



2026:DHC:8338-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 25.09.2026

CNR No. DLHC010464212026

+ **W.P. (CRL.) 3031/2026**
MANOJ CHAUDHARY

.....Petitioner

Through: Mr.Kartik Kumar, Mr.Trilok
Chand and Mr.Gaurav Sharma,
Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr.Amol Sinha, ASC (Crl.)
with Mr.Kshitiz Garg, Adv.
along with Insp. Sangita Tiwari,
DIU North East.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE ARUN BHARDWAJ

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 30303/2026 (Exemption)

1. Allowed, subject to all just exceptions.

W.P. (CRL.) 3031/2026 & CRL.M.A.30302/2026

2. This Writ Petition has been listed before us on being mentioned before Hon'ble the Chief Justice.

3. The present Writ Petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking issuance of a Writ in the nature of Habeas Corpus, directing the respondent to release the



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petitioner, who is stated to be in illegal custody in connection with FIR No. 493/2026, Police Station–New Usmanpur, North-East Delhi.

4. It is stated in the petition that on registration of the above FIR, the petitioner was illegally detained on 20.07.2026 and was produced before the Court of the learned Judicial Magistrate First Class (in short, ‘JMFC’), Karkardooma Courts, Delhi, only on 23.07.2026.

5. By the Order dated 23.07.2026, the learned JMFC-04 observed that the grounds of arrest supplied to the petitioner did not bear any date or time as to when it was handed over to the petitioner or if it was handed over two hours prior to the production of the petitioner, which is the mandate in ***Mihir Rajesh Shah v. State of Maharashtra***, (2026) 1 SCC 500. There were also no details of the incident, for which the petitioner had been arrested, in the grounds of arrest.

6. In view of the above observations, the appellant was directed to be released on furnishing a bail bond in the sum of Rs.10,000/- with one surety of the like amount.

7. The petitioner was, however, re-arrested on 21.08.2026, without following the due procedure as prescribed in ***Mihir Rajesh Shah*** (supra).

8. The appellant challenged his arrest before the Court of the learned Additional Sessions Judge (SC POCSO)-01, North-East District, Karkardooma Court, however, the same was rejected by the learned Court *vide* Order dated 22.08.2026.

9. By another order of the same date, the petitioner was remanded to police custody for two days.



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10. The learned counsel for the petitioner submits that as the re-arrest of the petitioner was without following the due procedure prescribed in ***Mihir Rajesh Shah*** (supra), the arrest was illegal and in violation of the fundamental rights of the petitioner under Article 22 of the Constitution of India and the petitioner is liable to be released forthwith.

11. Issue notice.

12. Notice is accepted by Mr. Amol Sinha, the learned Additional Standing Counsel for the State.

13. The learned ASC for the State, on instructions, affirms that the procedure prescribed in ***Mihir Rajesh Shah*** (supra) and recently reiterated by the Supreme Court in ***Jaskaran Jeet Singh Deol v. State of Punjab***, 2026 INSC 1022, inasmuch as it prescribes that before making a re-arrest, the concerned Investigating Officer must forward a report to and seek permission of the superior authority as also file an application before the concerned Court seeking its permission to re-arrest the accused and stating the necessity for the same, has not been followed in the present case.

14. In ***Jaskaran Jeet Singh Deol*** (supra), the Supreme Court reiterated the procedure to be followed by the Investigating Officer if it wishes to re-arrest an accused who is released from the custody for breach of Article 22 of the Constitution of India, by observing as under:

“23. Having discussed the judgments, it would be apposite to sum up the core principles qua Article 22(1). The grounds of arrest must be in writing and in a language



which is understood by the accused. A copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception. An accused has a fundamental and statutory right to be informed about the grounds of his arrest in writing and a copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception at the earliest. Any attempt to encroach upon the fundamental rights guaranteed under Article 22(1) of the Constitution has to be frowned upon by the courts and dealt with strictly. It would vitiate the process of arrest and remand. Such a fundamental right being sacrosanct, cannot be breached under any situation. Any breach or non-compliance would entail immediate release of the arrested person because such arrest is unconstitutional. We cannot tinker with the most important safeguards provided under Article 22. Subsequent filing of chargesheet and order of cognizance will not validate such an arrest. Article 22(1) applies across the spectrum including offences under the IPC or under special enactments. It is not statute specific. It is not a mere formality or a matter of procedure. It is a mandatory binding constitutional safeguard. When there is violation of the Constitution, question of prejudice or demonstrable prejudice does not arise. The safeguards adumbrated in Article 22(1) are not mere procedural safeguards; these are fundamental principles which are required to be followed in the event liberty of a person is sought to be curtailed. Therefore, it is not correct at all to say that procedural lapses in furnishing grounds of arrest do not ipso facto render custody illegal or entitles the accused to bail. When an accused is released for violation of his fundamental rights under Article 22 (1), he is not enlarged on bail. He is released from illegal and unconstitutional detention.



24. While we are bound by the ratio laid down in *Mihir Rajesh Shah* with the conclusions summarized in paragraph 66 of the said judgment and endorse the course of action declared in paragraph 65 thereof, we would like to further stress upon and strengthen the safeguards introduced by way of the said judgment when it comes to re-arrest of an accused who is released from custody for breach of Article 22(1). If upon release of such an accused, the investigating agency is still of the opinion that for furthering the course of investigation it is necessary to have custodial interrogation of the accused, then as directed in paragraph 65 of *Mihir Rajesh Shah*, the investigating agency has to file an application before the concerned Magistrate for custody mentioning therein the reasons for re-arrest of the accused and the necessity for the same. The application should also contain the explanation for non-supply of the grounds of arrest to the accused at the first instance. However, this application can only be moved after furnishing the grounds of arrest to the accused. To rule out any foul play or collusion, such an application must have the endorsement of the immediate superior authority. This is because the immediate superior authority should know that the concerned officer has committed an unbecoming act of violating a constitutional provision for which necessary remedial steps will have to be taken. On receipt of such application with the endorsement, the concerned Magistrate shall decide the same expeditiously and as directed in *Mihir Rajesh Shah* preferably within a week of its submission by adhering to the principles of natural justice.

25. What is sought to be highlighted is that once there is a breach of Article 22(1) of the Constitution, the power to re-arrest the



accused must not be left to the discretion of the very same authority who had violated the said provision of the Constitution. It must have the judicial imprimatur. It is only when the Magistrate is satisfied that for bona fide reasons the grounds of arrest could not be furnished to the arrestee at the first instance but furnished subsequent to his release and on further satisfaction that the accused needs to be re-arrested, he may pass an order permitting the investigating agency to re-arrest.

25.1. On the administrative side, the superior authority when presented with the application seeking his endorsement for custody of the accused who has been released for violation of Article 22(1) shall hand over the investigation of the case to another officer, further directing departmental enquiry for such a serious lapse. If the enquiry culminates in adverse finding against the erring police officer(s), it would entail departmental action with entry in the service book of such officer(s).

26. Let us now turn our attention to clause (2) of Article 22 and the consequences of breach thereof.

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36. Similar to what we have held and directed in paragraphs 24 to 25.1 above, the same procedure has to be followed when there is a breach of clause (2) of Article 22 of the Constitution of India and if the investigating agency still wants custody of the accused after his release for such constitutional violation. Additionally, depending upon the facts and circumstances of the case, the High Court may direct payment of compensation as part of the public law remedy in a case of violation of Article 22(2) of the Constitution, with the liberty to the accused to avail his remedy under the private civil law.



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38. For all the aforesaid reasons, we set aside and quash the impugned order of the High Court dated 29.05.2026 as well as the impugned observations of the learned Magistrate dated 18.05.2026. We hold and direct that in the event the respondents are of the view that custodial interrogation of the appellant isnecessary, they will have to follow the mandate of Mihir Rajesh Shah read with paragraphs 24 to 25.1 of this judgment as well as the mandate of paragraph 36 supra. We, however, clarify that we have not expressed any opinion on the merit of the accusation against the appellant.”

15. In view of the fact that the above procedure prescribed in **Mihir Rajesh Shah** (supra) and which has further been recently affirmed in **Jaskaran Jeet Singh Deol** (supra) was not followed by the respondent before re-arresting the petitioner and he was re-arrested only on the fact that offences under the Protection of Children from Sexual Offences Act, 2012 had been further added in the FIR against him, the re-arrest of the petitioner cannot be justified and is found to be illegal and in violation of his fundamental rights.

16. The petitioner is, therefore, directed to be forthwith released from the custody on the same terms and conditions as were stipulated in the Order dated 23.07.2026 passed by the learned JMFC-04, Karkardooma Courts, Delhi.

17. The petition is disposed of in the above terms. The pending application also stands disposed of as infructuous.

18. It is made clear that we have not made any observations on the



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merits of the case of the prosecution alleged against the petitioner.

19. *Dasti*.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

SEPTEMBER 25, 2026/rv/pb