

59/24.04.25

Today is fixed for hearing petition dt. 2.4.25, filed on behalf of the accused namely, Kushumuddin Ali and also for further cross examination of PW21 and production.

The sole accused person is produced from JC through VC.

Ld. LADC for the accused person is present.

Ld. P.P is also present with CD.

The PW21 namely, SI Shah Alam Martuja is present and cross examined in part.

The cross examination is deferred as per the prayer of Ld Defence Counsel on the ground stated in the petition for time.

The PW21 namely, SI Shah Alam Martuja is directed to remain present on the next date fixed for adducing evidence.

Fix 16.05.25 for further cross examination of PW21.

Ld. Advocate for the de-facto complainant of this case is found present at this stage.

Now the record is taken up for hearing the prayer for bail in respect of accused namely, Kushumuddin Ali.

Ld. advocate for the petitioner/ accused submitted that at the time of arrest his client was not informed about the grounds of arrest by the arresting police officer which was a mandate as per law. Ld Counsel by referring the Memo of Arrest of Kushumuddin Ali further submitted that nowhere in the Arrest Memo it has been reflected that the accused was elaborately explained about the ground of his arrest. Ld Counsel referred the Judgement of the Hon'ble Apex Court passed in Criminal Appeal @ SLP (Crl.)13320 of 2024 [Vihaan Kumar – Vs – State of Haryana & Anr.] and submitted that as his client was not informed by police the ground of his arrest, at the time of arrest, mere filling up the 'Memo of Arrest' cannot be considered as an intimation of the ground of arrest and accordingly, such arrest was a clear violation of constitutional mandate under article 22 (1). Ld Advocate prayed for bail for his client on any term and condition with remark that when a violation of article 22 (1) is established, it is the duty of the Court to forthwith order the release of the accused and even the statutory restrictions do not affect the power of the Court to grant bail when the violation of Article 21 and 22 of the Constitution is established.

One objection of bail petition is filed by SI Baidyanath Sarkar of Raiganj PS, duly forwarded by the IC of the concerned PS.

Ld PP opposed the prayer for bail of the accused person and submitted that at the time of arrest, the accused was duly informed about the ground of his arrest and the 'Memo of Arrest' shows that at the time of arrest one Rejaul Haque was also informed the ground of arrest. Moreover, the arrest was held in presence of said Rejaul Haque and in the 'Memo of Arrest' the sections of IPC were duly mentioned. Ld P.P also referred the relevant pages of the CD and submitted that the accused of this case was arrested after following all legal procedure.

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Ld P.P by producing the CD further argued that this accused was arrested by police, during investigation , after continuous raid and after arrest, he was taken into police remand when during interrogation this accused had confessed his guilt towards his involvement in this case and his such conduct clearly shows that he was well aware about the offence, committed by him. Moreover, it has been clearly noted in the CD that during the procedure of arrest, the ground of arrest was duly been communicated to the accused person. So, at this stage of trial, the plea as taken by the accused is baseless. Ld P.P prayed for rejection of the prayer for bail of the accused.

I have perused the entire materials on record from which it reveals that the accused person has been detained in custody since arrest and after framing charge of this case on 18.02.22, the trial was commenced which is in the verge of completion.

It further revealed from the CD as well as Memo of Arrest that at the time of arrest, the accused was duly communicated the ground of arrest and it is quite astonishing that suddenly at the end of trial which is continuing since 2022, the accused recalled that during arrest, he was not informed about the reason of his arrest by police whereas this was not raised by him since trial has been commenced.

Though Ld. Defence Counsel argued that the point of violation of the accused person's right under Article 22(1) of the Constitution of India can be raised at any stage of proceeding, such as soon after the arrest, pre-trial stage and at the stage of trial, on perusal of the Judgement of the Hon'ble Apex Court, referred by the Ld Defence Counsel in support of his submission, I am of opinion that the fact and situation of this case is not identical with the fact and situation of the referred case and accordingly, the view of the Hon'ble Apex Court is not applicable here at this stage in favour of the accused.

The record further shows that since his arrest in connection with this case, on several occasions bail prayers were moved by the Ld. Counsel of this accused before this Trial Court but surprisingly nowhere this accused had raised the point that at the time of arrest the ground of arrest was not communicated or explained to him by the arresting police officer.

In view of the above discussion, I am not inclined to allow the prayer for bail of the petitioner/accused Kushumuddin Ali as there was no incident of non-compliance of the mandate of the CrPC which has been introduced to give effect to Article 22(1) of the Constitution of India, 1950, at the time of arrest of Kushumuddin Ali, as alleged by the Ld Defence Counsel.

Therefore, the bail prayer of accused Kushumuddin Ali is considered and rejected.

To date (16.05.25) for evidence.

Issue summons accordingly. Prosecution to take necessary steps.

Alamat, if any, be produced on the date fixed.

Dictated by me

Judge

ADJ,FTC-I,Raiganj, U/D.