

FIR No. 28/2024
PS Spl Cell
State Vs. David Narh

25.07.2025

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

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/N. Delhi
25.07.2025

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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 David Narh 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 is in JC since 01.02.2024, after a raid was allegedly conducted on the basis of secret information that two African nationals would come near Kaanch restaurant, SFS Road, Mayur Vihar, Phase-III at around 4:00 pm to supply narcotic substances. As per the case of prosecution, 29.64 gm cocaine (intermediate quantity) and 12.60 gm Ecstasy/MDMA (commercial quantity) was recovered from applicant/accused.

4. It is submitted by the Ld. Counsel for the applicant/accused that the application is filed on limited grounds of non-compliance of 50 CrPC, section 52 NDPS Act, 1985 and article 22 (1) of Constitution of India, since the grounds of arrest were never supplied to applicant/accused.

5. It is submitted by the Ld. Counsel for the applicant/accused that 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 Delhi in ‘***Vikas Chawla @ Vicky Vs State (NCT of Delhi)***’ Neutral Citation 2025:DHC:2040.

6. It is submitted by the Ld. Counsel for the applicant/accused that there are 17 Prosecution Witnesses cited in the present case and the testimony of only one witness has been recorded till date and the conclusion of trial is going to take considerable time and the applicant/accused cannot be kept in

custody for an indefinite period of time, especially when his arrest was illegal in the eyes of law.

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

8. Per contra, it is submitted by the Ld. Sub. Addl. PP for the State that the applicant/accused is involved in the criminal conspiracy of supplying the narcotic substances and he is a foreign national and if released on bail, he may abscond and flee away from the hands of justice. There is CDR connectivity between him and other accused persons.

9. It is further submitted by Ld. Sub. Addl. PP for the State that since the arrest was made in pursuance of a secret information received by the members of Spl Cell and during the raid itself, the arrest was effected and there was no requirement of providing written grounds of arrest, since the said proceedings formed part of the same transaction. As far as the judgments cited by Ld. Counsel for applicant/accused, the view of the Hon'ble High Court of Delhi as evidenced in the order dated 29.04.2025 in **WP Criminal 809/2025** titled as “***Mohd Akram Vs State of NCT of Delhi***” is categorical, wherein the Hon'ble High Court of

Delhi refused to entertain the bail application of the petitioner therein, since the Hon'ble Supreme Court of India in **SLP No. 17132/2024** titled as “*Mihir Rajesh Shah Vs State of Maharashtra*”, vide order dated 22.04.2025 has reserved the judgment and the matter was listed by Hon'ble High Court of Delhi for a later date. It is also submitted by Ld. Sub. Addl. PP for the State that the decisions cited by Ld. Counsel for applicant/accused were not rendered in NDPS cases and has limited scope, since the issue is still *subjudice* before Hon'ble Supreme Court of India regarding the arrest being vitiated on the ground of non-compliance of section 50 CrPC, 1973 or not. Therefore, the present application is strongly opposed.

10. 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.

11. The expression “Arrest” is not defined in the Cr.P.C,1973 or BNSS,2023. The said expression has its origin in the 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.

12. 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.

13. 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 authorized 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.

14. 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.

15. 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.

16. 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.

17. In the facts of the present case, it is not disputed that the written grounds of arrest were never supplied to applicant/accused. Upon a specific query being put to the IO, he had replied that no grounds of arrest were supplied by him in writing.

18. The objection raised by the Ld. Addl. PP for the State that no grounds of arrest were required to be given, since the arrest was made at the time of raid conducted by the officials of PS Spl Cell and was following the recovery of the illegal contra-band, is also devoid of any merits. If that stand is to be believed, then in all cases wherein the raid is conducted by the officials and during the raid, the recovery of contraband was allegedly made, then the official making the arrest would be given a free hand to not supply the reasons for affecting the arrest and the grounds of arrest which were based on his subjective satisfaction of requirement of the arrest.

19. There is no merit in the submissions of the Ld. Sub. Add PP for the state that since the Hon'ble Supreme Court of India is seized of the question of law relating to whether the arrest could be vitiated on the non-compliance of section 50 CrPC and that in one case, the Hon'ble High Court of Delhi adjourned a bail hearing on the ground of the matter being pending before Hon'ble Supreme Court of India, does not mean that the law of the land, which exists today is not to be followed. The categorical findings of Hon'ble Supreme Court of India in ***Pankaj Bansal (supra)***, ***Prabir Purkayastha (Supra)*** and ***Vihaan Kumar (supra)*** are binding upon this Court, being the law of the land and same has to be applied while deciding the present application on merits. The fundamental rights under Article 22 of the Constitution of India are available to both the citizens and non-citizens and it is not the case of the prosecution that the applicant/accused was an enemy alien or detained under the preventive detention laws.

20. No written grounds of arrest were ever supplied to the applicant/accused and there has been non-compliance of section 52 NDPS Act. Therefore, I have no doubt to hold the mandate of Article 22 is not followed, and it amounts to violation of Article 21, and the arrest is rendered illegal and vitiated, therefore, the applicant/accused cannot further remain in custody.

21. Since, no grounds of arrest were ever communicated to the applicant/accused, 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. Therefore, as the arrest itself is vitiated, I shall not deal the present application on merits on the other grounds raised by the Ld. Counsel for the accused.

22. After considering the rival contention of the parties, considering the facts & circumstances of the present case, and considering the fact that no grounds of arrest were communicated to the applicant/accused, rendering his arrest to be vitiated as being illegal, in my considered opinion, he has made out his case for regular bail. Hence, the applicant/accused David Narh is admitted to regular bail on following conditions :-

(i) On furnishing of personal bond of **Rs. 1,00,000/- with two local sureties** of the like amount, to the satisfaction of this Court.

(ii) He shall deposit his passport, if not already deposited/impounded and he shall not leave the country without the permission of this Court.

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

manner.

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

(v) He shall mark his attendance in the PS concerned, on the first Monday of each calendar month, till the trial is completed.

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

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

(viii) He 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, he shall not be released on bail.

(ix) He shall register himself with the FRRO, within two weeks of the date of his release.

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

(xi) He shall inform the place of residence along with valid proof and report any changes within one week, to

both the Court and IO.

(xii) He shall file an affidavit within two weeks of his release on bail, stating the source of his funds and source of income in India, giving details of his bank account.

23. The application under Section 483 BNSS, 2023 moved on behalf of applicant/accused David Narh for grant of regular bail is accordingly disposed off, as allowed.

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

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

26. Application is disposed off accordingly.

27. Copy of the present order be given dasti and same be also sent to concerned jail superintendent, to be supplied to the applicant/accused.

(ATUL AHLAWAT)
ASJ/ Special Judge, NDPS/N. Delhi
Delhi/25.07.2025