

**HIGH COURT OF TRIPURA
AGARTALA**

B.A. No.89 of 2025

Md. Amran Hossain(21)

S/o Abdul Ali,
Resident of Madhyapara, Indiranagar, P.S: Melaghar,
Dist.: Sepahijala, Tripura, Pin-799115.

---- Applicant

Saddam Hossain (30),

S/o Abdul Ali,
Resident of Madhyapara, Indiranagar, P.S: Melaghar,
Dist.: Sepahijala, Tripura, Pin-799115.

---- Accused person in custody

Versus

Union of India

Represented by Customs Preventive Force,
Teliamura under Customs Division, Agartala,
Ministry of Finance, Department of Revenue, Govt. of India.

----Respondent(s)

For Applicant(s)	:	Mr. Siraj Ali, Adv.
For Respondent(s)	:	Mr. Biplabendu Roy, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

13/11/2025

This bail application under Section 483 of BNSS, 2023 read with Section 37 of NDPS Act, 1985 is filed for granting bail to the accused person-in-custody namely Saddam Hossain in connection with Customs, Teliamura case No.03/CL/NDPS/CPF/TLM/2025-26 for the offence punishable under Sections 21(c)/22(c)/23(c)/ 25/25A/29 of NDPS Act, 1985.

Heard Learned Counsel, Mr. Siraj Ali appearing on behalf of the accused person-in-custody and also heard Learned Counsel, Mr. Biplabendu Roy appearing on behalf of the respondent-Union of India.

As ordered earlier, this Court has received the record from the Learned Trial Court and also Learned prosecuting Counsel on behalf of Union of India has produced the Case Diary.

Taking part in the hearing, Learned Counsel for the accused has drawn the attention of this Court referring the contents of the complaint that on 18.06.2025 at about 05:30 hours, Inspector Dinesh Kumar, Customs Preventive Force, Teliamura received one secret information from a secret source that huge quantity of Yaba tablets are being transported from Dharmanagar to Sonamura by a new bike (two-wheeler) Bajaj NS 200 (Red Colour) with temporary registration number and the Yaba tablets will be kept in bag of the rider and the name of the rider will be Saddam Hossain. It was also the information that the said bike will proceed through Kamalpur-Khowai road (NH-208) and it will cross Khowai between 09:30 hours to 10:30 hours. After receiving the information, the fact was immediately reduced into writing in the office information register and then he immediately intimated the fact to his superior officer i.e., the Superintendent, CPF Unit, Teliamura by sending one copy of the page of the information register in which he reduced the information in writing along with a forwarding vide dispatch no.- 179, dated 18.06.2025. After receiving his written intimation, his superior officer endorsed him with the operation and directed him to proceed for the recovery by following the NDPS Act. Accordingly, at around 07:30 hours, he formed a team of other staffs of CPF Unit, Teliamura and also took assistance of 28 Assam Rifles, Teliamura Sector for the purpose of operation and proceeded from their office along with the tools for operation & seizure proceedings like electronic weight machine, field drug

testing kit, blank & formatted papers, etc. and reached Khowai around 08:30 hours and went towards Bachaibari to decide the interception point as the carrier was riding a bike and NH208 is wider which the rider could use to flee away. At around 09:00 hours they reached near Bachaibari market and found one suitable place to intercept the small vehicle. At around 09:15 hours, he approached two persons and introduced himself and the team to them by showing ID cards. Thereafter, he informed them about the secret information and requested them to be witness of the search proceedings that will be interception of the targeted vehicle. The witnesses agreed to his request. At about 11:15 hours, when the informant along with the other members of the team were waiting near Bachaibari, Khowai, that time, he found the vehicle i.e. red colour Bajaj NS 200 driven by one person, carrying one bag and he signaled the bike to stop and park on the roadside. That time, he asked Havaladar of Teliamura Customs office for video recording of the proceedings. Being asked the accused person disclosed his name and address as Saddam Hossain from Melaghar and thereafter conducted search to him and asked him to open his black bag which he was carrying on his back. The rider got down from the bike and opened his back. After opening, two brown coloured packets packed in one white polyethene and 02 packets in 02 coloured polyethene were recovered which were concealed under clothes and armguard. Thereafter, on asking the accused person told him that the goods are being transported from Dharmanagar to Melaghar. After that, Inspector made arrangement for the weight of the packet and after weighing the gross weight of all 04 packets found around 4.570 Kgs. Thereafter, one packet was opened and it was found

containing 05 small brown packets of Yaba Tablets and thus the net weight of the recovered Yaba tablets found around 4Kgs. After that, on closure of seizure proceeding, a case was registered on spot against the accused person by the Customs under Customs Seizure Case No.-03/CL/NDPS/CPF/TLM/2025-26, dated 18.06.2025 and value of seized Yaba tablets was around Rs. 4,00,00,000/- (Rupees Four Crores only) and the total value was ascertained at Rs. 4,02,50,000/- (Rupees Four Crores Two Lakh Fifty Thousand) only. Accordingly, the accused was taken into custody and thereafter prosecution report was submitted to the Learned Trial Court and on and from 19.06.2025 till today the accused is lodging in custody.

It was further submitted by Learned Counsel for the accused person-in-custody that in this case the ground of arrest was not communicated to the accused in writing to the language he understands. Furthermore, in the arrest memo, signature of one Gopal Debnath has been obtained by the informant who is not the family member or the near relative of the accused. Referring the arrest memo and also the memo containing ground of arrest which are annexed with the bail application, Learned Counsel Mr. Ali has drawn the attention of the Court that observation made by Hon'ble the Apex Court was not followed by the Prosecuting Agency and as such the present accused deserves to be released on bail.

In support of his contention, Learned Counsel relied upon one judgment of Hon'ble Supreme Court of India reported in **(2025) 5 SCC 799 [titled as Vihaan Kumar vs. State of Haryana & Another]** wherein in para Nos.26, 42, Hon'ble the Apex Court observed as under:

"Conclusions

26. Therefore, we conclude:

26.1. *** *** ***

26.2. The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

26.3. *** *** ***

26.4. *** *** ***

26.5. *** *** ***

26.6. *** *** ***

42. The purpose of inserting Section 50-ACrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal."

Learned Counsel also referred a very recent judgment of Hon'ble the Apex Court reported in **2025 SCC OnLine SC 2356 [titled as Mihir Rajesh Shah vs. State of Maharashtra & Another]**, wherein in para Nos.43, 44, 45, 47, 49 and 52, Hon'ble the Apex Court observed as under:

"43. Further, the above judgment has been reiterated and followed by this Court in *Lallubhai Jogibhai Patel v. Union of India*, (1981) 2 SCC 427 : 1981 SCC (Cri) 463 : (1982) 52 COMP CAS 543 where it has been reaffirmed that grounds of

detention must be communicated to the detenu in writing in a language which he understands.

44. On perusal of the above two judgments, it turns out that mere communication of the grounds in a language not understood by the person arrested does not fulfil the constitutional mandate under Article 22 of the Constitution of India. The failure to supply such grounds in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Article 21 and 22 of the Constitution of India. The objective of the constitutional mandate is to place the person in a position to comprehend the basis of the allegations levelled against him and it can only be realised when the grounds are furnished in a language understood by the person, thereby enabling him to exercise his rights effectively.

45. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse. The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard. The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1). There is no harm in providing the grounds of arrest in writing in the language the arrestee understands, this approach would not only fulfil the true intent of the constitutional mandate but will also be beneficial for the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.

47. It would not be out of context now to refer to an obligation which has been imposed on a person making arrest, as provided under Section 50A read in relation to Section 50 of the CrPC 1973 (now Section 48 and 47 of BNSS 2023 respectively), to inform the arrestee of his right to indicate his relative, friend or such other person for the purpose of giving information with regard to his arrest. Simultaneously, a duty has also been cast on the person making arrest to forthwith thereafter inform of such arrest with reasons and the place where the arrested person is being held to the such indicated person. The police officer/person making any arrest

shall make an entry of the fact as to who has been informed of such an arrest in a book to be kept in the police station. Further protection in this regard is reflected when a duty has been cast on the magistrate to satisfy himself, when the arrestee is produced before him, that the above requirement stands complied with. This requirement is in addition to the rights of an arrestee to be made aware of the grounds of arrest.

49. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says 'as soon as may be' which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.

52. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. **Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the magistrate for remand proceedings.** The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the magistrate."

Referring those citations, Learned Counsel submitted that from the contents of grounds of arrest memo and also the arrest memo, it transpires that the requirement of law could not be followed by the prosecuting officer. Thus, in view of the observation made by Hon'ble the Apex Court in the aforementioned case, the accused deserves to be released on bail in any condition.

On the other hand, on behalf of Union of India, one objection is filed by filing an affidavit on the ground that in this case, the provision of Section 37 of NDPS Act will be applied and as such, the accused is not entitled to be released on bail.

At the time of hearing, Learned prosecuting Counsel on behalf of Union of India relied upon one citation of Hon'ble the Apex Court reported in **(2022) 18 SCC 374 [titled as *Narcotics Control Bureau vs. Mohit Aggarwal*]** wherein in para Nos.14, 15, 17 and 18, Hon'ble the Apex Court observed as under:

"14. To sum up, the expression "reasonable grounds" used in clause (b) of sub-section (1) of Section 37 would mean credible and plausible grounds for the court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of Section 37 of the Act, the court is not required to record a finding that the accused person is not guilty. The court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

18. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by the learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

19. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

Referring the same, Learned Counsel on behalf of Union of India submitted that in view of the observation made by Hon'ble the Apex Court in the aforementioned case there is no scope to release the accused on bail at this stage and urged for dismissal of the bail application.

I have heard both the sides at length and perused the relevant prosecution papers and also the citations of Hon'ble the Apex Court referred by Learned Counsel for the parties.

For the sake of convenience, first of all let us examine Section 37 of NDPS, which provides as under:

"37. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for "[offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail"

From the aforesaid provision of law, it appears that Section 37 of NDPS Act would apply only in a case of contraband items which attracts commercial quantity. Here in the case at hand there is no dispute on record that the contraband item of commercial quantity was not seized from the possession of the alleged accused on the alleged date and time and the said fact has not been disputed by the Learned Counsel for the accused.

At the time of hearing, Learned Counsel for the accused-in-custody only drawn the attention of the Court that the grounds of arrest was not communicated to the accused to the language he understands and in the arrest memo, the prosecuting agency has shown the name of one Gopal Debnath, who was/is in no way connected with the accused, thus, violated Article 22 of the Constitution of India and Section 47 and 48 of BNSS for which the accused deserves to be released on bail in any condition.

I have also very carefully perused the record of the Learned Trial Court and also the Case Diary maintained by the I/O of this case. From the memo of ground of arrest prepared by I/O on 18.06.2025, it appears that on the bottom of the said memo, it was specifically written that "*Grounds of arrest as written above explained to me in my known language by Dinesh Kumar, Inspector, CPF Teliamura which I understood.*" and also from the arrest memo it appears that on the body of the same, the signature of the accused was taken and the ground of arrest was not only communicated to the accused but also the same was informed to his brother Imran Hossain through his phone number 9366458732.

This present accused was produced under arrest before the Learned Trial Court on 19.06.2025 and from that day he is languishing in jail till today. From the record of the Learned Trial Court, it appears that almost on all the dates the accused was represented by his engaged Counsel and also it transpires that in course of hearing of bail before the Learned Trial Court not a single question was raised either by the accused or by his engaged Learned Counsel regarding the communication of "ground of arrest" to the accused save and except the submission

that the guideline of the Hon'ble Supreme Court of India in **Vihaan Kumar(supra)** was not complied with. From the memo of ground of arrest and also the arrest memo which has been annexed with the bail application as *Annexure-C* and *Annexure-D*, it appears to this Court that the prosecuting officer has not committed any mistake in compliance of the direction of the Hon'ble Supreme Court of India in this regard. Before the Learned Trial Court, not a single question was raised by the engaged Learned Counsel who represented the accused. From Annexure-D, it appears that the signature of one Gopal Debnath was taken by I/O, who is not a family member or relative of the accused rather he was a reputed person of the locality in presence of whom the accused was taken into custody. So, *prima facie* I do not find any irregularity or illegality has been committed by I/O in this case.

In this regard, Hon'ble the Apex Court in a judgment reported in **2025 SCC OnLine SC 1228 [titled as *Kasireddy Upender Reddy vs. State of Andhra Pradesh & Ors.*]** in para No.36, Hon'ble the Apex Court observed as under:

"36. If a person is arrested on a warrant, the grounds for reasons for the arrest is the warrant itself; if the warrant is read over to him, that is sufficient compliance with the requirement that he should be informed of the grounds for his arrest. If he is arrested without a warrant, he must be told why he has been arrested. If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial. In order to inform him that he has committed a certain offence, he must be told of the acts done by him which amounts to the offence. He must be informed of the precise acts done by him for which he would be tried; informing him merely of the law applicable to such acts would not be enough. (See : Vimal Kishore Mehrotra (supra))"

Similarly, Hon'ble the Apex Court in another case reported in **2025 SCC OnLine SC 1702 [titled *State of Karnataka vs. Sri Darshan Etc.*]** wherein in para Nos.20.1.6 and 20.1.7, has been pleased to observe 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."

From the aforesaid observation, it appears that Hon'ble the Apex Court observed that if there is any procedural lapses, the same is a curable defect and cannot, by itself, warrant release on bail and do not *ipso facto* render custody illegal or entitle the accused to bail. Here in the case at hand, from the record of the Learned Trial Court and the arrest memo, it appears that the accused person-in-custody was all along aware of the reasons for his arrest. He was all along represented by his engaged Learned Counsel and applied for bail knowing the understanding of the accusations and there is no material before this Court at this stage

to show that any prejudice has been caused due to alleged procedural lapse to the accused.

So, after going through the relevant prosecution papers, I do not find any material in the instant case that any prejudice has been caused to the accused regarding information of ground of arrest and also regarding conveying information to the family member of the accused from the side of the prosecuting officer.

Situated thus, I find no merit in the bail application. Accordingly, the bail application filed by the applicant stands rejected. The accused is to remain in Judicial Custody as before.

The I/O be asked to expedite investigation and to submit report.

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 Counsel on behalf of Union of India along with a copy of this order.

JUDGE