

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Miscellaneous Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

CRM (NDPS) No. 146 of 2025

Sudhar Mangar

Versus

The State of West Bengal

Mr. Subhankar Dutta

Mr. Arjun Chowdhury

Ms. P. Dutta Chowdhury

Ms. Sunayana Parveen

Ms. Riya Agarwal

Mr. Mantu Mandal

Mr. Bappaditya Roy

Mr. Soumyadeep Paul

Mr. Swagata Mitra

.....For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP (in-charge)

Mr. Nilay Chakraborty, Ld. APP

Mr. Biswarup Roy

.....For the State.

Hearing Concluded On : 21.05.2025

Judgment on : 11.06.2025

Krishna Rao, J.:

1. The petitioner has filed the present application under Section 439 of the Code of Criminal Procedure, 1973, now Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of bail in connection with Jaigaon Police Station Case No. 62 of 2024 dated 28th March, 2024, under Section 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, pending before the Learned Court of Additional District and Sessions Judge at Alipurduar (NDPS).
2. The allegation against the petitioner is that on 28th March, 2024, on receipt of information, the police reached to the house of the petitioner and during the search of the house of the petitioner, the police recovered one plastic sack styled “Langal” containing 40 (forty) bottles of “Rc-Kuff” cough syrup each bottle containing 100 ml each.
3. After seizure of the materials, the police has arrested the petitioner at 20:15 hours from the house of the petitioner and brought to the Police Station and initiated the above case.
4. On previous occasion, the petitioner has preferred an application for bail before this Court being CRM (NDPS) No. 365 of 2024 but the same was rejected.

5. Now, in the present application for bail, the petitioner has argued that though the petitioner was alleged to have been arrested from his house but the petitioner was not informed the grounds of his arrest and thus the arresting officer has violated the right provided to the petitioner under Article 22(1) of the Constitution of India.
6. Mr. Arjun Chowdhury, Learned Advocate representing the petitioner submits that the grounds of arrest was not communicated to the petitioner in writing as mandated under Article 22(1) of the Constitution of India and Section 52(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985, Act and thus the arrest of the petitioner is vitiated.
7. Mr. Chowdhury submits that to carry forward and execute such Constitutional intention, legislature in its own motion has incorporated similar statutory provisions in almost all the procedural statutes connected with penal consequences like Section 50(1) of the Code of Criminal Procedure, 1973 corresponding to new Section 47(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023. He submits that similar provision is provided in Section 35 of the Foreign Exchange Regulation Act, 1973, Section 104 of the Customs Act, 1962, Section 43B(1) of the Unlawful Activities (Prevention) Act, 1967 and Section 19 of the Prevention of Money-Laundering Act, 2002.
8. Mr. Chowdhury submits the petitioner was arrested for the alleged offence under Section 21(c)/29 of the Narcotic Drugs and Psychotropic

Substances Act, 1985, and as per Section 52(1) of the NDPS Act, it is mandatory on the part of the arresting officer to inform the ground of arrest to the petitioner but in the present case, the arresting officer has not informed the ground of arrest to the petitioner.

9. In support of his submissions, Mr. Chowdhury has relied upon the following judgments:

- i. Prabir Purkayastha Vs. State of NCT OF Delhi reported in (2024) 8 SCC 254.*
- ii. Vihaan Kumar Vs. State of Haryana & Anr. reported in 2025 SCC OnLine SC 269.*
- iii. Pankaj Bansal Vs. Union of India & Ors. reported in (2024) 7 SCC 516.*
- iv. Ashish Kakkar Vs. Union Territory of Chandigarh passed in Criminal Appeal No. 1518 of 2025.*
- v. Directorate of Enforcement Vs. Subhash Sharma reported in 2025 SCC OnLine SC 240.*
- vi. Ujjal Seal @ Ujjal Shil Vs. The State of West Bengal passed in CRM (NDPS) 126 of 2025.*
- vii. Ram Krishna Vs. State of West Bengal passed in CRM (NDPS) 144 of 2025.*
- viii. Central Bureau of Investigation Vs. Rajnikant Ojha passed in CRM (M) 1 of 2025.*
- ix. Minu Das Vs. State of West Bengal & Ors. passed in WPA 6877 of 2025.*

10. Mr. Aditi Shankar Chakraborty, Learned Additional Public Prosecutor (In-Charge) submits that the use of the term “informed” in Article 22(1) of the Constitution of India indicates that the communication of ground must be effective and meaningful, but it does not mandate that

such communication be in writing. He submits that Section 52(1) mandates that any officer arresting a person under Sections 41, 42, 43 or 44 of the Narcotic Drugs and Psychotropic Substances Act, 1985, shall, “as soon as maybe” inform the arrested person of the grounds for such arrest. He submits that the phrase “as soon as maybe” implies a reasonable time frame, which has been judicially interpreted to mean within a practicable period, typically not exceeding 24 hours.

- 11.** Mr. Chakraborty submits that Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, imposes stringent conditions for granting bail in cases involving commercial quantities of narcotic drugs or psychotropic substances. He submits that in the present case also the police has recovered commercial quantity of narcotics from the possession of the petitioner and the petitioner has to made out a case to come out from Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- 12.** Mr. Chakraborty submits that on receipt of information from reliable sources, the police has conducted raid in the house of the petitioner and police recovered 40 bottles of cough syrups of 100 ml each bottle from the house of the petitioner and the same was seized after complying with all formalities. After seizure of the said narcotics, the police arrested the petitioner for the said offence by preparing memo of arrest and the police informed the ground of arrest of the petitioner,

thus it cannot be said that the ground of arrest was not informed to the petitioner.

13. Mr. Chakraborty submits that after seizure and arrest of the petitioner, the petitioner along with the materials were brought to the police station and on the basis of written complaint of the Raiding Officer, FIR has been initiated. He submits that in the written complaint, it is categorically mentioned that he arrested the petitioner after communicating the ground of arrest.
14. Mr. Chakraborty submits that it is not only mentioned in the written complaint, it is also recorded in the Case Diary as well as forwarding memo submitted before the Learned Court of District and Sessions Judge, Alipurduar (NDPS) when the petitioner was first produced before the Court after his arrest.
15. Mr. Chakraborty submitted that the Arresting Officer duly informed the ground of arrest to the petitioner at the time of his arrest and the Arresting Officer has not violated any provisions of law.
16. In support of his submissions, he has relied upon the following judgments:
 - i. *Neeraj Singal Vs. Directorate of Enforcement* reported in 2024 SCC OnLine Del 64.
 - ii. *Vihaan Kumar Vs. State of Haryana & Another* reported in 2025 SCC OnLine SC 269.
 - iii. *Rajrishi Bindawat Vs. State of Maharashtra & Anr.* reported in 2024 SCC OnLine Bom 3660.

iv. *Rakesh Kumar Raghuvanshi Vs. State of Madhya Pradesh* reported in 2025 SCC OnLine SC 122.

17. The question raised in the present application that the ground of arrest was not communicated to the petitioner and thus the arrest of the petitioner is vitiated for violation of Article 22(1) of the Constitution of India and Section 52(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

18. Article 22(1) of the Constitution of India reads as follows:

“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.*”

Section 52(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985, reads as follows:

“52. Disposal of persons arrested and articles seized.— (1) *Any officer arresting a person under Section 41, Section 42, Section 43 or Section 44 shall, as soon as may be, inform him of the grounds for such arrest.*”

Section 19(1) of The Prevention of Money-Laundering Act, 2002, reads as follows:

“19. Power to arrest.—(1) *If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in*

writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.”

Section 43B(1) of the Unlawful Activities (Prevention) Act, 1967 reads as follows:

“43B. Procedure of arrest, seizure, etc.—
(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.”

Section 50(1) of the Cr.P.C. corresponding to Section 47(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 reads as follows:

“Section 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.”*

Article 22(5) of the Constitution of India reads as follows:

“22. Protection against arrest and detention in certain cases.- (5) *When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”*

- 19.** Both the parties have relied upon several judgments as noted above. It is not in dispute that the ground of arrest is to be intimated while arresting the accused. Mr. Chowdhury pointed out the Memo of Arrest wherein the petitioner was arrested and submitted that in the face of

the arrest memo, there is no whisper that the ground of arrest was informed to the petitioner.

20. In the case of **Prabir Purkayastha (supra)**, the Hon'ble Supreme Court held that:

“28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the “grounds” of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.”

21. In the case of **Vihaan Kumar (supra)**, the Hon'ble Supreme Court concluded that:

“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.”

22. In the present case, the petitioner was arrested by the Police for the offence under Section 21(c)/29 of the NDPS Act, 1985 on the allegation that the police has seized 40 (forty) bottles of “Rc-Kuff” cough syrup containing 100ml each bottle from the possession of the

petitioner. The seizure was made on 28th March, 2024 at about 19:25 hrs. to 20:15 hrs. The petitioner was arrested on 28th March, 2024 at 20:15 hrs. from his house. In the arrest memo, it is mentioned that the petitioner will be produced before the Learned District and Sessions Judge (Special Court), Alipurduar on 29th March, 2024. It also appears that in the arrest memo, signature of his relative has taken along with signature of the petitioner. Admittedly in the arrest memo, it is not mentioned about the ground of arrest of the petitioner and there is no column in the arrest memo about information of ground of arrest.

- 23.** It is settled law that the information about ground of arrest to the accused is mandatory. The information of the grounds of arrest must be provided to the accused person in a manner that sufficient knowledge of 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. It is the burden of the Arresting Officer or the Investigating Officer to prove compliance of Article 22(1) of the Constitution of India.
- 24.** After seizure and arrest, FIR is initiated on the written complaint of the Sub-Inspector who has seized the materials and arrested the petitioner. In the written complaint dated 28th March, 2024, it is mentioned that *“I also arrested him after communicating him ground of arrest”*.

- 25.** This Court also perused the original Case Diary produced by the Additional Public Prosecutor. In the Case Diary also it is recorded that the petitioner was arrested after explaining the ground of his arrest. After arrest, the petitioner and the co-accused were produced before the Learned Court of District and Sessions Judge (NDPS), Alipurduar on 29th March, 2024 and in the forwarding memo submitted before the Learned District and Sessions Judge (NDPS), Alipurduar, it is recorded that *“the petitioner was arrested explaining him the grounds of his arrest”*.
- 26.** Though in the written complaint, Case Diary and forwarding report before the Learned Judge, NDPS Court, it is mentioned that the ground of arrest was explained to the petitioner but the State has not disclosed any document or evidence that the ground of arrest was informed to the petitioner. Written complaint was made after the arrest and after initiation of FIR Case Diary was started. The forwarding report submitted before the Learned NDPS Court was not served to the petitioner. At the time of production of the petitioner before the Learned Court on 29th March, 2024, no Advocate was provided and none appears on behalf of the petitioner and the Learned Court has granted 3 days police remand. On completion of 3 days police remand, the petitioner was produced before the Learned Judge, NDPS Court on 1st April, 2024 and on that day, the petitioner was taken into judicial custody but the Learned Judge has not provided

any Advocate from Legal Aid to defend the petitioner as the petitioner was undefended.

- 27.** Considering the above, this Court finds that while arresting the petitioner, the Arresting Officer has violated the provisions of Article 22(1) of the Constitution of India and Section 52(1) of the NDPS Act, 1985 by not informing the ground of arrest to the petitioner at the time of arrest of the petitioner.
- 28.** Article 22(1) of the Constitution of India provides, Inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the ground for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended person. In the present case, the same is missing.
- 29.** In view of the above, the petitioner may find bail of Rs. 20,000/- with two sureties of Rs. 10,000/- each and one of them must be local with the satisfaction the Learned District and Sessions Judge (NDPS) Alipurduar. If on bail, the petitioner shall appear before the learned trial Court on each and every date of hearing without fail and shall not leave the jurisdiction of Jaigaon police station without the leave of the trial Court.
- 30.** This Court finds that neither the Learned Chief Judicial Magistrate, Alipurduar wherein the petitioner was produced before him after the

arrest nor the Learned District & Sessions Judge (NDPS) Court when the petitioner was produced before him on 1st April, 2024, on completion of police remand, have provided the petitioner a suitable Advocate from Legal Aid as on both days the petitioner was undefended and none appears on behalf of the petitioner.

31. This order be forwarded to the Registrar General of the High Court for information of the Hon'ble the Chief Justice and necessary action against the Chief Judicial Magistrate and District and Sessions Judge (NDPS), Alipurduar for not offering Advocate from Legal Aid to the petitioner as at the time of production, the petitioner was undefended.

32. CRM (NDPS) No. 146 of 2025 is allowed. Case Diary be returned to the Learned Additional Public Prosecutor.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)