Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 38 of 2025

Date of Decision: 26.08.2025

Shri. Robinus Ripnar,
Aged about 45 years,
S/o (L) Paulus Lapang, R/o- Umsning, Ri-Bhoi District,
Meghalaya.

…..Petitioner

Versus

1. The State of Meghalaya
   Represented by Secretary (Home)
   Government of Meghalaya.
2. The Superintendent of Police,
   Ri-Bhoi District, Meghalaya.

…..Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S.S. Yadav, Adv. Mr. S. Purkayastha, Adv.
For the Respondent(s)	:	Mr. N.D. Chullai, AAG, with Mr. E.R. Chyne, GA Mr. A.H. Kharwanlang, Addl. P.P

ORDER

1. Heard Mr. S.S. Yadav, learned counsel who has submitted that the petitioner has approached this Court by way of this application under Section 483 of the BNSS with a prayer for grant of bail since he was arrested on 12.03.2024 in connection with Nongpoh P.S. Case No. 25(03) 2024 under Section 120B/121A IPC read with Section 10/13/18 of the Unlawful Activities (Prevention) Act, 1967 read with Section 5 & 6 of the Explosive Substances Act.

2. It is also the submission of the learned counsel that this is the third bail application preferred before this Court and four other bail applications preferred before the learned Trial Court. The bail application filed before this Court was withdrawn with liberty to file a fresh one, hence this application.

3. The learned counsel has submitted that since the time when the petitioner was arrested, on investigation conducted, the Investigating Officer has filed the final report along with the chargesheet, finding a prima facie case well made out against the petitioner herein as well as against other co-accused persons. However, till date the charges have not been framed even though the prosecution has cited about 31 witnesses to be examined from its side.

4. Again, the learned counsel has submitted that records would show that there is no evidence against the petitioner except that he is related to one of the accused persons, Shri Damanbha Ripnar and is connected with him by way of phone calls via mobile phone.

5. The main thrust of the argument of the learned counsel is that at

the time when the petitioner was arrested, the arresting agency have flouted the mandatory provision of law as far as application of Section 43B of the UAP Act is concerned, inasmuch as at such time, he was not informed of the grounds of his arrest.

6. The learned counsel has submitted it is an admitted fact that the petitioner was arrested, inter alia, for an offence under Section 18 of the UAP Act, which falls under Chapter IV where there is an embargo under Section 43D for grant of bail which is pari materia with Section 37 of the NDPS Act, 1985. However, in the case of the petitioner, because of non-compliance of the provision of Section 43B of the said UAP Act and the Constitutional mandate as found under Article 22(1) of the Constitution of India, he is liable to be released on bail forthwith.

7. The learned counsel has further submitted that the applicability of the provision of Section 43B to the fact situation of a case has been dealt with by the Hon'ble Supreme Court in the case of Prabir Purkayastha v. State(NCT of Delhi) reported in (2024) 8 SCC 254 at paras 3, 8(vi), (vii), (viii), (ix), (x), 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 37, 38 and 44 to 51, wherein it was held that it the statutory and constitutional right of a person arrested under this Act, who at the time of his arrest, is required to be informed of the grounds of his arrest as is provided under Section 43B. At para 20 of this judgment, the Supreme Court has observed as follows:

> "20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a

> matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India."

8. The learned counsel has again referred to a number of judgments, particularly the case of Thokchom Shyamjai Singh & Ors v. Union of India through Home Secretary & Ors., para 1, 11.3, 15, 15.1, 17 to 29, 30 to 33 and 38, wherein vide order dated 20.02.2025 passed in W.P.(Crl) 1929/2024 & CRL.M.A. 18784/2024, the Hon'ble Delhi High Court has elaborately dealt with this issue by referring to a number of relevant judgments passed by the Hon'ble Supreme Court viz., Prabir Purkayastha(supra), Pankaj Bansal v. Union of India & Ors., (2024) 7 SCC 576 and Vihaan Kumar v. State of Haryana & Anr., 2025 SCC Online SC 269 amongst others, where the same proposition of whether the grounds of arrest are required to be furnished to a person as soon as he is arrested, the same being mandatory or obligatory has been discussed in details.

9. To confirm that the grounds of arrest were never communicated to the petitioner, the learned counsel has referred to the Arrest Memo at page 13 (Annexure II) of this application at para 8 wherein it has been noted that the arrested person, that is, the petitioner herein has been informed of the grounds of arrest, but the fact remain that it has not been done so, as such grounds have not been communicated to him in writing.

10. Even in the first remand report filed before the court by the Addl. Superintendent of Police, Ri-Bhoi District, Nongpoh on 12.03.2024, nothing is said about the grounds of arrest being made known or communicated to

the accused/petitioner and likewise, the related order of the learned Special Judge, dated 12.03.2024 taking such report on record, has also failed to note that the arrestee was ever supplied with the grounds of arrest, submits the learned counsel.

11. Besides the fact that the said grounds of arrest have not been communicated to the accused/petitioner, the learned counsel has also submitted that from the chargesheet, there is nothing found to implicate the accused/petitioner in the case as the Investigating Officer has linked the petitioner to one of the accused persons Damanbha Ripnar on the basis that the petitioner's phone number has appeared in the phone records of the said Damanbha Ripnar, but nothing incriminating has been found to connect the petitioner with the commission of the alleged offences.

12. Furthermore, learned counsel has submitted that the petitioner has been in custody for more than 1 year 4 months and the stage of the case is for framing of charges, which have not been framed till date. There are about 33 listed witnesses and as such, delay in the proceedings would invariably occur, the petitioner only on this ground is entitled to be enlarged on bail. The case of Athar Parwez v. Union of India, Criminal Appeal No. 5387 of 2024 was cited in this regard wherein the Hon'ble Supreme Court vide order dated 17.12.2024, at para 32 has held as under:

> "32. The Appellant was arrested on 12.07.2022. He has undergone custody for more than two years and four months. Chargesheet was filed on 07.01.2023 but till date charges have not been framed which is an admitted position. There are 40 accused and 354 witnesses cited by the prosecution to be examined. There can be no doubt that the trial is not likely to complete soon, and as has been laid down by various judgments of this Court as has been referred to above, the Appellant cannot be allowed to languish in jail indefinitely and that too without a

> trial. If such an approach is allowed Article 21 of the Constitution of India would stand violated. The ratio as laid down by this Court in Union of India v. K.A. Najeeb (supra) as also the other judgments in Javed Ghulam Nabi Shaikh v. State of Maharashtra (supra) and Thwaha Fasal v. Union of India (supra) would be applicable to this case and would squarely apply entitling the Appellant for grant of bail."

13. Per contra, Mr. N.D. Chullai, learned AAG while strenuously opposing the prayer made by the petitioner and the submission and contention raised by the learned counsel for the petitioner in support of such prayer, has submitted that the first ground of challenge to this petition is fundamental inasmuch as this is the fifth bail application filed by the petitioner, the earlier four applications being rejected by the learned Trial Court on respective dates. There being no pleading made in this petition as regard change in circumstances or the fact situation since the last bail application was rejected, therefore this petition is not maintainable and is liable to be rejected.

14. To support this contention, the learned AAG has referred to the case of State of Maharashtra v. Captain Buddhikota Subha Rao, 1989 Supp (2) SCC 605, para 7 wherein the Hon'ble Supreme Court has held that "…*For the above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation…*". Similarly, in the case of Mohd Salman v. The State GNCT of Delhi passed in Bail Appln. 836/2024 decided on 06.03.2024, it was observed at para 13 that "*It has been held in the catena of judgments that there must be change in circumstances to warrant fresh consideration of the bail application. The successive bail applications filed without there being any change in circumstances, is strongly discouraged, and is a gross abuse of the process of law.*".

15. It is also the submission of the learned AAG that the petitioner has tried to improve his case this time around by raising the issue of "grounds of arrest not being communicated to the person accused" in the first bail application filed before the Trial Court since such ground could have been raised by the petitioner at the first instance, the same being within his knowledge right from inception. This cannot be construed as fresh ground to maintain a subsequent application for bail. The case of Sohrab Patel v. Directorate of Enforcement being the subject matter of MCRC-17324 of 2019 decided on 03.05.2019 by the Hon'ble Madhya Pradesh High Court (Indore Bench) where reliance was placed on the case of Atar Singh v. State of M.P. 1997 (1) JLJ 123 at para 9 and also the case of Arjun Bhanot & Ors. v. State of Punjab & Anr., I.L.R. Punjab & Haryana, 2021(2) 412, para 23 where this proposition was confirmed by the abovementioned High Courts have also been cited by the learned AAG in this regard.

16. As to the contention of the petitioner that the grounds of arrest have not been informed or communicated to him, the learned AAG has submitted that records would show that the petitioner is well aware of the contents of the Arrest Memo dated 12.03.2024, which has been annexed by him in this petition and wherein at para 8 of the same it has been noted that the arrested person was informed of the grounds of arrest and his legal right and thereafter he was taken into custody on 12.03.2024. It is also noticed that the petitioner has appended his signature in the said Memo and therefore it cannot be said that the grounds of arrest have not been communicated to the accused/petitioner. The case of Ram Kishor Arora v. Directorate of Enforcement, (2024) 7 SCC 599, the Hon'ble Supreme Court at para 22 of the same had referred to the case of Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 wherein it has been categorically held that so long as

the person has been informed about the grounds of his arrest, that is sufficient compliance with mandate of Article 22(1) of the Constitution.

17. The learned AAG has also contended that the reliance of the petitioner on the case of Prabir Purkayastha(supra) cannot come to his rescue since the ratio passed in this case, judgment of which was delivered on 15.05.2024 would not be applicable to the case of the petitioner who was arrested on 12.03.2024, the judgment not having retrospective effect.

18. The last contention of the learned AAG is that the bail application preferred by the petitioner herein has to be scrutinized through the provision of Section 43D (5) of the UAP Act (1967) wherein as has been held in the case of Gurwinder Singh v. State of Punjab & Anr., 2024 SCC Online SC 109, that "*bail is an exception and jail is the rule under UAP Act*". Paras 26, 27 and 28 of this judgment have also been referred in this regard, the same being reproduced herein below:

> "26. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of courts must tilt in favour of the oft-quoted phrase – "bail is the rule, jail is the exception" – unless circumstances justify otherwise – does not find any place while dealing with bail applications under UAP Act. The "exercise" of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43-D(5)– 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC – "may be released" – suggests the intention of the legislature to make bail, the exception and jail, the rule.
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> 27. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The "justifications" must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, "prima facie" standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising

the justifications [materials on record]. This standard can be contrasted with the standard of "strong suspicion", which is used by courts while hearing applications for "discharge". In fact, the Supreme Court in Zahoor Ali Watali [(2019) 5 SCC 1] has noticed this difference, where it said: (SCC p. 24, para 23)

> "23. …In any case, the degree of satisfaction to be recorded by the court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

28. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a "rule", if after hearing the Public Prosecutor and after perusing the final report or case diary, the court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied – that the courts would proceed to decide the bail application in accordance with the "tripod test" (flight risk, influencing witnesses, tampering with evidence). This position is made clear by sub-section (6) of Section 43-D, which lays down that the restrictions, on granting of bail specified in sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail."

19. The proposition laid down in the case of Gurwinder Singh(supra) and other related judgments in this regard in the context of the case of the petitioner, wherein there are found materials on record, prima facie, to connect the involvement of the petitioner with the offence alleged including the records of the 'CDR' pertaining to the many conversations he had with one of the main accused persons, Damanbha Ripnar, as such, the provision of Section 43D (5) of the Act is applicable to his case, therefore bail cannot be granted to him at this point of time, submits the learned AAG.

20. It is prayed that this petition being devoid of merits, the same is liable to be dismissed.

21. This Court has carefully considered the argument advanced by the respective counsels in support of their contention and is also conscious of the fact that the allegation made against the petitioner are serious in nature, being one under the provisions of the Unlawful Activities (Prevention) Act, 1967 where the purpose of the Act is to provide an effective prevention of certain unlawful activities of individuals and associations, including terrorist activities, such activities being directed against the integrity and sovereignty of India.

22. However, in our country even the most stringent Act or canon of law has to confirm with the constitutional provisions, wherein the life and liberty of a citizen and the accompanying rights guaranteed therein has to be kept in mind, particularly when it comes to a point where such rights are curtailed as in when such a citizen is detained in custody, albeit within due process or procedure of law.

23. The law makers and the courts have throughout sought to bring about a balance in this regard, to ensure that there is peace and tranquility in the country and that no citizen is being unduly or unnecessarily or illegally detained in custody in connection with any accusations made as far as violation of the law is concerned.

24. The facts in this case have been detailed hereinabove and need not be repeated. Suffice it to say that the petitioner has been arrested under the provision of the UAP Act and is in custody for more than a year. Though the Special Court has taken cognizance of the allegation made, no charges have been framed against the petitioner or other co-accused till date.

25. At this juncture, the petitioner has approached this Court mainly on a one-agenda stand, that is, that his constitutional rights have been

violated by the relevant authority, when at the time of his arrest, he was not informed of, nor the grounds of arrest ever communicated to him, even till date.

26. Reliance has been placed by the petitioner on Article 22(1) which reads as follow:

> "**22. Protection against arrest and detention in certain cases.**– (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

27. From this flows the provision of Section 43B(1) which reads as:-

> "**43B. Procedure of arrest, seizure, etc.**–(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest."

28. Now, how these grounds are to be informed to the arrestee, judicial pronouncements by the Hon'ble Supreme Court and other High Courts in this regard have brought clarity to such a process within the ambit of the constitutional and legal provisions connected thereto.

29. The Hon'ble Supreme Court in the case of Vihaan Kumar v. State of Haryana & Anr. reported in (2025) 5 SCC 799 at para 18 and 19 of the same has more or less answered this question, the same are reproduced herein as:

> "18. Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed

in a language which the arrestee understands. That is how, in Pankaj Bansal, this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

19. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the

> arrest is held to be vitiated, the person arrested cannot remain in custody even for a second."

30. The next question is whether compliance in terms of the said para 18 and 19 in the Vihaan Kumar case has been affected as far as the case of the petitioner herein is concerned. Except for the bald statement found at para 8 of the Arrest/Court Surrender Form or in other words the 'Arrest Memo' which says that the arrested person has been informed of the grounds of arrest, there is nothing on record to show that such grounds have been duly spelt out and communicated to the accused/petitioner in writing. In the opinion of this Court, this can only mean that such grounds of arrest have not been communicated to the petitioner.

31. The consequences of such action or inaction of the arresting authority, would therefore have a telling effect on the case of the petitioner vis-à-vis his entitlement to bail.

32. In this connection, it would not be out of place to refer to the observations made by the Hon'ble Supreme Court in the case of Vihaan Kumar(supra) wherein at para 26.1 to 26.6 which are found to be applicable to the case of the petitioner herein, such observations being the following:

> "26.1. The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);
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> 26.2. 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;
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> 26.3. 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);

26.4. 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.** [Emphasis laid] 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);

26.5. 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

26.6. **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**. [Emphasis laid]"

33. In the final analysis, without further requirement of discussion of the case laws cited by the learned AAG on the other aspects of the case of the petitioner, since the observations at 26.1 to 26.6 are sufficient to render such reliance on behalf of the prosecution, this Court is of the considered opinion that the petitioner has made out a case for grant of bail.

34. In view of the above, this petition is hereby allowed. The accused/petitioner is directed to be released on bail, if not wanted in any other case, on the following conditions:-

i) That he shall not abscond or tamper with the witnesses;

ii) That he shall attend court as and when called for;

iii) That he shall not leave the jurisdiction of Meghalaya, except with due permission of the court concerned; and

iv) That he shall bind himself on a bond of ₹ 50,000/- (Rupees fifty thousand) only along with one surety of like amount to the satisfaction of the trial court.

35. Petition disposed of. No costs.

Judge