

**HIGH COURT OF TRIPURA
AGARTALA
BA No.91 of 2025**

Sri Pradip Podder,
Son of Sri Haradhan Podder,
Resident of Nripendra Para,
Bijoynagar, P.O. Bijoynagar,
P.S. Sabroom, District: South Tripura

---Applicant

On behalf of:-

Sri Pranesh Das,
Son of Late Narendra Das,
Resident of Nripendra Para,
Bijoynagar, P.O. Bijoynagar,
P.S. Sabroom, District: South Tripura

---Accused Person

-Vs-

The State of Tripura

---Respondent

For Applicant(s)	:	Mr. Ankan Tilak Paul, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

01/11/2025

This bail application under Section 483 of BNSS is filed for granting bail to the accused person in custody in connection with Sabroom PS Case No.2025 SBM 024 for the offence punishable under Sections 20(b)(ii)(c)/25/29 of NDPS Act, 1985.

Heard Learned Counsel Mr. A. T. Paul appearing on behalf of the accused in custody and also heard Learned P.P. Mr. R. Datta appearing on behalf of the State.

We have received the record from the Learned Trial Court and by this time Learned P.P. has produced the Case Diary.

At the time of hearing Learned Counsel appearing for the accused in custody first of all drawn the contents of the FIR that as per printed form of the FIR the occurrence of offence took place

on 19.07.2025 at 13.00 hours and information received at P.S. on 19.07.2025 at 14.55 hours and as per FIR the patrolling party conducted raid at about 2230 hours and further as per arrest memo the accused in custody was arrested on 19.07.2025 at 1415 hours. Referring the same Learned Counsel appearing for the accused in custody drawn the attention of the Court that how before the registration of the case and information received at P.S. the accused was arrested in connection with this case, this was totally surprising and prosecution in this case could not explain anything in this regard. Furthermore nothing was seized from the possession of the accused and he was not owner or driver of the vehicle even he was also not the passenger of that vehicle. Rather he was simply a passer-by and was intoxicated for which he was taken into custody and has been falsely implicated in this case. So Learned Counsel on conclusion of his argument urged for releasing the accused on bail in any condition.

On the other hand, Learned P.P. Mr. R. Datta appearing on behalf of the State strongly objected the submission made by Learned Counsel appearing for the accused in custody and submitted that in this case no investigation was conducted by the police initially rather right from the seizure/detention everything was made by BSF Personnel. In this regard he drawn the attention of the Court the relevant portion of the part of the FIR laid by the BSF Personnel and submitted that on the basis of the FIR laid by Sanjay Kumar Singh of 114 Bn BSF 'B' Coy Bop, Chhotakhil this present case has been registered and the accused was taken into custody and the contraband item was of commercial quantity so

the story projected by Learned Counsel appearing for the applicant cannot be believed.

Learned P.P. further submitted that even if we assume that nothing was directly found or seized from the possession of the accused still in view of the observation made by the Hon'ble Apex Court there is no scope to grant bail to the accused and in this case the rigour of provision of Section-37 of the NDPS Act would strictly apply and he urged for dismissal of the bail application. Reference was made by him upon one citation of the Hon'ble Apex Court in **Union of India vs. Rattan Mallik alias Habul** reported in **(2009) 2 SCC 624** wherein in para Nos.15 and 16 Hon'ble the Apex Court observed as under:

15. Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are :(i) that nothing has been found (2007) 7 SCC 798 from the possession of the respondent; (ii) he is in jail for the last three years and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Indian Penal Code, 1860 etc. but are not sufficient to satisfy the mandatory requirements as stipulated in sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act.

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

Further reference was made in another case of the Hon'ble Supreme Court of India 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 Hon'ble the Apex Court 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 Malik¹⁹, 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 Malik (supra), 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."

Referring the same Learned P.P. submitted that from the principle of law laid down by the Hon'ble Apex Court in the aforementioned cases there is no scope to grant bail to the accused. Learned P.P. further submitted that on bare perusal of the written FIR it appears that there might have some clerical or typing mistake. Actually the date of performing duty as mentioned in the FIR would be 18.07.2025 at about 2230 hours in place of 19.07.2025 because from the entire prosecution papers it will be clear that the vehicle was detained in the intervening night of 18.07.2025 and 19.07.2025 after 12.00 so there is no scope to believe the defence theory projected by Learned Counsel for the accused and urged for dismissal of this bail application.

I have heard both the sides and perused the relevant prosecution papers. As already stated the FIR was laid by one S.I. Sanjay Kumar Singh of B.S.F. who in his FIR to O/C, Sabroom, South Tripura submitted that on 19.07.2025 which should be 18.07.2025 at about 2230 hours Special Patrolling party were performing duties in the depth area of BOP Battali from 190005 hours and at about 0100 hours the patrolling party observed that 01 auto is coming from Kalyan Nagar road turned to Sabroom Manughat road. On seeing the movement of auto the patrolling

party gave a signal to stop the same. But the auto driver did not stop the same rather turned the auto towards Kalyannagar resulting which the auto turned upside down the auto driver managed to escape from the spot leaving the auto and dragged towards Kalyannagar taking the advantage of dense vegetation and one person was seated in the backside of the auto when in course of search they found three gunny bags inside the auto suspected to be contraband items and thereafter in presence of independent witnesses they prepared pre-search memo and total they could recover around 43 kilo of contraband items suspected to be dry ganja in different packets having separate quantum of each packets and during search they have recovered the driving license of another accused Khokan Nath and also the name of the detained person was Pranesh Das and after that they have arrested said Pranesh Das and the seized contraband items along with other documents handed over to OC of the concerned PS and accordingly the case was registered. In total 43.500 kg of the contraband item was seized and recovered and in course of investigation the accused was produced before the Court on 19.07.2025 and since then he is lodging in custody.

I have seen the relevant prosecution papers and also gone through the statements of the witnesses so far recorded by I.O. in course of investigation of the case. It is on record that the seized contraband items was seized from the offending vehicle when the driver Khokan Nath escaped leaving the vehicle to the spot but the present accused in custody was also present inside the vehicle on that relevant point of time. He also could not give any specific account in respect of his possession of the contraband items. I have also seen the observation made by the Hon'ble Apex Court in

the aforementioned cases. The investigation of the case is in progress. The involvement of the present accused cannot be ruled out with the alleged offence regarding his movement in the late night through the said vehicle which contained the contraband items. The citation referred by Learned P.P. representing the prosecution appears to be more significant at this stage and in view of the provision of Section-37 of the NDPS Act at this stage there is no scope to presume the accused to be innocent. So the submission of Learned Counsel appearing for the accused in custody cannot be accepted. However, after going through the FIR it appears that the informant who laid the FIR through bona fide typing mistake might have mentioned the date 19.07.2025 which should be 18.07.2025 at about 2230 hours created some doubt in the mind of the Learned Counsel appearing for the applicant and for the clerical/typing mistake I also find no scope to consider the bail filed on behalf of the accused at this stage. Accordingly the bail application filed by the applicant stands rejected being devoid of merit. The accused is to remain in J/C as before.

With this observation this present bail application stands disposed of.

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

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

JUDGE

**MOUMITA
DATTA**

Moumita

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MOUMITA DATTA
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