

**HIGH COURT OF TRIPURA
AGARTALA
B.A.No.73 of 2025**

Badal Miah,
S/o: Md. Kuddus Miah, aged about 43 years,
Resident of Sachindralal Charipara, P.S. Amtali,
District: West Tripura.

----Accused-in-custody(s)

The accused person being lodged in judicial custody, the present petition is preferred and presented by the wife of accused person, namely:

Rina Begam,
W/o: Badal Miah, aged about.....years,
Resident of Sachindralal Charipara,
P.S. Amtali, District: West Tripura.

----Applicant(s)

Versus

The State of Tripura

----Respondent(s)

For Applicant(s)	:	Mr. Prasanta Sen Chowdhury, Adv. Mr. Partha Ranjan Sarkar, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

18/09/2025

This bail application under Section 483(1) of BNSS, 2023 is filed for granting bail to the accused in custody namely, Badal Miah who is lodging in jail in connection with Amtali PS Case No.2024 AMT 104 under Sections 21(b)/22(c)/23/25/27/27(A)/29 of NDPS Act, 1985 corresponding to Special NDPS 35 of 2025.

Heard Learned Counsel, Mr. Prasanta Sen Chowdhury appearing on behalf of the accused in custody. Also heard Learned P.P., Mr. Raju Datta appearing on behalf of the respondent-State.

Today, Learned P.P. has produced the case diary and by this time, record from the Learned Trial Court has also been received.

At the time of hearing, Learned Counsel for the accused in custody first of all drawn the attention of this court that initially by order dated 06.09.2024, the present accused in custody was granted interim bail by the Court of Learned Special Judge, Court No.4, West Tripura, Agartala till 30.09.2024 on the ground that nothing was seized from his possession in course of investigation and on the basis of confessional statement of another accused, Ibrahim Miah he was taken into custody. Thereafter, the same was further extended till 05.11.2024 which was again extended till 20.11.2024. By this time, the State-respondent challenged the order of interim bail granted to the present accused and this Court by order dated 17.01.2025 in connection with BA No.88 of 2024 cancelled the interim bail granted to the accused with a direction to surrender before the Learned Court below. After that, on 06.05.2025, the present accused surrendered before the Court of Learned Special Judge and since then he is lodging in custody.

It was further submitted by Learned Counsel for the accused in custody that by this time, the charge-sheet is submitted by the I.O. of this case and other accused persons namely, Kabir Hossen and Helal Miah @ Abdul Miah are still absconding. It is not known to the Court when the rest of the accused persons would appear before the Court and as such, considering the period of detention of the accused person in custody, Learned Counsel, Mr. Sen Chowdhury urged for releasing him on bail in any condition.

Learned Counsel for the accused in custody further submitted that the ground of arrest was not communicated to the accused and no contraband item was directly seized from his possession. Moreso, the accused was not F.I.R. named. So, considering

the materials on record, there is very least scope that the present accused would be convicted on conclusion of trial. So, Learned Counsel urged for releasing the accused on bail on any condition.

On the other hand, Learned P.P. for the respondent-State submitted that it is the admitted position that the accused was granted interim bail initially by the Court of Learned Special Judge. So, the argument of Learned Counsel for the accused in custody that no ground of arrest was communicated to him is immaterial. Learned P.P. further submitted that the plea of Learned Counsel for the accused in custody that nothing was found from his possession is also not a ground for granting bail to the accused. It was also submitted that the State-respondent has challenged the order of interim bail dated 06.09.2024 granted to the accused and this Court, after elaborate consideration of all the materials on record, by order dated 17.01.2025 in connection with BA No.88 of 2024, cancelled the interim bail granted to the accused. Learned P.P. further submitted that although by the said order dated 17.01.2025, a direction was given to the accused to surrender before the Learned Trial Court within a period of 7(seven) days but, he did not surrender and ultimately warrant of arrest was issued against him and in pursuance of warrant of arrest the present accused was produced under arrest before the Learned Court below. So, considering the materials on record and the conduct of the accused in custody, there is no scope to grant him bail at this stage.

Learned P.P. further submitted that even if it is found that other accused persons of this case are absconding, in that case a direction may be given to Learned Trial Court to split up the trial for the sake of justice.

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 in para No.20.1.7, Hon'ble the Apex Court observed as under:

"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 principle of law laid down by the Hon'ble Apex Court, there is no scope to consider the bail application of the accused in custody on the ground of arrest at this stage.

Learned P.P. also referred another order passed by a Division Bench of this Court in **W.P.(Crl) No.6 of 2025** titled as **Sima Aktar on behalf of Ikbāl Hossain vs. The State of Tripura & Anr.**, wherein in para No.16 it was observed as under:

"[16] As regards the judgment relied upon by the learned counsel for the petitioner, wherein it was observed that once a violation of Article 22(1) is alleged, the burden shifts upon the State to show effective compliance, this Court is of the view that the said authority is not applicable to the facts of the present case. That judgment dealt with a situation where the very communication of the grounds of arrest was in dispute. In the present matter, however, the grounds of arrest were sufficiently conveyed, and more importantly, the recovery of contraband dry ganja from the house of the accused in his presence itself constituted a clear and tangible ground for his arrest. Thus, the ratio laid down in the said case does not advance the cause of the petitioner and cannot be relied upon by this Court."

Learned P.P. further referred the order dated 08.09.2025 in connection with BA No.71 of 2025 passed by this Court. In addition to this, Learned P.P. also referred the citation of Hon'ble Supreme Court of India in **Union of India vs. Rattan Mallik alias Habul** reported in **(2009) 2 SCC 624**, wherein in para Nos.16 and 17, Hon'ble the Apex Court observed as under:

"16. Merely because, according to the learned 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 learned 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.

17. Thus, in our opinion, the impugned order having been passed ignoring the mandatory requirements of Section 37 of the NDPS Act, it cannot be sustained. Accordingly, the appeal is allowed and the matter is remitted back to the High Court for fresh consideration of the application filed by the respondent for suspension of sentence and for granting of bail, keeping in view the parameters of Section 37 of the NDPS Act, enumerated above. We further direct that the bail application shall be taken up for consideration only after the respondent surrenders to custody. The respondent is directed to surrender to custody within two weeks of the date of this order, failing which the High Court will take appropriate steps for his arrest."

Referring the same, Learned P.P. submitted that in view of the principle of law laid down by the Hon'ble Apex Court, even if the contraband item is not recovered from the possession of the accused person, still there is no scope to grant bail to the accused.

Learned P.P. further referred another citation of Hon'ble the Apex Court in **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan**, reported in **(2021) 10 SCC 100** wherein in para Nos.28 and 29, it was 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* [*Union of India v. Rattan Mallik*, (2009) 2 SCC 624 :

(2009) 1 SCC (Cri) 831] , 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 [Union of India v. Rattan Mallik, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831] , 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."

Again, referring another citation of this Court in **State of Tripura represented by Ld. Public Prosecutor vs. Mahabul Alam & Ors.**, reported in **2023 SCC OnLine Tri 777**, wherein in para Nos.17 to 21, this Court observed as under:

"17. From the aforesaid enunciations of law on the subject, it is abundantly clear, that the Courts while considering the application for bail must strictly adhere to the two conditions embodied in Section 37 of the NDPS Act, and must record its reason of satisfaction that there are substantial probable causes for believing that the accused is not guilty of committing such offence and that there is no likelihood of repetition of committing such offence by the accused while on bail. It is re-iterated that while considering the bail application filed by the accused arrested under the penal provisions of the NDPS Act, learned Special Judges should be confined within the limits embodied in Section 37 of the NDPS Act. Procedural violations, if any, shall be taken into consideration during the course of trial, and not at the stage of consideration of bail application.

18. I have given due consideration to the submissions of Mr. Bhattacharjee, learned counsel appearing for the accused-respondents and the decisions he relies upon in order to support his plea that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail as held by the Supreme Court in State (Delhi Administration) v. Sanjay Gandhi, (1978) 2 SCC 411 : AIR 1978 SC 961; Bhagirath Singh Judeja v. State of Gujarat, (1984) 1 SCC 284 : AIR 1984 SC 372; Bhuri Bai v. State of Madhya Pradesh, 2022 LiveLaw (SC) 956.

19. A Full-Bench of the Hon'ble Supreme Court in Sanjay Gandhi (supra) held that in order to succeed in an application for cancellation of a bail the Court should make an endeavour to test the balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice. The bench further held that:

"24. Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court

or Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the courts and bolt their doors against all than permit a few to ensure that justice shall not be done."

20. Similar view has been expressed in Bhagirath Singh Judeja (supra) and Bhuri Bai (supra). At this juncture, I must say, as I said earlier, the Courts should not forget the limitations under Section 37 of the NDPS Act in addition to the limitations prescribed in Cr. P.C.

21. In the context of the case, it is found that after being enlarged on bail two of the accused, namely, Mahabul Alam and Piklu Bhowmik had abused the benefit of liberty granted by the Court by way of allowing their applications for bail. The accused-respondents were found to be involved in two other cases registered under different police stations during the period of bail."

Referring the same citations, Learned P.P. submitted that in view of the settled position of law laid down by the Hon'ble Supreme Court of India, there is no scope to grant bail to the accused at this stage. Learned P.P. finally submitted that since the I.O. by this time has laid charge-sheet against the accused and there are sufficient materials against him showing his implication with the alleged offence so, there is no scope to grant bail to him at this stage and urged for dismissal of the bail application.

I have heard detailed submissions of both the sides and perused the record of Learned Trial Court as well as the case diary produced by Learned P.P.

This case was registered on the basis of an F.I.R. laid by one Om Prakash Swami, Assistant Commandant, 'D' COY 42 Bn BSF to O/C Amtali PS on 19.08.2024 and on the basis of that F.I.R., this case

was registered. In course of investigation, on the basis of confessional statement of another accused, Ibrahim Miah, the present accused in custody was produced under arrest before the Learned Trial Court on 06.09.2024 but, on that day the Learned Trial Court considering the materials on record, granted him interim bail which was extended for certain period time to time. Later on, his interim bail was challenged before this Court and this Court by order dated 17.01.2025 cancelled the order of interim bail granted to him and subsequent orders thereon. In the meantime, the I.O. has also collected some evidences i.e. recorded the statement of some of the witnesses of the prosecution from whose statements, the involvement of the accused in custody has been revealed. Finally, the I.O. in this case has laid charge-sheet against: 1. Badal Miah 2. Abdul Husain 3. Kabir Hossen, 4. Abdul Miah @ Helal Miah and 5. Ibrahim Miah and accordingly, by order dated 28.02.2025, cognizance of offence punishable under Section 21(b)/22(c)/25/27/27(A)/29/23 of NDPS Act has been taken against all the accused persons.

From the record it appears that accused, Ibrahim Miah was released on default bail and accused Abdul Husain later on was enlarged on bail by order dated 01.08.2025. Accused Kabir Hossen and Abdul Miah @ Helal Miah are still absconding and the present accused Badal Miah is lodging in jail on and from 06.05.2025.

On perusal of the record of Learned Trial Court, the case dairy and the materials so far collected by the I.O. in course of investigation against the present accused it is revealed that in pursuance of the order of this Court the accused person did not surrender before the Court below and ultimately warrant of arrest was issued against him. On the basis of warrant of arrest the present

accused was again produced before the Court below on 06.05.2025. So, the submission of Learned defense counsel that the accused surrendered and he could not appeared before the Court below due to his illness does not appears to be true and correct.

I have also perused the citations referred by Learned P.P. representing the prosecution.

In a case of this nature, it is not necessary that the accused person should be F.I.R. named. If during investigation his/her name reveals in that case there is no scope to presume that he/she was innocent. Since, after completion of the investigation the I.O. has laid charge-sheet against the present accused in custody and others. So, *prima facie*, at this stage, there is no scope to presume the accused to be innocent. However, the grounds referred by Learned Counsel for the accused in custody cannot be accepted at this stage because the plea of ground of arrest is not a valid ground for releasing the accused on bail and in view of the principle of law laid down by Hon'ble the Apex Court in the aforementioned case of **Darshan (supra)** there is no scope to consider his bail application. Furthermore, it is the admitted position that the accused is not F.I.R. named but at the same time it is also on record that on the basis of confessional statement he was taken into custody and in course of investigation the I.O. has collected some materials against him showing his implication with the alleged offence. So, the submission of Learned Counsel for the accused in custody also cannot be considered that there are no materials against him showing his implication with the alleged offence.

Now, at this stage, whether in view of the present circumstances, where the two accused persons are still absconding is there any scope to consider the bail application to the accused?

In this regard, the answer is 'No'. Each case will proceed according to its own merit.

It is on record that two accused persons are absconding and against them process has been issued. Now, it is for the executing authority to execute the order of the Court. As, already stated accused, Ibrahim Miah was granted default bail and another accused, Abdul Husain was granted bail by order dated 01.08.2025 and the present accused is in custody. On perusal of the record it appears that the conduct of the accused was not at all satisfactory. Even, considering the materials on record, at this stage, there is no scope to grant the benefit of Section 37 of NDPS Act as because Learned Counsel for the accused in custody in course of hearing failed to place any satisfactory grounds to consider the bail application of the accused in custody.

So, considering the materials on record, at this stage, I find no scope to release the present accused on bail. Hence, the instant bail application stands rejected. The accused is to remain in J/C as before.

However, considering the present situation it is ordered that the Learned Court below may split up the case record and proceed for trial against the accused persons who are available, keeping the case pending against the rest absconding accused persons.

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

Send down the record of the Learned Trial Court along with a copy of this order. Return back the case diary to I.O. through Learned P.P. along with a copy of this order.

JUDGE

Snigdha