



2026:AHC:119488

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 16120 of 2026

Sandeep Baisoya

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Amit Saxena
Counsel for Opposite Party(s) : G.A.

Court No. - 67

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Amit Saxena, learned counsel for the applicant, Sri M.L. Pandey, learned A.G.A. for the State.

2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No. 16 of 2026, under Sections 103(1)/3(5) of Bhartiya Nyaya Sanhita, 2023, Police Station-Tronica City, District -Ghaziabad.

3. This matter was heard on 12th May, 2026. On that date, the counsel for the applicant apart from claiming parity with the co-accused Divyanshu also raised the issue of non supply of ground of arrest at the time of arrest or thereafter even prior to the remand order passed by the concerned Magistrate. It was also submitted that before proceeding to recover the country-made pistol, no disclosure memo (panchnama) was prepared at the police station as required by the Apex Court in the case of **Subramanya Vs. State of Karnataka 2023 (11) SCC 255**.

4. In pursuance of order dated 12th May, 2026, learned A.G.A. has filed compliance affidavit of Kamal Kant, Sub Inspector, Police Station-Tronica City, District-Ghaziabad wherein he has not denied the fact that the ground of arrest was not supplied to the applicant at any stage till the remand order was passed by the learned Magistrate. This affidavit is also silent on the issue regarding preparation of disclosure memo at the police station before proceeding for recovery, as required by the Apex Court in the case of **Subramanya Vs. State of Karnataka (supra)** and no reason was mentioned why the ground of arrest was not supplied and why the disclosure memo has not been prepared despite the direction of the Apex Court. In the case of **Subramanya Vs. State of Karnataka (supra)** the Hon'ble Apex Court by considering the scope of Section 27 of Evidence Act observed that before proceeding for recovery, Panchnama (disclosure memo) must be prepared duly signed by the accused at the police station. In the case of **Subramanya Vs. State of Karnataka (supra)** in paragraph

No.78 held as under:

"78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

5. The Apex Court in the case of **Vihaan Kumar Vs. State of Haryana**, reported in **(2025) 5 SCC 799** has observed that ground of arrest should be given to the accused at the time of arrest or at least two hours prior to the order of remand. It was further mentioned in the case of **Vihaan Kumar** that it is duty of the Magistrate who is hearing the remand of the accused to record his satisfaction whether the ground of arrest has been given to the accused. It was also observed by the Apex Court that the serving of ground of arrest is the constitutional requirement of the police authority under **Article 22(1)** of the Constitution of India and non compliance thereof would be violation of fundamental right which makes

the remand itself illegal and the accused must be released on bail immediately. In the case of **Vihaan Kumar vs. State of Haryana**, (*supra*) the Hon'ble Apex Court has held in paragraph no.21 as under:-

"21. Therefore, we conclude:

21.1. The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

21.2. 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;

21.3. 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);

21.4. 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);

21.5. 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

21.6. 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."

6. The Hon'ble Apex Court in the case of **Mihir Rajesh Shah v. State of Maharashtra**, reported as in (2026) 1 SCC 500 also observed that the grounds of arrest must be given in writing to the accused and in the present case there is nothing on record that the ground of arrest was supplied to the applicant at any stage of arrest. **Paragraph Nos. 57 and 58** of Mihir Rajesh Shah are quoted as under:

"57. After having come to the above conclusion, it is pertinent to note that the provision of law under Section 50CrPC (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 [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , 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."

7. The Hon'ble Apex Court in the case of **Vihaan Kumar vs. State of Haryana**, (*supra*) also observed in paragraph No.20 that, when the person is produced before the Judicial Magistrate for remand, it is duty of the Judicial Magistrate to ascertain whether the compliance of **Article 22(1)** of the Constitution of India has been made. Paragraph 20 is quoted as under:

"20. 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) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the courts to uphold the fundamental rights."

8. It has become the routine practice of non supplying the ground of arrest and non preparation of disclosure memo at the police station in compliance of the order of the Apex Court mentioned above, therefore, this court directs to Commissioner of Police, Ghaziabad to look into this issue and issue appropriate direction to his subordinate police officers.

9. From perusal of the remand order annexed by the counsel for the applicant along with supplementary affidavit it is clear that there is nothing but printed proforma which was subsequently filled up and signed by the CJM, Ghaziabad. This is not only non application of judicial mind by the C.J.M., Ghaziabad but also clear violation of the direction of the Hon'ble Apex Court in the case of Vihaan Kumar, therefore, this Court also directs C.J.M., Ghaziabad to be more careful in future taking into account his period of service.

10. Contention of learned counsel for the applicant is that the applicant is an innocent person and he has been falsely implicated in the present case. He further submitted that the applicant was not named in the FIR. Subsequently, the first informant in his statement recorded under Section 180 BNSs expressed doubt and apprehension over the applicant and co-accused because of the old enmity between the applicant and co-accused with the deceased, though there is no incriminating material against the applicant and no eye-witness of the incident. The applicant has falsely been implicated in the present case due to apprehension and doubt. He

further submitted that one country made pistol has been shown to be recovered on his pointing out. It is also submitted that the co-accused Divyanshu has been released on bail by a coordinate Bench of this Court in Criminal Misc. Bail Application No. 10024 of 2026. Therefore, applicant is also entitled to bail being on similar footing. Applicant has explained the criminal history of one case. The applicant is in jail since 13.01.2026. He further submitted that charge sheet has been filed by the police, therefore, there is no requirement for custodial interrogation. In case the applicant is released on bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings. The applicant has a criminal history of four case which has been properly explained. The applicant is languishing in jail since 13.01.2026. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

11. Per contra, learned A.G.A. for the State opposed the prayer for bail but could not dispute the aforesaid fact.

12. Considering the fact that the applicant was not given the ground of arrest at any stage till granting remand to the police as well as no panchnama (disclosure memo) was prepared at the police station before proceeding for the recovery of country-made pistol as well as taking note that the co-accused Divyanshu @ Roki having similar role to that of the applicant has been released on bail by the Co-ordinate Bench of this Court in Crl. Misc. Bail Application No. 10024 of 2026 on 10.4.2026 and also considering entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation** reported in **2025 SCC Online SC 3038** as well as guideline of this Court in the case of **Maya Tiwari vs State of U.P.** reported in **2024 SCC Online All 6765** regarding grant of bail and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail. Accordingly, the present application is allowed.

13. Let the applicant- **Sandeep Baisoya** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

i. The applicant shall not directly or indirectly make any 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 any police officer or tamper with the evidence.

ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

16. Verification of mobile number as well as Aadhaar Card of the applicant and sureties should also be conducted by the court concerned.

17. It is directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

18. Office is directed to send a copy of this order to the applicant through **Ghaziabad, Jail Superintendent** via e-mail or e-prison portal within 24 hours in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No. 4 of 2021 decided on 31.01.2023** reported in **(2024) 10 SCC 685**.

19. Application, if any, stands disposed of.

20. **Registrar (Compliance)** is directed to send a copy of this order to the **Commissioner of Police, Ghaziabad** as well as **District Judge, Ghaziabad**.

(Arun Kumar Singh Deshwal,J.)

May 22, 2026

Kumar Manish