

GAHC010040632025



2025:GAU-AS:8884

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

Case No. : Bail Appln./565/2025

MD ASHIMUDDIN BANIA
S/O GOHER ALI BANIA
R/O VILL-GORAIMARI,P.O. BIJNI
DIST.BONGAIGAON, ASSAM- 783390.

VERSUS

NARCOTIC CONTROL BUREUA
REPRESENTED INTELLIGENT OFFICER, GUWAHATI ZONAL UNIT,
GUWAHATI.

Advocate for the Petitioner : MR. N J DUTTA, IMDADUL ISLAM,M RAHMAN,MR A
BASUMATARY,MR. M M ZAMAN,MR N AHMED

Advocate for the Respondent : SC, NCB,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

30.06.2025

Heard Mr. N. J. Dutta, learned counsel for the petitioner. Also heard Ms. M. Deka, learned counsel appearing on behalf of Mr. S. C. Keyal, learned Standing Counsel, NCB for the 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 NCB Case No. 161/2022, registered under Sections 20(b)(ii)(C)/29 of NDPS Act, 1985 arising out of NCB Crime No. 02/2022 which is pending before the Court of learned Additional Sessions Judge No.2, Kamrup (M), Guwahati.

3. Scanned copy of the TCR as called for, has already been received and I have perused the same.

4. It is submitted by Mr. Dutta, learned counsel for the petitioner, that the present accused/petitioner is innocent and nothing has been seized from his conscious possession. He has been arrested in connection with this case only on the basis of the statement of the co-accused recorded under Section 67 of NDPS Act. However, it is the settled position that the statement of the co-accused or the voluntary statement recorded under Section 67 of the NDPS Act is not admissible at the time of trial or that cannot be the basis for conviction as laid down by the Hon'ble Apex Court in the case of **Tofan Singh Vs. State of Tamil Nadu [(2021) 4 SCC 1]**, wherein it has been held that the statement of the co-accused person recorded under Section 67 NDPS Act is not tenable in the eye of law and it cannot be the basis of the conviction.

5. The petitioner got arrested on 11.01.2022 and since last 3 (three) years and 5 (five) months, he has been in custody. The charge-sheet was filed on 07.07.2022, but till date, the prosecutor could examine only 4 (four) witnesses out of 10 (ten) numbers of listed witnesses and there is no probability of completion of trial within a short period as lots of witnesses are yet to be examined by the prosecution and therefore he submitted that considering the period of long incarceration, the petitioner may be enlarged on bail.

6. In that context, Mr. Dutta also relied on following decisions:

- (i) **Nitesh Adhikary alias Bapan Vs. State of West Bengal [2022 SCC OnLine SC 2068]**
- (ii) **Shariful Islam @ Sharif Vs. State of West Bengal [Order dated 01.08.2022 in SLP CrI. No. 4173/2022]**
- (iii) **Md. Muslim alias Hussain Vs. State (NCT of Delhi), [2023 SCC OnLine SC 352]**
- (iv) **Rabi Prakash Vs. State of Odisha [2023 SCC OnLine SC 1109]**
- (v) **Md. Salman Hanif Shaikh Vs. State of Gujarat [SLA Criminal No. 5530/2022, decided on 22.08.2022]**

7. Mr. Dutta further submitted that the grounds of arrest were also not mentioned in the Notices issued to the present petitioner under Section 50/50A of Cr. P.C. corresponding to Sections 47/48 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 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. In this context also, Mr. Dutta, learned counsel for the petitioner, relied on a decision of Hon'ble Supreme Court passed in the case of **Vihaan Kumar Vs. State of Haryana**, reported in **2025 SCC OnLine SC 269**.

8. Mr. Dutta further relied on another decision of Hon'ble Supreme Court passed in the case of **Directorate of Enforcement Vs. Subhash Sharma**, reported in **(2025) SCC Online SC 240**, wherein it has been held as under:

"Once a court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of the every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution. Therefore, when the arrest is illegal or vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA."

9. Mr. Dutta also raises the ground of parity, stating that the co-accused has already been granted bail in connection with this case.

10. He 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 Notices under Section 50/50A of 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.

11. In this regard, Ms. Deka, learned counsel appearing on behalf of the NCB, has submitted that the ground of parity is not applicable in the present case, as 3,071.16 kgs of suspected Ganja was recovered directly from the accused/petitioner, whereas it was not recovered from the conscious possession of the co-accused. She further submitted that the seizing officer appeared before the Court on two occasions, but due to the absence of the learned defence counsel, he could not be examined. Additionally, she submitted that out of the 10 listed witnesses, only 4 have been examined to date. Therefore, she argued that this is not at all a fit case for granting bail to the accused/petitioner merely on the ground of the length of detention. She 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, she raised objection in granting bail to the accused/ petitioner.

12. She further relied on the decision passed by the Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.**, reported in 2005 (0) Supreme (SC) 104, and specifically emphasized paragraph 17 of the said judgment, which reads as under:

"17. It is trite law that personal liberty cannot be taken away

except in accordance with the proceeding established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorized by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusions that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations, require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situations. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier application being rejected, the Courts can do so."

13. She further submitted relying on the decision rendered by the Hon'ble Supreme Court in SLP (Crl.) Diary No. 22702 of 2020, decided on 10.01.2022, wherein it was held that the ground of parity cannot be considered if the footing of the cases is entirely different. She relied specifically on paragraph 11 of the said judgment.

14. Ms. Kakati further 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 annexure annexed in the petition, 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, she 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.

15. 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 Notices issued to the present accused/petitioner under Section 50/50A of Cr.P.C. It is accordingly seen that while issuing the said the 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 in the Notice as well as the Arrest Memo. 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.

16. It is the contention of the petitioner that non-communication of the grounds of arrest is in violation of Section 50/50A of 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.

17. The Hon'ble Apex Court in the case of **Prabir Purkayastha Vs. State (NCT of Delhi)**, reported in **(2024) 8 SCC 254** (supra), 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."

18. 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."

19. In the instant case also, as discussed above, it is seen that there is no mention of grounds of arrest in the Notices issued to the present accused/petitioner under Section 50/50A of 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 50/50A of 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 his 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.

20. 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.](#)"

21. In the same time, it also cannot be denied that the accused/petitioner is behind the bar for more than 3 (three) years and 5 (five) months from the date of his arrest and till date, the prosecution could examine only 4 (four) witnesses out of 10 (ten) numbers of listed witnesses, though the charge-sheet was filed in the year 2022 and it also cannot be denied that the prosecution may take considerable time for examining the other witnesses.

22. In view of the entire facts and circumstances, as discussed above, viz-a-viz non-mentioning of grounds of arrest in the Arrest Memo as well as in Notice issued to the present accused/petitioner under Section 50/50A of Cr.P.C., and also considering the period of incarceration already undergone by the accused/petitioner, i.e. more than 3 (three) years and 5 (five) months, as well as the considering the view expressed by the Hon'ble Supreme Court in the case laws referred to hereinabove, this Court find it a fit case to extend the privilege of bail to the accused/petitioner.

23. 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 Special Judge, Kamrup (M), Guwahati, the accused/petitioner, namely, **Md. Ashimuddin Bania**, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall appear before the Court of learned Special Judge, Kamrup (M), 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 Special Judge, Kamrup (M); and
- (iv) that the petitioner shall not leave the jurisdiction of the learned Special Judge, Kamrup (M), Guwahati, without prior permission.

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

JUDGE

Comparing Assistant