



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 07<sup>TH</sup> DAY OF MAY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE V SRISHANANDA**

**CRIMINAL PETITION No.16286 OF 2025 (439(Cr.PC) /  
483(BNSS)**

**BETWEEN:**

CRISTIAN SOPORUCHUKWU  
S/O. UCHEGWAM,  
AGED ABOUT 44 YEARS,  
PRESENTLY R/AT NO.16,  
SONU'S NEST APARTMENT,  
5<sup>TH</sup> G CROSS, 5<sup>TH</sup> MAIN,  
SRY LAYOUT, BEGURU KOPPA ROAD,  
MAILSANDRA, (VADDARAPALLY)  
JIGANI POST  
BENGALURU - 560 083  
(NOW IN JUDICIAL CUSTODY)

...PETITIONER

(BY SRI BALAKRISHNA M R, ADVOCATE)

**AND:**

THE STATE OF KARNATAKA  
BEGUR POLICE STATION

REPRESENTED BY ITS  
STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
BANGALORE 560 001.

...RESPONDENT

(BY SRI CHANNAPPA ERAPPA, HIGH COURT GOVERNMENT  
PLEADER)

THIS CRL.P IS FILED UNDER SECTION 439 CR.PC (FILED  
U/S 483 BNNS) PRAYING TO RELEASING THE PETITIONER ON  
BAIL PENDING TRIAL IN CR.No.79/2025 (SPL.CC.No.1648/  
2025) REGISTERED BY THE RESPONDENT BEGUR POLICE  
STATION FOR THE ALLEGED OFFENCES PUNISHABLE UNDER



SECTIONS 8(c), 22(A), 22(B) AND 22(C) OF NDPS ACT NOW PENDING ON THE FILE OF HON'BLE XXXIII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPL.JUDGE FOR NDPS CASES AT, BENGLAURU.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

**CAV ORDER**

Present petition is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, with the following prayer:

*"WHEREFORE, the petitioner/accused above named humbly prays that this Hon'ble Court be pleased to pass an order releasing the petitioner on bail pending trial in Crime No.79/2025 (Spl.CC No.1648/2025) registered by the respondent Beguru Police Station, for the alleged offences punishable u/S 8(c), 22(A), 22(B), and 22(C) of NDPS Act now pending on the file of Hon'ble XXXIII Addl. City Civil and Sessions Judge and Spl. Judge for NDPS cases at Bengaluru in the interest of justice and equity."*

2. Facts of the case which are utmost necessary for disposal of the present petition are as under:

Beguru Police, Electronic City Sub Division, Bengaluru City, registered a case in Crime No.79/2025 on 05.04.2025.

2.1 Gist of the complaint averments would reveal that Sri K.Lakshminarayana, being the Police Inspector of Anti

Narcotic Wing, Central Crime Branch, Bengaluru, received a credible information on 05.04.2025 that an African citizen is in the process of selling MDMA crystals to his known customers near Begur lake, AECS layout road.

2.2 Based on such information, Sri K.Lakshminarayan, being the Police Inspector, Anti Narcotic Wing, formed a raid team comprising of himself, Sri Lokesh (H.C-13009), Sri Mahesh S (HC-10602), Sri Harinath N (HC-11227) (videographer) along with two panch witnesses by name Kamaruddin and Kushal Chatri.

2.3 At about 11.00 pm, the entire raid team including panchas moved in a Government Vehicle bearing No.KA-02/G-1521 and parked the vehicle little away from the place as per the information and got down from the jeep.

2.4 At that juncture, a person(informant) showed a person who was standing by the side of a two wheeler on the tank bund. Immediately the raid team rushed towards him. On seeing the raid party, said person tried to run away from the spot.

2.5 However, sub staff could chase and apprehended him. It was around 11.15 p.m. Head of the raid party got introduced him by conversing with the said person in English language.

2.6 On enquiry, he revealed his name as Cristian Soporuchukwu, S/o Uchegwam and that he is residing at Sonu's Nest Apartment, 5<sup>th</sup> G Cross, 5<sup>th</sup> Main, SRY Layout, Beguru Koppa Road, Mailsandra (Vaddarapally), Jigani Post, Bengaluru-560 083 and he is the native of Nigeria. He also provided his telephone number.

3. Thereafter, head of the raid party, further enquired him and at that juncture he revealed himself that he is Nigerian citizen and he came to India under business visa for cloth business. Thereafter, he moved to Goa, Delhi, Mumbai and got acquainted with the drug peddlers of South African origin and used to purchase the MDMA crystals from them for cheaper price and used to sell the same to College students, ITBT employees at the rate of Rs.15,000/- to Rs.20,000/- per gram. He also revealed that he has got about 1 kg of MDMA crystals in the dicky box of his two wheeler.

4. It was also enquired with him that whether he has got any pass or permit to possess the MDMA crystals. After noting that he has no such pass or permit, the raid party proceeded to the two wheeler and seized the MDMA crystals from the dicky box of the two wheeler. The raid party also seized a pocket electronic weighing machine and ten zip lock covers, a pink coloured plastic bag, a grey coloured Samsung Galaxy Mobile telephone handset and two wheeler bearing registration No. TN-36/AF-6707.

5. Photographs were taken and thereafter the entire proceedings was videographed. Panchamma was drafted. Accused was taken to custody.

6. After taking the accused into custody, Sri Lakshminarayan, handed over the same to the Beguru Police Station along with seized materials, who in turn arrested the accused and issued arrest memo and the ground of arrest which reads as under.

"GROUND OF ARREST

*This is to inform you that, in Bengaluru city Beguru Police Station Cr.No.79/2025 u/S 8(c), 22(a), 22(b), 22(c) NDPS Act-1985, you are arraigned as accused. This case related to illegal sales of Narcotic Drugs. During the course of investigation, based on available evidence and*

*your voluntary statement. Your complicity in the offence is revealed and your role in the crime is prime facie found.*

*In this regard, you are being arrested on date:06.04.2025 at 00.55 am in the above mentioned case. You will be produced before the Hon'ble 9<sup>th</sup> ACJM Court, Bengaluru City.*

*Investigation Officer  
Sd/-  
Police Sub Inspector  
Begur Police Station  
Bangalore City"*

7. Later on, accused was produced before the jurisdictional Judge.
8. Pertinently, when accused was produced, learned Judge has enquired the accused, wherein he has stated that there is no complaint of any ill-treatment by the police.
9. He has specifically stated that he has been arrested on 06.04.2025 at about 00.45 a.m. and police have informed about his arrest to his friend namely Aaffam.
10. Learned Judge has also noted that the Investigation Officer has followed the guidelines of the Hon'ble Apex Court while effecting the arrest. An advocate by name 'NM' was also present and he has filed power for the accused after obtaining the permission of the Court to take his signature. However,

learned advocate has not chosen to file any application for bail and therefore, accused was sent to judicial custody till 17.04.2025.

11. Thereafter, accused applied for grant of bail in C.Misc.No. 9369/2025. Learned Judge who entertained the bail application in C.Misc.No.9369/2025 after hearing the parties, considered the rival contentions of the parties and dismissed the bail request holdings in paragraphs 14 and 15 as under:

*"14. This Court has gone through the decisions relied by the learned counsel for accused including the latest decision rendered by the Hon'ble Supreme Court in Cr.Appeal No.2195/2025 in the case of Mihir Rajesh Shah Vs., State of Maharashtra. On going through this decision, the Hon'ble Apex Court in detail dealt with the matter by relying on earlier decisions in the case of Pankaj Bansal and Prabir Purkayastha, in the case of Vihaan Kumar and finally observed that in the case of Pankaj Bansal and Prabir Purkayastha needs to be read harmoniously with the case of Vihaan Kumar which provides as a general rule that grounds of arrest are not mandated to be communicated in writing. However, in the latest decision of Mihir Rajesh Shah , the Hon'ble Apex Court held as under:-*

*"56. In conclusion, it is held that:*

*i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023); ii) The grounds*

*of arrest must be communicated in writing to the arrestee in the language he/she understands;*

*iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.*

*iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.”*

*and finally in the said decision it is observed that 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. However, in the case on hand though learned counsel vehemently argued that the vague grounds of arrest had been communicated to the accused, in the grounds of arrest the alleged offence and role of accused in committing the offence has been mentioned. At the same time the accused had also signed the said grounds of arrest. It cannot be considered that the arrest of accused has not been informed to any of the persons known to the accused and there is separate memo for having informed the arrest of the accused to his friend Aaffam through his Mobile No.918197935423. When the accused has signed these two documents it has to be presumed that on going through the documents and by understanding the contents of those documents he has signed the*

*documents. Therefore, in the present case it cannot be said that the grounds of arrest is not in consonance with the article 22(1) of the Constitution.*

*15. During the course of arguments the learned PP submitted that the accused was arrested on 5.4.2025 and the decision in Mihir Rajesh Shah case is later decision than the date of arrest of the accused, that in the said decision no where it is mentioned that it has retrospective effect, but this Court does not agree with the arguments advanced by the learned PP because in the present decision the principles laid in the earlier decisions has been reiterated and in the present decision also it is held that the article 22(1) mandates the serving of grounds of arrest to the arrestee. When Article 22(1) of Constitution of India mandates communication of grounds of arrest to the arrestee, then one cannot submit that the said decision is not applicable to the earlier case which are registered prior to 6.11.2025. In the opinion of this Court the principles laid down in the aforesaid decision is applicable to all the cases even the apprehension of the accused is earlier than 6.11.2025. 10 CCH-33 CrI.Misc.No.9369/2025 However, on facts the present case on hand differs from the case narrated in the aforesaid decision. In the present case on hand the raiding officer has issued grounds of arrest in English language which is known to him and the accused has signed the said grounds of arrest. Further, since the arrest of accused has been informed to his friend the arrest is not illegal and thus as per the requirement of Sec.37 of NDPS Act, 1985, burden is on the petitioner to satisfy the Court that there are reasonable grounds to believe that he*

*is not guilty of the offence for which he has been charged and that he is not likely to commit any offence if benefit of bail is extended to him, but no material has been placed on record for the fulfillment of these conditions. There is prima-facie material available against the petitioner in regard to the possession of narcotic drug. Furthermore, earlier the petitioner has filed similar petition on the same grounds, the same was rejected. Now, again he has filed this petition without any new grounds for grant of bail. The learned counsel for petitioner has failed to place any new grounds to grant bail. In the result, this Court proceeds to hold that the petitioner has not made out any grounds to entertain his plea for bail. Accordingly, this Court answers point No. 1 in the Negative."*

12. Pertinently, the only ground that is now urged before this Court is that there was no 'ground of arrest' furnished to the accused. Therefore, bail is to be granted to the petitioner/accused, since the said ground was not considered by the learned Judge while rejecting the bail request.

13. Being aggrieved by the same, accused is before this Court, on the following grounds.

- *"It is submitted that the Petitioner was arrested by the Respondent Police on 06.04.2025 at about 12.45 p.m., on the allegation that he was in possession of contraband MDMA crystal weighing 1 Kg and other articles and subsequently he was produced before the Hon'ble IX AJCM Court, at Bengaluru on 06.04.2025,*

*who remanded him to Judicial Custody till 17.04.2025 and now the charge sheet has been filed against the Petitioner and same is pending before the Hon'ble XXXIII Addl. District and Sessions Judge and Spl. Judge for NDPS cases at Bengaluru, in Spl.C.No.1648/2025.*

- *It is submitted that nowhere in the remand application or in the order sheet it was mentioned that the alleged grounds of arrest was communicated to his relative or friend or any other person nominated by him, apart from the arrestee by the arresting officer at the time of his arrest or two hours prior to his production before the Learned Magistrate, in consonance with the law laid down by the Hon'ble Apex Court in the case of **Vihaan Kumar V/s. State of Haryana & another** and subsequent judgment of Hon'ble Apex Court in the case of **Mihir Rajesh Shaw V/s. State of Maharashtra in Crl.A.No.2195/2025 dated 06.11.2025**. In the said judgements, the Hon'ble Apex Court has categorically held that grounds of arrest has to be communicated not only to the arrestee by the arresting officer but it has to be communicated to his relative or friend or any other person nominated by him. In the case on hand, absolutely the prosecution has not produced any materials to show that the grounds of arrest was communicated effectively and meaningfully in consonance with the dictum of the Hon'ble Apex Court in the above referred judgements, on this ground alone the Petitioner is entitled for bail.*
- *It is submitted that since the alleged grounds of arrest is not in consonance with the Apex Court rulings, the arrest and subsequent remand of the Petitioner is*

*illegal and vitiated his arrest and subsequent remand order and the Petitioner is entitled for bail without touching the merits of the case.*

- *It is submitted that violation of statutory provisions or Constitutional mandates, overrides the statutory restrictions governed u/s. 37 of the NDPS Act for granting bail, as such there is no legal embargo to grant the bail based on the violation of statutory provisions which are governed u/s. 47 of BNSS 2023, 52(1) of the NDPS Act and under Article 22 (1) of the Constitution of India.*
- *It is submitted that the Petitioner is ready and willing to offer adequate surety for his due appearance before this Hon'ble Court and he will not abscond and tamper with prosecution witness and he will abide by any condition that may be imposed by this Hon'ble Court in the facts and circumstances of the present case. He undertakes to be present before this Hon'ble Court on all the future dates of hearing without fail and He will cooperate with this Hon'ble Court for speedy investigation. He has no criminal antecedents except the present one, no other criminal case is pending against him."*

14. Sri M.R.Balakrishna, learned counsel for the petitioner, reiterating the grounds urged in the petition, vehemently contented that the Hon'ble Apex Court in the case of **Vihan Kumar vs. State of Haryana and others** reported in **(2025)5 SCC 799** has held that, non-furnishing of the proper

grounds of arrest would vitiate the very arrest itself as it is against the mandate of Article 22 of the Constitution of India and therefore, petitioner is entitled for grant of bail.

15. He would further contend that the principles of law enunciated in the case of **Vihan Kumar** supra in paragraph 26 was the subject matter of consideration before the Hon'ble Supreme Court again in the case of **Mihir Rajesh Shah vs. State of Maharashtra and another** reported in **(2026)1 SCC 500** wherein the Hon'ble Apex Court has reiterated the principles of law in paragraph No.512d, 513b-c, 520e, 521a, 524d and thus, wherever there is violation of mandatory requirement of furnishing of the grounds of arrest, the very arrest itself would be illegal and such persons must be set at free forthwith.

16. He would further submit that the conclusions reached by the Hon'ble Apex Court in **Vihan Kumar** and **Mihir Rajesh Shah** supra in para 66 would make out a case for grant of bail to the petitioner.

17. Sri Balakrishna, learned counsel would further emphasize that in the case of **Ahmed Mansoor and others vs. The State rep. by Assistant Commissioner of Police and**

**another** reported in **2025 SCC Online SC 2650**, the Hon'ble Apex Court again reiterated the principles as to grounds of arrest is a *sine qua non* and non compliance of furnishing of the grounds of arrest would make out a case for grant of bail.

18. In that regard, he invited the attention of this Court to paragraph 5 which reads as under:

*"5. The aforesaid position has been reiterated in Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573 as stated under:*

*"45. We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the courts in the country by virtue of Article 141 of the Constitution of India.*

*46. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the investigating officer.*

*47. We have perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a proforma indicating the formal "reasons" for which the accused was being arrested.*

***48. 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 tampering 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."***

19. Sri Balakrishna also places his reliance on the judgment of the Hon'ble Apex Court in the case of **Dr.Rajinder Rajan vs. Union of India and another** in SLP (Crl.) No. 3326 of 2026 dated 01.04.2026 wherein, the principles of law **Mihir Rajesh Shah** has been reiterated and allowed the appeal.

20. He invited the attention of this Court to paragraph Nos.22 and 23, which reads as under:

*"22. On going through the arrest memo, we find that it has been prepared in a template format and contains a statement to the effect that the arresting officer had explained the grounds of arrest to the accused before the arrest. Thus, the arrest memo, by itself, reflects that the grounds of arrest had been orally explained to the accused before the process of formal arrest was undertaken. Consequently, it was incumbent upon the arresting officer to have supplied the memo of grounds of arrest in writing to the accused two hours prior to producing them before the Magistrate as per the mandate of Mihir Rajesh Shah (supra) which apparently has not been followed in this case.*

*23. In the wake of the above discussion, we are of the firm view that the appellants are entitled to be released from custody by giving them the benefit of the ratio laid down in Mihir Rajesh Shah (supra). Accordingly, it is hereby directed that the appellants shall be released on bail forthwith, subject to furnishing bail bonds to the*

*satisfaction of the trial Court and such other conditions as it may deem fit to impose.”*

21. He would further contend that the petitioner therein i.e., **Dr.Rajinder Rajan** was also accused of offences under Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short) and therefore, this petitioner is entitled to grant of bail.

22. *Per contra*, learned High Court Government Pleader opposes the bail petition by contending that petitioner has overstayed in this Country than his period of validity of visa.

23. He would further emphasize that admittedly petitioner is a Nigerian citizen who visited this Country for carrying out the business under business visa and very fact that he remained in this Country without proper documentation would expose the intention of the petitioner.

24. He would also bring to the notice of this Court that seizure of one kilograms of MDMA crystals from the vehicle possessed by the accused in the presence of panch witnesses would be sufficient enough to reject the bail request of the petitioner by resorting to Section 37 of the NDPS Act.

25. It is also specific contention of the State that the arrest memo is duly supplied to the petitioner and when he was produced before the learned Trial Judge, there was an enquiry by the learned Trial Judge about the communication of arrest.

26. He would point out that petitioner has not raised any objection at that juncture with regard to non-furnishing of the arrest memo or non-communication of the arrest to his kith and kin.

27. Therefore, the contentions now raised before this Court that there is no proper communication of the grounds of arrest cannot be countenanced in law and sought for dismissal of the petition.

28. In the light of the rival contentions of the parties, this Court bestowed its best attention to the material on record.

29. On such anxious consideration, it is noticed that petitioner/accused is admittedly citizen of Nigeria and he has overstayed than the period of validity of visa. He visited this Country under business visa about eight years earlier and has managed to stay in this Country without proper documents. As such, he is *per se* illegal immigrant.

30. Seized MDMA in the case on hand, as per the seizure mahazar is to the tune of 1 (one) kilograms.

31. Pertinently 1 gram of MDMA is sold at the rate of Rs.15,000/- to Rs.20,000/-. Thus, seizure of 1 kg MDMA itself is significant in appreciating the case of the prosecution in opposing the bail request by the petitioner.

32. Since the seized MDMA is commercial quantity, Section 37 of NDPS Act would be applicable to the case on hand. For reference, Section 37 is extracted hereunder:

***"37. Offences to be cognizable and non-bailable.—***

*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for 3[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

*(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”*

33. It is to be borne in mind that Section 37 of NDPS Act would get attracted only in respect of commercial quantity of the NDPS. Legislature in its wisdom has therefore employed specific words, whereby it is the accused who is required to establish before the Court that he is not guilty of the offences alleged against him.

34. It is also to be borne in mind that while considering the bail request, grounds of the bail petition must emphasize that there are reasonable grounds to believe that accused is not guilty of the offences alleged against him in contrast to the innocence of the accused as per the constitutional mandate in respect of other offences under Indian Penal Code or Bharatiya Nyaya Sanhita.

35. In fact, a person who is accused of an offence of murder which is highly heinous would enjoy the presumption that he is held to be innocent until contrary is proved by prosecution.

Such presumption of innocence is taken away in respect of a person who is accused of possessing or transporting commercial quantity of NDPS.

36. In this regard, this Court gainfully places reliance on the principles of law enunciated by the Hon'ble Apex Court in the case of ***Union of India vs. Ram Samujh and another*** reported in **(1999)9 SCC 429** wherein, at paragraph 7 it is held as under:

*"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secy., Union Territory of Goa [(1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)*

*"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."*

37. Insertion of provision of law as per Section 37 of NDPS Act is not without purpose. The same is intended to curb the menace of drug transporting, possessing, peddling etc., which is harming the youth of this Country.

38. Likewise, Court is also required to find out that if the accused is granted bail, there is no likelihood of accused committing a similar crime.

39. In other words, unlike any other offences, the grounds that is mentioned in the bail petition must be sufficient enough

to persuade the Court that petitioner would have a fair chance of an acquittal as being not guilty.

40. With the above object in the background, when the material on record is analyzed, it is noticed that seized NDPS is placed before the jurisdictional Court vide necessary PF memo. Sample is also taken out from the seized quantity of NDPS.

41. Pertinently one kilogram of MDMA is not a freely available commodity in the market so as to implant the same by the police to falsely implicate the accused in the incident.

42. Further, grounds of bail petition referred to supra would not make out that there existed a previous enmity or animosity between the head of the raid party and the accused.

43. Therefore, this Court does not find any good reasons to grant the bail on merits of the matter.

44. As such, counsel for the petitioner has now taken shelter under non-furnishing of the grounds of arrest to seek the bail.

45. The said argument cannot also be countenanced in law inasmuch as in the case on hand, grounds of arrest was furnished to the petitioner as referred to supra. It is not also in

the template form either. Petitioner being Nigerian citizen, investigation officer took necessary precaution to furnish the grounds of arrest in English language.

46. One has to bear in mind the difference between grounds of arrest and reasons to arrest, as is held by the Hon'ble Supreme Court in the case of **Ahmed Mansoor** supra.

47. In the case on hand, when the petitioner was found with one kilogram of MDMA, which was kept in his two wheeler box beneath the seat, all that the head of the raid party did is to seize the same and took the petitioner to custody. Head of the raid party also seized mini electronic weighing machine, mobile handset and two wheeler bearing registration No.TN-36/AF-6707.

48. Later on, he handed over the custody of the petitioner, seized material objects to the Station House Officer who in turn has effected the arrest after issuing the arrest memo as referred to supra.

49. In other words, actual arrest has taken place in the police station and not by the head of the raid party. While taking the accused to custody no other formalities are to be carried out by

the head of the raid party. It is to be noted that the mandatory requirement of furnishing grounds of arrest is, when the petitioner is to be arrested, inasmuch as, in every custody there need not be arrest, but, in every arrest would necessarily follow custody.

50. There is no loss of time in producing the petitioner before the learned Judge after the arrest.

51. Learned Judge also enquired the accused as to any harassment/ill-treatment, by the police. In fact, accused was produced in the open Court in the presence of an advocate by name 'NM'.

52. Accused has voluntarily answered to the learned Judge that there was no ill-treatment and his arrest has been informed to his friend.

53. Taking note of these aspects of the matter, this Court is of the concerned opinion that in the case on hand, the grounds of arrest furnished to the accused is sufficient compliance of mandatory requirement as per Article 22 of the Constitution of India.

54. Further, in respect of a commercial quantity of the seized NDPS the approach of the Court while considering the bail request, is no longer *res integra*.

55. Hon'ble Apex Court, in the case of ***Narcotics Control Bureau vs. Kashif*** reported in ***(2024)11 SCC 372***, after considering catena of decisions rendered earlier, in the light of Section 37 in respect of seized NDPS is of commercial quantity, in paragraph Nos.9 to 12, has held as under:

*"9. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act.*

*10. Apart from granting the opportunity of hearing to the Public Prosecutor, the other two conditions i.e. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence, and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.*

**11.** *In State of M.P. v. Kajad [State of M.P. v. Kajad, (2001) 7 SCC 673 : 2001 SCC (Cri) 1520] , this Court while considering the scope of Section 37 in the light of the scheme of the Act, had observed that: (SCC pp. 675-76, para 5)*

*"5. ... A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for."*

*(emphasis supplied)*

**12.** *Similarly, recently a three-Judge Bench in Narcotics Control Bureau v. Mohit Aggarwal [Narcotics Control Bureau v. Mohit Aggarwal, (2022) 18 SCC 374] , considering the earlier judgments on the parameters of bail available under Section 37 of the said Act held that: (SCC p. 381, para 19)*

*"19. ... The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."*

56. In other words, in case of an accused who has been alleged with the possession of commercial quantity of the NDPS, negation of bail is the rule and grant is an exception is to be borne in mind.

*(emphasis supplied)*

57. Likewise, in a recent judgment in the case of **State of Punjab vs. Sukhwinder Singh** reported in **2026 SCC Online SC 671**, taking note of the principles of law enunciated in the case of **Kashif** supra, in paragraph 9 their Lordships have held as under:

*"9. It is well-settled that in matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial. The provision casts upon the Court a duty to record, before enlarging an accused on bail, its satisfaction on two cumulative conditions, first, that there exist reasonable grounds for believing that the accused is not guilty of the offence charged; and second, that he is*

*not likely to commit any offence while on bail. The recording of such satisfaction is not a mere formality but a mandatory pre-condition, the non-observance of which vitiates the grant of bail. This Court, in Kashif (supra), has held in no uncertain terms that the recording of satisfaction on the twin conditions under Section 37 is mandatory and not merely directory, and that an order granting bail without such recorded satisfaction stands vitiated and cannot be sustained. The same view stands reiterated in Lalrintluanga Sailo (supra)."*

58. Pertinently, before the Hon'ble Apex Court, in the case of **Sukhwinder Singh** supra, on behalf of accused, **Mihir Rajesh Shah, Dr.Rajinder Rajan** were also cited. Thereafter, the Hon'ble Apex Court allowed the appeal of the State and cancelled the bail granted to accused by the High Court and directed the accused to surrender before the Trial Court.

59. In other words, while on one hand, non furnishing of grounds of arrest, or improper compliance of furnishing the grounds of arrest would be a good ground for grant of bail in all offences, on the other hand, where the accused is alleged of possessing commercial property of NDPS, would not be permitted to gain a back door entry in getting the bail on the ground of improper compliance of furnishing grounds of arrest,

especially when he has failed to make out a ground for grant of bail by resorting to Section 37 of the NDPS Act.

60. In view of the foregoing discussion, since the grounds urged in the bail petition are not sufficient to admit the petitioner on bail by resorting to Section 37 of the NDPS Act and also taking note of the fact that the petitioner being the Nigerian citizen and has over stayed than the period of visa this Court is of the considered opinion that no grounds are made out by the petitioner much less good grounds to accede to his request.

61. As such, the following:

ORDER

Criminal Petition is ***dismissed***.

**Sd/-  
(V SRISHANANDA)  
JUDGE**

kcm