

GAHC010034422025



2025:GAU-AS:9854

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./520/2025

SANJIT DEBBARMA
S/O ARUN DEBBARMA
R/O VILL- ABHICHARANPARA
P.O. MADHUCHOUDHURY
P.S. LEFFUNGA,
DIST. WEST TRIPUR,
STATE-TRIPURA
PIN- 799211.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR S RAHMAN, MS DHANESWARI K,MS. S PHUKAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 31-07-2025

Heard Mr. S. Rahman, the learned counsel for the petitioner. Also heard Mr. P. Borthakur, the learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 483 of BNSS, 2023 praying for grant of bail to the accused/petitioner, who has been arrested in connection with NDPS Case No. 24/2024, arising out of GRPS Case No. 207/2023, under Sections 20(b)(ii)(C)/29 of the NDPS Act, pending before the Court of learned Sessions Judge, Kamrup (M), Guwahati.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Rahman, the learned counsel for the petitioner, that the present accused/petitioner is innocent and nothing has been seized from his conscious possession. However, the present accused/petitioner was arrested on 13.10.2023 and for last 1 (one) year, 9 (nine) months, he has been in custody and one of the accused-persons has been granted bail by this Court. So considering the case of the present petitioner on same footing, his bail prayer may be considered on the ground of parity.

The charge-sheet was filed on 05.02.2024, but till date, the prosecution could examined only 4 (four) witnesses out of 12 (twelve) numbers of listed witnesses and therefore he submitted that considering the period of long incarceration, the petitioner may be enlarged on bail.

5. In that context, Mr. Rahman also relied on following decisions:

- (i) **Shariful Islam @ Sarif Vs. the State of West Bengal [Special Leave to Appeal (Crl.) No. 4173/2022]**
- (ii) **Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh [Special Leave to Appeal (Crl.) No(s). 6690/2022]**
- (iii) **Anjan Nath. Vs. The State of Assam [Special Leave to Appeal (Crl.) No(s). 9860/2023]**
- (iv) **Chitta Biswas @ Subhas Vs. the State of West Bengal [Criminal Appeal No(s). 245/2020 (@ SLP (Crl.) No. 8823/20190]**
- (v) **Nitish Adhikary @ Bapan Vs. the State of Bengal [Special Leave to Appeal (Crl.) No(s). 5769/2022]**
- (vi) **Mohammad Salman Hanif Shaikh Vs. The State of Gujarat [Special Leave to Appeal (Crl.) No(s). 5530/2022]**
- (vii) **Harish Mia @ Harij Mia Vs. The State of Assam [Bail Appln. No. 2475/2023, decided on 30.08.2023]**
- (viii) **Abu Sufian Vs. The State of Assam [Bail Appln. No. 1128/2023, decided on 11.05.2023]**
- (ix) **Bayar Debbarma @ Jakki & Anr. Vs. Union of India [Bail Appln. No. 3548/2023, decided on 01.12.2023]**

- (x) **Sanjay Kumar Shah Vs. Union of India [Bail Appln. No. 3881/2023, decided on 22.01.2024]**
- (xi) **Krishna Biswas Vs. The Union of India [Bail Appln. No. 4605/2023, decided on 01.03.2024]**
- (xii) **Amal Das Vs. The State of Assam [Bail Appln. No. 2750/2023, decided on 18.10.2023]**
- (xiii) **Majinder Singh Vs. The Union of India [Bail Appln. No. 835/2024, decided on 20.04.2024]**
- (xiv) **Bishal Debbarma Vs. Union of India [Bail Appln. No. 600/2024, decided on 19.04.2024]**
- (xv) **Javaid Iqbal @ Javid Iqbal Vs. The Union of India [Bail Appln. No. 538/2024, decided on 17.05.2024]**
- (xvi) **Panchlal Singh Vs. The Union of India [Bail Appln. No. 1258/2024, decided on 04.06.2024]**
- (xvii) **Puja Dutta Vs. Union of India [Puja Dutta Vs. Union of India, decided on 24.04.2024]**
- (xviii) **Amit Kumar Vs. Union of India [Bail Appln. No. 3805/2024, decided on 16.12.2024]**
- (xix) **Anil Yadav Vs. Union of India & Anr.[Bail Appln. No. 434/2024, decided on 03.12.2024].**

6. Mr. Rahman, by filing an additional affidavit, further submitted that the grounds of arrest were not communicated to the present petitioner in the Arrest Memo as well as in the Notice under Section 50 Cr.P.C., corresponding to Section 47 of BNSS, which is mandatorily required and non-compliance of the same is in violation of Articles 21 & 22(1) of the Constitution of India. He further submitted that the accused/petitioner was arrested on 13.10.2023 and was remanded for judicial custody on the same day, but due to non-mentioning of grounds of arrest in the Arrest Memo as well as in the Notice under Section 50 Cr.P.C., the arrest and the remand itself is illegal. He accordingly submitted that all the full particulars of the offence, which is alleged to have been committed by the accused, should be informed to him at the time of his arrest and otherwise it would be against the mandate of the Constitution of India as well as the statutory provisions which would vitiate the arrest itself.

7. In this context also, Mr. Rahman, learned counsel for the petitioner, cited the following decisions:

(i) **Vihaan Kumar Vs. State of Haryana**, reported in **2025 SCC OnLine SC 269**.

(ii) **Prabir Purkayastha Vs. State (NCT of Delhi)**, reported in **(2024) 8 SCC 254**.

8. Mr. Rahman also submitted that though in the case of commercial quantity, the rigor of Section 37 NDPS Act follows, but in cases where there is violation of the constitutional provision as mandated under Articles 21 & 22 of the Constitution of India, the statutory restriction will not affect the power of the Court to grant bail in such circumstances. More so, non-mentioning of grounds

of arrest while issuing the Arrest Memo or Notice under Section 50 Cr.P.C. is itself in violation of Article 22(1) of the Constitution of India and hence, without even going into the detail of the merit of the case, the present petitioner is entitled to bail.

9. Mr. Borthakur, the learned Additional Public Prosecutor, submitted in this regard that during investigation, the I.O. collected sufficient incriminating materials against the present accused/petitioner and 46.895 Kgs of suspected Ganja were seized from the conscious possession of the 3 (three) accused persons, including the present accused/petitioner. He further submitted that the charge has already been framed and 4 (four) numbers of witnesses are also been examined by the prosecution therefore, he submitted that this is not at all a fit case to grant bail to the accused/petitioner only considering the length of detention of the present accused/petitioner. He also submitted that there may not be any written communication for grounds of arrest, but from the materials available in the case record, it is very much evident that the accused was informed about the grounds of arrest orally during investigation and hence, he raised objection in granting bail to the accused/ petitioner.

10. Further Mr. Borthakur submitted that the case is of commercial in nature and hence, rigor of Section 37 NDPS Act will follow wherein the twin condition has to be satisfied that the accused is not guilty of the offence and there has to be a belief that the accused will not repeat or commit the same offence while on bail. But, from the materials available in the Case Record and Case Diary, it cannot be said that the present petitioner is innocent, he has not committed such offence nor there is any probability of committing similar kind of offence if

he is released on bail. Thus, he raised vehement objection and submitted that considering the nature and gravity of the offence, it is not at all a fit case to enlarge the accused/petitioner on bail at this stage.

11. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the annexures filed along with the petition, more particularly, the Arrest Memo and the Notice issued to the present accused/ petitioner under Section 50 Cr.P.C. It is accordingly seen that while issuing the said Notice, though the name and the address of the accused/petitioner along with the case number as well as the Sections under which he was arrested are being mentioned, but admittedly there is no mention about the grounds of arrest in the Notice. Thus, it is the admitted position that the grounds of arrest were not intimated to the accused/petitioner or to his family members at the time of his arrest which is a statutory right of an accused and it is also a constitutional mandate that the person should be intimated regarding the grounds of arrest under which he was taken into custody of police.

12. It is the contention of the petitioner that non-communication of the grounds of arrest is in violation of Section 50 Cr.P.C. rendering the arrest and subsequent remand of the accused/petitioner invalid. The accused/petitioner has the fundamental and statutory right to be informed about the grounds of arrest in writing and copy of such written ground of arrest have to be furnished to the arrested person as a matter of course and without any explanation. Non-supply of written grounds of arrest to the arrested accused/ petitioner would vitiate the arrest even if the case has been charge-sheeted.

13. The Hon'ble Apex Court in the case of **Prabir Purkayastha** (supra), as relied by the learned counsel for the petitioner, has held in paragraph Nos. 19, 21 & 48 of the judgment as under:

“19. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under [Article 22\(1\)](#) of the Constitution of India.

21. The right to be informed about the grounds of arrest flows from [Article 22\(1\)](#) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality 3 (2000) 8 SCC 590 committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

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 tempering with such evidence in any manner; to prevent the arrested person for 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.”

14. Further, in the case of **Vihaan Kumar** (supra), the Hon'ble Apex Court has held 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.”

15. In the instant case also, as discussed above, it is seen that there is no mention of grounds of arrest in the Arrest Memo as well as in the Notice issued to the present accused/petitioner under Section 50 Cr.P.C. and except the name, address and the case numbers, there is no mention about any other particulars of the offence as well as the grounds of arrest. So, from the proviso of Section 50 Cr.P.C., it is seen that there is clear violation of mandate of Article 22(1) of the Constitution of India and in such cases, in spite of the statutory restrictions under Section 37 of the NDPS Act, this Court is of the considered opinion that for the violation of the constitution mandate contained under Article 22(1) of the Constitution of India, the arrest of the petitioner is vitiated and it may be a sufficient ground to consider her bail application in spite of rigor of Section 37 of

the NDPS Act which provides the restriction in granting bail in the cases of commercial quantity under the NDPS Act.

16. More so, the Hon'ble Supreme Court in the case of **Vihaan Kumar** (supra) has also held that even after filing of the charge-sheet, the arrest and the detention will be considered as unconstitutional being violative of Articles 21 & 22(1) of the Constitution of India. The Hon'ble Supreme Court in paragraph No. 16 of the said judgment has held as under:

“16. An attempt was made by learned senior counsel appearing for 1st respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a chargesheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge sheet. Accepting such arguments, with great respect to the learned senior counsel, will amount to completely nullifying [Articles 21](#) and [22\(1\)](#) of the Constitution. Once it is held that arrest is unconstitutional due to violation of [Article 22\(1\)](#), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of [Articles 21](#) and [22\(1\)](#) of the Constitution of India. We cannot tinker with the most important safeguards provided under [Article 22](#).”

17. In view of the entire discussions made above, it is the opinion of this Court that the period of incarceration undergone by the accused/petitioner may not be a good ground for considering his bail application at this stage as the trial has already commenced and 4 (four) numbers of witnesses are also been examined by the prosecution. However, considering the fact that the grounds of arrest were not communicated to the petitioner or mentioned in the Arrest Memo as well as in the Notice issued to the present accused/petitioner under Section 50 Cr.P.C., this Court find it a fit case to extend the privilege of bail to the accused/petitioner.

18. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only with 2 (two) sureties of like amount, provided that one surety has to be a government servant, to the satisfaction of the learned Sessions Judge, Kamrup(M), Guwahati, the accused/petitioner, namely, Sanjit Debbarma, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall appear before the Court of learned Sessions Judge, Kamrup(M), Guwahati, on each and every date to be fixed by the Court;
- (ii) that the petitioner 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 from disclosing such facts to the Court or to any police officer;
- (iii) that the petitioner shall submit his Aadhar Card and PAN Card before the learned Sessions Judge, Kamrup(M), Guwahati; and
- (iv) that the petitioner shall not leave the jurisdiction of the learned Sessions Judge, Kamrup(M), Guwahati, without prior permission.

19. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant