

**HIGH COURT OF TRIPURA  
AGARTALA**

**B.A. No.83 of 2025**

**Sri Binod Sahni**

S/O Godo Sahni

Of Jyoti Vihar Meerachak,

Sabour Road Zero Mile, Babupur, Bhagalpur,

Bihar-813210

---- Applicant on behalf of accused persons-in-custody

**1. Smti. Rina Devi,**

W/O Vinod Sahani

Of Jyoti Vihar Meerachak,

Sabour Road Zero Mile, Babupur, Bhagalpur,

Bihar-813210

**2. Smti. Rinku Devi**

W/O Sri Jobon Singh

Of Mohanpur, Goughatta,

P.O-Mohanpur, P.S.-Noughachia,

District-Bhagalpur, State-Bihar.

**3. Laxmi Devi**

W/O Sri Sita Prasad of Naya Godam

P.S.-Gaya Sadar, District-Gaya,

State-Bihar

**4. Smt. Gita Devi**

W/O Sri Mouli Mandal alias Bhanu

Of Kharti, P.O-Amour, P.S.-Godda,

District-Godda, State-Jharkhand.

---- Accused persons-in-custody

Versus

**The State of Tripura**

----Respondent(s)

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For Applicant(s) : Ms. Megha Sarkar, Adv.

For Respondent(s) : Mr. Raju Datta, P.P.

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**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Order**

**26/09/2025**

This bail application under Section 483 of BNSS, 2023 is filed by the applicant for granting bail to the accused persons in custody namely Smt. Rina Devi, Smti Rinku Devi, Laxmi Devi and Smti. Gita Devi in connection with Agartala GRPS case No.59 of 2025 for the offence punishable under Section 20(b)(ii)(C)/29 of NDPS Act.

Heard Learned Counsel Ms. Megha Sarkar appearing on behalf of the accused persons in custody and also heard Learned P.P. Mr. Raju Datta appearing on behalf of the State-respondent.

As ordered earlier, this Court has received the record from the Learned Trial Court and also, Learned P.P. has produced the Case Diary.

At the time of hearing, Learned Counsel for the accused persons in custody has drawn the attention of the Court referring the contents of the FIR and submitted that the accused persons in custody are not related to each other and they came from different areas of Bihar and Jharkhand for visiting Tripura. On the alleged day they were detained by police at Agartala Railway station and from accused Laxmi Devi, 6kg 235g of dry ganja was recovered, from accused Gita Devi, 6kg 210g dry ganja was recovered, from Rina Devi, 5kg 540g dry ganja was recovered and from another accused Rinku Devi, 5kg 640g dry ganja was recovered. According to Learned Counsel for the accused persons, the police at the time of registering the case, wrongly registered the case under 20(b)(ii)(C)/29 of NDPS in place of registering the case under Section 20(b)(ii)(B) of NDPS Act resulting which the said accused persons being women are lodging in custody for more than 110 days without any justified grounds and by this time they have also acquired the right to be released on default bail but the Learned Special Judge and even the Learned Session Judge under Section 439(1)(a) of Cr.P.C. presently under Section 483(1)(a) of BNSS refused their bail application. Learned Counsel also drawn the attention of the Court that there is no materials for application of Section 29 of NDPS Act but only for the purpose of incarceration of the accused persons in custody those Sections

were incorporated by the O/C of the concerned PS at the time of registration of the case. In support of her contention, reliance was placed upon one citation of Hon'ble Supreme Court of India reported in **2025 SCC OnLine SC 1779** [titled as **Nadeem Ahamed Vs. State of West Bengal** dated 05.08.2025] wherein in para Nos.22 and 23, Hon'ble the Apex Court observed as under:

**"22. Merely because the two accused, walking side-by-side, were apprehended simultaneously, and both were carrying narcotic drug concealed on their body, the said coincidental happening, by itself, would not give rise to an inference that either of them had the knowledge about the contraband being carried by the other. These facts may give rise to a suspicion, but suspicion, however, cannot take place of proof.**

**23. If at all the prosecution intended to bring home the charge of conspiracy, and club the contraband recovered from both the accused persons together, then positive proof to support the charge of conspiracy had to be presented. Such proof could not be substituted with mere inferences or conjectures. Positive and tangible evidence was necessary to establish, beyond reasonable doubt, that both accused persons had prior knowledge of the contraband in the other's possession. However, upon carefully analysing the evidence available on record, we find that, apart from the bald allegation that both the accused were seen walking together and were searched one after the other, not even a semblance of evidence was led by the prosecution, which can substantiate the charge of prior conspiracy between the two accused persons."**

Relying upon the same, Learned Counsel Ms. Sarkar submitted that the accused persons are not known to each other and they had no knowledge of their possession of contraband items by each of them. So, this principle also may be applied in this case.

Finally, Learned Counsel urged for releasing the accused persons on bail in any condition.

On the other hand, Learned P.P. strongly opposed the bail application preferred on behalf of the accused persons and referring the contents of the FIR, Learned P.P. submitted that it is clear that on the alleged day the accused persons came to

Agartala by the same train when they were detained at Agartala Railway Station and there are sufficient materials showing their implication with the alleged offence. So, considering the materials on record, Learned P.P. submitted that at this stage there is no scope to consider the bail application of the accused persons and prayed for rejecting the same. It was further submitted that from the statement of the witnesses it is also clear that the accused persons are involved with the alleged offence and further submitted that the story projected by defence is not true.

I have heard both the sides at length and perused the Case Diary and also the record of the Learned Trial Court.

Now, here in this bail application, we are to see whether the present case ought to have been registered under Section 20(b)(ii)(B) of NDPS Act or not? In support of this contention, Learned Counsel for the accused persons at the time of hearing drawn the attention of the Court the copy of the seizure list and referring the same, she submitted that the police in course of seizure seized the contraband items individually from their possession which attracts the offence punishable under Section 20(b)(ii)(B) of NDPS Act not under Section 20(b)(ii)(C) of NDPS Act but the police has intentionally incorporated the said Section for the purpose of unnecessary and illegal detention of the accused persons in custody for their harassment.

As already stated, from the possession of the accused persons namely Laxmi Devi, Gita Devi, Rina Devi, Rinku Devi, contraband items were recovered. In total 23kg 625g of contraband item was recovered.

Now, let us refer hereinbelow the provision of Section 20 of NDPS Act which provides as under:

**"20. Punishment for contravention in relation to cannabis plant and cannabis.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,--**

**(a) cultivates any cannabis plant; or**

**(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,**

**shall be punishable,-**

**(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and**

**(ii) where such contravention relates to sub-clause (b),-**

**(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;**

**(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;**

**(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:**

**Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]"**

From the aforesaid provision of NDPS Act, it appears that in 20(b), the language is used "produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis", meaning thereby, the said Section deals with possession along with other ingredients. If it is so and if we see the prosecution case i.e. the seizure list and consider that each individual accused persons possess identical contraband items to their bag, in that case, it is highly doubtful as to whether Section 20(b)(ii)(C) of NDPS Act would attract in this case or not. However, the investigation of the case is in progress. Till today no charge-sheet is submitted by I/O. If the I/O could

show in the seizure list that collectively 23kg 625g of dry ganja was found from the possession of the accused persons, in that case, it could have been believed that Section 20(b)(ii)(C) would attract in this case. Even if it is assumed that 23kg 625g of dry ganja was recovered collectively from the accused and if the case is ended in charge-sheet, in that case at the time of framing of charge the concerned Court is to indicate the amount of contraband items recovered from the possession of each one of the accused persons, not total quantum of contraband items recovered. Situated thus, *prima facie* it appears that the case was not properly registered by the O/C of the concerned PS at the time of registration of this case.

Furthermore, Section 29(1) of NDPS Act also provides as under:

**Punishment for abetment and criminal conspiracy.-**

**(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.**

**(2) ...."**

Moreover, from the Case Diary at this stage, I also do not find any materials showing implication of any of the accused persons with the offence punishable under Section 29(1) of NDPS Act. Moreso, there is no other evidence on record that the accused persons are involved in some other case/cases. Situated thus, considering the materials on record, in the considered opinion of this Court, the present accused persons deserve to be released on bail. However, in this regard, in **Prabhas Mandal Vs. State of**

**Kerela**, reported in **2025 Supreme(Online)(KER)4380**, the High Court of Kerela in para Nos.6 to 10 observed as under:

"6. This Court considered the contention of the petitioner and the Public Prosecutor. Admittedly, the contraband seized from the petitioner is intermediate quantity. The offence alleged is under Section 20(b)(ii)B of NDPS Act. In such circumstances, the rigor under Section 37 of the NDPS Act is not applicable. No criminal antecedents are alleged against the petitioner. Petitioner is in custody from 15.11.2024 onwards. Considering the facts and circumstances of the case, I think the petitioner can be released on bail after imposing stringent conditions. But I make it clear that, if the petitioner is involved in similar offence in future, the Investigating Officer is free to file appropriate application before the Jurisdictional Court for cancellation of bail, and if such an application is filed, the Jurisdictional Court is free to pass appropriate orders in accordance with law, even though this order is passed by this Court.

7. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in *Chidambaram. P v Directorate of Enforcement* [2019 (16) SCALE 870], after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

8. Moreover, in *Jalaluddin Khan v. Union of India* [2024 KHC 6431], the Hon'ble Supreme Court observed that:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Art.21 of our Constitution."

(underline supplied)

9. In *Manish Sisodia v. Directorate of Enforcement* [2024 KHC 6426], also the Hon'ble Supreme Court observed that:

"53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled

principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

10. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. Petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall cooperate with the investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

5. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court. The prosecution and the victim are at liberty to approach the jurisdictional court to cancel the bail, if there is any violation of the above conditions."

I have also gone through the aforesaid citation. The accused persons are lodging in custody on and from 02.06.2025. The citation as referred by Learned Counsel for the accused persons in custody is not applicable in toto at this stage which may be taken up for consideration in course of trial. However, considering the materials on record and the period of incarceration of the accused persons in custody, this Court is of the considered view that the rigors of provision of Section 37 of NDPS Act would

not apply against any of the accused persons in custody at this stage.

Accordingly, the accused persons namely, Laxmi Devi, Gita Devi, Rina Devi, Rinku Devi may be released on interim bail till 20.12.2025 of their furnishing bail bond of Rs.50,000/- each with one local surety of like amount to the satisfaction of Learned Special Judge, West Tripura, Agartala with condition that they shall appear before IO once in every fortnight till filing of charge-sheet and they shall not tamper evidence on record nor they shall leave the jurisdiction of the concerned Court without prior permission of the Learned Trial Court, in default, they shall remain in Judicial Custody as before. In case of the violation of terms and conditions, the I/O shall be at liberty to pray for cancellation of their bail.

With this observation, this bail application stands disposed of.

Send down the record of Learned Trial Court along with a copy of this order.

Return back the Case Diary to IO through Learned P.P. along with a copy of this order.

Also, a copy of this order be supplied to Learned Counsel for the accused persons in custody for information and compliance.

**JUDGE**