

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.92 of 2024**

The State of Tripura

Represented by the Secretary to the Government of Tripura,
Home Department, Agartala.

-----Applicant(s)

Versus

Uttam Datta,

S/O Late Swapan Datta

Resident of Shantilla, Kamalnagar,

P.O. & P.S.- Sonamura, District- Sepahijala Tripura.

-----Respondent (s)

For Applicant(s)	:	Mr. Raju Datta, P.P.
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For Respondent(s)	:	None.
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HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

31/01/2025

Learned P.P., Mr. Raju Datta is present for the applicant. Today also no step was taken by the respondent-accused or none appeared on behalf of the said respondent-accused.

The applicant has filed this application under Section 439(2) read with Section 482 of Cr.P.C. for cancellation of the bail granted to the accused by the Learned Special Judge, Sonamura, Sepahijala District in connection with Case No.Spl. (NDPS) 85 of 2023 dated 29.01.2024 under Section 20(a)(i)/20(b)(ii)(c)/25/29 of the NDPS Act.

Taking part in the hearing, Learned P.P. drawn the attention of the Court that by order dated 29.01.2024 the respondent-accused was granted bail by Learned Special Judge, Sonamura, Sepahijala District without assigning any valid

reason. He further drawn the attention of the Court that in this case by order dated 16.11.2023, Learned Special Judge took cognizance of offence under Section 20(a)(i)/20(b)(ii)(c)/25/29 of the NDPS Act and during the stage of trial, after recording evidence of only 01 no. of witness, Learned Special Judge allowed the bail to the accused by the said order. It was further submitted that in this case, I.O. cited 14 nos. of witnesses but only after recording evidence of 01 no. of witness Learned Special Judge granted bail which was totally not warranted by law and beyond the spirit of the provision of Section 37 of the NDPS Act and also contrary to the principles of the law laid down by the Hon'ble Apex Court in series of judgments. Learned P.P. further referred the initial FIR dated 07.07.2023 on the basis of which this case was registered.

Finally, Learned P.P. submitted that since the Learned Special Judge, without assigning any valid reason allowed bail to the respondent-accused, so, the same needs to be interfered with by this Court by setting aside the said order dated 29.01.2024 and in support of his contention Learned P.P. relied upon one citation of the Hon'ble Supreme Court of India in **Narcotics Control Bureau vs. Mohit Aggarwal** dated 19.07.2022 reported in **(2022) 18 SCC 374** wherein in para No.19 Hon'ble the Apex Court has been pleased to observe as under:

"19. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet

has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

Referring the same, Learned P.P. submitted that considering the facts and circumstances of the present case, the order dated 29.01.2024 needs to be cancelled by this Court and the accused be taken into custody.

In this case, as per order of the Court notice was served upon the respondent-accused by Dasti service and it appears that notice was served upon the respondent-accused on 16.01.2025, but inspite of that neither the respondent-accused appeared nor he engaged any counsel to conduct his defence. In this case, the prosecution was set into motion on the basis of an FIR laid by Inspector Subhankar Debbarma on 07.07.2023 to O/C Sonamura P.S. alleging interalia that on 07.07.2023 on the basis of secret information, he along with other staff conducted raid to the residence of the respondent-accused, Uttam Datta at Anandanagar, Kamalnagar, Ward No.05, Shanti Tilla, P.S.- Sonamura, Sepahijala and in course of search they recovered 03(three) nos. deep blue colour plastic drum with airtight lid containing suspected to be dry ganja (cannabis) after digging out the earth which were marked as "A", "B" and "C" and after measurement, it was found that 129 kgs of dry ganja was seized and accordingly, the case was registered. It was also mentioned in the FIR that in course of search, the accused found to be absconded from his house. However, later on, on 25.09.2023 he was produced under arrest before the Court and he was in custody for a considerable period of time and after that by order dated 29.01.2024 the respondent-accused was

granted bail by the Learned Special Judge, Sonamura, Sepahijala. For the sake of convenience, the relevant portion of the order dated 29.01.2024 delivered by Learned Special Judge, Sonamura, Sepahijala:

29.01.2024:

"Custody accused persons namely Uttam Datta is produced from J/C before the court.

One bail petition is filed for the accused persons by their Ld. Advocate and prayed to release them on bail on any condition.

Ld. Special PP Mr. M. Sen is present.

Today the case was fixed for order.

Heard both sides on the bail petition.

Ld. Special PP Mr. M. Sen raised strong objection to the bail prayer and cited one judgment of our own Hon'ble the High Court(The State of Tripura Vs.. Mahabul Alam) in BA 12 of 2023 citing that due to the rigors of Section 37 of NDPS Act the accused persons should not be released on bail.

I have perused the record and found that though the contrabands involved in this case falls under the purview of commercial quantity, after filing of charge sheet rigors u/s 37 of NDPS Act shall not be tenable during trial.

Hence, the bail prayer is accepted.

Accused persons are allowed to go on bail on furnishing a bail bond of Rs. 100000/- with one surety of like amount on condition that:

i) the accused persons shall not leave the State of Tripura without the prior permission of this court;

ii) the accused persons will remain present before the court in all the vital stage of the trial: and

iii) the accused persons shall not to try to influence the witnesses in any manner. I.d. to J/C till 11.02.2024."

From the said order, it appears that in course of hearing, Learned P.P. of the District Court opposed the bail application and referred one judgment of this High Court in connection with B.A. No.12/2023 (State of Tripura vs. Mahabul Alam & Ors.) But the Learned Special Judge observed that through the contraband involved in the case false under the purview of commercial quantity but after filing of charge-sheet, rigors under Section 37 NDPS Act would not attract and hence, he allowed the bail application of the respondent-accused. This observation is totally irrelevant.

I have also perused another bail application order dated 20.06.2024 passed by a Coordinate Bench of this High Court in connection with B.A. No.30 of 2024 (The State of Tripura vs. Mijanur Rahaman wherein in para Nos.11 to 13 this High Court observed as under:

"11. On careful consideration of the above enunciation of law, I can easily hold that mere filing of charge-sheet is not a ground at all or has no persuasive value to grant bail to an accused of allegedly committing offence under the penal provisions of NDPS Act. The materials available on records do not suggest anything that there are reasonable grounds to believe that the accused is not guilty of committing the alleged offence under Sections 20(b)(ii)(c)/25/29 of the NDPS Act.

12. I have also perused the judgment cited by Mr. Ali, learned counsel for the respondent-accused. In the case of Mohd Muslim @ Hussain vs. State (NCT of Delhi) [Criminal Appeal No.(s) of 2023 arising out of Special Leave Petition (Crl.) No(s) 915 of 2023], the Hon'ble Supreme Court has released the accused on the ground that the trial was delayed for 7 years. This is not the case here.

13. In the light of the above discussion, the instant application for cancellation of bail of the accused stands allowed.

The Order dated 30.01.2024 granting bail to the respondent-accused by the learned Special Judge, Sepahijala District, Sonamura in Special (NDPS) 97 of 2023, stands set-aside and quashed.

The respondent-accused, namely, Mijanur Rahaman, is directed to surrender before the learned Special Judge, Sepahijala District, Sonamura by 11.00 a.m. on 21.06.2024, failing which learned Special Judge, Sepahijala District, Sonamura shall pass necessary direction to ensure arrest of the respondent-accused.

Consequently, the bail bond furnished by the surety for and on behalf of the respondent-accused also stands cancelled.

Registry is directed to furnish a copy of this order to the learned Special Judge, Sepahijala District, Sonamura."

Here in the given case as already stated prosecution till today has adduced only 04 nos. of witnesses before the Learned Trial Court whose evidence has already been recorded. I have also perused the evidence on record and the Case Diary of this case. Also I have perused the evidence on record of the said witnesses adduced by the prosecution and the order dated

29.01.2024 passed by Learned Special Judge, Sonamura, Sepahijala. Further, I have also perused the judgment of the Hon'ble Supreme Court of India referred by the prosecution as discussed above.

After going through the evidence on record and also after perusal of the case record of the Learned Trial Court below, it appears that prior to 29.01.2024 only one witness was produced by the prosecution before the Learned Special Judge, who as the informant of the case and from his evidence, it appears that there was sufficient incriminating evidence against the respondent-accused showing his involvement with the alleged offence. It is not understood to this Court as to how the Learned Special Judge without taking evidence of other material witnesses came to the observation that the rigors of Section 37 would not attract in this case. For the sake of convenience, I would like to refer herein below Section 37 of the NDPS Act which reads as follows:

Section 37 of the NDPS Act:

Offences to be cognizable and non-bailable. --
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 1[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal

Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.].

On bare perusal of the said provision, it is crystal clear that to consider bail of an accused in a case under NDPS Act, the Court must be satisfied that there is reasonable ground to believe that the accused is not guilty of committing the alleged offence and he is not likely to commit any offence while on bail. From the said provision it appears that the Learned Special Judge failed to appreciate the provision of Section 37 of NDPS Act in granting bail to the respondent-accused.

Furthermore, the mere fact of filing charge-sheet and the period of his detention in custody, cannot be a ground for granting relief to an accused under Section 37 of NDPS Act specifically in a case where there is evidence of possession of Narcotic Drugs of "commercial quantity".

Thus, after perusal of the order passed by Learned Special Judge and in view of the principle of law laid down by the Hon'ble Apex Court in the afore noted case and also this High Court, it appears that the Learned Special Judge has committed serious error in granting bail to the respondent-accused in this case where there is allegation of possessing contraband items of commercial quantity.

In view of the above the instant application for cancellation of bail filed by the prosecution stands allowed. The order dated 29.01.2024 delivered by Learned Special Judge, Sonamura, Sepahijala granting bail to the respondent-accused in connection with case No.Spcl. (NDPS) 85 of 2023 stands set aside and cancelled. The respondent-accused although remained absent, is to surrender before the Learned Special Judge,

Sonamura, Sepahijala by 10.02.2025 on or before 11 am failing which the Learned Special Judge shall pass appropriate order to ensure arrest of accused and to commit the accused into custody. The bail bond filed by the accused and his surety accordingly, stands cancelled.

A copy of this order along with the case record be transmitted to Learned Special Judge, Sonamura, Sepahijala immediately and also a copy of this order be communicated to I.O. through Learned P.P.

With this observation, this bail application stands disposed of.

JUDGE



**MOUMITA
DATTA**

Purnita

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