

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.70 of 2025**

Smt. Jaya Rani Debbarma, (Aged 32 years)
W/O Shri Bishu Kumar Tripura
Resident of Rampadapara (Larmai),
P.S.- Melaghar, District – Sepahijala Tripura,
PIN No.-799103.

**.... Petitioner on behalf of
Custody Accused Person**

And

Shri Bishu Kumar Tripura, (Aged 62 years)
S/O- Shri Malindra Kumar Tripura
Resident of Rampadapara (Larmai),
P.S.- Melaghar, District- Sepahijala Tripura,
PIN No.-799103.

.... Custody Accused Person

Versus

The State of Tripura

(Represented by the Secretary, Home Department),
Government of Tripura, Agartala

.....Respondent.

For Applicant(s)	:	Mr. Janardhan Bhattacharjee, Adv. Mr. Subhradip Sharma, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

28/08/2025

This bail application under Section 483 of BNSS corresponding to Section 439 of Cr.P.C. is filed for granting bail to the accused-in-custody namely Bishu Kumar Tripura who is lodging in jail in connection with Melaghar P.S. Case No.2025/MLG/002 under Section 20(b)(ii)(C)/25/29 of NDPS Act, 1985 corresponding to Case No.Special NDPS 42 of 2025 pending before the Court of Learned Special Judge, Sepahijala, Sonamura.

Heard Learned Counsel, Mr. Janardhan Bhattacharjee along with Learned Counsel, Mr. Subhradip Sharma appearing on behalf of the accused person in custody and also heard Learned P.P., Mr. Raju Datta appearing on behalf of the State-respondent.

As ordered earlier Learned P.P. has produced the CD today also by this time we have received the record from Learned Trial Court.

Taking part in the hearing, Learned Counsel, Mr. J. Bhattacharjee appearing for the applicant first of all drawn the attention of the Court that before the Trial Court bail petition was moved on behalf of the accused narrating some serious lapses on the part of the prosecution that no "grounds of arrest" was communicated to the accused-in-custody in writing at the time of his forwarding before the court.

Furthermore, Learned Counsel for the applicant also drawn the attention of the Court referring Annexure-2 i.e. the arrest memo wherein in column No.10 the "grounds of arrest" has been mechanically shown and furthermore Learned Counsel again drawn the attention of the Court that on 14.05.2025 from the order of Learned Special Judge (NDPS Act), Sepahijala District, Sonamura it will be crystal clear that no "grounds of arrest" was communicated to the accused in writing at the time of his forwarding before the Court which violates Article 21 and Article 22 of the Constitution of India and in view of the judgment of this High Court and also the authoritative judgments of the Hon'ble Supreme Court, the accused deserves to be released on bail in any condition.

It was further submitted that after obtaining certified copy it was found that one "intimation of arrest" was given to the accused which cannot be termed as "grounds of arrest" because the same violates the directions of law laid down by the Hon'ble Supreme Court in number of cases and the same also does not contain any date and time of arrest.

Further, Learned Counsel, Mr. J. Bhattacharjee again submitted that even if it is accepted that the intimation regarding "grounds of arrest" is correct but on perusal of the same it appears that in the said communication the I/O has mentioned the date as 08.04.2025 when the accused himself was arrested on 13.05.2025 by ED and thereafter he was handed over to police. There was no clear explanation in this regard from the side of the prosecution.

Learned Counsel, Mr. J. Bhattacharjee further submitted that although from the order dated 24.07.2025 of the Learned Trial Court it will be found that Learned Special Judge, NDPS Act, 1985 Sepahijala District, Sonamura at the time of disposal of the bail application mentioned that this was a typing error on the part of the I/O.

Learned Counsel also submitted that as the cases under NDPS Act involves some technical questions of law so, procedural lapses be taken into consideration at the time of consideration of the bail application and furthermore in this case the I/O has submitted charge-sheet and the case is now posted for DC and FC. So, considering the period of detention of the accused-in-custody, the accused may be released on bail in any condition.

On the other hand, Learned P.P. appearing for the State-respondent strongly opposed the submission made by Learned Counsel for the accused-in-custody and submitted that from the forwarding report of I/O dated 14.05.2025 addressed to the Learned Trial Court it will be crystal clear that in the first para of the forwarding report it was clearly mentioned by I/O that the "grounds of arrest" has been communicated in writing to the accused person and the same was verbally informed to his near relatives. That written "grounds of arrest" was also forwarded to the Learned Court on 14.05.2025 which was duly signed by the concerned Learned Special Judge. But Learned P.P. also fairly admitted that in the said communication which was supplied to the accused by the I/O the date was wrongly mentioned as 08.04.2025 which was nothing but a typing/clerical error because on 08.04.2025 there was no question of arresting the accused in connection with this case and after conjoint reading of the forwarding report dated 14.05.2025 submitted by I/O to the Learned Court and the memo regarding "grounds of arrest" supplied to the accused it will be clear that at the time of arrest, the "grounds of arrest" was duly communicated in writing to the accused. So, Learned P.P. submitted that on this plea the present accused is not entitled to get any benefit in connection with the case.

Further, referring the arrest memo prepared as per Section 35 of BNSS Learned P.P. submitted that in the arrest memo also the signature of the accused was obtained and in column No.8 it was clearly written that the intimation regarding arrest was duly

communicated to the wife of the accused person. So, Learned P.P. submitted that there is/was no procedural violation on the part of the I/O and furthermore since the contraband item was recovered from the residence of the accused when he found to be absconded and in the forwarding report it was clearly mentioned by the I/O that in course of search and seizure the father of the accused stated to the police that the recovered articles were Dry Ganja and his son Bishu Kumar Tripura stored the same for the purpose of selling to earn money. It was further submitted by Learned P.P. that the accused was arrested on 13.05.2025 at about 15.20 hrs. and on the following day i.e. on 14.05.2025 he was produced before the Court when he was duly represented by his engaged Learned Defence Counsel and during that period no such plea was taken on behalf of the accused that the "grounds of arrest" was not communicated to him and furthermore since in this case the I/O himself supplied the copy of "grounds of arrest" narrating the details of the case to him so the plea taken by Learned Counsel for the accused-in-custody cannot be legally accepted and cannot be sustained in the eye of law.

Finally in support of his contention, Learned P.P. relied upon one citation of the Hon'ble Supreme Court of India in ***State of Karnataka vs. Sri Darshan Etc.*** reported in **2025 SCC OnLine SC 1702**, wherein Hon'ble the Apex Court observed as under:

"20.1.6. The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a *prima facie* case. It noted, *inter alia*, that there was no mention in the remand orders about service of memo of grounds of arrest (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on *Pankaj Bansal v. Union of*

India, (2024) 7 SCC 576 and Prabir Purkayastha v. State (NCT of Delhi) (supra), it concluded (paras 43, 49 - 50) that from 03.10.2023 onwards, failure to serve detailed, written, and individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.

20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a *prima facie* case. Its reliance on *Pankaj Bansal* and *Prabir Purkayastha* is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not *ipso facto* render custody illegal or entitle the accused to bail."

Referring the same, Learned P.P. submitted that in view of the observation on the Hon'ble Apex Court if it is found that no "grounds of arrest" was communicated to the accused still it is a curable defect and cannot by itself warrant release of accused on bail and also it cannot be said that the arrest was illegal and the accused be entitled to bail.

Learned P.P. also relied upon another case reference of the Hon'ble High Court at Calcutta in dealing with CRM (NDPS) No.169 of 2025 along with Other cases reported in **2025 SCC OnLine Cal 4502** wherein in Para Nos.37 to 40, Hon'ble High Court of Calcutta also observed as under:-

"37. In most of the instant bail applications as stated above the recovery was made from the possession of the petitioners who according to prosecution case knew about the transportation or carrying narcotic substance and each of them had alleged role in the transportation and/or possession with conscious knowledge of what they are doing.

38. Even on perusal of Vihaan Kumar Case (supra) in paragraph 17, it appears that the argument canvassed on behalf of the respondents is that even if the appellant is released on the grounds of violating Article 22, the arresting officer can arrest him again or not and the Hon'ble Supreme court held "at this stage it is not

necessary to decide the issue.” Accordingly Supreme Court has not yet completely negated said issue and has kept it open for future consideration.

39. Petitioner heavily relied upon a co-ordinate Bench judgment of this court in CRM (NDPS) 144 of 2025, (Ramkrishna v. State of West Bengal), where in an offence under NDPS Act, bail prayer of petitioner was allowed only on the ground of non-compliance of section 52(1) of the NDPS Act, without going into merit of the case. But it appears that the above-mentioned judgments of Supreme Court passed in connection with stringent provisions under the NDPS case were neither referred nor discussed in the said judgment, while dealt with bail prayer of the accused, and as such it is not binding upon me.

40. Considering observations made in above mentioned cases viz. Superintendent, NCB Chennai (Supra) and Narayanaswamy Rabi Shankar (supra), it appears to me that the offence under NDPS Act containing stringent provisions are not to be equated with general offences. Needless to say that the NDPS Act has been enacted by the legislature to achieve specific purpose and objectives as stated in preamble and in the object and reasons of the Act. Fundamental rights usually strikes a balance between individual liberty with the interest of justice and social control. Offences under NDPS Act are very serious in nature and any sort of indulgence against combatting such menace may have a detrimental effect in the society, more specifically it's adverse impact may destroy specially the young generation of the country. It is quite expected that the stringent provisions of the Act which includes section 37 of the Act must be construed in the manner which would enhance the objectives of the special Act and not to frustrate the very purpose and objective of the Act. While dealing with such issue, court must be cautious in exercise of the power, so that it must not create any undue advantage or benefit to the persons accused of serious offences under the NDPS Act or to demoralise the officers who have been specially conferred with the powers to combat the serious crime and/or encourage the unscrupulous element to commit crime. An offence under the NDPS Act cannot be compared with the ordinary offences committed against an individual or with the accused of ordinary crime. It is a crime against society at large and the nation itself. I am afraid that any other interpretation of stringent provisions including section 37 of NDPS Act may frustrate the very purpose and objectives of the Act.”

Relying upon the same, Learned P.P. further submitted that in view of the aforesaid citation there is no scope to release the accused on bail in this case. Finally Learned P.P. submitted that considering the materials on record the bail petition filed by the accused be rejected/dismissed henceforth.

The prosecution case in short is that on 10.01.2025 one SI Uttam Paul, UB of Melaghar PS laid an FIR to O/C Melaghar Police Station alleging *inter alia* that on that day at about 1010 hours the

O/C of the concerned PS received one secret information from one Pankaj Goyat, Assistant Director of Aizwal Sub-zonal office Guwahati, ED, Ministry of Finance that on that day they conducted search in the house of Bishu Kumar Tripura at Larmai Bari, PS Melaghar in connection with File No.ECIR/AGSZO/04/2022 under the provision of Prevention of Money Laundering Act, 2002. That time they have found some suspected psychotropic substance to the residence of said Bishu Kumar Tripura. They also requested to assist their team in 'search and seizure' of the said suspected psychotropic substance. The matter was entered in Police G.D. entry No.11 dated 10.01.2025 and after that O.C. of the concerned P.S. referred the matter to the higher authority in writing to carry out search and seizure. The S.D.P.O. Sonamura gave an authorization and directed to him to take necessary action as per law. Accordingly at about 1040 hours vide Melaghar PS GDE No.14 dated 10.01.2025 the police personnel conducted raid in the house of Bishu Kumar Tripura. At about 1130 hours after arrival to the address they found the staff of Enforcement Directorate already cordoned the said house by CRPF personnel when they found two independent witnesses namely Debalina Roy and Salfa Debbarma who were present at the request of ED. After that as per direction of O/C Melaghar PS he prepared body search memo, pre-search memo and post house search memo in presence of witnesses and apprised them regarding issuance of pre-search memo, body search memo and translated the same into Bengali version. Before that he asked one elderly person who was present who disclosed him as the father of the accused Bishu Kumar Tripura. Then he asked him whether he wants to search or not the raid party in presence of Gazetted Officer. Debasish

Saha, O/C Melaghar PS being a Gazetted Officer who was present. But he denied searching of the raid party. However raid party also conducted body of search team by the witness. During search no narcotic article was recovered from the search team. Accordingly the informant along with staff and staff of ED jointly conducted raid and search in the house of Bishu Kumar Tripura after observing all formalities in presence of O/C Melaghar P.S. and two independent witnesses. During search and raid they recovered one blue colour plastic drum and two nos. white colour sacks when smell of ganja was coming out from those sacks. That time the father of accused informed that Bishu Kumar Tripura stored the same for purpose of selling and after measurement 66 kg of dry ganja was recovered and thereafter after observing all formalities the seizure was made. The accused found to be absconded and accordingly the FIR was submitted to the O/C of the concerned P.S. During investigation the ED team conducted arrest of accused on 13.05.2025 at about 1520 hours and after that he was forwarded to the Court of Learned Special Judge on 14.05.2025 by I/O when on the same date the accused has engaged one Learned Defence Counsel to conduct his defence.

I have gone through the forwarding report of I.O., arrest memo and the intimation regarding "grounds of arrest". It is on record that on 14.05.2025 when the accused was produced before the Court of Learned Special Judge with forwarding report and separate intimation of arrest to the accused containing "grounds of arrest" Learned Special Judge in the order did not specifically mention about the communication of "grounds of arrest" was supplied to the accused but it was specifically mentioned that the accused was produced under arrest with forwarding report, arrest

memo and medical examination report. But on perusal of the record it appears that on the same day the document which was communicated to the accused as "grounds of arrest" was also submitted before the Court which contained the signature of Learned Special Judge and in the forwarding report it was specifically mentioned by I/O that the "grounds of arrest" was communicated to the accused in writing and the same was intimated to his near relatives verbally but for any reason in the communication regarding "intimation of grounds of arrest" the date was mentioned as 08.04.2025. Now if we meticulously go through the forwarding report, the copy of "grounds of arrest" supplied to the accused it can easily be understood that at the time of arrest the "grounds of arrest" was duly communicated to the accused. So the submission of Learned defence counsel in this regard cannot be accepted. Even if we assume that the said intimation of "grounds of arrest" alleged to be written on 08.04.2025 is incorrect still in the forwarding report of I.O. dated 14.05.2025 it was clearly mentioned that the "grounds of arrest" was duly communicated to the accused in writing. So those two documents cannot be interpreted in different manner. Furthermore, the contraband item was recovered from the residence of the accused when he was found to be absconding. The statement of his father also cannot be overlooked during this stage of investigation. The accused was produced before the Court on 14.05.2025 and on the same day the accused was duly defended by a Learned Counsel and on that day no such plea was taken by the accused in this regard. From the printed format of arrest memo prepared by ED it appears that the "grounds of arrest" was duly communicated to the wife of the accused. So the

submission of Learned defence counsel that there were serious latches on the part of the prosecution cannot be accepted to be true and valid one for further interference. This is a case under NDPS Act. The contraband items of commercial quantity was recovered from the residence of the accused. It is the settled position of law that the stringent provisions under NDPS Act cannot be compared with the other general offences. In granting bail in a case wherein contraband item of commercial quantity is involved the twin conditions of Section-37 of NDPS Act are to be fulfilled. Herein the case at hand, save and except the plea of "grounds of arrest" no other grounds were taken by the Learned defence counsel at the time of hearing. So after going through the relevant prosecution papers it appears to this Court that the accused petitioner before this Court at the time of hearing of argument could not project any sufficient grounds to invoke the jurisdiction provided under Section 37 of NDPS Act in dealing with the bail application. As such after hearing both the sides and also after going through the aforesaid citations relied upon and referred by Learned P.P. appearing on behalf of the prosecution it appears to this Court that the present accused-in-custody is not entitled to be released on bail in view of the stringent conditions of Section 37 of NDPS Act. Accordingly, the bail application filed stands rejected. The accused is to remain in J/C as before.

However, at the time of going through the record of the Learned Trial Court it appears that the firisti was not properly prepared. The documents were indexed in a scattered manner and the firisti does not contain the true picture of the documents which needs to be looked into. In this case the forwarding letter of I/O at the time of production of accused is found in one file but the

intimation of "grounds of arrest" along with arrest memo was found in another file. Even the index/firisti does not contain any such information in this regard and at the time of hearing of case it is not possible on the part of the Court to find out the relevant papers/documents instantly to hear the bail application properly. As such, all the Learned Special Judges be asked to ensure that at the time of sending or transmission of records to the High Court, the firisti is to be prepared in such a manner so that on the basis of firisti the documents can be traced out properly failing which it becomes difficult on the part of this Court to trace out the relevant documents at the time of hearing of bail matters.

Register (Judicial) be asked to circulate the copy of order to all the Learned Special Judges of the State.

It is also found that, in the arrest memo simply the I/O has mentioned in the relevant column of "grounds of arrest" only case number with relevant sections although separate "grounds of arrest" is communicated to the accused in writing but the same is not mentioned as annexed with the arrest memo. So, to avoid any confusion it is desired that since the relevant column of the arrest memo does not contain sufficient space to mention the "grounds of arrest" and in the event of supplying copy of "grounds of arrest" to the accused the same be reflected in the connected arrest memo with the caption enclosure "copy of grounds of arrest" supplied to accused. In absence of that the same creates a serious confusion/doubt about the conduct of the I/O regarding compliance of "grounds of arrest" to the accused at the time of forwarding of accused before the Courts. Henceforth, it is directed that the office of Director General Police, Tripura shall intimate all the investigating officers of the State who are dealing with NDPS

cases to ensure that at the time of forwarding of arrest memo before any Court the same should contain with the caption, "enclo copy of grounds of arrest in writing" supplied to the accused to avoid any confusion in dealing with bail matters in future.

Learned P.P. be asked to apprise this order to the office of D.G.P., Tripura accordingly.

Return back the CD to I/O through Learned P.P. along with a copy of this order.

Send down the record of the Learned Trial Court along with a copy of this order.

With this observation, this present bail application stands disposed of.

JUDGE

Amrita

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