



CRWP-4021-2026

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-4021-2026

Date of decision: 13.07.2026

SAJAN SINGH

..... PETITIONER

VERSUS

STATE OF PUNJAB

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. Nikhil Ghai, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

SURYA PARTAP SINGH. J.

1. By invoking the jurisdiction vested in this Court by virtue of Article 226 of the Constitution of India, read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, the following writ petition has been filed praying to:-

“a. hold and declare that entire exercise culminating into arrest of the petitioner, by the Investigating Agency, and the subsequent remand proceedings conducted before the



learned Judicial Magistrate-cum- Area Magistrate is without jurisdiction, illegal and unconstitutional;

- b. to set aside and quash the action of arrest of the petitioner and his subsequent incarceration by way of remand order dated 10.02.2026;
- c. to release the petitioner from custody forthwith.”

2. In nut-shell, the facts emerging from record are that for the commission of offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred to as NDPS only, the FIR No.29 dated 09.02.2026 has been lodged in Police Station Anti-Narcotic Task Force, Sector 79, Mohali.

3. In nut-shell, the facts emerging from record are that the above-mentioned FIR was lodged at the instance of ASI Hardeep Singh. According to prosecution, it was reported by the above-named police officer that on 09.02.2026 when he was leading a team of police officials, deputed for usual patrolling duty in the area of Police Station Makhu District Ferozepur, a reliable source gave him a tip-off that ‘Ravinder Singh @ Captain’ (co-accused) and ‘Sajan Singh’ (the petitioner herein) were involved in drug trafficking, and that on that day they were travelling in a white coloured car, make Swift, bearing registration No.PB-46AL-8793 for the supply of Heroin in the villages surroundings village Makhu. According to above-named police officer the information being reliable he immediately sent an intimation to the Police Station for registration of FIR and an information-memo, as prescribed under Section 42 of NDPS Act, to Senior Police Officer.



4. According to prosecution, thereafter a picket was laid on the link road leading from Talwandi Nepala to village Chak Marhana, where the above-said car, occupied by above-named two persons, was intercepted. As per prosecution, after enquiries about the names and addresses of the occupant of the car, they were served with notice under Section 50 of NDPS Act. According to prosecution during search of the car 307 grams of Heroin was recovered, which was seized vide separate seizure memo.

5. It is the case of the prosecution that, thereafter, requisite formalities with regard to seizure and sealing of contraband and formal arrest of the accused were performed and further investigation taken up.

6. Heard.

7. It has been contended by learned counsel for the petitioner that, in the present case, the arrest of the petitioner has been made by the Investigating Officer in an illegal manner. According to learned counsel for the petitioner *firstly*, the grounds of arrest were not communicated to the petitioner and *secondly*, the arrest memo was not served upon him, as per the mandate of law. The learned counsel for the petitioner has further contended that another lapse committed in the present case is that, that without providing any legal assistance the petitioner was produced before the Court of learned Judicial Magistrate and without affording him an opportunity to engage a lawyer of his choice, to defend him, he was remanded into custody. The learned counsel for the petitioner has further contended that, in addition to above, any family member of the petitioner was not informed regarding his arrest nor the ground of arrest and arrest-memo were communicated to them, which is in violation of the settled principle of law.



8. In support of his above-mentioned arguments, the learned counsel for the petitioner has referred to the principles of law propounded by the Hon'ble Supreme Court of India in the case of 'Vihaan Kumar v. State of Haryana and Another' (2025) 5 SSC 799, in the case of 'Prabir Purkayastha Vs. State (NCT of Delhi)' (2024) 8 SCC 254 and in the case of 'Mihir Rajesh Shah Vs. State of Maharashtra and Another' (2026) 1 SCC 500.

9. In addition to above, the learned counsel for the petitioner has also referred to the observations recorded by this Court in the case of 'Ashok Kumar Sharma Vs. State of Punjab' CRM-M-16156-2025.

10. According to learned counsel for the petitioner since there is violation of above-mentioned mandatory provisions of law, the arrest of the petitioner by the police and subsequent order of remand passed by the learned Magistrate are illegal. In view of above, the learned counsel for the petitioner has submitted that by accepting the present petition, the impugned order with regard to remand of petitioner be set aside and the petitioner be released from custody.

11. The learned State counsel has controverted the above-mentioned arguments. The learned State counsel has contended that instant case is one wherein all the legal formalities with regard to arrest of the petitioner, by the police, vis-a-vis his remand by the Court of Judicial Magistrate, have been complied with. According to learned State counsel not only there is compliance of Section 42 and 50 of NDPS Act, but also the compliance of all the directions issued by Hon'ble Supreme Court of India in the case of 'Vihaan Kumar' (supra), 'Prabir Purkayastha' (supra) and 'Mihir Rajesh Shah' (supra). The learned State counsel has further contended that the ground taken in the present



petition is non-communication of ground of arrest to the petitioner. With regard to above, while referring to Annexure R1/T to the supplementary short reply, the learned State counsel has contended that there was proper compliance of above-mentioned provisions of law.

12. While claiming that a serious offence has been committed by the petitioner, who was found in possession of 307 grams of Heroin, it has been contended by learned State counsel that in fact to wriggle-out of the rigors of Section 37 of NDPS Act, the present petition has been filed on false and frivolous grounds. The learned State counsel has also contended that, as per law, the petitioner is not entitled to the concession of bail, and therefore a smoke screen has been created by the petitioner, with the intent to seek release from judicial custody. The learned State counsel has claimed that the present petition is devoid of merits and deserves dismissal.

13. The record has been perused carefully.

14. In the present case, at the very out-set, it is pertinent to mention that the relevant law has been propounded by the Hon'ble Supreme Court of India in the case of 'Vihaan Kumar' (supra) and 'Mihir Rajesh Shah' (supra).

15. In the case of 'Vihaan Kumar' (supra), the Hon'ble Supreme Court of India has observed that;

- a. the requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1) of the Constitution of India;
- b. the information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is



imparted and communicated to the arrested person effectively, in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

- c. When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the investigating officer/agency to prove compliance with the requirements of Article 22(1);
- d. Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge-sheet and trial. But, at the same time, filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1):
- e. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and
- f. When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the



accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

16. Similarly in the case of ‘Mihir Rajesh Shah’ (supra), the Hon’ble Supreme Court of India has observed that it is mandatory upon the police officer before arrest of an accused in any case, to communicate the ground of arrest to the accused person and if in any case the same could not be provided due to exceptional circumstances than at all cost they shall be provided to the accused at least two hours before production of the arrestee for remand proceedings before the Magistrate and in case of non-compliance the remand would be illegal and the accused shall be at liberty to set free. It has been further observed that;-

- a. 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);
- b. the grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;
- c. 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;

- d. in case of non-compliance of above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set.

17. It has been further observed by Hon'ble Supreme Court of India that the provision of law under Section 50 CrPC (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. According to Hon'ble Supreme Court of India, in the case of Prabir Purkayastha, it has been 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.

18. With regard to facts and circumstances of the present case the principles of law laid down by Hon'ble Supreme Court of India in the case of 'Prabir Purkayastha' (supra) are also relevant. In the above-mentioned case, it has been observed that:-

- a. from a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in Harikisan, Wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as



to enable him to seek remedial measures against the deprivation of liberty.

- b. the language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly identical. Neither of the constitutional provisions require that the "ground of arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.
- c. the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and-22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.
- d. the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal laying down beyond the pale of doubt that the grounds of arrest must be communicated in



writing to the person arrested of an offence at the earliest.

Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.

- e. 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."

19. In the light of above-mentioned principles of law, if the facts and circumstances of the present case are analyzed, it transpires that the copy of memo with regard to information of ground of arrest is available on record as Annexure R1/T [to the supplementary short reply]. The above-mentioned arrest memo reads as under:-

Grounds of Arrest of accused and Intimation to heirs.

Grounds of arrest:- in the presence of the following witnesses, myself, ASI, disclosed my name, rank and posting to accused Sajan Singh that I, ASI Hardeep Singh No.484/SMS being the Investigating officer posted at ANTF, Bathinda Range, Bathinda. Today you have been apprehended by the police party and as per the procedure I, ASI recovered 307 grams Heroin from a transparent small polythene envelope lying near the gear lever of car make Swift bearing No.PB-46-AL-8793 of white colour. You have



kept 307 Heroin illegally in your possession, so you have committed an offence under Section 21/61/85 of NDPS Act, so you are being arrested under Section 21/61/85 of NDPS Act.

Conveyed to me

Sd/-

Sajan Singh

Arrest of accused

In the presence of the following witnesses, I, ASI disclosed my name, rank and posting to accused Sajan Singh as per the procedure and conveyed that you have committed offence under Section 21/61/85 of NDPS Act and the said offence is being non-bailable, so you are being arrested.

Q. That you have committed an offence under Section 21/61/85 NDPS Act which is non bailable and whether you want to convey regarding your arrest to your family member/friend or an advocate.

A. Regarding my arrest information may be furnished to my mother Ranjit Kaur on her mobile phone No. 73470-64610.

Sd/-

Sajan Singh

20. A bare perusal of the arrest memo shows that the above-mentioned arrest memo nowhere contains that before arrest of the petitioner any satisfaction was recorded by the Investigating Officer to the effect that there is



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sufficient ground to arrest the petitioner. For the sake of argument even if it is assumed that any such satisfaction was recorded somewhere in the case diary or on any other paper, which might not have been placed on record. In this petition the contents of above-mentioned memo shows that grounds of arrest were never communicated to the family member of the petitioner to whom information about his arrest was given. With regard to above, the relevant contents of the arrest memo is as under:-

As per wish of Sajan Singh, information regarding his arrest was conveyed to his mother Ranjit Kaur on his mobile phone No.73471-64610. Grounds of arrest and information to the heirs were prepared. Witnesses are being witnessing the memo.

Conveyed to me.

Sd/-

Sajan Singh

Witness:

Sd/-

1. C-II Nanddeep Singh 941/SMS

ANTF, Bathinda Range, Bathinda.

Sd/-

2. Sr. Constable Charanjit Singh 968/SMS

ANTF, Bathinda, Range, Bathinda.

Sd/-

Hardeep Singh, ASI

ANTF,

Bathinda Range, Bathinda

Dated:-09.02.2026.



21. With regard to above, the Hon'ble Supreme Court of India in the case of 'Vihaan Kumar' (supra) has observed that the grounds of arrest should be communicated to the friend, relative or person nominated by the arrested person also. It has been observed by the Hon'ble Supreme Court of India that:-

the purpose of inserting Section 50-A CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to



the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.

22. It shall not be out of place to mention here that in the above-mentioned case, it has also been observed by the Hon'ble Supreme Court of India that on failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. With regard to above, the Hon'ble Supreme Court of India in the case of 'State of Delhi Vs. Ram Avtar @ Rama (2011) 12 SCC 207 has observed that:-

"It is a settled canon of criminal jurisprudence that when a safeguard or a right is provided, favouring the accused, compliance therewith should be strictly construed. As already held by the Constitution Bench in Vijaysinh Chandubha Jadeja, the theory of "substantial compliance" would not be applicable to such situations, particularly where the punishment provided is very harsh and is likely to cause serious prejudice against the suspect. The safeguard cannot be treated as a formality, but it must be construed in its proper perspective, compliance therewith must be ensured. The law has provided a right to the accused, and makes it obligatory upon the officer concerned to make the suspect aware of such right. The officer had prior information of the raid; thus, he was expected to be prepared for carrying out his duties of investigation in accordance with the provisions of Section 50 of the Act. While discharging the onus of Section 50 of the Act, the prosecution has to establish that information regarding the existence of such a right had been given to the suspect. If such information is incomplete and ambiguous, then it cannot be construed to satisfy the requirements of Section 50 of the Act.



Noncompliance with the provisions of Section 50 of the Act would cause prejudice to the accused, and, therefore, amount to the denial of a fair trial.”

23. In the light of above-mentioned principles of law, if the factual matrix of the present case is analyzed, it is hereby observed that there is no evidence to show that the grounds of arrest were communicated to the mother of the petitioner in writing. Thus, it is hereby held that there is violation of above-mentioned mandate of the law.

24. Another aspect to be taken into consideration in the present petition is that after arrest on 09.02.2026, the petitioner was produced in the Court of learned Judicial Magistrate and on that day the order recorded by the learned Judicial Magistrate was as under:-

“Accused along with Case Property i.e. 307 Swift Car bearing no PB46-AL-8273 produced before me, attorney being Illqua Magistrate of P.S. Makhu. Request for 05 days Police remand of accused has been made today. Heard. In order to facilitate the further investigation on the present matter and further to know about the last as to from whom the present accused has bought the alleged contraband and to whom they were going to supply the same, this Court is of the considered opinion that the custodial interrogation of the accused is necessary. Accordingly, both accused remanded to Police Custody till 13.2.2026. The IO is directed to get the medical examination of the accused conducted before Police interrogation.”

25. A bare perusal of above-mentioned order shows that on 10.02.2026 when the accused was produced before the learned Judicial Magistrate he was not being represented/assisted by any counsel. It is mandatory provision of law that at the time of remand of an accused, large assistance should be ensured to him. As per mandate of the law, if any counsel is not engaged by the petitioner,



it is obligatory upon the Court, dealing with the remand paper, to ensure legal assistance to the accused by deputing a Legal Aid Counsel for him. But in the present case no counsel was present at the time of first remand of the petitioner.

26. With regard to above, the Hon'ble Supreme Court of India in the case of 'Mihir Rajesh Shah' (supra) has observed that the arrested person is entitled to defend himself by consulting a legal practitioner of his choice.

27. If the facts and circumstances prevailing in the present case are analyzed in the light of above-mentioned principles of law, it transpires that this right available to the petitioner, too, has been violated.

28. Taking into consideration the cumulative effect of above-mentioned discussion, it is hereby observed that in the present case *firstly* the grounds of arrest were not communicated to the mother of the petitioner [to whom information about the arrest of petitioner was conveyed] and *secondly* the petitioner was deprived of his right to have legal assistance at the time of hearing on his remand application in the Court.

29. In view of above, it is hereby held that the arrest of the petitioner for want of compliance of above-mentioned mandatory provisions stands vitiated. The same is hereby held illegal.

30. In view of observations in the foregoing paragraphs, it is hereby observed that the present petition deserves to be allowed. The same is hereby **allowed** accordingly. The arrest of the petitioner is hereby held to be illegal. Thus, police/judicial remand of the petitioner, too, is hereby held illegal. The petitioner is hereby ordered to be released forthwith in the present case. Obvious to say that in view of law propounded by the Hon'ble Supreme Court of India in the case of 'Mihir Rajesh Shah' (supra), after release, the



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Investigating Agency/prosecution can move fresh application for remand or custody of the petitioner, while complying with the conditions prescribed by the Hon'ble Supreme Court of India.

(SURYA PARTAP SINGH)
JUDGE

13.07.2026.

vipin Whether speaking/reasoned : Yes
 Whether Reportable : No