

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**Cr.MP(M) No. 2474 of 2025
Decided on 25.11.2025.**

Budhi Prakash petitioner

Versus

State of H.P.

.....respondent

Coram:

Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting? ¹

For the petitioner : Mr. Ankit Dhiman, Advocate.

For the respondent : Mr. Raj Kumar Negi, Additional
Advocate General.

Bipin Chander Negi, Judge (oral)

Status report stands filed and the same is taken on record.

2. The present bail petition been filed under Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail, arising out of FIR No. 110 of 2024 dated 04.04.2024, registered at Police Station, Sadar, Chamba District Chamba H.P., for an offence punishable under Sections 20 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. I have heard learned counsel for the parties and perused the status report.

4. In the case at hand, the quantity involved is commercial quantity. The main ground raised by the petitioner for

¹ Whether the reporters of the local papers may be allowed to see the judgment?

seeking release of bail in the case at hand is that the grounds of arrest were not communicated to him. I have perused the status report and the record which has been produced. From the same, it is evident that respondent/state in order to justify the communication of grounds of arrest to the bail petitioner in the case at hand are relying upon the arrest memo. In this respect, learned counsel appearing on behalf of the petitioner has drawn the attention of this Court to judgment passed by the Apex Court in ***Vihaan Kumar vs. State of Haryana and another*** dated 6th February 2025. Relevant extract whereof has been reproduced hereinbelow for a ready reference:-

“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”.

5. The arrest memo in the case at hand incorporates the name of the arrested person, his permanent address, particulars of FIR and sections invoked, place of arrest, date and time of arrest, name of the officer effecting the arrest and the name and address of the person to whom information regarding the arrest has been given. In view of the authoritative pronouncement of the Apex Court in ***Vihaan Kumar's case***, the arrest memo in the case at hand only contains the information

stated and not the grounds of arrest hence, the present petition is allowed. The arrest of the bail petitioner on 4.4.2024 in connection with FIR No. 110/2024 registered at Police Station Sadar Chamba District Chamba under Sections 20 & 29 of the ND&PS Act stands vitiated. The bail petitioner shall be forthwith released and set at liberty. It is clarified that the findings of this Court that the arrest of the bail petitioner stands vitiated will not affect the merits of the charge sheet and the pending case.

6. At this juncture with respect to supplying grounds of arrest to the bail petitioner (similarly situate individual), it would be appropriate to refer to 1969 (1) SCC 292 titled as *Madhu Limaye And Ors. Vs. Unknown* on 18 December, 1968 (Division Bench of three Hon'ble Judges). Relevant paragraph whereof is being reproduced here-in-below:-

10. [Article 22\(1\)](#) embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the rule of law prevails. For example, the 6th amendment to the Constitution of the United States of America contains similar provisions and so does Article XXXIV of the Japanese Constitution of 1946. In England whenever an arrest is made without a warrant, the arrested person has a right to be informed not only that he is being arrested but also of the reasons or grounds for the arrest. The House of Lords in *Christie & Another v. Leachinsky* ((1947) 1 All EER 567) went into the origin and development of this rule. In the words of Viscount Simon if a policeman who entertained a reasonable suspicion that X had committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. Viscount Simon laid down several propositions which were not meant to be exhaustive. For our purposes we may refer to the first and the third :

"1. If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not

entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

2. X X X X

3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained."

Lord Simonds gave an illustration of the circumstances where the accused must know why he is being arrested.

"There is no need to explain the reasons of arrest if the arrested man is caught red-handed and the crime is patent to high Heaven."

The two requirements of clause (1) of [Article 22](#) are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Clause (2) of [Article 22](#) provides the next and most material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may without delay apply his mind to his case. The [Criminal Procedure Code](#) contains analogous provisions in [Section 60](#) and 340 but our Constitution-makers were anxious to make these safeguards an integral part of fundamental rights. This is what Dr. B. R. Ambedkar said while moving for insertion of Article 15-A (as numbered in the Draft Bill of the Constitution) which corresponded to present [Article 22](#) :

"Article 15-A merely lifts from the provisions of the [Criminal Procedure Code](#) two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the [Criminal Procedure Code](#) and thereby probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of Article 15-A is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate the two provisions, because they are now introduced in our Constitution itself."

As stated in [Ram Narayan Singh v. State of Delhi & Ors.](#) this court has often reiterated that those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law. Whenever that is not done

the petitioner would be entitled to a writ of Habeas Corpus directing his release.

7. The aforesaid release of the bail petitioner in the case at hand does not preclude the respondent from re-arresting the accused after the rectifying procedural defects of prior illegal arrest. There is no statutory or judicial bar on re-arrest. In this respect, it would be appropriate to refer to the pronouncement of the Delhi High Court in judgment delivered on 15.7.2025 titled as ***Anwar Khan @ Chacha and others vs. The State of NCT of Delhi***. Relevant extract whereof is being reproduced hereinbelow for a reference:-

36. This issue also raises a more complex question: what happens when the arrest of an accused in a serious offence is declared illegal Digitally Signed W.P.(CRL) 2045/2025 28 of 34 or non-est purely on technical grounds? Can the State, after rectifying the procedural irregularity, not arrest the said accused again, even if cogent grounds exist? The learned counsel for the petitioners contended that once the arrest is held to be non-est, the petitioners cannot be re-arrested. This Court is unable to accept such a proposition of law. Let us test this argument in a hypothetical but plausible situation: suppose a police officer, either due to oversight or deliberately, does not communicate the grounds of arrest in writing, and therefore the arrest is declared illegal by the Court, however, at the same time clarifying that such declaration was solely on technical ground and the investigating agency was at liberty to rectify such lapse, it would necessarily lead to a conclusion that there was no immunity or bar in future to arrest the accused qua the same offence. Assume further that the case in question involves grave allegations - say, charges of organized crime, murders, etc. Should the procedural lapse committed by one officer, however serious, be allowed to permanently shield the accused from arrest, even after the defect has been remedied? The answer, in this Court's view, must be in the negative.

37. This question assumes even greater significance in the context of the present case, where the petitioners are not first-time offenders but individuals with a long list of criminal antecedents. As per the material placed on record, some of the petitioners are involved in as many as 10, 15, or even 26 criminal cases, including offences such as robbery, extortion, attempt to murder, and even murder. The Digitally Signed W.P.(CRL) 2045/2025 29 of 34 provisions of MCOCA have been invoked in this case, and the prosecution's allegations, at

least prima facie point towards the existence of a structured organised criminal syndicate. In such a context, the argument that an illegal or non-est arrest should completely shield the accused persons from future arrest, after complying with all procedural safeguards, cannot be accepted by this Court.

38. The view that re-arrest is not impermissible in such circumstances has also received judicial recognition. In *Kavita Manikikar of Mumbai v. CBI*: 2018 SCC OnLine Bom 1095, the Bombay High Court held that while the initial arrest of the petitioner therein was declared illegal due to violation of [Section 46\(4\)](#) of Cr.P.C. (arrest of a woman after sunset), it was clarified that the police was not barred from affecting a subsequent arrest after rectifying the procedural irregularity. The relevant observations in this regard are as under:

"34. In result, of the aforesaid discussion, the writ petition is allowed in terms of prayer clause (a) and it is held that the arrest of the petitioner is illegal and contrary to the provisions of [Section 46\(4\)](#) of the Code of Criminal Procedure. However, the CBI is not precluded to arrest the petitioner if investigation warrants so, by following the due procedure of law."

39. Similarly, in [Vicky Bharat Kalyani v. State of Maharashtra](#) (supra), the Division Bench of the Bombay High Court clearly observed in paragraph 58 of the judgment that there was no legal bar on re-arresting an accused who had been released earlier due to Digitally Signed W.P.(CRL) 2045/2025 30 of 34 failure to furnish written grounds of arrest. Though the Division Bench referred six questions, including the issue of re-arrest, to a Larger Bench, it nevertheless recorded a clear and reasoned view in favour of permissibility of re-arrest in paragraph 58, and no contrary opinion was expressed anywhere in [the said judgment](#). The relevant observations in this regard are as under:

"58. In this context, we have seriously considered the arguments advanced by learned Advocate General about re-arrest of the accused who is released with or without bail bonds on the ground of alleged non-compliance of the provisions of [Section 50](#) of Cr.P.C. for not giving the grounds of arrest in writing. In this context, Shri Bhuta could not point out any embargo or bar upon such re-arrest. Shri Amit Desai, however, submitted that once the accused is released on that ground, re-arrest would violate the protection of the accused under [Article 21](#) of the Constitution of India. The State should not be given a second chance. In this connection, we are inclined to agree with the learned Advocate General that there is no bar in re-arresting the persons who are released for non-furnishing the grounds of arrest in writing. What the accused are claiming in this situation, is that, they were arrested in violation to the provisions of [Cr.P.C.](#) and it infringes their constitutional right under [Article 21](#) but if they are released on that ground and thereafter if the grounds of arrest are supplied to them, they cannot have any grievance. The purpose behind these provisions is to make the accused aware as to why he was arrested and thereafter enable him to defend himself. Leaving aside the issue whether such ground should be

communicated orally or should be given in writing for the time being; if on the ground of non-communication they are released and if thereafter the grounds are furnished as per the requirement; then the accused cannot have any grievance, that they were not aware as to why they were arrested. From that point onward, the procedure for remand can be followed and the shortcoming of non-compliance of the provision is wiped out. In that context, reference can be made to the case of Kavita Manikikar. In that case, the Petitioner before the Court was a lady. She was released because she was Digitally Signed W.P.(CRL) 2045/2025 31 of 34 arrested after sun-set for breach of [Section 46\(4\)](#) of Cr.P.C. Having held her arrest illegal, the Division Bench of this Court went on to observe that considering the seriousness of the allegations, she could be re-arrested after following due procedure of law. The same course can be adopted in the cases where the investigating agency wants to re-arrest the accused if they are released for non-compliance of [Section 50](#) of Cr.P.C."

(Emphasis added)

40. On the other hand, reliance on decision in Vihaan Kumar v. State of Haryana & Anr. (supra) can be of no help to the petitioners, inasmuch as the said judgment does not decide the question of whether re-arrest is legally permissible after an initial arrest is declared illegal. The Hon"ble Supreme Court in that case expressly noted that it was not necessary to adjudicate on that issue in the given set of facts of that case. Thus, no proposition of law was laid down in the said decision on the permissibility of re-arrest. The relevant observations in this regard are as under:

"22. Another argument canvassed on behalf of the respondents is that even if the appellant is released on the grounds of violating [Article 22](#), the first respondent can arrest him again. At this stage, it is not necessary to decide the issue."

41. However, this Court"s attention was drawn to the judgment of [Rakesh Kumar Paul v. State of Assam](#) (supra) by the State wherein while releasing the petitioner on default bail, on the ground that chargesheet had not been filed within a period of 60 days, the Hon"ble Supreme Court had clarified that the release of petitioner shall not prohibit or otherwise prevent the arrest or rearrest of the Digitally Signed W.P.(CRL) 2045/2025 32 of 34 petitioner on cogent grounds in respect of the subject charge. The relevant observations in this regard are as under:

"49. The petitioner is held entitled to the grant of "default bail"on the facts and in the circumstances of this case. The Trial Judge should release the petitioner on "default bail" on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case."

42. Thus, in the considered view of this Court, there is merit in the argument advanced on behalf of the State that when an accused is released or his arrest is declared illegal solely on technical or procedural grounds - such as in the cases of [Rakesh Kumar Paul v. State of Assam](#) (supra), [Kavita Manikikar v. CBI](#) (supra), or [Vicky Bharat Kalyani v. State of Maharashtra](#) (supra) - the State cannot be precluded from taking steps to re-arrest such a person, provided the subsequent arrest is affected strictly in accordance with the procedure established by law. The mere fact that the earlier arrest was vitiated on account of procedural lapses does not, by itself, create any blanket immunity from future arrest, especially where the investigating agency continues to be in possession of material implicating the accused and there has been no adjudication on the merits of such material by the court declaring the arrest illegal.

43. In view of the foregoing discussion, this Court finds that the initial arrest of the petitioners was declared non-est solely due to non- furnishing of written grounds of arrest and not due to insufficiency of material against them. Further, detailed and sufficient grounds of arrest were furnished to the petitioners at the time of re-arrest on 10.06.2025. This Court also concludes that there is no statutory or judicial bar on re-arrest of an accused after curing the procedural defects of a prior illegal arrest; and that the judicial precedents, including those of the Hon"ble Supreme Court and Bombay High Court (as discussed above) support the proposition that a subsequent arrest is permissible in law, provided procedural safeguards are followed.

8. Accordingly, the bail application is allowed and it is ordered that the petitioner, who has been arrested by the police, in case FIR No. 110 of 2024 dated 04.04.2024, registered at Police Station Sadar Chamba District Chamba H.P. for an offence punishable under Sections 20 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, shall be forthwith released on bail, subject to his furnishing personal bond to the tune of Rs. 1,00,000/- (Rupees one lac) with one Local surety in the like amount, to the satisfaction of learned trial Court. This bail order is subject, however, to the following conditions:-.

- (i) Petitioner shall attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;**
- (ii). Petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever;**
- (iii) Petitioner will not leave India without prior permission of the Court;**
- (iv) Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the victim and Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;**
- (v). Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Cards, Telephone Numbers, Email, PAN Cards, Bank Account Numbers, if any; &**
- (vi). It is made clear that in case petitioner is arraigned as accused, in future, in any FIR, then his bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard.**

9. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

10. The Registry is directed to forward a soft copy of the bail order to the Superintendent, District Jail, Chamba H.P., through email, with a direction to enter the date of passing of the present judgment in the e-prison software.

11. The petition stand accordingly disposed of. A copy of this order be sent to the Superintendent, District Jail, Chamba H.P., and the learned trial Court by FASTER.

12. A downloaded copy of this order shall be accepted by the learned Trial Court while accepting the bail bonds from the petitioner and in case, said Court intends to ascertain the veracity of the downloaded copy of the order presented to it, same may be ascertained from the official website of this Court.

(Bipin Chander Negi)
Judge

25th November, 2025
Susheel

**KAMLESH
SHARMA**

Digitally signed by KAMLESH SHARMA
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