

NDPS 30 of 2024
CNR No.WBUD01003768-2024
JO Code No.WB01460

Order No. 20

15.05.2025

Today is fixed for hearing of bail petition filed on behalf of accused Md. Alam @ Aliruddin. CD is produced and one written bail objection is filed by the I.O.

Ld. Advocate for the accused is present.

Ld. PP-in-charge is present.

Bail petition is moved.

Heard both sides.

Perused the case record and CD and also the written bail objection as submitted by the I.O.

At time of hearing Ld. Advocate for the accused submits that the accused has been falsely implicated in this case. It is in his submission that there are defects in the memo of arrest regarding arrest of the accused person and those defects are related with grounds of arrest and information as to the arrest of the accused person to his family members. At the time of such submission Ld. Advocate relied upon the decision of the Hon'ble Supreme Court passed in SLP (Criminal) No.13320 of 2024 on 07.02.2025. It is his specific submission that the decision of the Hon'ble Court passed in the case of Vihan Kumar vs. State of Hariyana and another vide SLP (Criminal) No.13320 of 2024 has been considered by the Hon'ble Calcutta High Court in the judgment passed in CRM (DB) No.194 of 2025 with CRM (DB) No.350 of 2025 passed on 25.04.2025 and the Hon'ble Court granted bail considering defects relating to ground of arrest and information as to the arrest to the family members. In such submission Ld. Advocate prays for releasing the accused person on any conditions.

On the other hand Ld. District PP vehemently opposes the bail prayer of the accused person by submitting that the case is involved with recovery of 196 bottles of phensedyl and there are materials against the accused.

In view of the aforesaid submissions of both sides on minutely perusal of the memo of arrest of the accused person it appears that the accused person was arrested at Islampur PS on being produced by Rakesh Sing Sekhawat, AC, 17 BN BSF, Coy Commander of B Company on 16.10.2024 at about 23.40 hours. It further appears in the memo of arrest that in the place of signature of the witness, one signature in short has been written with date 16.10.2024 just above the LTI of Md. Alam @ Aliruddin and full name of said person does not appear there and other than the said signature written in English nothing is found at the said column No.10 of the memo of arrest while LTI of the accused has been put in the memo of arrest while there is nothing else as to who identified the LTI of the accused and other than this nothing else were found with respect to column Nos.10 and 11 together with the column Nos.1 and 2.

In such facts and circumstances on minutely perusal of the decision of the Hon'ble Supreme Court passed in SLP (Criminal) No.13320 of 2024 reported in 2025 SCC Online SC 269, this Court finds that the Hon'ble Court has been pleased to observe in the form of conclusions as under which appears to be very relevant in the present perspective:

“21. Therefore, we conclude:

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) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

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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.”

In this regard paragraph 26 and 28 are also appearing relevant in view of the present plea for bail made on behalf of the accused person which are as follows:-

“26. The stand taken before the High Court was that the appellant's wife was informed about the arrest. Information about the arrest is completely different from the grounds of arrest. The grounds of arrest are different from the arrest memo. The arrest memo incorporates the name of the arrested person, his permanent address, present address, particulars of FIR and Section applied, place of arrest, date and time of arrest, the name of the officer arresting the accused and name, address and phone number of the person to whom information about arrest has been given. We have perused the arrest memo in the present case. The same contains only the information stated above and not the grounds of arrest. The information about the arrest is completely different from information about the grounds of arrest. Mere information of arrest will not amount to furnishing grounds of arrest....

28. Therefore, in the facts of the case, we have no hesitation in holding that the arrest of the appellant was rendered illegal on account of failure to communicate the grounds of arrest to the appellant as mandated by Article 22(1) of the Constitution.”

Now in such perspective I have minutely gone through the two judgments of the Division Bench of the Hon'ble Calcutta High Court passed in CRM (DB) No.194 of 2025 with CRM (DB) No.350 of 2025 on 25.04.2025 and CRM (DB) No. 62 of 2025 passed on 25.04.2025. It appears that Hon'ble Division Bench of the Hon'ble Court has been pleased to grant bail on similar considerations in view of decision of the Hon'ble Supreme Court passed in SLP (Criminal) No.13320 of 2024 (Vihan Kumar vs. State of Hariyana and another) reported in 2025 SCC Online SC 269 considering the defects in the memo of arrest as to the grounds of arrest and information regarding such arrest. After minutely going through the aforesaid two judgments of the Hon'ble High Court dated 25.07.2025, this Court finds that following paragraphs of the judgment of the Division Bench of the Hon'ble Calcutta High Court passed in CRM (DB) No.194 of 2025 as relied upon by the Ld. Advocate for the accused are appearing to be relevant in the instant case:-

“11. In Vihaan Kumar's case (supra), the main issue involved in the said case was whether the appellant who was not informed of the grounds of his arrest, is sufficient to hold that there is a violation of his right under Article 22(1) of the Constitution or not.

12. The Hon'ble Apex Court has been pleased to hold that Article 22(1) of the Constitution provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying the information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. In the said decision it is further held that there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why it should be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read to the accused person or read by such person with nothing further and this fact in a given case it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due compliance in this regard. The second reason as to why this should be the proper course to adopt such Constitutional objectives is that conveyance of this information is not only to apprise the arrested

person as to why he/she is being arrested but also to enable such person to seek legal counseling and thereafter present a case before the Court under Section 45 to seek release on bail.

13. The Hon'ble Court has been pleased to quote para 29 of the judicial decision of Prabir Purkayastha's case (supra) which is as hereunder:-

“29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22 (5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.”

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14. We have examined the Memo of arrest but we do not find that the concerned Police Officers have complied with the direction of the Hon'ble Supreme Court as required in Prabir Purkayastha (supra) and Vihaan Kumar (supra) at the time of arrest of both the petitioners in writing. Needless to mention, even alleged oral communication of grounds of arrest or through any other indirect mode of conveying the grounds to the petitioners would not suffice since when the law, as interpreted by the Hon'ble Supreme Court's judgments of the Division Bench of the Hon'ble Calcutta High Court passed in CRM (DB) No.194 of 2025 with CRM (DB) No.350 of 2025 on 25.04.2025 and CRM (DB) No. 62 of 2025 passed on 25.04.2025, it dictates one thing to be done in a particular manner, the same is to be done in the same manner only, and not in any other manner or mode. Therefore, non-compliance of such provision is sufficient to hold that the arrest made without informing the concerned persons the grounds of arrest was in utter violation of the law postulated by the Hon'ble Apex Court, and accordingly the petitioners are entitled to be released on bail on certain conditions..."

In view of the aforesaid findings on minutely perusal of the case record, materials in CD together with the written bail objection of the I.O and on hearing both sides therewith, this Court has duly considered and perused the memo of arrest and the defects therewith. In this regard it appears that the case has been ended in filing charge-sheet and after taking cognizance in the case process has been issued and the record reveals next date has been fixed on 03.06.2025 for production and ER of WPA (appearance) against the absconded accused persons Giyasat, Abul, Dhol and Najibul and the case involves recovery of 196 bottles of phensedyl cough syrup and the present accused is in custody since 04.11.2024. In such circumstances on minutely going through the decision of the Hon'ble Supreme Court passed in the case of Vihan Kumar Vs. State of Haryana and another it is found that the Hon'ble Court has been pleased to observe "...Needless to add that it will not vitiate the investigation, charge-sheet and trial but at the same time filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1)". It further appears such observation has been made by the Hon'ble Supreme Court as well as by the Hon'ble High Court recently with regard to non-compliance of Article 22(1) and it relates to the information of grounds of arrest and requirement of such information of informing to the accused arrested mentioning the same as mandatory requirement of article 22(1) of Constitution.

In the circumstances considering all aspects and the memo of arrest of the accused person in the light of the decision of the Hon'ble Supreme Court passed in SLP (Criminal) No.13320 of 2024 (Vihan Kumar Vs. State of Haryana and another) reported in 2025 SCC Online SC 269, as well as the judgments of the Hon'ble Division Bench of the Hon'ble Calcutta High Court passed in CRM (DB) No.194 of 2025 with CRM (DB) No.350 of 2025 on 25.04.2025 and CRM (DB) No. 62 of 2025 passed on 25.04.2025, I am inclined to allow bail prayer of the accused person on interim basis on some stringent conditions.

Accordingly, accused person, **Md. Alam @ Aliruddin** may find bail of Rs.20,000/- with two sureties of Rs.10,000/- each, one of whom must be local having landed property within the jurisdiction of this Court to the satisfaction of Ld. CJM, Uttar Dinajpur at Raiganj and on further condition that the accused person shall not leave jurisdiction of the local PS without prior order and/ or information of this Court and being released on bail he shall furnish particulars of his stay with official address thereof with proper form along with further condition that the accused person shall attend the Court on each fixed date till disposal of the case id to J.C.

Let a copy of this order be sent to Ld. CJM, Raiganj, Uttar Dinajpur for information and taking necessary action.

To-date (**03.06.2025**) for production/appearance if on bail and ER of WPA (appearance)

D/C by me

Spl.Judge(NDPS)
Raiganj,U/Dinajpur

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