HIGH COURT OF TRIPURA
AGARTALA

B.A.No.42 of 2025

Smt. Lalita Khatun (52),
W/o: Renu Miah, resident of Rangamatiya, Sonamura,
P.S.: Sonamura, District: Sepahijala, Tripura, Pin No.:799131.

….. Applicant on behalf of the accused person in custody

Iman Hossain,
S/o: Renu Miah, resident of Rangamatiya, Sonamura,
P.S.: Sonamura, Dist. Sepahijala, Tripura, Pin No.:799131.

----Accused Person(s)

Versus

The State of Tripura
(Represented by the Ld. Public Prosecutor), High Court of Tripura, Agartala

----Respondent(s)

For Applicant(s)	:	Mr. Siraj Ali, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

23/06/2025

This bail application under Section 439 of the Code of Criminal Procedure, 1973 is filed for granting bail to the accused person in custody namely, Iman Hossain in connection with Kailashahar Police Station case No.143 of 2023 corresponding to Special (NDPS) 12 of 2024 under Sections 20(b)(ii)C/25/29 of the NDPS Act.

Heard Learned Counsel, Mr. Siraj Ali appearing on behalf of the accused in custody. Also heard Learned P.P., Mr. Raju Datta along with Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the State-respondent.

Learned P.P. has produced the case diary. The record from the Learned Trial Court below has also been received.

Taking part in the hearing, Learned Counsel, Mr. Ali appearing on behalf of the accused in custody drawn the attention of this Court that the accused person was arrested and is lodging in custody in connection with this case on and from 07.05.2024 and the statutory period of his detention was expired on 02.11.2024. But within time the I.O. could not submit any charge-sheet justifying his further detention in custody and as such the accused person is entitled to get default bail in connection with this case. Learned Counsel further referring the order dated 02.11.2024 passed by Learned Trial Court submitted that on that day the I.O. could not place any charge-sheet against the accused person before the jurisdictional Court and the plea was taken before the Learned Special Judge, Unakoti District, Kailashahar that the accused person was lodging in custody for more than 180 days. But the Learned Special Judge did not consider his plea and by the said order dated 02.11.2024 the Learned Special Judge further extended the period of his detention in custody beyond the statutory period. Learned Counsel further drawn the attention of this Court referring the order dated 04.11.2024 wherein the Learned Special Judge observed that on 02.11.2024 no charge-sheet was placed before the Learned Court below though the charge-sheet was despatched from Kailashahar PS on 30.09.2024. Learned Counsel further drawn the attention of this Court referring the remaining portion of the order that if the charge-sheet is actually submitted on 30.09.2024 in that case why the same was not placed before the Learned Court below within time. So, it is clear that the I.O. within the statutory period of limitation failed to file the charge-sheet against the accused person and as such the accused person is entitled to be released on bail. Learned Counsel for the accused person in custody further drawn the attention of this Court referring the order dated 16.01.2025 passed by Learned Special Judge wherein it was clarified that it was a draft charge-sheet. But the I.O. clarified before the Court that it was a charge-sheet in final form. Learned Counsel thereafter drawn the attention of this Court referring the report of I.O. dated

30.09.2024 and submitted that on the basis of some omnibus statements that the offending vehicle was possessed by the accused in custody and on the basis of that evidence on record there is no scope to convict him in this case and urged for releasing him on bail in any condition. Learned Counsel again submitted that in Kumarghat PS case No.11 of 2024, the accused was in custody and has already been acquitted. In support of his contention Learned Counsel for the accused person referred following citations and submitted that the present accused is entitled to be released on bail in any condition.

In **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau & Anr.,** reported in **(2009) 17 SCC 631** in para Nos.12 and 13, Hon'ble the Apex Court has observed as under:

> **"12. The maximum period of 90 days fixed under Section 167(2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorises a yet further period of detention which may in total go up to one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:**
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> **(*1*) a report of the Public Prosecutor,**
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> **(*2*) which indicates the progress of the investigation, and**
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> **(*3*) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and**
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> **(*4*) after notice to the accused.**
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> **13. The question to be noticed at this stage is as to whether the two applications for extension that had been filed by the Public Prosecutor seeking an extension beyond 180 days met the necessary conditions. We find that the matter need not detain us as it is no longer res integra and is completely covered by the judgment of this Court in *Hitendra Vishnu case* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] . In this case, the Bench was dealing with the proviso inserted as clause (*bb*) in sub-section (4) of Section 20 of TADA, which is in pari materia with the proviso to sub-section (4) of Section 36-A of the Act. This Court accepted the argument of the accused that an extension beyond 180 days could be granted but laid a rider that it could be so after certain conditions were satisfied."**

In **Pankaj Bansal vs. Union of India & Ors.,** reported in **(2024) 7 SCC 576** in para Nos.38 and 45, Hon'ble the Apex Court observed as under:

"38. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's "reason to believe" that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

45. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi [Moin Akhtar Qureshi v. Union of India, 2017 SCC OnLine Del 12108] and the Bombay High Court in Chhagan Chandrakant Bhujbal [Chhagan Chandrakant Bhujbal v. Union of India, 2016 SCC OnLine Bom 9938 : (2017) 1 AIR Bom R (Cri) 929] , which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA. Further, as already noted supra, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and, thereafter, to judicial custody, cannot be sustained."

Again, in **Prabir Purkayastha vs. State(NCT of Delhi)** reported in **(2024) 8 SCC 254** in para Nos.28, 29, 30 and 37, Hon'ble the Apex Court observed thus:

"28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions

require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.

37. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the "reasons for arrest" which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the "grounds of arrest" would be personal in nature and specific to the person arrested.

"9. Reason for arrest

(a) Prevent the accused person from committing any further offence.

(b) For proper investigation of the offence.

(c) To prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.

(d) To prevent such person from making 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 the police officer.

(e) As unless such person is arrested, his presence in the court whenever required cannot be ensured."

In addition to the aforementioned citations, Learned Counsel for the accused in custody also referred to some other citations of Hon'ble The Gauhati High Court, High Court of Orissa etc.

On the other hand, Learned P.P., Mr. Datta appearing on behalf of the State-respondent strongly opposed the submissions made by Learned

Counsel for the accused in custody and submitted that the accused person was taken into custody in connection with this case on 07.05.2024 and accordingly his statutory period of detention was expired on 02.11.2024 but the I.O. laid charge-sheet against him on 30.09.2024 although the same was not placed before the Learned Court below on the same day. But from the order dated 04.11.2024 it is crystal clear that for want of signature of the I.O. on the fly-leaf of the docket on 21.10.2024 the same could not be placed before the concerned Court below. Learned P.P. further submitted that considering the materials on record at this stage there is no scope to release the accused person on bail in any condition since the trial of the case is going on and if at this stage the accused person is enlarged on bail in that case the trial would be vitiated and the case be dragged if he absconds. In this regard, Learned P.P. also relied upon one citation of the Hon'ble Supreme Court in **Narcotics Control Bureau vs. Kashif** reported in **2024 SCC OnLine SC 3848** wherein in para Nos. 39 (i) and (ii), Hon'ble the Apex Court observed as under:

> **"39. The upshot of the above discussion may be summarized as under:**
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> **(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.**
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> **(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is *sine qua non* is known for granting bail to the accused involved in the offences under the NDPS Act."**

Referring the same Learned P.P. drawn the attention of this Court that in view of the statutory bar provided under Section 37 of the NDPS Act at this stage there is no scope to release the accused person on bail.

I have heard both the sides at length and perused the record of the Learned Court below.

In this case, the prosecution was set into motion on the basis of an F.I.R. laid by one Deputy SP, Firuz Miah to O/C, Kailashahar PS alleging *inter alia* that on 31.12.2023 night at about 0030 hrs, he was on night duty as per schedule and in course of mobile duty they conducted random vehicle checking near Kamrangabari Bridge i.e. on the NH-208A of Kailashahar to Fatikroy main road when one white colored Bolero Ambulance bearing registration No.TR01-C-4314 was coming from Kailashahar side towards Fatikroy and on seeing the police suddenly reversed back in hurry and fled away. Thereafter, on suspicion he along with staff started to chase the vehicle and found that the driver parked the vehicle on newly constructed highway of NH 208A at a secluded place. They saw 3(three) persons coming out of the vehicle who were fleeing away towards the river side. Accordingly, the informant along with the staff pursued the vehicle and conducted search and during search it was seen that except the driver seat as well as co-passenger front seat there were no seats in the vehicle and some suspicious articles were found covered by a white cloth. On removing the cloth they found some brown colored plastic wrapped bundles lying all over the vehicle. On further query it was found that those bundles were of Cannabis (Ganja) packed and wrapped tightly with brown colored plastic cello tape. He immediately informed the matter to O/C PS as well as SDPO who immediately rushed to the spot. Thereafter, Inspector L. Darlong, I/C Kailashahar PS along with SI, Debabrata Shil arrived the spot carrying electronic weighing machine, drug detection kit etc. and after search they recovered 53 Nos. bundles of Cannabis packed and wrapped with brown colored plastic cello tape. Subsequently, after taking weight it was found that in total 386 kgs 86 gms of Cannabis were found. Accordingly, he seized the recovered Cannabis along with the vehicle bearing registration No. TR01-C-4314(White colored Bolero Ambulance) and 3 numbers of fake number plates bearing No.TR01-C-4313, TR05-B-3525(02 Nos.). Hence, he laid the F.I.R. The case was registered and in course of investigation, the present

accused person along with others were taken into custody. This present accused as already stated was produced before the Court of Learned Special Judge on 07.05.2024 and since then he is lodging in custody.

Perused the case record.

From the record it appears that the case is posted for recording evidence of PWs and by this time prosecution has produced 6 Nos. of witnesses before the Court of Learned Special Judge out of 11 Nos. of witnesses. The ground of arrest has already been communicated to the accused by the I.O. on 10.05.2024. I have also perused the case diary. It appears that the same was despatched vide No.13106-07 dated 30.09.2024 from Kailashahar PS. I have also perused the order dated 02.11.2024 and 04.11.2024 passed by Learned Special Judge. Cognizance of offence in this case has been taken on 07.11.2024. From the order dated 02.11.2024 it appears that on that day no charge-sheet was placed before the concerned Court below who was dealing with the bail matter. Even on 04.11.2024 no charge-sheet was placed rather CTSI, Kailashahar submitted one report that on 21.10.2024 one woman constable Gupa Bardhan of Kailashahar PS received the case docket when she found that I.O. did not give his signature on the fly-leaf of the docket. So the I.O. was informed to give his signature. Surprisingly, on and from 30.09.2024 to 02.11.2024 no step was taken either by the prosecution or by the I.O. or by the concerned Court Sub-Inspector to place the charge-sheet before the concerned Court of Learned Special Judge. Even on 21.10.2024 or thereafter i.e. on the following day also after obtaining signature the Sub-Inspector the same could be placed to the prosecution section for placing the same to the concerned Court of Learned Special Judge. But after 30.09.2024 till 06.11.2024 no step was taken in this regard for placing the charge-sheet to the concerned Court below. Until and unless the charge-sheet is placed before the concerned Court for acceptance it cannot be said that the same was submitted within the statutory period. Thus, it appears that there was some negligence either

on the part of the Court Sub-Inspector or the prosecution section to place the charge-sheet before the concerned Court below for passing appropriate order. Situated thus, it appears that there were non-application of mind by those persons who were entrusted with the duties of handling prosecution papers and due to such fault the right of a person cannot be curtailed. The statutory period of detention of the accused person was expired on 02.11.2024. Since no charge-sheet was placed before the Court either on that day or on the following day so the accused person was entitled to be released on bail. As already stated, the trial has already been commenced and by this time prosecution has adduced 6 Nos. of witnesses. The prosecution is to adduce more 4 or 5 Nos. of witnesses in this case. Whether the accused is innocent or guilty that can be ascertained only after conclusion of trial at the time of delivery of judgment by the concerned Learned Special Judge. However, due to the aforesaid technical reasons the right of the accused person cannot be curtailed and as such, the present accused is entitled to be released on bail.

Accordingly, the application for granting bail to the accused in custody is hereby allowed. The accused namely, Iman Hossain may be released on bail of his furnishing bail bond of Rs.1,00,000/- with one surety of like amount who must be a public servant to the satisfaction of Learned Special Judge, Unakoti District, Kailashahar with the following terms and conditions:

i) That the accused shall attend Court once in a week until completion of trial of the case.

ii) That he shall not leave the jurisdiction of the Court without prior permission of the Court.

iii) That he shall not make any attempt to tamper the evidence on record of the rest witnesses of the prosecution. However, if the aforesaid conditions are violated in that case the prosecution shall be at

liberty to approach to the concerned Court for cancellation of his bail.

In default, the accused person shall remain in J/C as before.

However, considering the facts and circumstances of this case further it is ordered that Learned Special Judge, Unakoti District, Kailashahar shall ensure that in future in cases where the accused persons are languishing in jail, in those cases in the event of filing of charge-sheet by the concerned Investigating Officers the same shall be placed before the concerned Courts immediately without any delay to avoid any legal complicacy in dealing with the bail matters and for that necessary instructions be communicated to the concerned staff by Learned Special Judge, Unakoti District, Kailashahar so that this order is duly complied with in letter and spirit.

A copy of this order be supplied to Learned counsel appearing for the accused in custody for information and compliance.

With this observation, this bail application stands allowed disposed.

Send down the LCR along with a copy of this order. Also return back the CD to I.O. through Learned P.P. along with a copy of this order. Also a copy of this order be communicated to Learned Sessions Judge, Unakoti District, Kailashahar for information and necessary action.

JUDGE

Snigdha

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