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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-16156-2025 (O&M)

Date of decision: 12.05.2025

Ashok Kumar Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate and
Mr. Akhil Godara, Advocate for the petitioner.

Mr. T.P.S. Walia, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') in FIR No.22 dated
21.01.2025, registered under Sections 309(4) and 191(3) read with Section
190 of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and Sections 21-C,
25, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act,
1985 (for short 'NDPS Act') at Police Station Anti Narcotics Task Force
(ANTF), Mohali, with the following prayer(s):-

- (i) to declare the arrest of petitioner as illegal, *non est* and
arbitrary;
- (ii) to set aside the impugned remand order dated 19.03.2025
(P-3) passed by learned Judicial Magistrate First Class,
Amritsar (for short 'JMFC'), whereby petitioner was
remanded to police custody for three days;



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- (iii) to release petitioner from custody forthwith and also to preserve the entire record, including the file notings and case diaries of present case pertaining to FIR No. 22 dated 21.01.2025 (*supra*); and
- (iv) to direct interim release of petitioner during pendency of present petition.

2. Allegations are that drug money of 20,000 Euro, 10,000 British Pound and 10,020 Canadian Dollars were recovered from the residence of petitioner situated at Subhash Nagar, Phagwara. Also alleged that an amount of Rs.13,30,000/-, one DVR and Currency Counting Machine were recovered from Sharma Forex Money Changer, Phagwara, which is run by the petitioner.

3. CONTENTIONS

ON BEHALF OF THE PETITIONER

3.1 Learned Senior counsel contends that petitioner has been falsely implicated in the present case; he has not been named in the present FIR; nor his name surfaced on the basis of disclosure made by any co-accused.

3.2 Again contends that no “grounds of arrest” were furnished to the petitioner, which is mandatory; hence his arrest is *per se* illegal.

3.3 Further contends that even after arrest of petitioner, due procedure of law was not followed by the Investigating Agency, as none of his family members had been informed regarding alleged arrest.

3.4 Also contends that there is no incriminating material available with the Investigating Agency against petitioner; hence his arrest cannot be justified by any stretch of imagination.

3.5 Still further contends that premises of petitioner at Phagwara was locked; but the police team broke open the lock in the absence of



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petitioner and conducted alleged search without following mandatory procedure prescribed under Section 165 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') (now 185 BNSS).

3.6 Again contends that even seizure of alleged drug money and other articles by the police party was illegal being conducted *de hors* the provisions of Section 185 BNSS.

3.7 Lastly contends that false and frivolous case has been implanted upon the petitioner by police, just to malign his reputation in the society and to extort money; hence petition deserves to be allowed.

3.8 In support of above contentions, learned Senior counsel relied upon following judicial pronouncements:-

**(i) *Pankaj Bansal Versus Union of India and others,*
2023 SC Online SC 1244;**

**(ii) *Prabir Purkayastha v. State (NCT of Delhi) 2024 SCC
Online SC 934; and***

**(iii) *Vihaan Kumar v. State of Haryana & another, 2025 SCC
Online SC 269.***

ON BEHALF OF STATE

4. *Per contra*, learned State counsel vehemently opposed the prayer of petitioner, while submitting that he was arrested on the basis of secret information and in pursuance thereof, recovery of drug money to the tune of Rs.13,30,000/-, one DVR and currency counting machine was effected from the premises of petitioner at Phagwara i.e. Sharma Forex Money Changer.

4.1 Further submits that on 18.03.2025 at 12.30 p.m., house of petitioner was searched at Subhash Nagar, Phagwara, leading to recovery of drug money of 20,000 Euro, 10,000 British Pound and 10,020 Canadian Dollars without any valid documents in this regard.



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4.2 Also submits that petitioner is member of a cartel along with other co-accused, who are selling contraband; receiving huge drug money and these type of persons have ruined the State.

4.3 Still further submits that “grounds of arrest” were duly furnished to the petitioner well in time and as such, his arrest is fully justified.

4.4 Also submits that there is sufficient incriminating material available against the petitioner; hence, *prima facie*, his complicity is well apparent.

4.5 Lastly submitted that even if, there are some minor lapses or discrepancies during investigation, the same shall not vitiate the arrest in view of the substantial compliance by the Investigating Officer.

5. Heard both sides and perused the paper-book.

6. FIR No. 22 dated 21.01.2025 (*supra*) was registered on the basis of statement made by SI-Raj Kumar and the allegations are recapitulated as under:-

“Today I, SI was present in the office of Anti Narcotics Task Force, Border Range, Amritsar. At about 12.00 noon, LR/SI Kashmir Singh No. 1684/ASR-C alongwith his informer came to me in my office and the informer informed that Harjinder Singh alias Ajay son of Sukhdev Singh, resident of H.No.2919, street No.01, Tandura Wala Chowk, Ram Talai, Amritsar, whose appearance is aged about 28-29 years, height about 5'-7/8", complexion wheatish, Muslim fashioned and Harmanjit Singh alias Harry son of Sukhwinder Singh, resident of H.No. 1819, street No.07, Guru Nanak Colony, Tarn Taran Road, Amritsar, whose appearance is aged about 23-24 years, height 5'-6/7", Muslim fashioned, complexion wheatish in connivance with each other are doing the smuggling of heroin at large scale. Today also,



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they are out on their Activa No.PB-02-DZ-6292, colour brown, for supplying the heroin in huge quantity. They have to give the supply of heroin to some customer towards Dhingra Complex, Amritsar. If supervision is made secretly towards Dhingra Complex, Amritsar by the police, then Harjinder Singh alias Ajay and Harmanjit Singh alias Harry can be nabbed with huge quantity of heroin and drug money. The above information being true, concrete and believable, the senior officers were informed.”

6 (i) Above mentioned **(1)** Harjinder Singh @ Ajay and **(2)** Harmanjeet Singh @ Harry were arrested on 22.01.2025 and alleged recovery of 263 grams heroin alongwith Rs. 5,60,000/- (drug money) was effected from Scooter (Activa), on which they were travelling.

6 (ii) During investigation, on the basis of disclosure made by above accused, four other persons were nominated in this case and which are as under:-

- 1) Harminder Singh @ Harry;
- 2) Tanush Setia;
- 3) Saurav Mahajan; and
- 4) Harbhej Singh @ Bheja.

6 (iii) Above Tanush Setia was arrested on 22.01.2025 and during investigation, alleged drug money to the tune of Rs. 23,00,000/- was recovered from him.

6 (iv) On the same day, Harminder Singh @ Harry and Saurav Mahajan were arrested and alleged recovery of Rs. 24,50,000/- alongwith currency counting machine, one Motorcycle Make 'Bullet' and a car was effected from them.

6 (v) On 23.01.2025, above Harminder Singh @ Harry nominated two other persons i.e. **(1)** Vinod Kumar @ Nona and **(2)** Harish Kumar @



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Hari.

6 (vi) On 24.01.2025, above said Harmanjeet Singh @ Harry nominated two other persons viz:

1) Sagar from whom Activa Scooter and Rs.5,00,000/- were allegedly recovered;

2) Lovedeep Singh @ Lala from whom 160 grams heroin is alleged to have been recovered.

6 (vii) On 17.03.2025, after receipt of some other secret information, one Sunil @ Amit Bansal as well as present petitioner-Ashok Kumar Sharma were nominated and on 18.03.2025, alleged recovery of 20,000 Euro, 10,000 British Pound and 10,020 Canadian Dollars was effected from his residence at Phagwara.

6 (viii) On 18.03.2025, petitioner allegedly nominated five other persons i.e. (1) Vipin Sidana, (2) Rajesh Kumar @ Bobby, (3) Manoj Sharma @ Goga (brother of petitioner), (4) Rajnish @ Bunty (another brother of petitioner) and (5) Sahil Preet.

6 (ix) In this way, as on today, there are total 17 accused arraigned in the present case.

7. During the course of hearing, learned State counsel duly acknowledged that name of petitioner was not mentioned in the FIR; nor it surfaced on disclosure made by any co-accused; rather he has been nominated on the basis of some secret information.

8. Police papers have been examined carefully and upon perusal of the same, it is nowhere discernible that “grounds of arrest” were supplied to the petitioner; rather it is only the arrest memo, which was given to him.

9. Hon'ble the Supreme Court in ***Pankaj Bansal's case*** (*supra*) while considering the provisions of Section 19(1) of Prevention of Money



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Laundrying Act, 2002 held that it would be necessary, henceforth, that a copy of written “grounds of arrest” be furnished to the arrested person as a matter of course and without exception and para No. 45, being relevant, is extracted here-in-below:-

“45. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi [Moin Akhtar Qureshi v. Union of India, 2017 SCC OnLine Del 12108] and the Bombay High Court in Chhagan Chandrakant Bhujbal [Chhagan Chandrakant Bhujbal v. Union of India, 2016 SCC Online Bom 9938: (2017) 1 AIR Bom R (Cri) 929], which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA.”

10. Again while considering the point to supply “grounds of arrest”, to the arrestee, Hon'ble the Supreme Court in **Prabir Purkayastha's case** (*supra*) held that the “grounds of arrest” have to be conveyed to the accused in writing expeditiously and the practice of filling non-specific reasons in



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“arrest memo form” without recording “grounds of arrest” was severely criticized by Hon'ble the Supreme Court in the following words:-

“.... 30. Furthermore, 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.

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37. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the "reasons for arrest" which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the "grounds of arrest" would be personal in nature and specific to the person arrested.

"9. Reason for arrest (a) Prevent the accused person from committing any further offence, (b) For proper investigation of the offence, (c) To prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner, (d) To prevent such person from making 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 the police officer, (e) As unless such person is arrested, his presence in the court whenever required cannot be ensured."

38. The remand order dated 4-10-2023 (reproduced supra) records that the copy of the remand application had been



sent to the learned advocate engaged by the appellant accused through WhatsApp. A bare perusal of the remand order is enough to satisfy us that these two lines were subsequently inserted, moreover, these two lines give a clear indication of subsequent insertion. It is quite possible that the learned Remand Judge may have heard the learned counsel for the appellant after signing the remand order and thus, these lines were inserted later without intending any harm or malintention but the fact remains that the order of remand had already been passed at 6.00 a.m. and hence, the subsequent opportunity of hearing, if any, provided to the counsel was nothing but an exercise in futility.

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43. We do not feel persuaded to examine these aspects at this stage because the same would require entering into the merits of the case. This would be within the domain of the court examining the matter after the filing of the chargesheet. The core issue in this appeal is regarding the illegality of the process whereby the appellant was arrested and remanded to police custody which does not require examining the merits of the case.

.....

45. We are of the firm opinion that 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.

46. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the Investigating Officer.

47. We have carefully perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo



is simply a pro forma indicating the formal "reasons" for which the accused was being arrested.

48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase "reasons for arrest" and "grounds of arrest". The "reasons for arrest" as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person from making 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 the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the "grounds of arrest" would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the "grounds of arrest" would invariably be personal to the accused and cannot be equated with the "reasons of arrest" which are general in nature."

11. Recently, Hon'ble the Supreme Court has again reiterated the legal position regarding supply of "ground of arrest" in ***Vihaan Kumar's case*** (*supra*) and the relevant para No. 14 is reproduced as under:-

"14. 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.”

12. The above proposition of law has been duly followed by the Co-ordinate Bench of this Court in **CRM-M-62038-2024 titled as 'Ravinder @ Tanni @ Taran Vs. State of Haryana'** and Para No.13 of the above, being relevant, is recapitulated here-as-under:-

*“Thus, the proposition of law that emerges is that the grounds of arrest must be supplied in writing to an accused but the law as laid down in **Pankaj Bansal** (supra) is to supply is prospectively after 03.10.2023 i.e. the date of which the judgment in **Pankaj Bansal** (supra) was pronounced.”*

13. In view of the above, there is force in the argument raised by learned Senior counsel that it was imperative for the Investigating Agency to



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supply the “grounds of arrest” to the petitioner, but they miserably failed to do so and thus, negated the mandatory provisions of Section 50 of Cr.P.C. (Section 47 of BNSS) as well as breached the safeguards provided under Article 22 of the Constitution. As such, the initial arrest of the petitioner was wholly illegal; hence unsustainable in law. Even the observations recorded by learned JMIC to the effect that “grounds of arrest” were supplied to the accused, are factually incorrect and contrary to records; thus, liable to be set aside and so ordered.

14. Apart that, there is merit in the contention raised by learned Senior counsel that search and seizure conducted by police party in the premises/residence of petitioner was illegal being in breach of mandatory provisions of Section 185 BNSS (earlier 165 Cr.P.C.).

15. For reference, Section 185 of BNSS [Section 165 of Cr.P.C.] which deals with power of police officer conducting investigation and to search the premises is reproduced as under:-

“185. Search by police officer.-(1) *Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief in the case-diary and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.*

2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person:



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Provided that the search conducted under this section shall be recorded through audio-video electronic means preferably by mobile phone.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Sanhita as to search-warrants and the general provisions as to searches contained in section 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith, but not later than forty-eight hours, be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.”

A bare perusal of the above extract clearly reveals that recording of reasons is an essential step for conducting search of the premises and failure to do so, would negate the mandate of Section 185 BNSS and will render the search illegal.

16. In the present case, premises of petitioner at Phagwara was found locked; but the police party broke open the lock. Here, it is noteworthy that from perusal of entire police file, it is nowhere discernible that any reason(s) was/were recorded for breaking lock of the premises or that intimation in terms of Section 185(5) of BNSS was sent to the concerned Magistrate; thus, there is complete negation of mandatory provisions envisaged



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under Section 185 BNSS. In such a scenario, the course adopted by Investigating Officer is wholly illegal and reference in this regard can be made to ***State of Rajasthan Vs. Rehman, AIR 1960 SC 210***, wherein, it was held that provisions of Section 165 Code of Criminal Procedure, 1898 (which is analogous to 165 of Cr.P.C. and 185 of BNSS) must be followed in the matter of searches, in true letter and spirit; and failure to do so will make the search illegal. The relevant paragraph Nos. 7, 8 & 9 of the above judgment are recapitulated as under:-

“7. Now we shall look at the provisions of the Criminal Procedure Code to ascertain which of its provisions regulating the mode of search are appropriate to the power conferred on the Deputy Superintendent under Rule 201 of the Rules. In the Criminal Procedure Code there are four groups of sections regulating the searches authorised under it. Sections 47, 48, 51 and 52 appear in Chapter V of the Code which provides for the arrest, escape and retaking of persons. Section 47 provides for the search of a place entered by persons sought to be arrested; Section 48 for procedure where ingress is not obtainable; and Sections 51 and 52 for the search of the arrested persons. The second group consists of Sections 100, 101, 102 and 103 of Chapter VII of the Code. Section 100 deals with the search for persons wrongfully confined, and the other sections are general provisions relating to search warrants, duties of persons in charge of closed places and the requisitioning of persons to witness searches. Section 153 forms the third group and it falls under Chapter XIII of the Code which provides for the preventive action of the police. Under Section 153, a police officer can make a search without a warrant for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept within the limits of his station, if he has reason to believe that the weights etc. are false. The fourth group of sections appear in Chapter XIV which provides for searches



by a police officer during the investigation of a cognizable offence. The power of search given under this chapter is incidental to the conduct of investigation the police officer is authorized by law to make. Under Section 165 four conditions are imposed: (i) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making a search, without undue delay; (ii) he should record in writing the grounds of his belief and specify in such writing as far as possible the things for which the search is to be made; (iii) he must conduct the search, if practicable, in person; and (iv) if it is not practicable to make the search himself, he must record in writing the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made. As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. A comparative study of the aforesaid provisions with the provisions of Rule 201 of the Rules indicates that searches made by a police officer during the course of an investigation of a cognizable offence can properly be approximated with the searches to be made by the authorized officer under Rule 201 of the Rules; for, in the former case, the police officer makes a search during the investigation of a cognizable offence and in the latter the authorized officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer under Section 165 of the Code, but no such safeguard need be provided in the case of a search by the excise officer under the Rules. We think that the legislature, by stating in Section 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to



searches, clearly indicated that the appropriate provisions of the Code shall govern searches authorized under the Act and the Rules. We therefore hold that the provisions of Section 165 of the Code must be followed in the matter of searches under Rule 201 of the Rules.

8. There are no merits in the second contention either. The recording of reasons does not confer on the officer jurisdiction to make a search, though it is a necessary condition for making a search. The jurisdiction or the power to make a search is conferred by the statute and not derived from the record of reasons. That apart, Section 18 of the Act in express terms states that searches shall be carried out in accordance with the provisions of the Code of Criminal Procedure. Section 165 of the Code lays down various steps to be followed in making a search. The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure : it would be a search made in contravention of the provisions of the Code.

9. For the reasons mentioned, we hold that the search made by the Deputy Superintendent in the present case in contravention of the provisions of Section 165 of the Code was illegal.”

17. Still further, Constitution Bench of Hon'ble the Supreme Court in ***State of Punjab Vs. Baldev Singh, (1999) 6 SCC 172***, *inter alia*, held that an illicit article seized from person of an accused, during search conducted in violation of the safeguards provided, cannot by itself be used as admissible evidence of proof of unlawful possession of the seized articles on the accused. Para No. 57 (7) of ***Baldev Singh's case*** contains the conclusion and which reads as under:-



“57. On the basis of the reasoning and discussion above, the following conclusion arise:

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search.”

18. Although, learned State counsel tried to justify the action of police party while submitting that there is sufficient compliance while conducting search and seizure; but the same is not acceptable for the reason that when a safeguard or right is provided to an accused, compliance thereof should be made strictly in accordance with law. Thus, the plea of “substantial compliance” raised by learned State counsel is hereby rejected. To strengthen the above conclusion, reference in this regard can be made to observations of Hon'ble the Supreme Court in ***State of Delhi Versus Ram Avtar @ Rama (2011) 12 SCC 207*** which read as under:-

“27. 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. Non-compliance 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.”

19. In view of the above, it is duly established that search conducted by Investigating Officer and seizure of alleged drug money/articles made from the premises/residence of petitioner were completely illegal, while adopting the course, unknown to law.

20. Learned State counsel also made an attempt to justify the arrest while submitting that once the initial arrest has been sanctified by the judicial order(s), petitioner cannot challenge the legality of the arrest later on.

However, the contention is liable to be rejected in view of the old legal maxim, i.e. “*Sublato Fundamento Cadit Opus*”; which means that once foundation is removed, the superstructure will also fall and reference in this regard be made to ***Chairman-cum-Managing Director, Coal India Limited and others Versus Ananta Saha and others (2011) 5 SCC 142***, paragraph Nos. 32 & 33 thereof read as under:-

“32. *It is a settled legal proposition that if initial action*



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is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim sublato fundamento cadit opus is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. *In Badrinath vs. Govt. of T.N this Court observed that once the basis of a proceedings is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.”*

21. As such, impugned order dated 19.03.2025 (P-1) passed by learned JMIC shall not validate the arrest of the petitioner and moreover, same is held to be illegal by this Court in para No.13 of this order (*supra*).

Consequently, arrest of petitioner in FIR No.22 dated 21.01.2025, registered under Sections 309(4) and 191(3) read with Section 190 of BNS and Sections 21-C, 25, 27-A and 29 of NDPS Act at Police Station ANTF, Mohali is held to be illegal and liable to be set aside being *non est* in the eyes of law.

22. For the conclusion drawn on both counts i.e non-supply of “grounds of arrest” as well as the fact that search and seizure were conducted in violation of mandatory provisions of Section 185 of BNSS (Section 165 Cr.P.C.), there is no option, except to allow the petition.

23. Ordered accordingly.

24. As a result of the above, arrest of petitioner is held to be illegal; remand order dated 19.03.2025 (P-1) passed by learned JMIC against the petitioner is hereby quashed and set aside, being unsustainable in law.

25. Hence, the petitioner be released from custody in FIR No. 22



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dated 21.01.2025 (*supra*), if not required in any other case.

26. Needless to say that observations, made here-in-above, be not construed as an expression of opinion on merits of FIR No. 22 (*supra*) in any manner.

27. A copy of this order be sent to learned JMIC and Superintendent, Central Jail, Amritsar for information and compliance.

Pending application(s), if any, shall also stand disposed off.

12.05.2025
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No