

**HIGH COURT OF TRIPURA
AGARTALA
B.A.No.21 of 2025**

Sultana Parbin,
wife of Md. Rabi Mia,
resident of Couhanpara,
Maheshkhola, Anandanagar,
P.S. Amtalai, District-West Tripura,
Pin-799004

----- Petitioner on behalf of Custody Accused Person

Md. Rabi Mia,
son of Nur Islam,
resident of Chouhanpara,
Maheshkhola, Anandanagar,
P.S. Amtalai, District-West Tripura,
Pin-799004

----- Custody Accused Person

Versus

The State of Tripura
(represented by the Secretary, Home
Department), Government of Tripura, Agartala

-----Respondent(s)

For Applicant(s)	:	Mr. J. Bhattacharjee, Adv. Mr. S. Ghosh, Adv.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

09/04/2025

This bail application under Section 439 of Cr.P.C. is filed for releasing of the custody accused namely Md. Rabi Mia in connection with Khowai P.S. Case No.2022/KHW/078 under Section 20(b)(ii)(C)/25/29 of NDPS Act.

[02] Heard Mr. J. Bhattacharjee, Learned counsel assisted by Mr. S. Ghosh, Learned counsel appearing on behalf of the accused in custody and also heard Mr. R. Saha, Learned Addl. P.P. appearing on behalf of the State-respondent.

[03] Taking part in the hearing, Learned counsel, Mr. J. Bhattacharjee first of all drawn the attention of the Court that this present

accused was the registered owner of the seized vehicle. He sold out his vehicle to one Sahanur Miah who is the purchaser/driver of the said vehicle and said Sahanur Miah got defaulted bail in connection with this case as per order dated 26.02.2024. Learned counsel further submitted that the accused in custody Mr. Rabi Mia was also not FIR named and furthermore his wife is suffering from five months pregnancy and the accused is also suffering from severe illness for which he has been ordered to be shifted from Khowai sub jail to Kendrya Sansodhanagar. So, Learned counsel urged for releasing the accused on bail in any condition.

[04] On the other hand, Learned Addl. P.P. Mr. R. Saha appearing on behalf of the State opposed the bail application and submitted that in this case contravened items of commercial quantity was seized. So, considering the nature of allegation, he urged for rejection of the bail application and prayed for further detention of the accused for the sake of investigation.

Considered.

[05] In this case, the prosecution was set into motion on the basis of an FIR laid by one Debasish Saha, Inspector of Police on 08.10.2022 to O/C Khowai Police Station alleging inter alia that on 08.10.2022 morning he was performing vehicle checking duty at Paharmura Naka point on Agartala to Khowai road with his staff in reference to Subash Park GDE No.10 dated 08.10.2022. During vehicle checking duty at about 1300 hrs. they found one vehicle bearing No.TR01AQ-1942 (TATA INTRA) which was proceeding towards Khowai town from Agartala side and on reaching Naka point staff stopped the vehicle and started to check the vehicle and when the staffs were busy to check the vehicle at that time suddenly the driver fled away from the place of checking. As the matter was suspicious and serious in nature, they stopped the vehicle and checked thoroughly. During search

they found 16 nos. packet wrapped with brown coloured cello tape are recovered from hidden chamber under the body of the said vehicle. The matter was immediately reported to O/C Khowai P.S. vide Khowai P.S. GD Entry No.17 dated 08.10.2022 and thereafter O/C Khowai P.S. and SDPO Khowai appeared therein. He obtained authorization from SDPO Khowai after observing all legal formalities and seized the hidden 16 nos. of packet and after counting, they found 69 kgs. of Ganja in those packets along with other items. Accordingly, the case was registered and the investigation was started. In course of investigation, the accused Sahanur Miah surrendered before the Court on 31.08.2023. In course of investigation, notice was issued upon the owner of the vehicle i.e. the present accused in custody and he was found to be absconding to evade police arrest and IO submitted before the Court for issuing warrant of arrest against the said accused. Although the I/O produced the accused under arrest on 09.01.2025.

[06] As submitted by Learned Addl. P.P. for the prosecution, Hon'ble the Supreme Court of India in **Union of India versus Om Prakash Yadav and Another** in **Criminal Appeal No.2026-2027 of 2024 arising out of SLP (Criminal)Nos.3835-3836 of 2023** the said Apex Court in para Nos.8 & 9 observed as under :

"8. Having regard to such a huge quantity being carried in the truck, it is not believable that the respondents were not aware about the contents of the consignments being carried in the truck. The respondents having prima facie failed to satisfy us that they were not guilty of the alleged offences, it could not be said that there was compliance of the Section 37 of the NDPS Act.
9. In that view of the matter, the impugned order passed by the High Court deserves to be quashed and set aside and is set aside. The respondents are directed to surrender themselves within two weeks from today before the Trial Court."

Learned Addl. P.P. also referred another judgment of the Hon'ble Supreme Court of India in **Union of India versus Rattan Malik alias Habul** reported in **(2009) 2 SCC 624** wherein in para No.16 Hon'ble the Apex Court observed as under :

"16.Merely because, according to the Ld. Judge, nothing was found from the possession of the respondent, it could not be said at this

stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the Ld. Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge."

He also referred another citation of the Hon'ble Supreme Court in **Union of India through Narcotics Control Bureau, Lucknow versus Md. Nawaz Khan** reported in **(2021) 10 SCC 100** wherein in para Nos. 28 & 29 Hon'ble the Apex Court observed as under :

"28.As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in *Union of India v. Rattan Mallik* :(2009)2 SCC 624, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the 'possession' of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

29.In line with the decision of this Court in *Rattan Mallik* (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act."

Referring the same, Learned Addl. P.P. submitted that although, no contravened item was directly found from the possession of the accused in custody but considering the nature of allegation, at this stage, there is no scope to release the accused on bail and prayed for detention of the accused in custody for the sake of investigation.

[07] I have also gone through the aforesaid citations referred by Learned Addl. P.P. and also perused the case diary properly. Considering the materials on record, at this stage, I do not find any scope to presume the accused to be innocent in view of the provision provided under Section 37 of the NDPS Act. So, considering all the bail application filed on behalf of the accused in custody stands rejected being devoid of merit. The accused shall remain in jail custody as before.

Send down the LCR along with a copy of this order. Return back the CD to IO through Learned Addl. P.P. along with a copy of this order.

The bail is accordingly stands disposed of.

JUDGE

SABYASACHI
BHATTACHARJEE

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