

Present : Mohd. Aqil Saifi [J.O. Code-WB01310]
Addl. Sessions Judge, 1st Court, Durgapur

Spl. (POCSO) Case No.23/2024

Spl. (POCSO) Trial No.85/2024

(CIS No.23/2024)

(Arising out of Budbud PS Case No. 40/2024 dated 25.04.2024)

Order no.19

01.07.2025

The accused persons **Pradyut Bhattacharjee** and **Kunal Das** are produced from J/C through virtual mode before this court.

Accused **Biswajit Das** on CB is present by filing hazira.

Accused **Raj Das** on CB is absent by filing an application u/s 317 of Cr.PC where in he has under taken not to dispute his identity if the evidence is recorded in his absence.

Ld. Advocates for the accused persons as well as Ld. Special PP in-charge are present in Court.

The petition u/s 317 of Cr.P.C is considered and allowed.

Today the record was fixed for evidence, production of CD and hearing of bail application filed on behalf of accused Kunal Das.

No witness is present.

Now the bail application is taken up for hearing and passing order.

CD is produced.

Ld. Advocate appearing for the accused submits that the petitioner is innocent and has falsely been implicated in this case. Ld. Advocate further submits that the petitioner has been arrested in this case illegally in gross violation of Article 22(1) of the Constitution of India as well as other statutory provisions enshrined in Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS). The Ld. Advocate further submits that in the arrest memo of the petitioner Grounds of Arrest of the petitioner has not been communicated to him in terms of Article 22(1) of the Constitution of India as well as Section 47(1) of BNSS.

The Ld. Advocate for the petitioner, in order to fortify his contention, has relied upon the judgement of **Vihaan Kumar vs. The State of Haryana, 2025 INSC 162** and submitted that in view of mandate of the judgment, the arrest of the petitioner is illegal and accordingly he is entitled for bail and as such the Ld. Advocate prays for enlarging the accused on bail.

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The Ld. Special PP in-charge objected to the grant of bail.

Heard both sides and perused the material available on record and CD.

I have gone through the Judgment relied upon by the petitioner, case record, bail application and the case diary carefully. It is transpired from the Arrest Memo of the petitioner that Grounds of his Arrest has not been communicated to the petitioner. It is also transpired from the case diary of 23.07.2024 at 13.40 hours that "I arrested him after observing all NHRC Govt. Rules".

It is also transpired from the C.D that in the notice u/s 50 of Cr.P.C the grounds of arrest of the petitioner was mentioned but the notice u/s 50 of Cr.P.C was addressed to Kajal Das i.e. the father of petitioner and the same was received by him.

The main contention of the Ld. Advocate for the petitioner is violation of Article 22(1) of the Constitution of India as well as u/s 50 of Cr.P.C (corresponding to Section 47(1) of BNSS) while the arrest of the accused was made and as such it is relevant to reproduce Article 22(1) of the Constitution of India as well as Section 47(1) of BNSS.

Article 22(1) of the Constitution of India:-

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 47(1) of BNSS:-

47.(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.

During the arguments, the Ld. Special PP has submitted that the grounds of arrest has been clearly communicated to the accused through his arrest memo as the provision under which the accused was arrested have been mentioned in serial no.3. The Ld. Special PP further submits that the fact of communication of grounds of arrest to the accused finds corroboration from the entry made in the case diary dated 23.07.2024 about conveying the grounds of his arrest.

During the arguments the Ld. Advocate for the petitioner has submitted that the communication of grounds of arrest has not been

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communicated to the petitioner as per Article 22(1) of Constitution of India and Section 47(1) of BNSS as both the provisions demands a clearcut written communication to the accused about grounds of his arrest.

At this stage, this Court proposes to rely upon the judgment of **Prabir Purkayastha vs. State (NCT of Delhi) 2024 SCC OnLine SC 934** where the Hon'ble Supreme Court in para no.49 has been pleased to cull out the distinction between “ reasons of arrest” and “grounds of arrest” as:-

“49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest’. The ‘reasons for arrest’ as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making 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 the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the ‘grounds of arrest’ would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’ which are general in nature.”

It is crystal clear from the above that there is a marked difference between the term ‘reasons of arrest’ and ‘grounds of arrest’ and the grounds of arrest are specific and elaborate so as to make aware the arrested person about commission of offence by him.

It is transpired from the Arrest Memo of the petitioner that Grounds of his Arrest has not been communicated to the petitioner. It is also transpired from the case diary of 23.07.2024 at 13.40 hours that “I arrested him after observing all NHRC Govt. Rules”.

In the judgement of Vihaan Kumar vs. The State of Haryana the Hon'ble Supreme Court in para no.14 has held that ‘ 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.'

In the same judgement, the Hon'ble Supreme Court concluded:-

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).....

d).....

e).....

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.

After considering the rival submissions of the parties, case record, case diary and the judgment as mentioned above, it is found that the grounds of arrest have not been communicated to the petitioner as per the provision of Article 22(1) of Constitution of India and Section 47(1) of BNSS which makes his arrest illegal in view of the judgement of Vihaan Kumar vs. The State of Haryana, 2025 INSC 162 and as such the accused is entitled to be released on bail. Accordingly, it is,

ORDERED

that the accused **Kunal Das** may find bail of Rs.10,000/- with two registered sureties of Rs.5,000/- each subject to the satisfaction of Ld. ACJM, Durgapur. On condition that the accused/petitioner shall not temper with

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evidence and shall not influence the witnesses of this case in any manner whatsoever.

The bail application of Kunal Das is, thus, disposed off.

Return the C.D.

Todate **05.08.2025 & 06.08.2025** for production of the accused Pradyut Bhattacharjee, appearance and evidence.

Accused is remanded to J/C till 05.08.2025.

Let a copy of this order be sent to the Ld. ACJM, Durgapur for information.

Dictated & corrected by me,

Sd/-
Judge Special (POCSO) Court cum
Additional Sessions Judge,
1st Court, Durgapur.

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Judge Special (POCSO) Court cum
Additional Sessions Judge,
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