

**HIGH COURT OF TRIPURA
AGARTALA**

BA No.03 of 2025

The State of Tripura

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

---Appellant(s)

Versus

Jamal Haque,

Son of Mafijul Islam,
Resident of Salpukur,
P.S. Jatrapur, District: Sepahijala Tripura

----Respondent(s)

For Appellant(s)	:	Mr. Raju Datta, P.P.
For Respondent(s)	:	Mr. Rashmi Bhattacharjee, Adv. Mr. Samar Das, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

17/03/2025

This application is filed under Section 439(2) of Cr.P.C. read with Section 482 of Cr.P.C. for cancellation of bail granted to the accused namely Jamal Hoque by Learned Special Judge, Sepahijala District, Sonamura in connection with Case No. Special (NDPS) 87 of 2023 by its order dated 30.01.2024.

Heard Learned P.P. Mr. Raju Datta appearing on behalf of the state-respondent and also heard Ms. R. Bhattacharjee, Learned Counsel along with Mr. Samar Das, Learned counsel appearing on behalf of the accused-respondent.

Taking part in the hearing Learned P.P. drawn the attention of this court that Learned Special Judge by the order dated 30.01.2024 granted bail to the accused without application of proper mind and also beyond the law laid down by the Hon'ble Apex Court. According to Learned P.P. in this case after completion of investigation the I.O. laid chargesheet and accordingly by the said order cognizance of offence punishable under Section 20(b)(ii)(c)/25/29 of NDPS Act was taken and on

that day Learned Special P.P. raised strong objection against the application for bail filed by the respondent-accused. But the Learned Special Judge in considering the bail application came to the observation that the rigors of Section-37 of NDPS Act would not apply in this case and mechanically allowed bail to the accused.

Learned P.P. relied upon the judgment dated 20.06.2024 delivered by a Coordinate Bench of this High Court in connection with Bail Application No.30 of 2024, order dated 31.01.2025 delivered by this High Court in connection with B.A. No.92 of 2024. He also relied upon the observation of the Hon'ble Supreme Court 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 observed 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 3 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. drawn the attention of the court that mere filing of chargesheet cannot be a ground for consideration of bail application in a case under NDPS Act where there is allegation of possessing contraband items of commercial quantity. He also referred the relevant portion of the order dated 20.06.2024 delivered by a Coordinate Bench of this High Court in connection with BA No.30 of 2024 in para No.11 which runs as follows:

"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."

Learned P.P. also drawn the attention of the court that in view of the discussion made in the aforesaid judgment there was no scope on the part of the Learned Special Judge to consider the accused to be released on bail.

Learned P.P. thereafter referred another order dated 31.01.2025 passed by this court in connection with Case No. B.A. No. 92 of 2024 wherein in last three paragraphs this High Court also cancelled the bail granted to the accused and finally urged for allowing the prayer of the prosecution.

On the other hand, Learned Counsel Ms. R. Bhattacharjee along with Mr. S. Das, Learned Counsel appearing for the respondent-accused strongly objected the submission made by Learned P.P. and submitted that in this case the accused was in custody for a considerable long period of time and trial by this time has commenced and prosecution up to this stage has adduced only six numbers of witnesses and considering the materials on record there is no scope to reject the bail granted to the respondent-accused at this stage and furthermore, it was also submitted that even after conclusion of trial there will be no scope for convicting the accused as there is serious non-compliance of the mandatory provisions of law. So after elapsing of a long period the application filed by the State-applicant cannot be accepted and urged for dismissal of this application.

Here in the case at hand the prosecution was set into motion on the basis of an FIR laid by one Inspection Arup Debbarma of Jatrapur P.S. on 26.06.2023 to O.C., Jatrapur P.S., Sepahijala Tripura alleging inter alia that on 25.06.2023 at about 2035 hours

Sri Jitender Singh, Assistant Commandant, C-Coy of 133 Bn. BSF, Salpukur BOP informed to O/C of Jatrapur PS over telephone that they need to conduct raid against NDPS items at Salpukur areas and he requested for providing local police for the same purpose. The matter was entered in Jatrapur PS GD and the OC informed the matter to SDPO Sonamura for seeking permission to conduct joint raid at Salpukur area and accordingly after obtaining permission SDPO Sonamura, SI Tapan Das along with PS staffs and W/C Sima Das left for Salpukur area with BSF personnel on 25.06.2023 after making necessary entries in GD entry book. Thereafter the informant along with other staff conducted raid in the house of Jamal Hoque and on being seen the police personnel said Jamal Hoque tried to abscond but failed. Thereafter they conducted search and in course of search they recovered three numbers of plastic blue colour drum containing 85 kgs dry ganja in present of witnesses. Accordingly the seizure was made and the accused was taken into custody and the FIR was laid to the concerned Police Station. The accused was produced before the Learned Court of Special Judge on 26.06.2023 and thereafter he was released on bail by the order dated 30.01.2024 and challenging that order of bail this application for cancellation of bail is presented before this High Court.

I have heard detailed submission of both the parties and also perused the order dated 30.01.2024 delivered by Learned Special Judge. Admittedly in this case cognizance is already been taken on the ground that the accused possessed contraband items of commercial quantity. I have also seen the aforesaid citation of the Hon'ble Apex Court and the order passed by the Coordinate Bench of this High Court and also by this Court. It appears that upon filing of chargesheet the same cannot divest any right upon the

accused person to be released on bail. Here in the case at hand from the order dated 30.01.2024 it appears that Learned Trial court without assigning any cogent ground came to the observation that since the chargesheet is filed so Section 37 of the NDPS Act would not attract and allowed the accused to go on bail which in my considered view was totally impermissible and not tenable in the eye of law. Because once the chargesheet is submitted within time and there is prima facie allegation of possession of contraband items of commercial quantity there was very least scope on the part of the Learned Special Judge to grant bail to the accused which Learned Special Judge has committed serious error in deciding the matter.

In view of the above, the instant application for cancellation of bail filed by the prosecution stands allowed. The order dated 30.01.2024 delivered by the Learned Special Judge, Sepahijala District, Sonamura in connection with Case No.Special (NDPS) 87 of 2023 stands set aside and cancelled. The respondent-accused is to surrender before the Learned Court of Special Judge on or before 01.04.2025 at 11.00 a.m. failing which the Learned Special Judge shall pass appropriate order to ensure arrest of the accused and to commit the accused to custody. The bail bond executed by the accused and his sureties, if any, stands set aside and cancelled.

With this observation this application stands disposed of.

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

However, before departing my part it appears that our officers who are dealing with NDPS cases needs to be undergo

more training programme regarding granting of bail to the accused persons. So a copy of this order be communicated to the Director, Judicial Academy for arranging time to time training programme of the Special Judges on the topic of NDPS Act. So, a copy of this order be communicated to the Director, Judicial Academy for information and compliance.

JUDGE



**MOUMITA
DATTA**

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