

(2025) 09 GAU CK 0473
In the Gauhati High Court
Case No : Bail Appl. No. 2459 Of 2025

Paominthan Vaiphei

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 22(1)
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 36, 47, 48, 483
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 29

Citation : (2025) 09 GAU CK 0473

Hon'ble Judges : Sanjeev Kumar Sharma, J

Bench : Single Bench

Advocate : Darrak Ullah, D.Borah

Final Decision : Dismissed

Judgement

Sanjeev Kumar Sharma, J

1. Heard Mr. Darak Ullah, learned counsel for the accused petitioner and Mr. D.Bora, learned Standing Counsel for Union of India i.e. Directorate of Revenue Intelligence (DRI).

2. This is an application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for bail for the accused petitioner who was arrested and taken into custody on 04.02.2025 in connection with Departmental Case No. 07/CL/NDPS/DRI/SIL/2024-25 dated 03.02.2025 under Section 21(C)/29 of NDPS Act.

3. The brief fact of the case is that acting on a specific Intelligence, shared by DRI Guwahati Zonal Unit, the officers of Directorate of Revenue Intelligence, Silchar Sub-Regional Unit, Silchar, along with two Independent witnesses and with the assistance of the Assam Rifle, 38th Unit, Silchar, identified and intercepted one TUV300 T8 MHA car bearing Regn No. AS-02-Z-2315 at 20:45 hours on 04.02.2025 at Ramnagar area of Cachar District of Assam, which was

coming from Aizawl, wherein the driver of the said car Identified himself as Sri Paominthang Vaiphei (Age 24 yrs.), S/o Sri Khama Vaiphei, Nakhujang Village, Kharam Thadol, Senapati District, Manipur 795146. (As per Aadhaar Card-6863 8054 4762). The DRI officers along with Independent witnesses identified themselves before the suspect and enquired on the specific Intel if they were carrying any contraband goods to which he initially denied but hesitantly confessed that he was carrying contraband drugs concealed inside the vehicle. The driver of the car Sri Paominthang Vaiphei requested DRI officers to take the vehicle to some safe place for carrying out rummaging and other formalities and as no logistics were available to find and open the concealment in the car at main road, accordingly the vehicle along with driver was brought to the DRI, Silchar, SRU at Silchar duly escorted by DRI officers, Assam Rifles personals and Independent witnesses at around 21:30 hrs. At around 10:00 pm, the DRI officers started rummaging procedure under videography, of the vehicle in the presence of the driver of the car, panchas, Assam Riffle personnel, wherein the driver of the car viz. Sri Paominthang Vaiphei told the officer of DRI that the contraband goods were concealed in the body cavity behind the third row (side-facing jump seat). From the said cavity, 9 rectangular sized packets were recovered. The Officer then opened a small portion of a packet and conducted drug test of the recovered substances with testing kit at the spot which confirmed presence of contraband drug and the same packet was marked 1 and weighed. Subsequent other packets were opened, marked from serially number 2 to 8 and weighed. In one of the rectangular packet, one 9 mm Sig Sauer Brand Pistol with Serial No 58C364469 and Two Magazine of SIG Sauer 9 mm and 30 live rounds of 9mm LUGER, PMC outwardly wrapped with Bluish paper, Carbon paper, corrugated cardboard and black plastic were found present and recovered. The DRI Officers took personal search of the occupant but before that he was offered option in writing for search before a Judicial Magistrate or a Gazetted Officer to which he opted for search before a Gazetted Officer, Prior to personal search of the driver, he was also offered to search the DRI officer who was about conduct his personal search in front of the Gazetted officer as well as the panchas. During personal search no more contraband goods were found from their possession. The DRI Officer immediately seized the contraband goods by preparing Inventory after proper weighment which was found to be 8 kgs of suspected methamphetamine tablets in rectangular shape packets and one 9 mm Sig Sauer Brand Pistol and Two Magazine of SIG Sauer 9 mm and 30 rounds of live 9mm LUGER, PMC at around 03.30 hrs on 04.02.2025 vide DRI seizure case File no. 07/CL/NDPS/DRI/SIL/2024-25 dated 04.02.2025. The DRI Officer, the driver of the car and the panchas signed the said documents. The recovered contraband totally valued at Rs 8,00,00,000/-, the car valued at Rs. 6,40,000/- along with mobile and documents were seized vide DRI Stichar Seizure Case F No. 07/CL/NDPS/DRI/SIL/2024-25 on 04.02.2025 at around 03.30 hrs. The accused petitioner namely Sri Paominthang Vaiphei was thereby arrested under the provisions of the NDPS Act, 1985.

4. Mr. Darak Ullah, learned counsel for the accused petitioner submitted that the arresting authorities failed to communicate the grounds of arrest to the accused petitioner as well as to his relatives/family members as per mandate of Sections 47 and 48 of BNSS read with Article 22(1) of the Constitution of India.

5. With reference to the arrest memo furnished to the accused petitioner, which is not in dispute, it is submitted that the said arrest memo pertains to Section 36 of BNSS and not Section 47 BNSS and mere compliance with Section 36 of BNSS does not imply that Sections 47/48 of BNSS has been complied with. Although, it was stated in the bail application that communication was not made to the accused petitioner in a language he understood, the learned counsel fairly conceded the said issue and did not press the same.

6. In view of the aforesaid violations and in the light of the decision of the Hon'ble Supreme Court in *Prabir Purkayastha Vs. State (NCT of Delhi)* reported in (2024) 8 SCC 254 as well as in *Vihaan Kumar Vs. State of Haryana & Another*, reported in (2025) SCC Online SC 269, the petitioner is entitled to be released on bail.

7. Taking the Hon'ble Court through the arrest memo, it is pointed out by the learned counsel that although it is stated at the bottom that copy is furnished to the wife of the accused petitioner, namely, Smt. Nengpi Vaiphei, the same does not bear any receipt acknowledgment from the said wife of the accused petitioner. In the meantime, the petitioner has already spent seven months in jail under an illegal detention, contends the learned counsel.

8. DRI has filed a detailed objection wherein the claims of the accused petitioner have been vehemently disputed. It is stated therein that the petitioner's contention that the reasons of arrest was not explained or communicated to him as mandated under Section 47 of the BNSS is false and aimed to gain undue sympathy from the Court. The Arrest Memo was descriptive and detailed. The Hon'ble Special Judge, Cachar, Silchar while rejecting the petitioner's bail application vide Order dated 06.06.2025 has observed as under-

"Hence, from perusal of the Arrest Memo, it is evident that while effecting the arrest of the accused/petitioner, the arresting officer duly recorded in writing the sequence of events which led to the recovery of 8 kgs of suspected methamphetamine tablets and one 9 mm Sig Sauer Brand Pistol and Two Magazine of SIG SAUER 9 mm and 30 rounds of live 9mm LUGER and the accused/petitioner put his signature on the Arrest Memo, thereby acknowledging its contents".

9. It is also stated that in the Arrest Memo, the violations of the provisions of the NDPS Act leading to his arrest was explained and recorded in writing in clear terms. The paragraph 1 of the said Arrest Memo reads-

"Sri Paominthang Vaiphei (age 24 years), S/o Sri Khama Vaiphei, Nakhujang Village, Kharam Thadoi, Senapati District, Manipur-795146 (As per Aadhaar Card

– 6863 8054 4762) is hereby arrestedon reasonable belief that he has violated the provisions of Sec. 8(c), punishable u/s 21(C) and 29 of the NDPS Act, 1985, as amended”.

The above is followed by narration of the brief facts of the case detailing the sequence of events leading to his arrest. Therefore, the contention of the accused petitioner that the reasons of his arrest were not explained to him falls flat and merits rejection.

10. It is also stated that the contention of the petitioner that the grounds of arrest mandated under Section 48 of the BNSS were not complied while arresting him is unfounded and merits rejection. Section 48 of the BNSS, 2023 outlines the obligation of a person making an arrest to inform the arrested individual's relatives or friends about the arrest. Section 48 of the BNSS, 2023 inter alia, requires the person making the arrest to give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and to inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. In the instant case, the information of arrest of the accused petitioner was communicated to his wife, as was disclosed and nominated by the accused petitioner. In this respect, the respondent relies on the Arrest Memo dated 04.02.2025 wherein a copy of the Arrest Memo can be found to have been endorsed to Smt. Nengpi Vaiphei, W/o Sri Paominthang Vaiphei vide endorsement DRI F.No.07/CL/NDPS/DRI/SIL/2024-25/427 dated 04.02.2025.

11. The learned counsel for the petitioners has relied upon the decisions of the Hon'ble Supreme Court in Prabir Purkayastha (supra) wherein it was held as follows:

“30. Hence, we have no hesitation in reiterating that 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. 31. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal Vs. Union of India and Others, 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 learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused/petitioner appellant is noted to be rejected.”

12. The learned Addl. Public Prosecutor has placed reliance upon the recent decision of the Hon'ble Supreme Court in the case of State of Karnataka Vs. Sri

Darshan etc., reported in 2025 SCC Online SC 1702, wherein it has been held that mere non-furnishing of the grounds of arrest would not be ipso facto vitiate the arrest and the test of prejudice is required to be applied.

13. It has been held in the State of Karnataka Vs. Sri Darshan reported in (2025) SCC SC 1702 as follows:-

"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 22, it was reiterated that Article 22(1) is satisfied if the accused/petitioner is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in Kasireddy Upender Reddy v. State of Andhra Pradesh 23 , 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.

20.1.7. 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/petitioner to bail."

14. A Division Bench of this Court in the case of National Investigation Agency Vs. Thangminlen Mate @ Lenin Mate in CrI.A. No. 234/2025 has held that there appears to be a dichotomy of views in the decision of the Hon'ble Supreme Court in State of Karnataka Vs. Sri Darshan (supra) and Vihaan Kumar Vs. State of Haryana & Anr(supra) and referring to the decision of the Hon'ble Supreme Court

in the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported in (2017) 16 SCC 680, wherein it was held that if there are conflicting decisions of equal Benches of the Supreme Court, the earlier decision should be followed by the High Courts, has held that the earlier decision of the Supreme Court, i.e., Vihaan Kumar (supra) would have to be followed.

15. A bare perusal of the arrest memo furnished to the accused petitioner would go to show that more than sufficient grounds of arrest has been communicated to the accused person and therefore, once it is found that the grounds of arrest have been communicated to the accused person, the form in which the notice under Section 47 was served upon the accused petitioner, or even if not served at all, would not make any difference, inasmuch as, the constitutional mandate is that the grounds of the arrest must be furnished to the accused petitioner and as per the decisions of the Hon'ble Supreme Court referred to herein above i.e. Prabir Purkayastha (supra) and Vihaan Kumar (supra), they must be in writing.

16. Therefore, as contended by learned Counsel for the accused petitioner, merely because the arrest memo is issued under Section 36 of BNSS and not under Section 47/48 of BNSS does not obviate the fact that the grounds of arrest have been furnished to the accused petitioner as required by law.

17. Therefore, I do not find any force in the submission of learned Counsel for the accused petitioner in this regard and I am of the considered view that Section 47 of BNSS has been duly complied with.

18. This brings us to the question of violation of Section 48 of BNSS requiring communication of grounds of arrest to the relatives/family members/nominated persons of the accused person. As adverted to earlier in the arrest memo at the bottom, it has been stated as follows:

"Copy to : Smt. Nengpi Vaiphei, W/o Sri Paominthang Vaiphei, Mata IFCD Relief Camp, Churachanpur, Manipur-795128 for information."

It bears the signature of the officer effecting the arrest as well as that of the accused petitioner. Naturally, it would not bear the signature of the person to which a copy of the said arrest memo was purportedly communicated as he/she was not present on the spot to receive the same.

19. What is therefore required to be looked into is whether there is any other indication that the nominated person/relative/family member, in this case, the wife of the accused petitioner has been intimated the grounds of arrest. It is found from the CD that a certificate was issued on the date of arrest i.e. 04.02.2025 by the arresting officer wherein it is stated that the arrestee has informed his wife Smt. Nengpi Vaiphei over telephone number 91-8837085397 from the telephone number 6000465213. The said certificate bears the signature of the arrestee. Thereafter, a communication number DRI F. No. 07/CL/NDPS/DRI/SIL/2024-25 dated 04.02.2025, addressed to the Superintendent of Police, Senapati District, Manipur by the Arresting Officer containing information

regarding the recovery and arrest with concise grounds along with copy of the arrest memo has been made with the request to intimate the family member of the accused petitioner. From the above, it appears that the arresting authorities have done everything within their powers to inform the family members of the accused petitioner of the grounds of his arrest, although there is no acknowledgment by such family member on record, which is quite understandable given the situation obtaining in Manipur at that time.

20. A perusal of the Order dated 04.02.2025 passed by the Chief Judicial Magistrate, Cachar, Silchar on the date of first production of the accused petitioner reflects that on that day the accused petitioner was represented by the learned LADC Smt. Rose Mariam Mazumdar. It is also reflected in the said order that on being asked, the accused petitioner stated that his family members are aware of his arrest. Therefore, since the accused petitioner has admitted before the learned Chief Judicial Magistrate(CJM), Cachar, Silchar that his family members are aware of his arrest, and there being no reason to doubt the correct recording of facts by the learned CJM concerned, the court is inclined to accept the version of the prosecution that the family members of the accused petitioner have communicated the grounds of arrest as evidenced by the documents referred to herein before.

21. In the considered opinion of this Court, there has been substantial compliance with the provisions of Section 48 of BNSS as well. As far as the merits of the bail application are concerned, it does appear from the material on record that a huge quantity of contraband drugs as well as arms and ammunitions were recovered from the conscious possession of the accused petitioner and therefore, this Court sees no reasonable ground to believe that the accused person may not be guilty of the alleged offence of possessing and transporting commercial quantity of contraband drugs and therefore, the bar imposed by Section 37 of the NDPS Act squarely applies to negate the plea for bail in the facts of the present case.

22. In view of the above discussion, the prayer for bail stands rejected and the petition stands dismissed.

23. Return the Case Diary.