

IA 7/25 in SC No. 80/2025
FIR No. 426/24
PS Special Cell
State Vs. Mamita Lama

19.01.2026

Present: Sh. A. B. Asthana, Ld. Addl. PP for the State.
applicant/accused.
Sh. Meghan, Ld. Counsel for accused.

Vide my separate order of even date, the present application is allowed and disposed off accordingly.

Copy of the order be given *dasti* as well as be sent to jail superintendent for supplying the same to accused in jail.

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/ND
19.01.2026

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ORDER

1. Vide this order, I shall dispose off the bail application u/s. 483 BNSS, 2023 moved on behalf of accused/applicant Mamita Lama for grant of regular bail. Reply filed by the IO.
2. It is submitted by Ld. Counsel for the applicant/accused that there is no other bail application preferred by the present applicant/accused which is pending disposal before the Hon'ble Supreme Court of India, before the Hon'ble High Court of Delhi, or any other Court in the present case FIR, in which similar relief has been sought.
3. It is submitted by Ld. Counsel for applicant/accused that accused/applicant was arrested on 13.09.2024, after the alleged secret information was received by the officials of the PS Special Cell. The raid was conducted qua the applicant/accused was based on the alleged dealing with the contraband, along with one person. The raid was conducted on the house of the applicant/accused and the recovery i.e. 7 kg of charas was

planted upon the present applicant/accused.

4. It is submitted by the Ld. Counsel for the applicant/accused that as per the case of the prosecution, when the raid was conducted, in the densely populated area during the peak hours, yet the IO did not make any independent witnesses join the investigation. There is no videography or photography of the alleged search and seizure.

5. It is submitted by the Ld. Counsel for the applicant/accused that in the present case there has been non-compliance of mandatory provision, i.e Section 52 of the NDPS Act, since grounds of arrest were never supplied to the applicant/accused by the IO. Only arrest memo was prepared, which is not containing any grounds of arrest. The fundamental right of the applicant/accused as enshrined in Articles 21 and 22 (1) of the Constitution of India have been repudiated and hence, the arrest was illegal and *non-est*. The Ld. Counsel has relied upon the decisions of the Hon'ble Supreme Court in "***Pankaj Bansal Vs UOI & Ors.***" (2024) 7 SCC 576; "***Prabir Purkayastha Vs State (NCT of Delhi)***", (2024) 8 SCC 254; "***Vihaan Kumar vs State of Haryana***", 2025 SCC OnLine SC 269 and the decision of the Hon'ble High Court of Kerala in "***Shahina Vs State of Kerala***", 2025 SCC On Line Ker 4556.

6. It is submitted by the Ld. Counsel for the applicant/accused that in the present case the IO had moved the application before the Ld. Magistrate seeking permission to arrest the applicant/accused after sunset, however, the said application is bad in law, as it was required to be made by the woman police officer, which was authorized or empowered to arrest the woman suspect. The compliance of Section 45 (5) of BNSS, 2023 is missing, which has rendered the authorization given by the Ld. MM non est in the eyes of law. The Ld. Counsel has relied upon the decision of Hon'ble High Court of Bombay in "**Aleksander Kurgan Vs. State and Anr**", 2021 SCC OnLine Bom 150.

7. It is submitted by the Ld. Counsel for the applicant/accused that she is ready to abide with any condition that this Court may impose upon her if the bail is granted.

8. Per contra, it is submitted by the Ld. Addl. PP for the State that there is a recovery of commercial quantity of the contraband from the house of the applicant/accused and she was found in the said house and the secret informer had already informed about the involvement of applicant/accused and her associates. She had disclosed that her husband, i.e, co-accused Nabin Ranabhat was delivering her the charas, which was recovered from the said

house. FSL report has come out positive for the contraband. The charge sheet has been filed and the trial is underway. The applicant/accused is a Nepali resident and if released on bail, she may abscond. Therefore, the State is strongly opposing the present application.

9. Before proceeding ahead with the merits of the present application, I deem it fit to first discuss the law of arrest and fundamental rights of the arrestee to be furnished with the grounds of arrest, in contradistinction to the reasons for arrest.

10. The expression “Arrest” is not defined in the Cr.P.C,1973 or BNSS,2023. The said expression has its origin in the Old French word “arester”, which in itself comes from Vulgar Latin word “arrestare”. The said word is a combination of two Latin words “ad” and “restare”, meaning “to stand firm, stop”. Therefore, the concept of the word revolves around the meaning of stopping or holding something back.

11. The Standing Order No. 330/2019 of Delhi Police for Guidelines for Arrest, defines arrest as a procedure in a criminal justice system which is caused by using legal authority to deprive a person of his or her freedom of movement. The arrestee is taken into custody upon the probable cause upon reasonable

belief that the police officer holds in the guilt of the suspect, based on the facts and circumstances of the information received by him, prior to the arrest. The said reasonable belief pertains to the suspect of either having committed the crime or might be committing in the near future. As a safeguard against the abuse of power, it requires that an arrest must be made for a thoroughly justified reason.

12. In *Pankaj Bansal (Supra)*, the Hon'ble Apex Court has held that Article 22(1) of the Constitution provides, *inter alia*, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest. This fundamental right guaranteed to the arrested person, the mode of communicating/conveying the information as to the grounds of arrest must necessarily be meaningful, so as to serve the intended purpose. For the arrested person to meet out the twin conditions prescribed u/s 45 of PMLA (corresponding provision of Section 37 of NDPS Act), it would be essential for the arrested person to be aware of the grounds on which the authorised officer has arrested him and the basis of the officers "reasons to believe", that he is guilty of an offence. Therefore, the communication of the grounds of arrest must serve the higher purpose, as mandated in Article 22(1) and the same must be given due importance.

13. In *Prabir Purkayastha (Supra)*, the Hon’ble Apex Court has held that the right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20,21 and 22 of the Constitution of India. Any attempt to encroach upon them has been frowned upon by the Hon’ble Supreme Court in catena of judgments. The arrestee has the fundamental and statutory right to be informed about the grounds of arrest in writing and copy of the same must be furnished to the arrested person to consult his advocate, oppose the PC remand and to seek bail. Any other interpretation would seek to dilute his fundamental rights, and such infringement shall vitiate the process of arrest and remand. Merely because chargesheet has been filed, would not validate the illegality and the unconstitutionality committed at the time of arrest or immediately thereafter.

14. In *Prabir Purkayastha (Supra)*, the Hon’ble Apex Court has further held that there is a significant difference between “reasons of arrest” and “grounds of arrest”. The former pertains to purely formal parameters as indicated in the arrest memo, i.e to prevent him from committing any further offence; for proper investigation; to prevent tampering with evidence; to prevent from inducement, threat or promise etc. While the latter would

require to contain all such details in hand with the IO, which necessitated the arrest of the accused. It must contain all the basic facts on which he was arrested so as to provide him an opportunity of defending himself against custody remand and to seek bail. The grounds of arrest would invariably be personal to the accused, while the reasons of arrest would be general in nature.

15. In the landmark decision of *Vihaan Kumar (Supra)*, it was held by the Hon'ble Apex Court that 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 "Fundamental Rights". Thus, it is 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 are not informed as may be after the arrest, it would amount to violation of the fundamental right of the arrestee. If the mandate of Article 22 is not followed, then it will also amount to violation of Article 21, and the arrest will be rendered illegal. Once the arrest is held to be vitiated, the person arrested cannot remain in custody for even a second.

16. The Hon'ble High Court of Delhi in '*Naveen Handa Vs*

CBN’, Neutral Citation:2025:DHC:6090 has categorically held that significant procedural violations cannot be simply overlooked, as they go to the very root of the matter. The grounds of arrest have to be properly conveyed to the accused and to her family at the time of her arrest and since this is a statutory right under the NDPS Act and also a constitutional guarantee under article 22, any such violation is a serious issue. It serves as a contributory ground for the accused or an under trial to seek release during the trial.

17. As per the decisions of the Hon’ble Supreme Court the grounds of arrest were to be supplied to the family members of the arrestee as well. No grounds of arrest were supplied to the family members of the applicant/accused. It is not satisfying the mandate of Article 22(1) of the Constitution of India. In **“Kasireddy Upender Reddy Vs State of Andhra Pradesh & Ors.,** Neutral Citation: 2025 INSC 768, it was categorically held by the Hon’ble Apex Court that the grounds of arrest should not only be provided to the arrestee, but also to her family members and relatives so that necessary arrangements are made to secure her release at the earliest possible opportunity, so as to make the mandate of Article 22(1) meaningful. In the present case, alleged verbal intimation of grounds of arrest to the family member of the applicant/accused is no compliance of the mandate of Article

22(1) of the Constitution of India.

18. The Hon'ble Supreme Court of India had recently in the case of '*Ahmed Mansoor and Ors. v. The State represented by Assistant Commissioner of Police and Anr.*', Criminal Appeal No. 4505/2025, date of decision 14.10.2025 had upheld the decisions in **Pankaj Bansal (Supra)**, **Prabir (Supra)**, **Vihaan Kumar (Supra)** and **Kasireddy (Supra)** and had distinguished the decision in '*State of Karnataka v. Sri Darshan Etc.*', Criminal Appeal No. 3528-3534/2025 dated 14.08.2025 and held that the grounds of arrest should be communicated, as explained by the Hon'ble Apex Court in **Vihaan Kumar (Supra)**. Therefore, the law laid down in **Vihaan Kumar (Supra)** was approved and reiterated.

19. The Hon'ble Supreme Court of India recently in '*Mihir Rajesh Shah v. State of Maharashtra & Anr.*', Neutral Citation:2025:INSC:1288, on 06.11.2025, had categorically held that 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). The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands and where the Arresting Officer is unable to communicate the grounds in

writing on or soon after arrest, it be so done orally and the said grounds must be communicated in writing within a reasonable time and in no case later than two hours prior to production of the arrestee for remand proceedings before the Magistrate. The non-compliance would lead to the arrest and the subsequent remand being rendered illegal and the person will be at liberty to be set free. The Hon'ble Supreme Court of India had further held that the law laid down in *Vihaan (Supra)* and *Prabir (Supra)* had to be followed in all cases.

20. In the facts of the present case, it is not disputed that separate grounds of arrest in writing were never supplied to the applicant/accused. The arrest memo does not contain the said grounds of arrest. Upon specific inquiry made to the IO, he had replied that written grounds of arrest were never supplied to applicant/accused and he had orally supplied the same to the applicant/accused.

21. Since, no grounds of arrest were communicated to the applicant/accused and non-supply of grounds of arrest to the family members of the applicant/accused has led to non-compliance of Article 22(1) of the Constitution of India and Section 52 of the Act. Therefore, the rigours of Section 37 shall not apply to the present case, as the applicant/accused was never

granted the opportunity to mete out the stringent conditions leveled in the present case.

22. The recovery was made from a densely populated residential area and the non-joining of the public witnesses and there being no videography/photography as certainly raised serious doubts over the very fulcrum of the case. The matter of recovery is a matter of trial, however, since the applicant/accused has no past criminal antecedents and there is no justification in the charge sheet or status report regarding the efforts made to join the independent witnesses, and there is no justification for the absence of photography or videography. Therefore, the applicant/accused has been able to satisfy the test of section 37 of the Act. Reliance is placed upon the receiving of Hon'ble High Court of Delhi in '*Bantu Vs State of NCT of Delhi*', 2024 OnLine Del 4671.

23. Furthermore, even the arrest of the applicant/accused is not following the mandate of Section 45 (5) of BNSS 2023, since the application/written report before the concerned Id. Magistrate was not made by the arresting woman police officer and it was made by the IO himself, therefore, even the prior permission obtained is not in accordance with the law. Reliance is placed on the decision of the Hon'ble High Court of Bombay in "*Kavita*

Manikikar Vs. CBI”, 2018 SCC OnLine Bom 1095 and “*Bharti S. Khandhar Vs. Maruti Govind Jhadhav*”, 2012 SCC OnLine Bom 1901.

24. Therefore, in the considered opinion of this court, the present applicant/accused has made out her case for grant of regular bail to her. **Hence, the applicant/accused Mamita Lama is admitted to regular bail on following conditions :-**

(i) On furnishing of personal bond of Rs. **50,000/- with two local sureties** of the like amount, to the satisfaction of this Court.

(ii) She shall deposit her passport, if not already deposited/impounded and she shall not leave the country without the permission of this Court.

(iii) She shall not try to tamper the evidence or hamper the trial or try to influence the remaining witnesses, in any manner.

(iv) She shall furnish her present and permanent address with supporting documents along with an affidavit/undertaking to inform any change thereof without delay to the SHO concerned.

(v) She shall mark her attendance in the PS concerned, on the first Monday of each calendar month, till the trial

is completed.

(vi) She shall not commit any offence, whatsoever, during the period she remains on bail in the present case.

(vii) She shall attend the trial without any single default.

(viii) She shall be released subject to production of valid passport and visa. If the visa is expired, same must be applied online from the jail and the State shall provide all necessary assistance. It is made abundantly clear that until and unless valid passport and visa is produced, she shall not be released on bail.

(ix) She shall obtain a SIM card in her own name, on the basis of the passport and shall give the details of the number to this Court and to the IO.

(x) She shall inform the place of residence along with valid proof and report any changes within one week, to both the Court and IO.

25. Nothing stated herein shall tantamount to any expression or opinion on the merits of the case.

26. The application under Section 483 BNSS, 2023 moved on behalf of applicant/accused Mamita Lama for grant of regular bail is accordingly disposed of as allowed.

27. Needless to say, that nothing expressed herein shall have any effect on the merits of the case.

28. Copy of this order be sent to Jail Superintendent, Tihar Jail for necessary intimation to the applicant/accused.

29. Application is disposed off accordingly.

30. Copy of the order be given dasti as well as be sent to jail superintendent for supplying the same to accused in jail.

(ATUL AHLAWAT)
ASJ/ Special Judge, NDPS/N. Delhi
Delhi/19.01.2026