

**HIGH COURT OF TRIPURA
AGARTALA
B.A.71 of 2025**

Jamal Uddin (Aged 50 years),
son of Asaddar Ali,
resident of Ranigram,
Jalalnagar, P.S. Karimganj,
State-Assam, Pin No.-788712

----- Petitioner on behalf of Custody Accused Person(s)

Md. Abdul Pata (Aged 37 years),
son of Amad Uddin,
resident of Nilambazar, Ranigram,
P.S. Nilambazar, Sreebhum, Assam

----- Custody Accused Person(s)

Versus

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

-----Respondent(s)

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

08/09/2025

This bail application under Section 483 of BNSS, 2023 corresponding to Section 439 of Cr.P.C. is filed for granting bail to the accused in custody namely Md. Abdul Pata in connection with Bagbassa P.S. Case No.12/2025 under Section 8(C)/22(C)/29 of NDPS Act, 1985.

[02] Heard Mr. J. Bhattacharjee, Learned counsel assisted by Mr. S. Sharma appearing for the accused in custody. Also heard Learned P.P., Mr. R. Datta appearing on behalf of the State-respondent. At the time of hearing, Learned P.P. produced the CD and also received the record from the Learned Trial Court.

[03] Taking part in the hearing, Learned counsel for the accused in custody first of all drawn the attention of the Court referring the contents of the FIR and submitted that from the sua moto complaint it is clear that nothing was mentioned as to the date, time and place of detention of the accused in custody which was mandatory. Furthermore, in the FIR the informant has enclosed some of the documents but nowhere it was mentioned that the ground of arrest as required under Article 22 of the Constitution of India was communicated to the accused custody. Furthermore, the accused was produced before the Court of Learned CJM in absence of Learned Special Judge on 03.07.2025 and from the order passed by Learned CJM, North Tripura, Dharmanagar dated 03.07.2025 (Annexure-3) it appears that in the order sheet also nothing was reflected by Learned CJM that the 'grounds of arrest' was duly communicated to the accused. Learned counsel further drawn the attention of the Court referring the order dated 04.07.2025 passed by Learned Special Judge, North Tripura, Dharmanagar (Annexure-4) wherein from the order sheet it will further transpire that 'no grounds of arrest' was duly communicated either orally or in writing to the accused in custody. Learned counsel again drawn the attention of the Court referring arrest memo i.e. Annexure-2 of the bail application and referring the said document he submitted that in column No.5 nothing was mentioned by IO that the 'grounds of arrest' was duly communicated in writing to the accused which violates Article 21 and 22 of the Constitution of India and the same also violates Section 47 and 48 of BNSS, 2023. In this regard, Learned counsel

referring the case of Vihaan Kumar, Prabir Purkayastha and Pankaj Bansal of the Hon'ble Supreme Court of India drawn the attention of the Court that he has referred the citations of the Hon'ble Supreme Court of India of the aforesaid cases in different bail applications and in the present case, the directions referred by the Hon'ble Supreme Court in the aforementioned cases have not been complied with by the police authority. Furthermore, Learned counsel also referred the order dated 11.08.2025 passed by Learned Special Judge, North Tripura, Dharmanagar wherein the judgment of this High Court in W.P.(Crl.)04 of 2025 was reflected, but the principle of the said judgment has not been considered by the Learned Trial Court. So, in summing up, Learned counsel for the accused in custody submitted that since the prosecution has failed to comply with the mandatory provisions of law by not supplying/informing the 'grounds of arrest' in writing to the accused in custody and as such, the present accused in custody deserves to be released on bail in any condition henceforth. He further submitted that prosecution may take the plea that the contraband item was recovered from his possession and he had knowledge of the same is not a sufficient ground to overlook the principles of law laid down by the Hon'ble Apex Court in series of judgments. He also submitted that Learned P.P. may refer the case of the Hon'ble Supreme Court of India but the said citation was relating to a case of murder, not relating to a case under NDPS Act and as such, the said principle cannot be applied in this case and urged for releasing the accused on bail in any condition.

[04] On the other hand, Learned P.P. taking part in the hearing strongly countered the submission made by Learned counsel for the accused in custody and submitted that on the day of production of accused before the Court, the 'grounds of arrest' in writing was duly communicated to the accused and furthermore, the contraband item was directly recovered from his possession and more so, on the day, when the accused was produced under arrest before the Court of Learned CJM, North Tripura, Dharmanagar that day he was duly represented by Learned Defence Counsel. Situated thus, at this stage, there is no scope to consider bail to the accused since the 'grounds of arrest' has been duly communicated to the accused in writing and also the ground of arrest was duly communicated to the near relative of the accused with the consent of the accused on 03.07.2025. So, according to Learned P.P. the plea taken by Learned defence counsel cannot be accepted and furthermore, referring the order dated 28.08.2025 passed by this Court in **B.A.No.70 of 2025** and also referring the case of Hon'ble Supreme Court of India in **State of Karnataka vs. Sri Darshan Etc.** reported in **2025 SCC OnLine SC 1702** in para Nos.20.1.6 and 20.1.7 he further submitted that in view of the principle of law laid down in the aforesaid case there is no scope to release the accused on bail. Further, he referred another case of the Hon'ble High Court of Calcutta in **CRM(NDPS)No.169 of 2025 along with others** reported in 2025 SCC OnLine Cal 4502 wherein in para Nos.37 to 40 Hon'ble High Court of Kolkata made certain observations. Finally, Learned P.P. submitted that the defence in this case could

not place any strong materials before the Court to consider release of the accused on bail and as such, Learned P.P. urged for dismissal of the bail application.

[05] In this case, the prosecution was set into motion on the basis of a sua moto complaint laid by SI Shibu Ranjan Debnath of Bagbassa Police Station on 03.07.2025 with the allegation that on 02.07.2025 at about 2100 hrs., he received on telephonic information from Asi Naichung Thang Tripura of BGB PS who was discharging vehicle checking duty on NH-48 near Bagbassa Petrol Pump from 1400 to 2200 hrs., that time he found that one person is walking suspiciously from the Naka while carrying white colour bag, when the staff asked him to stop. Seeing the police personnel the person started to flee away. But the Ps staff chased him and somehow managed to detain him. In course of detention they found one brown colour packet under the possession of said person and accordingly, they detained that person on that basis of suspicion and that person was brought back to naka point and the police party informed the matter to the informant for taking necessary action. After receipt of the telephonic information, he reduced the matter in writing and informed O/C PS vide GDE number 22 dated 02.07.2025. After that, the informant went to naka point for checking of the detained person along with other necessary equipment, weighing machine etc. in reference to Bagbassa P.S. G.D. Entry No.23 dated 02.07.2025. After that the OC PS apprised the information to the higher authority over phone and also through letter and also sent requisition to SDM, Dharmanagar to depute one executive Magistrate for conducting

search and seizure as per guide line of NDPS Act. At about 2155 hrs SDPO Dharmanagar and Sandeep Debbarma DCM of SDM, Dharmanagar arrived to the PO near Bagbassa Petrol Pump. At about 2210 hrs. the informant obtained authorization from SDPO, Dharmanagar and notice was served under Section 50 of the NDPS Act to the said detained person namely Abdul Pata. Thereafter, he prepared pre-search memo and in presence of police personnel he conducted search of the bag belonging to the said detained person and also in presence of executive Magistrate and after opening the bundle the informant found that 2000 numbers of suspected Yaba tablets, in 5 numbers of white colour bundles total 10000 nos. of suspected Yaba tablets. Lateron, forensic expert collected 5 numbers tablets from 5 numbers bundle of suspected Yaba tablets for preliminary examination. Thereafter, at about 2250 hrs. he seized the said five numbers of bundles containing 10,000 nos. of suspected Yaba tablets, having total 50 nos. of small plastic packets, and one OPPO mobile phone from the possession of detained person and after completion of all the formalities the detained person namely Abdul Pata along with the contraband items were brought to the police station and thereafter, the suo moto complaint was laid by the informant to O/C, Bagbassa Police Station for registration of the case. Accordingly, the case was registered.

[06] In course of investigation, by a forwarding report along with GD extract, copy of notice, seizure list, arrest memo, pre-search memo and other papers, the accused was produced before the Court of Learned CJM on 03.07.2025 as regular special Judge

was absent, and on that day the accused was defended by his engaged Learned defence counsel by filing a bail application.

[07] I have also gone through the record of the Learned Trial Court including the documents forwarded at the time of production of accused before the Court. Also I have gone through the order dated 03.07.2025 passed by Learned CJM, North Tripura, Dharmanagar. From the documents produced before the Learned Trial Court on 03.07.2025 which were duly counter signed by Learned CJM it appears that separate 'grounds of arrest' memo was furnished to the accused by O/C, Bagbassa Police Station which contained the seal and signature of O/C, Bagbassa Police Station. In the order Learned CJM reflected that the IO produced the report along with arrest memo, forwarding report and medical examination report. But for any reason that the 'grounds of arrest' was communicated to the accused was not specifically mentioned in the order sheet. But from the record it is clear that separate 'grounds of arrest' in writing was also communicated to the accused in writing which also contained the signature of Learned CJM, North Tripura, Dharmanagar on 03.07.2025. So, the submission made by Learned Defence counsel that no 'grounds of arrest' was separately communicated to the accused in writing cannot be legally accepted at this stage. On 04.07.2025 the said accused was again produced before the Court of Learned Special Judge. I have also seen the order dated 04.07.2025 and subsequent orders dated 07.07.2025, 21.07.2025 04.08.2025, 11.08.2025 and 25.08.2025. In all the aforesaid dates the accused was duly represented by his engaged Learned defence

counsel. From the relevant prosecution papers it is crystal clear that on the date of production before the Learned Trial Court the accused was duly informed the 'grounds of his arrest' in writing. Initially, on the ground of non furnishing of 'grounds of arrest' in another case this Court granted interim bail to an accused but the fact of that case and the present case are totally different. In this regard reference is made by Learned P.P. to a judgment of the Hon'ble Supreme Court of India in **State of Karnataka vs. Sri Darshan Etc.** reported in **2025 SCC OnLine SC 1702** wherein in para Nos.20.1.6 and 20.1.7 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. drawn the attention of the Court that even if it is found that no 'grounds of arrest' is

communicated to the accused, still it is a curable defect and cannot by itself warrant release of the accused on bail and also cannot be said that the arrest was illegal and the accused be entitled to be released on bail.

Reference was made by Learned P.P. in another citation of the Hon'ble High Court of Kolkata in **CRM(NDPS)No.169 of 2025 along with others** reported in **2025 SCC OnLine Cal 4502** wherein in para Nos.37 to 40 Hon'ble High Court of Kolkata further 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."

Referring the same, Learned P.P. further drawn the attention of the Court that considering the facts and circumstances of the present case there is no scope to release the accused on bail at this stage and urged for dismissal of the bail application.

[08] I have given anxious hearing of both the sides and after going through the relevant prosecution papers and also after perusal of the citations as referred above by Learned P.P. in course of hearing it appears that on the day of production of the accused before the Learned CJM the 'grounds of arrest' was duly communicated in writing to the accused and the same fact was also informed to his near relative with the consent of the accused in custody. Furthermore, in this case, contraband item of commercial quantity was recovered/found under the possession of the accused in custody regarding possession of which the accused in custody could not give any specific account to the investigating police officer. Furthermore, it is also the settled position of law that the stringent positions under the NDPS Act cannot be compared with other general offences. In a case under NDPS Act the twin conditions as provided under Section 37 of NDPS Act are to be strictly followed.

[09] Here in the case at hand save and except the 'grounds of arrest', no other satisfactory arguments were placed by Learned defence Counsel representing the accused in custody to consider

bail of the accused in connection with this case. More so, the accused in custody at the time of hearing also failed to satisfy the Court that the twin conditions of Section 37 of NDPS Act cannot be applied in this case. So, considering the materials on record and also the fact that the contraband items of commercial quantity was directly seized from his possession and the said fact also reveals from the seizure memo. Furthermore, the grounds of arrest have been duly communicated in writing to the accused at the time of arrest and his production before the Court .

Situated thus, considering the materials on record at this stage I do not find any scope to consider release of the accused on bail. Accordingly, the bail application filed on behalf of the accused stands rejected. The accused is to remain in JC as before.

However, from the record it appears that in the arrest memo the IO did not reflect that separate 'grounds of arrest' was communicated in writing to the accused and in this regard, this Court in another order directed the DGP of Police to inform all the investigating officers who are dealing with cases under the NDPS Act to specifically mention with the arrest memo as 'enclosure' to avoid any legal confusion. Here in this case also nothing is found from the arrest memo that the 'grounds of arrest' was enclosed with the arrest memo to ensure that the same was duly communicated in writing to the accused at the time of production under the arrest before the Learned Trial Court which needs to be taken care of. Learned P.P. be asked to take up the matter again

with the appropriate authority so that the same thing may not occur in near future to avoid any legal confusion.

With this observation, the present bail application stands disposed of. Send down the record to the Learned Trial Couret along with a copy of this order. Return back the CD to IO through Learned P.P. along with a copy of this order.

JUDGE

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