



2026:DHC:5520



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 06.07.2026
Judgment pronounced on: 10.07.2026

+ **BAIL APPLN. 1865/2026**

AMAR THAPA

.....Petitioner

Through: Mr. Meghan and Mr. Vipul Shivhare,
Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
with SI Dinesh Kumar

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. The accused/applicant seeks regular bail in case FIR No. 49/2025 of Police Station Kotla Mubarakpur for offence under Section 20/25 of the NDPS Act.

2. Broadly speaking, the prosecution case is as follows. On 17.01.2025, on the basis of specific named secret information, the present accused/applicant was apprehended from second floor flat of a premises in Kotla Mubarakpur, New Delhi. In the course of search of the said premises, two packets were recovered and the same were later found on being tested with the Field Testing Kit as 1.516 kg charas. The allegedly recovered



contraband and other article were converted into parcel and sealed with the seal of NG, name of the IO being Naveen Gurjar. After registration of FIR, the accused/applicant was interrogated and arrested on 17.01.2025.

3. I heard learned counsel for the accused/applicant and learned APP for State assisted by the Investigating Officer (IO).

4. Learned counsel for accused/applicant raised two grounds in support of the bail application.

4.1 Firstly, it was argued that the material deposited with the *malkhana* is not the material allegedly recovered from the accused/applicant, and the recovery proceedings stand vitiated. It was argued that column 3 of Register No. 19 names the IO as the person who deposited the sealed parcel in *malkhana*, whereas the SHO in his statement under Section 161 CrPC stated that it is he who deposited the said parcels in *malkhana*. It was also submitted that the seal on the deposited parcels is of NG (Naveen Gurjar) while seal of the SHO Inspector Prahlad Matsaya is PSM according to statement of the SHO.

4.2 Secondly, it was contended that since grounds of arrest were not furnished to the accused/applicant, he is entitled to be released on bail. In support of this contention, learned counsel for accused/applicant referred to certain judicial precedents, which are discussed hereafter.

5. On the other hand, learned APP for State contended that the quantity of charas recovered from the accused/applicant was commercial quantity, so twin conditions laid down under Section 37 of the NDPS Act would come



into play. It was also argued that even as per FIR, the sealed parcels were sent by the IO from the spot of recovery for perusal of the SHO, the superior officer and it is thereafter that the SHO deposited the sealed parcels in the *malkhana*. It was pointed out by learned APP that Register No. 19, which is relied upon by the accused/applicant, itself also mentions that the seal of PSM was affixed by the SHO on the parcels as counter seal to maintain the purity of the recovered material. As regards grounds of arrest, learned APP submitted that the same are clearly defined in Serial No. 9 of the Arrest Memo. Further, it was submitted that in terms with settled legal position, the requirement of detailed grounds of arrest has to be kept in mind only in those cases where the accused is arrested after November 2025, while in the present case, the accused/applicant was arrested on 17.01.2025, so even if the grounds of arrest were not supplied, the accused/applicant cannot be granted bail on that ground, ignoring the twin conditions of Section 37 of the Act. It was further contended by learned APP that since the accused/applicant does not claim having suffered any prejudice on account of the alleged non-supply of grounds of arrest, this ground does not help him.

6. Admittedly, the quantity of charas allegedly recovered from the accused/applicant was a commercial quantity. That being so, the twin conditions stipulated under Section 37 of the Act come into play. It would be important to keep in mind that the provision under Section 37 of the Act is couched in negative expression that no person accused of an offence punishable for offences under Section 19, 24 or 27A and also for offence involving commercial quantity shall be released on bail. The exception



carved out by the legislature is that such a person can be released on bail only after giving the public prosecutor an opportunity to oppose the bail application and where the public prosecutor opposes the application, the court is satisfied of two aspects. One of those aspects is the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence, and the other aspect is that he is not likely to commit any offence while on bail.

7. So far as the argument pertaining to the entries in Register No. 19 is concerned, it would be significant to note that after completing the search, followed by recovery and the seizure proceedings, the IO/SI Naveen Gurjar prepared a *rukka* in which he specifically recorded that the seized articles were sealed by him with his seal of NG and the same were being sent to the SHO, Kotla Mubarakpur area along with the *tehrir* and seizure memo through HC Akshay Kumar. The seizure memo (*Annexure A-4 to the application*) bears a specific endorsement of the SHO that he countersealed the sealed parcels with his seal of PSM. Even the relevant page of Register No. 19 (*Annexure A-6 to the application*) bears similar endorsement of the SHO as regards countersealing of the parcels with his seal of PSM. Such countersealing is conducted by the senior officer in order to ensure purity of the material seized and sealed by the IO. I do not find this aspect a reasonable ground to believe that the accused/applicant is not guilty of the offence alleged against him.

8. Then comes the argument of non-supply of grounds of arrest. On this aspect, it would be apposite to briefly traverse through the legal position as culled out of different judicial pronouncements cited by learned counsel for



accused/applicant.

8.1 In the case of *Prabir Purkayastha vs State (NCT of Delhi)*, 2024 INSC 414, the Hon'ble Supreme Court while dealing with the dismissal of a miscellaneous case by the learned Single Judge in which declaration was sought by the petitioner that the arrest and the remand order were illegal being in gross violation of fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India took a view that supply of grounds of arrest to an accused is of vital significance; and that there is a difference between reasons for arrest and grounds of arrest in the sense that the former are purely formal parameters while the latter are specific grounds containing all such details which necessitate arrest of the accused. In the said case, since the computerized arrest memo format did not contain any column regarding grounds of arrest, the arrest and the remand order against the petitioner therein were held vitiated.

8.2 In the case of *Pankaj Bansal vs Union of India*, 2023 INSC 866, the Hon'ble Supreme Court dealt with dismissal of the writ petition by a Division Bench of Punjab and Haryana High Court, wherein challenge had been raised to constitutional validity of Section 19 of the Prevention of Money Laundering Act, and setting aside of arrest and remand orders was sought. The Hon'ble Supreme Court examined and described the significance of grounds of arrest, holding that the same are those grounds which would be personal to the accused, though at the same time authority lies with the investigating officer to redact sensitive portions of the document and furnish edited copy of grounds of arrest so that sanctity of investigation is safeguarded. Since the grounds of arrest were merely read



out to the accused in the said case, the Hon'ble Supreme Court quashed the arrest and remand orders. The Hon'ble Supreme Court held that "*it would be necessary henceforth that a copy of such written grounds of arrest is furnished to the accused persons as a matter of course and without exception*".

8.3 The issue as regards supply of grounds of arrest again came up before the Hon'ble Supreme Court in the case of ***Vihaan Kumar vs State of Haryana & Ors.***, 2025 INSC 162. The Hon'ble Supreme Court held that the requirement of informing the arrestee grounds of arrest is a mandatory requirement under Article 22(1) of the Constitution; that such information of grounds of arrest must be provided to the arrestee in such a manner that he has sufficient knowledge of the basic facts constituting the grounds effectively in the language which he understands; that where the arrestee alleges non-compliance with the requirements of Article 22(1), the burden shall be on investigating agency to prove the compliance; that where violation of Article 22(1) is established, it shall be the duty of the court to forthwith order release of the accused; that non-supply of grounds of arrest would be ground to grant bail even if statutory restrictions on grant of bail exist. After examining the arrest memo served on the arrestee in the said case, the Hon'ble Supreme Court observed that the same incorporates name of the arrestee, his permanent address, present address, particulars of FIR, Section applied, place of arrest, date and time of arrest, name of the arresting officer and particulars of the person to whom the arrest information was furnished. The Hon'ble Supreme Court rejected the said arrest memo, holding that the same contained information about the arrest, which is



different from the grounds of arrest.

8.4 In the case of *State of Karnataka vs Sri Darshan Etc.*, 2025 INSC 979, the accused contended that their arrest was illegal because grounds of arrest were not furnished in writing immediately, thereby violating Article 22(1) of the Constitution and Section 50 CrPC. The Hon'ble Supreme Court held thus:

“20.1.3. The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest – but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.

20.1.4. In Vihaan Kumar v. State of Haryana, it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in Kasireddy Upendar Reddy v. State of Andhra Pradesh, it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post- Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.

20.1.5. While Section 50 Cr.P.C is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.

20.1.6. The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a prima facie case. It noted, inter alia, that there was no mention in the remand orders about service of memo of grounds of arrest (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on Pankaj Bansal v. Union of India and Prabir Purkayastha v. State (NCT of Delhi) (supra), it concluded (paras 43, 49 – 50) that from 03.10.2023 onwards, failure to serve detailed, written, and individualised grounds of arrest immediately



after arrest was a violation entitling the accused to bail.

20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail”.

(emphasis supplied)

8.5 In the case of *Mihir Rajesh Shah vs State of Maharashtra & Anr.*, 2025 INSC 1288, the Hon’ble Supreme Court crystallized the issue involved in that case as to whether rights of the appellant under Article 22(1) of the Constitution of India and Section 50 CrPC were violated as he was not informed of grounds of his arrest in writing. After recapitulating the legal position emerging out of the above cited judicial precedents *qua* the constitutional tenets, the Hon’ble Supreme Court observed that mere oral communication of grounds of arrest in the absence of any written document renders the compliance susceptible to factual disputes which often result into rival claims between the arrestee and the investigating agency, thereby consequently jeopardizing the integrity of the arrest process and release of the arrested person. The Hon’ble Supreme Court observed that mandate contained in Article 22(1) is unambiguous and clear that the arrestee must be informed of the grounds of arrest as soon as the same can be done, so as to



enable the arrestee exercise his right to defend by consulting a legal practitioner of his choice. At the same time, the Hon'ble Supreme Court also discussed in detail various exigencies and held that in exceptional circumstances such as offences against body or property committed *in flagrante delicto* where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person for making the arrest to orally convey the same to the arrestee and later on a written copy of grounds of arrest must be supplied within reasonable time and positively not later than two hours prior to production of the arrestee before the magistrate for remand proceedings.

8.6 In the case of ***Mihir Rajesh Shah*** (supra), the Hon'ble Supreme Court also dealt with another aspect in following terms:

“57. After having come to the above conclusion, it is pertinent to note that the provision of law under Section 50 of CrPC 1973 (Section 47 of BNSS 2023) does not provide for a specific mode of or time frame for communication of the grounds of arrest to the person arrested. This Court in Prabir Purkayastha (supra), held that the grounds of arrest be conveyed to the arrestee in writing in all offences at the earliest, which means it need not be given at the time of arrest but within a reasonable time thereafter, for offences under all the statutes, which period would be as has been laid down above in this order.

58. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth”.

(emphasis supplied)

8.7 In the case of ***Dr. Rajinder Rajan vs Union of India & Anr.***, SLP



(Crl.) No. 3327 of 2026, the Hon'ble Supreme Court relying upon the decision in ***Mihir Rajesh Shah*** (supra) directed release of the accused from custody as the grounds of arrest in writing were not furnished. But the other aspects laid down in the case of ***Mihir Rajesh Shah*** (supra) were not raised before the Hon'ble Supreme Court and were not examined in ***Dr. Rajinder Rajan*** (supra).

9. Falling back to the present case, as mentioned above, on 17.01.2025 the accused/applicant was apprehended on the basis of specific named secret information and from his premises, 1.516 kg charas was recovered, so after completing procedural formalities, the IO arrested the accused/applicant. Prior to the arrest, the accused/applicant was interrogated and he disclosed that he is a native of Nepal and used to procure charas from co-accused Thomas, who used to bring charas from Nepal and supply the same to him in Delhi for further sale in small quantities. The limited purpose of this reference to the said disclosure of the accused/applicant in police custody is to keep in mind that at that stage promptness of the IO was required in order to unearth the suppliers and receivers of charas. Going by the above cited judicial precedents, what is to be seen is as to whether the alleged failure to furnish grounds of arrest in writing in this case can be a ground to release the accused/applicant on or without bail.

10. Certain vital aspects have to be kept in mind. As held in the above cited judicial precedents, the provisions under Article 22(1) of the Constitution of India and/or Section 50 CrPC do not explicitly prescribe a format of grounds of arrest and/or the timeframe for communication of grounds of arrest to the arrestee. What has to be seen is as to whether the



2026:DHC:5520



accused was made aware as to why he was being arrested, so that he may take appropriate steps for his defence and release from custody. Of course, the grounds of arrest must be in the language which the accused/applicant can understand. It is also trite according to the above cited judicial precedents that in cases where it is not practicable to furnish written grounds of arrest prior to conducting the arrest, the written grounds must be supplied to the accused at least two hours prior to his production before the magistrate for remand. It is also trite that where the arrest memos and remand records reflect that the accused was aware of reasons of his arrest and was legally represented from the outset and applied for bail shortly after arrest, it shows an immediate and informed understanding of the allegations. In order to secure bail for failure to supply grounds of arrest, the accused must show the prejudice, if any caused to him by the said procedural lapse and in the absence of demonstrable prejudice, the non-supply of grounds of arrest is at best a curable defect. As held in the above cited judicial precedents, gravity of offence and other relevant factors for consideration of bail cannot be overlooked, treating the non-supply of grounds of arrest as determinative factor. Further, as explained in the above cited judicial precedents, earlier there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all offences, so a clarity was made by the Hon'ble Supreme Court in order to avoid uncertainty in administration of criminal justice and consequently, the ends of fairness and legal discipline, which demand that this procedure as affirmed by the said judicial precedents shall govern the arrests after the said legal position was elucidated.



11. In the present case, as mentioned above, the accused/applicant was arrested on 17.01.2025, while the legal position *qua* impact of non-supply of written grounds of arrest was elucidated with clarity in the case of *Mihir Rajesh Shah* (supra), decided much later on 06.11.2025.

12. While dealing with the issue of bail, the court is duty bound to balance rights of the accused and prerogative (*rather, the duty*) of the investigating agency. Of course, fundamental rights of an accused are sacrosanct. But what about the fundamental rights of rest of the society. This Court cannot ignore the ground realities of the difficulties faced by police to arrest an accused, more so in cases involving serious crimes. This Court also cannot ignore the hard task for police to prevent further expanse of the crime and efforts of the accused to destroy the evidence. In such circumstances, should the accused be released on such ground, giving him a chance to wipe out the evidentiary footprints before being again arrested after formal supply of written grounds of arrest.

13. In the present case, the accused/applicant specifically disclosed that he had been purchasing the allegedly recovered contraband from co-accused Thomas. The priority at that stage for the investigator was to ensure arrest of Thomas and the investigator could not afford to lose time in legal niceties giving Thomas an opportunity to flee. It is to deal with such urgency that the format of the arrest memo was improvised by the Delhi Police. The arrest memo served on the present accused/applicant prior to his arrest contains paragraph 9(a) to 9(e). The heading of the said paragraph is “reasons of arrest”, but if examined carefully, what the sub-paragraphs (a) to (e) disclose are grounds of arrest. Those grounds are that the arrest is required in order to



prevent the accused/applicant from committing any other offence; for proper investigation of the case; to prevent the accused/applicant from causing the evidence of the offence to disappear or tamper with such evidence in any manner; to prevent the accused/applicant from making any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer; and as to whether presence of the accused/applicant in the court whenever required cannot be ensured unless he is arrested. The arrest memo in the present case was duly served on the accused/applicant and bears his signatures. The arrest memo at its top mentions that the same is “*as per the directions of the Hon’ble Supreme Court of India*”. That format of arrest memo was prepared by the Delhi Police in honest understanding of the legal position, and if the same is defective in any manner, the accused/applicant cannot claim right to be released. In my view, the compliance with the requirement to furnish grounds of arrest was substantial in the present case. For, at the cost of repetition, it must be said that there is no legislatively or judicially prescribed specific format. It cannot be said that the investigator in the present case knowingly flouted any direction of the Hon’ble Supreme Court in order to deprive any right of the accused/applicant. Besides, in law there is no sharp line distinction between what is generic information and what is specific information. Rather, there cannot be such distinction as in some cases, what may appear to be a generic information may also be specific to the accused, as in the present case. I am unable to convince myself that the said information as supplied to the accused/applicant was not sufficient for the accused/applicant to defend himself.



14. Going a step deeper, even if it is assumed despite the above discussion that the grounds of arrest were not supplied to the accused/applicant, the record does not reflect any prejudice caused to the accused/applicant for the alleged non-supply of grounds of arrest. Admittedly, on the very first occasion after arrest when the accused/applicant was produced before the learned Special Judge for remand, he was equipped with legal assistance. Even the application for police remand clearly disclosed amongst other factors, an effort to trace out the source of charas namely Thomas. Even in the order of first remand, the learned Special Judge reiterated that police custody was necessary for sustained interrogation, for collection of evidence, for eliciting information about the supplier of the contraband, for apprehending and arresting the supplier, and also to collect information about other receivers/suppliers.

15. Had the accused/applicant been not remanded by the learned Special Judge, opportunities would have been presented to him on platter to ensure that neither the supplier nor the subsequent purchasers could be apprehended by the police. Even at the present stage, if the accused/applicant is released, there is high probability of his absconding to his native place in Nepal, thereby completely blocking the efforts of police to track down the expanse of the network. The conscience of this Court does not allow that to happen. I am conscious that in the case of ***Brijesh Kothia vs State NCT of Delhi***, 2026 DHC 4222, a co-ordinate bench of this Court while releasing the accused on bail also held (paragraph 31) that “*the investigating agency would remain at liberty to take such steps as may be permissible, including, if so advised, effecting fresh arrest in strict compliance with the*



2026:DHC:5520



requirements of Article 22(1) and of the provisions of the BNSS and the NDPS Act". With utmost respect, I am unable to answer myself as to whether it would be advisable in view of practical ground realities in offence of the present nature to release the allegedly polluted element back to the society, only to be taken back into custody after completing the necessary paperwork.

16. It would be significant to understand that pernicious impact of drug peddling extends far beyond providing consumers/addicts with fleeting synthetic euphoria and eroding the collective productivity and work potential of society. The illicit wealth generated through the drug trade also fuels organized crime and is often channelled into terrorist activities, thereby causing a grave threat to social stability, national security and public order.

17. In view of the aforesaid discussion, I do not find it a fit case to grant bail to the accused/applicant. Therefore, the bail application is dismissed.

18. Copy of this order be sent to the concerned Jail Superintendent for being conveyed to the accused/applicant.

**GIRISH KATHPALIA
(JUDGE)**

JULY 10, 2026/*as/ry*