

22 SC 254/2024  
STATE Vs. KENNETH UNADIKE @ KEN  
FIR No. 443/2023  
PS Mohan Garden

06.03.2025

**This is an application filed on behalf of applicant/accused Kenneth Unadike @Ken for grant of regular bail.**

Present: Sh. Pramod Kumar, Ld. Addl. PP for the State.  
Ms. Shivani Sharma, Ld. counsel for applicant.

Vide this order bail application filed on behalf of accused Kenneth Unadike @Ken shall be disposed of.

The grounds on which bail has been prayed are as follows:-

1. Non compliance of Section 50 of Cr.P.C regarding failure of the IO to inform the accused regarding grounds of arrest in writing .
2. Non compliance of Section 52 of NDPS Act.
3. No videography or photography done of the search and seizure procedure.
4. Non joining of independent witnesses.

The most important ground on which bail has been prayed for is the first ground mentioned herein. It is stated that in view of the recent judgment of the Hon'ble Supreme Court of India and Hon'ble Delhi High Court, It is now the law that accused has to be informed about his grounds of arrest in writing as per the constitutional mandate mentioned in Article 22 of the Constitution of India. It is further submitted that it is obvious from the arrest memo of the accused that the grounds of arrest are not mentioned therein and no document on the file/chargesheet suggests that the accused was informed about his grounds of arrest in writing. It is further submitted

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that in the arrest memo, reasons of arrest have been mentioned but it is silent about the grounds of arrest which are mandatorily required to be informed to the accused in writing in order to allow him to prepare his defence/challenge it.

Ld. Addl. PP for the State has opposed the bail application on the basis of reply filed by the IO stating that the grounds of arrest were firstly informed to the accused in written when he was given notice u/s 50 NDPS Act to which he had replied that he did not want his search to be carried before any Gazetted Officer or Magistrate as he was carrying Amphetamine drugs and secondly he was also informed that he was being arrested as there was recovery of commercial quantity of Amphetamine from him. It is further submitted that in the arrest memo of the accused his reasons for arrest have also been mentioned. It is submitted that in view of the statutory bar of Section 37 NDPS Act, the application of the accused for grant of bail should be dismissed.

Submissions Considered.

On this aspect, from Pankaj Bansal Vs. Union of India (2024) 7 SCC S76 and Prabir Purkayasta Vs. State (NCT of Delhi) 2024 8 SCC 254 onwards, it has been repeatedly held by Hon'ble Supreme Court that non compliance of section 50 Cr.PC and article 22 (1) renders the arrest illegal. Recently, in Vihan Kumar Vs. State of Haryana & Anr. 2025 INSC 162, Hon'ble Supreme Court reiterated the law again and held that arrest in violation of article 22 (1) is illegal and laid that:

Therefore, we conclude:

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

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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.

c) When arrested accused alleges non compliance with the requirements of Article 22(1), the burden will always be on the Officer/Agency to Investigating 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

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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.

Therefore, for violation of Article 22(1) Constitution of India and Section 52 (1) NDPS Act, the application for bail is allowed. **Applicant/accused is admitted to bail on furnishing of personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount subject to the following conditions:**

1. That the applicant/accused shall inform the court before leaving jurisdiction of Delhi/NCR.
2. That in case of change of his residential address, he shall intimate the court about the same.
3. That the applicant shall appear before court on each and every date.
4. The applicant shall not misuse the liberty granted by the court.

**Application stands disposed of accordingly.**

Copy of the order be given dasti.

No observations are made on the merits of the case.

**(Bhavna Kalia)**

Spl. Judge (NDPS)-01/Dwarka Courts/SW  
New Delhi/06.03.2025