

IN THE COURT OF DISTRICT JUDGE-1 & ADDITIONAL
SESSIONS JUDGE, PANVEL RAIGAD
ORDER BELOW EXHIBIT 21 IN SPECIAL NDPS CASE 74/2024
(Dated 16/01/2024)
CNR NO.MHRG170010822024

1] Applicant/accused No.6 **Wazhul Qamer Abul Wafa Chaudhary** has filed application for bail in C.R.No.660/2023 registered with Panvel City police station for the offence p/u/sec.8 (c), 22 (C), 27(A), 29 of NDPS Act 1985.

2] Ld.Advocate Prasannan S. Namboodiri vehemently submitted that, present applicant was apprehended on 01/12/2023, forced to stay in police custody without producing before jurisdictional Court. There was violation of directions of Hon'ble Supreme Court given in D.K. Basu Vs. State of West Bengal. It is specifically argued that, grounds of arrest were not informed. Grounds of arrest were neither served nor its copy is produced in charge-sheet. It is specific submission that, there was non-compliance of section 50 of Cr. P. C.

3] Since present applicant/accused through his Advocate raised a specific ground about non-compliance of section 50 of Cr. P. C. investigating officer was directed to file his affidavit. Accordingly Nilesh Pandurang Dhumal API Crime Branch, Navi Mumbai Anti Drug Squad filed his affidavit which is at Exh.29. I have gone through this affidavit. It is submitted that, co-accused Sohail Lambe was interrogated, he informed that, contraband

was given to Shadab Sayyad. Sohail Lambe was arrested on 03/12/2023. Further it is submitted that, contraband was brought from Wazhul Chaudhary and Shaif Shaikh. IO submits that, thereafter he searched Wazhul Chaudhary and Saifulla Shaikh, they were found and they confessed. According to IO their confession itself was the reason for arrest and this was informed at time of panchanama in presence of panchas.

4] Having observed facts regarding arrest and contents of affidavit of IO now I would like to deal with law laid down in this regard.

5] Hon'ble Apex Court in case of *Prabir Purkayastha Vs. State (NCT of Delhi)*, has laid down law regarding necessity to inform the grounds of arrest, relying on its earlier decision of Pankaj Bansal Vs. Union of India. I am reproducing paragraph No.25 to 28 of the decision of the Hon'ble Apex Court as under ;

“A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of *Harikisan v. State of Maharashtra and Others* 4 and held that the communication of the grounds of detention to the detenu in 4 1962 SCC OnLine SC 117 writing and in a language which he understands is imperative and essential to provide an opportunity to detenu of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted here-in-below

“clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu would not amount to communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the Order of Detention is based. (emphasis supplied)

26. Further, this Court in the case of *Lallubhai Jogibhai Patel v. Union of India and Ors.*⁵, laid down that the grounds of 5 (1981) 2 SCC 427 detention must be communicated to the detenu in writing in a language which he understands and if the grounds are only verbally explained, the constitutional mandate of Article 22(5) is infringed. The relevant para is extracted hereunder: -

“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.....” (emphasis supplied)

27. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in Harikisan(supra), wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

28. Thus, there is no hesitation in the mind of this Court that the submission of learned ASG that in a case of preventive detention, the grounds of detention need not be provided to a detenu in writing is ex facie untenable in eyes of law. According to prosecution on 03/12/2023 accused No.1 Shadab Sayyad was apprehended while he was possessing 61.09 gms of Mephadrone. According to prosecution present applicant/ accused is involved in conspiracy as he had supplied chemical for preparation of said drug.

6] Further Hon'ble Parent High Court in a recent decision in Writ Petition No.4487/2024, in the case of Amit Giridhar Lalge Vs. State of Maharashtra decided on 28/11/2024 had dealt with similar issue and as there were no grounds of arrest communicated, declared arrest of petitioner therein as illegal and remand orders were declared as null and void. The petitioners therein were entitled to be released from custody on furnishing bail bonds.

7] Further I would like to mention following decisions in which non-compliance of informing reasons for arrest and grounds for arrest, was dealt by Hon'ble Parent High Court. These are as under ;

1. *Sachin Mahapati Nimbalkar Vs. State of Maharashtra Through Karad City police station Writ Petition (stamp) No.17029/2024* In this decision, the information of arrest was given to the wife of the accused on the cell phone. Hon'ble Parent High Court in the writ petition laid down that arrest was illegal and was gross violation of fundamental rights of the petitioner/accused.
2. *Mahesh Pandurang Naik Vs. State of Maharashtra Writ Petition (ST) No.13836/2024* In this decision, again Hon'ble Parent High Court laid down that, arrest of the petitioner was illegal and gross violation of his fundamental rights as intimation of arrest was given to the mother of the accused.
3. *Vishalkumar Bholu Ravani Vs. State of Maharashtra Writ Petition (ST) No.20594/2024* In this decision also arrest was declared as illegal and gross

violation of fundamental rights as there was non compliance of section 50 of Cr. P. C. and Article 22 (1) of The Constitution of India.

8] In light of aforesaid law laid down by Hon'ble Apex Court and Hon'ble Parent High Court, if facts which I have already stated above are again considered then it becomes crystal clear that, present investigating officer committed gross violation of Constitutional and Statutory provisions with regard to arrest of a person. Section 50 of Cr. P. C. nowhere prescribed that, any confession itself is a ground to arrest a person affidavit filed by present investigating officer is in a casual manner and such type of conduct needs to be probed into present applicant/accused Wazhul Chaudhary is entitled to be released on bail. I pass following order.

ORDER

1. Application Exh.21 is allowed.
2. Applicant/accused No.6 **Wazhul Qamer Abul Wafa Chaudhary** in C.R.No.660/2023 registered with Panvel City police station for the offence p/u/sec.8 (c), 22 (C), 27(A), 29 of NDPS Act 1985 be released on SB and PB of Rs.30,000/-.
3. Applicant/accused shall furnish his permanent address proof, alongwith names of his three blood relatives and their addresses.
4. Applicant/accused shall attend concerned police station as and when called.

5. Applicant/accused shall not directly or indirectly induce or threaten the prosecution witnesses, victims of the crime, informant or any other person related with the crime.
6. Bail before this Court.
7. Inform concerned police station and jail authority by E-mail.

Panvel
Date :-16/01/2025.

(Jairaj D.Wadne)
Special NDPS Judge,
Panvel-Raigad

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the stenographer	: S.J.Sheth
Name of the Court	: Additional Sessions Judge, Panvel Raigad
Dictation given on (direct)	: 16/01/2025
Order signed by the P.O.on	: 16/01/2025
Order uploaded on	: 17/01/2025