Let a copy of the Court's order be furnished to the Public Prosecutor, State of Assam to enable him to forward the same to the State Government for taking necessary steps as indicated above.

35. Accordingly, the bail application stands allowed and is disposed of.

JUDGE

Comparing Assistant