

**HIGH COURT OF TRIPURA
AGARTALA
B.A.No.33 of 2025**

Hriday Ali (Age-29 years),
son of Jangsar Ali,
resident of Purba Mog Pushkarani,
P.O.-Abani Riyangpara, P.S.-R.K.Pur,
District-Gomati Tripura

----Petitioner on behalf of Custody Accused Person

Jangsar Ali (Age-50 years),
son of late Asmat Ali,
resident of Purba Mog Pushkarani,
P.O.-Abani Riyangpara, P.S.-R.K.Pur,
District-Gomati Tripura

---- Applicant(s)

Versus

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

----Respondent(s)

For Applicant(s)	: Mr. Janardhan Bhattacharjee, Adv. Mr. Sajib Ghosh, Adv.
For Respondent(s)	: Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

14/05/2025

This bail application under Section 483 of BNSS read with Section 37 of NDPS Act is filed for releasing of the custody accused namely Jangsar Ali on bail in connection with Khowai P/S Case No.2024/KHW/062 under Section 20(b)(ii)(C)/25/29 of NDPS Act.

[02] Heard Mr. J. Bhattacharjee, Learned counsel appearing on behalf of the accused in custody and also heard Mr. R. Datta, Learned P.P. appearing on behalf of the State-respondent. As ordered earlier, Learned P.P. has produced two numbers of CDs. One is relating to this case and another is regarding Ambassa P/S Case No.29/2024. Also received the LCRs.

[03] Taking part in the hearing, Mr. J. Bhattacharjee, Learned counsel appearing on behalf of the accused in custody submitted that this present accused is not FIR named. No contraband items were recovered from his possession and furthermore, no incriminating evidence revealed against him during investigation. Learned counsel further submitted that this accused is not FIR named accused in connection with Ambassa P/S Case No.29/2024 nor he is arrested in connection with that case. Furthermore, he is lodging in jail since last 167 days. Learned counsel again submitted that the principal accused of this case has already been granted bail and there is no scope to refuse the bail application of this accused and urged for releasing the accused on bail in any condition considering the period of his detention in custody.

[04] On the other hand, Mr. R. Datta, Learned P.P. appearing on behalf of the State-respondent strongly opposed the submission and referring the case diary of this present case and the Ambassa P.S. case as noted above submitted that in a case of this nature, it is not always necessary that the contraband items should be seized directly from the possession of a person and if it is found that any person directly or indirectly involved with any offence, in that case, during investigation there is no scope to grant privilege of Section 37 of NDPS Act. He further submitted that in Ambassa P/S Case notice was issued to the accused but he did not comply with that and from the statement of the witnesses it is clear that the offending vehicle of that case is belonging to his wife being a lady and the accused taking this advantage using that vehicle for carrying contraband items and since he was lodging in Khowai P/S, so, he could not be produced in connection with that case. Regarding the involvement of the present accused in connection with this case, he submitted that the defence story cannot be believed because he took the offending vehicle of the owner on hire rent and used the same for carrying contraband items. So prima facie all though there is no direct evidence that he possessed contraband items but his conspiracy or involvement cannot be ruled out in this

case. He also referred few citations which would be discussed later on and finally urged for rejection of the bail application.

[05] I have heard both the sides at length and perused the case diary of both the cases. In this present case the prosecution was set into motion on the basis of an FIR laid by one Inspector Jugal Charan Tripura on 03.10.2024 to O/C Khowai P/S alleging inter alia that on 03.10.2024 morning at about 0550 hrs. P.S. GD Officer received an information that one white coloured Maruti Suzuki numberless vehicle was going toward Kamalpur side via Khowai road with concealing huge quantity of Ganja in the secret chamber of the said vehicle which was driven by Rajani Debbarma. On this information the matter was entered in GDE and the same was informed to O/C, Khowai P/S and after that, the O/C Khowai P/S informed the matter to higher authority in reference to Khowai P/S GDE No.06. Accordingly they were asked to Cherma Naka Point when they found that the vehicle was detained by police. In the meantime Deputy S.P. reached there when the driver of the vehicle disclosed his name as Rajani Debbarma and confessed that he was carrying 47.5 kg. dry Ganja concealing in the door chamber and back side light chamber of the vehicle. Accordingly, said Rajani Debbarma was taken into custody and FIR was accordingly laid and the case was registered.

[06] In course of investigation, the IO recorded the statement of so many witnesses in connection with the case and from the statement of the owner of the vehicle it appears that he (accused) took the vehicle from the owner of the offending vehicle on hire/rent and using that vehicle he used to supply contraband items to different areas and on 03.10.2024 the vehicle was detained which was being taken on hire/rent by the accused in custody and the vehicle of his wife was also detained in Ambassa P/S. Similar statement was made by some other witnesses also. On perusal of the records it transpires that another Rajani Debbarma was granted default bail. I have also perused the Ambassa P/S case. It transpires that in that case on so many occasion notice was served upon him under Section 67 of NDPS Act and in that case

total 87 kg of dry cannabis was seized from Maruti Suzuki bearing No.TR05 G 1691 and the rest Gaja was seized from another vehicle bearing No.TR05 G 1854 (BOLERO PIK-UP) out of 232 kgs. of dry cannabis. From the statement of the witnesses it also appears that he used to hire vehicles for carrying contraband items and the seized offending BOLERO PIK-UP van is belonging to his wife and he being the husband of the owner of the vehicle used to look after the management of the said vehicle as the wife cannot drive the vehicle. Admittedly in this case although notice was issued under Section 67 of NDPS Act but he could not be arrested or taken into custody since by this time the accused in custody was lodging in connection with this Khowai P/S case.

[07] In course of hearing, Learned P.P. relied upon the citation of Hon'ble Apex 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 the said 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.

In addition to that, he also few other citations of the High Court of Punjab and Haryana in **Ranjit Singh versus State of Punjab [CRM-M-25526-2023] dated 17.07.2023** wherein in para No.9 the said High Court observed as under :

"9. When there are multiple FIRs against a person over a significant period of time (in this case 18 years), then even though he may have been acquitted in some of those cases, the twin conditions as envisaged under Section 37 of the NDPS Act that he has not committed an offence and was not likely to commit an offence cannot be satisfied."

He referred another citation of the same High Court in connection with **Case No.CRM-M-42482-2023 dated 21.09.2023 [Mohammad Rayyan Ansari versus State of Haryana]** wherein in para No.13 the said High Court observed as under :

"13. In fact, when there are multiple FIRs against an accused over a significant period of time, then the twin conditions as envisaged under Section 37 of the NDPS Act that he had not committed an offence and was not likely to commit an offence cannot be satisfied. Further, the limitation to the grant of bail under Section 37 of the NDPS Act are in addition to those prescribed under Cr.P.C. or any other law in force on the grant of bail. Thus, a habitual offender is not entitled to the grant of bail even under the provisions of the Cr.P.C. keeping in view his criminal antecedents. On the contrary, in such cases, the custodial interrogation is certainly necessary even though the accused may have joined investigation at an earlier stage."

Further, he referred another citation in connection with **Case No.CRM-M-31645-2022 dated 20.10.2022 [Soni Singh @ Chamkaur Singh versus State of Punjab]** wherein in the last part of the judgment the said High Court observed as under :

"Admittedly, the petitioner in the present case is named in the disclosure statement of the arrested accused. Subsequently thereto 3 Kgs of Poppy Husk was recovered at his instance which is a non commercial quantity. It may be relevant to mention here that limitations to the grant of bail under Section 37 of the NDPS Act are in addition to those prescribed under Cr.P.C. or any other law in force on the grant of bail as has been set out by the Hon'ble Supreme Court in Satpal Singh Vs. State of Punjab 2018(5) RCR (Criminal) 152. In the present case, the petitioner is involved in two other cases under the NDPS Act. Thus, as he is a habitual offender, he is not entitled to the grant of bail even under Section 439 Cr.P.C. keeping in view his antecedents. Even otherwise, assuming that the rigors of Section 37 of the NDPS Act did not apply to the petitioner, that by itself would not ipso facto lead to the grant of bail to the petitioner. In view of the above discussion, I find no merit in the present petition and the same is therefore dismissed."

[08] Here in the case at hand after hearing both the sides and after perusal of the CD of both the cases it appears that admittedly in this case, nothing was seized from the possession of the accused and this accused is also not FIR named either in this case or in Ambassa P/S case. But from the statement of material witnesses the involvement of accused cannot be ruled out at this stage since the investigation is going on. Furthermore, nothing was found from the possession of the accused cannot be a sole ground for consideration of bail application of the accused. Rather from the statement of

witnesses it appears that in one case he was using the vehicle which was purchased in the name of his wife for carrying contraband items and in another case he on taking the vehicle on hire/rent was using the same for the purpose of carrying contraband items and in one case the vehicle was seized from his wife and in another case the vehicle of the owner who led the vehicle on rent to the accused was seized from where a huge quantum of contraband items were recovered.

Situated thus, considering the aforesaid citations and the materials on record I do not find any scope to consider release of the accused on bail in view of the provision provided under Section 37 of NDPS Act and as such, his bail application stands rejected. The accused is to remain in jail custody as before.

Send down the LCRs of both the cases along with a copy of this order.

Send down the Case Diary to the IO of this case through Learned P.P. along with a copy of this order.

With this observation, the bail application stands disposed of.

JUDGE

**MOUMITA
DATTA** Digitally signed by
MOUMITA DATTA
Date: 2025.05.17
04:47:01 +05'30'

Sabyasachi B