

HIGH COURT OF TRIPURA
AGARTALA

BAIL APPLICATION NO.95 OF 2025

Shri Rupak Shil,
S/o Manindra Shil, aged about 31 years, resident of
Village-Brajendra Nagar, P.O. Rayer Mura,
Pandabpur, District-West Tripura, Pin-799130.

--- Applicant .

Moudud Ahmed Choudhury,
S/o Hamid Uddin Choudhury, aged about 32 years,
Resident of Gobindapur, PT-II, Village-Gobindapur,
Part-III, Silchar, District-Cachar, Assam, Pin-788101.

...Accused person.

Versus

Union of India, represented by
Shri Sumanta Chowdhury, Sr. Intelligence Officer,
Directorate of Revenue Intelligence, Agartala Regional Unit, under
Ministry of Finance, Department of Revenue, Govt. of India.

--- Respondent.

BEFORE
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

For the Applicant/petitioner : Mr. Sankar Lodh, Advocate.
Mr. Subham Majumder, Advocate.

For the Respondents : Mr. Arindam Ray, Advocate.

Date of hearing : 28.10.2025

Date of delivery of
Judgment & Order : 27.11.2025

Whether fit for reporting :

YES	NO
✓	

JUDGMENT AND ORDER

This bail application has been filed on behalf of accused Moudud Ahmed Choudhury, the owner of the vehicle No. AS11-AB-3690 (Maruti Suzuki XL6) [here-in-after referred to as the present accused person], in connection with DRI Case No. 03/CL/NDPS/DRI/AGT/2024-25, corresponding to Special (NDPS) Case No.180/2024, under Sections 8(c) &

9(A) of the NDPS Act, punishable under Sections 21(a), 22(c), 23(c), 25(a), 28 and 29 of the said Act.

2. The gravamen made in the initial complaint/FIR, lodged by one Intelligence Officer, Directorate of Revenue Intelligence, Agartala, are that on the basis of secret information, they, along with other staff of DRI and BSF personnel, detained the above said vehicle near Kamalghat bridge on Khowai-Agartala road on 04.06.2024, at about 17:00 hours while the vehicle was coming towards Agartala, and on search, they recovered 7 Nos. of plastic packets wrapped with adhesive tape from the inbuilt box of the backside of the said vehicle, and further 8 Nos. of such plastic packets from the bonnet of the vehicle. Those packets contained pink coloured 'Yaba' tablets. The net weight of such tablets was found to be 15 Kg. After recovery, necessary seizure was made. They also detained the driver of the said vehicle, namely, Mohammed Dawait, and another passenger, namely, Rahul Ghosh, who was sitting on the front seat of the vehicle. The report of the Forensic Lab also affirmed the fact that those seized tablets contained *methamphetamine* and *caffeine*.

3. The Investigating Officer carried out the investigation, and a final report was submitted against the owner of the vehicle, namely, Moudud Ahmed Choudhury, along with the said two accused persons, under Sections 21(c), 22(c), 23(c), 25(a), 28, and 29 of the NDPS Act.

4. During the investigation, on two occasions, notice/summons was served upon the present accused person through his father and sister, as he was not found available in the house, asking for his appearance before the Investigating Officer. Despite the notices were served, he did not appear. Therefore, in the final report, he was shown as absconder.

5. Learned Special Judge, took cognizance of the above said offences vide order dated 05.12.2024, and directed to issue summons upon the present accused person. On 14.07.2025, he surrendered before the learned Special Judge and thereafter, he was taken into judicial custody. His bail applications were also rejected on several occasions and till date he is in custody.

6. Learned counsel, Mr. Sankar Lodh, praying for bail of the present accused person, argues mainly on 3 (three) points—firstly, that when a summons was issued by the Court upon him for his appearance and he appeared accordingly, taking him into custody thereafter by the learned Special Judge and remanding him in judicial custody were illegal; secondly, that the complaint was filed by the Union of India, which is not permissible as per the provision of Section 36-A(1)(d) of the NDPS Act; and thirdly, that there are no incriminating materials against the present accused person warranting such custodial detention. According to learned counsel, Mr. Lodh, in the investigation, it was only revealed that he was the owner of the vehicle and nothing more. Learned counsel, Mr. Lodh, also submits that the accused was not aware of service of notice/summons upon his family members; otherwise, he would have appeared before the Investigating Officer earlier.

7. Learned counsel, Mr. Lodh, further argues that the statements of the accused driver were recorded by the I.O., and according to said driver, one Kamal Roy engaged him to drive the said vehicle from Silchar Railway Station to Agartala for a remuneration of Rs.10,000/- stating that the said vehicle had been sold to one person at Agartala, and therefore, delivery of the vehicle was required to be made to said person. Accordingly, he was coming towards

Agartala with that vehicle, and near Kamalghat, the co-accused Rahul Ghosh gave him a signal to stop the vehicle, and accordingly, he stopped the vehicle. Thereafter, said Rahul Ghosh, having introduced himself as a representative of said Kamal Roy, boarded in the vehicle. Subsequently, the vehicle was intercepted by the officers of the Revenue Department, Govt. of India. Therefore, he was in no way involved in the alleged offence.

8. Therefore, according to learned counsel, Mr. Lodh, one Kamal Roy sent the vehicle to Agartala and there is no evidence that the present accused was involved in any manner in such an alleged drug trafficking. Learned counsel also relies on a decision of the Hon'ble Supreme Court in the case of *Tarsem Lal Vrs. Directorate of Enforcement, AIR 2024 SC 2512: (2024) 7 SCC 61* to gain support for his such submission that when an accused appears before the Court after receiving summons, he cannot be sent to judicial custody.

9. Mr. Lodh, learned counsel also relies on another decision of the Hon'ble Supreme Court in the case of *Souvik Bhattacharya Vrs. Enforcement Directorate, Kolkata Zonal Office-II, SLP (Criminal) No. 14476 of 2023*, decided on 16.02.2024. In that case, the Special Court in a case under the Prevention of Money Laundering Act, 2002 [for short, PMLA Act] did not pass any specific order for issuing any summons to the accused, but despite the same, the summons was issued and thereafter the accused voluntarily surrendered before the Court. When his bail application was filed and heard, it was rejected. His challenge in this regard made in the High Court was also turned down. Hon'ble Supreme Court in that contexts observed that when no summons was ordered to be issued against the said accused, the application for

bail of the accused could not have been entertained and therefore, there was a basic flaw in the proceeding conducted before the Special Court.

10. Learned counsel, Mr. Lodh also relies on another decision of the Hon'ble Supreme Court, in the case of *Satpal Singh Vrs. State of Punjab, (2018) 13 SCC 813*. The decision of this case is rendered in complete different contexts. In the said case, one of the co-accused filed a petition for pre-arrest bail before the High Court, claiming parity with the other two accused persons who were granted bail by both the High Court and the Special Court, ignoring the provision of Section 37 of the NDPS Act. Said petition for pre-arrest bail was rejected by the High Court, and ultimately the Hon'ble Supreme Court also rejected the same.

11. Learned counsel, Mr. Arindam Ray, for the respondents, argues that the accused initially was an absconder during the investigation, and therefore, when he appeared before the court after getting the summons, he was taken into custody. Learned counsel, Mr. Ray submits that there are *prima facie* materials against the present accused person regarding his involvement in commission of the crime under the above said provisions of the NDPS Act, and therefore, Section 37 of the Act stands as a bar in granting the bail. Learned counsel, Mr. Ray, also refuted the argument made by the learned counsel of the petitioner by submitting that proper notification was issued by the Union of India designating the concerned officer of Revenue Intelligence to investigate and submit a final report under the above said provisions of the NDPS Act, and therefore, the criminal proceeding is well maintainable.

12. Having considered the submissions of learned counsel of both sides, this Court has gone through the record of the trial Court and also the record of investigation as produced by learned counsel, Mr. Ray.

13. The point raised from the side of the petitioner that once a summons is issued by the Court for appearance of the accused and the accused accordingly appears, he cannot be taken into custody, is being addressed first. On this point, learned counsel, Mr. Lodh relies on *Tarsem Lal* (supra), wherein, a similar issue was raised that when a person appears before a Court after getting summons from that Court, whether that Court can remand him in the custody.

14. In the said case, the appellants were accused persons in a complaint filed under section 44(1)(b) of PMLA Act, who were not arrested after registration of the Enforcement Case Information Report (ECIR) till the Special Court took cognizance under the PMLA Act of an offence punishable under section 4 of the Act. After the cognizance was taken by the Special Court on the complaints so filed under section 44(1)(b), the appellants thereafter did not appear before the Special Court pursuant to the summons served upon them. The Special Court issued warrants for procuring their attendance and then they filed petition for pre-arrest bail before the Special Court which were rejected. Their prayers also were turned down by the High Court and then, approached the Hon'ble Supreme Court. One challenge was made from the side of the appellants in that case before the Apex Court that if an accused appears pursuant to the summons issued by the Special Court, there is no reason to issue a warrant of arrest against him or to take him into custody.

While discussing said issue with some other issues raised therein, Hon'ble Supreme Court finally held as under:

“Operative conclusions:

33. Now, we summarise our conclusions as under:

33.1. Once a complaint under Section 44(1)(b) PMLA is filed, it will be governed by Sections 200 to 205 CrPC as none of the said provisions are inconsistent with any of the provisions of PMLA;

33.2. If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;

33.3. After a summons is issued under Section 204 CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 CrPC;

33.4. In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 CrPC;

33.5. If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant;

33.6. A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

33.7 In a case where the accused has furnished bonds under Section 88 CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Section 70 CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; if such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said court on all the dates fixed by it. While cancelling the warrant, the court can always take an undertaking from the accused to appear before the court on every date unless appearance is specifically exempted. When ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application

for bail. Hence, Section 45(1) will have no application to such an application;

33.8. When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83 CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 CrPC, and the accused will have to apply for cancellation of the warrant;

33.9 After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44(1)(b), ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and

33.10 If ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.”

15. It was also clarified in paragraph No.24 that in the said case, Hon’ble Court was dealing with a fact situation where the accused shown in the complaint under Section 44(1)(b) PMLA was not arrested by ED by the exercise of power under Section 19 PMLA till the complaint was filed.

16. While arriving at the above said conclusions, Hon’ble Supreme Court interpreted the provisions of sections 43, 44(1)(b), 45(1), 46, 65, 71 of PMLA and the provisions of sections 88, 170, 200-204, 205, 437, 440 of Code of Criminal Procedure (for short, CrPC). Now, the applicability of said decision in *Tarsem Lal* is being discussed with reference to the provisions of NDPS Act and the facts involved in the present case in hand.

17. The alleged incident occurred in the present case is on 04.06.2024, and the first complaint was lodged on the following day before the

Special Judge i.e. prior to the date 01.07.2024 when the BNSS came into force. The provision of section 531(2) (a) of BNSS envisages that if, immediately before the date on which the Sanhita (BNSS) came into force, there is any appeal, application, trial, inquiry or investigation pending, then such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may, in accordance with the provisions of CrPC. Therefore, the matter is being discussed in the light of provisions as embodied in CrPC. In *Tarsem Lal* also, applicability of provisions of CrPC was discussed.

18. As per provisions of section 4 of PMLA, the prescribed punishment is within the range of imprisonment for 3 years to 10 years. Section 43 of the Act prescribes designation of one or more Courts of Sessions as Special Court for trial of cases under the said Act. *Pari materia* provision is also there under section 36 of the NDPS Act. Section 44(1)(d) of PMLA provides that a Special Court while trying the schedule offence or the offence of money-launder shall hold trial in accordance with the provisions of CrPC, as it applies to a trial before a Court of Sessions. Therefore, as per provisions of the said Act, a Special Court constituted under the provisions of PMLA is deemed to be a Court of Sessions. Similarly, as per provisions of section 36A of NDPS Act, the provisions of CrPC (including the provisions as to **bail** and **bonds**) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions. In section 51 of NDPS Act, it is also provided that the provisions of CrPC shall apply, in so far as they are not inconsistent with the provisions with the provisions of the Act, to all warrants issued and arrests, searches and seizures made the Act. Therefore, for trial under both the Acts,

there is applicability of the provisions of CrPC and in both cases, the Special Court is deemed to be the Court of Sessions.

19. The provision of section 437(1) CrPC, specifically exclude it's applicability when a person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by the police or appears or is brought before the court of Sessions or before the High Court.

20. Section 88 of CrPC, on the other hand, provides that when any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial. Said provision does speak only about furnishing a bond for appearance and not the bail bond. As per the provisions of section 2(x) of CrPC, any case relating to an offence punishable with death, imprisonment or imprisonment for a term exceeding two years are to be treated as 'warrant case'.

21. As per the provision of section 36A(d) of NDPS Act, a Special Court may, upon perusal of police report of the facts constituting an offence under the Act or upon complaint made by an officer of the Central Government or a State Government authorized in his behalf, take cognizance of that offence without the accused being committed to it for trial. Further, as per provision of section 2(d) of CrPC, complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence but does not include a police report. Therefore, for all practical and legal purposes, the

charge-sheet filed in this case by the officer of Directorate of Revenue Intelligence is required to be treated as ‘complaint’.

22. Taking note of all these provisions of CrPC, the Apex Court in ***Tarsem Lal*** observed that a complaint filed under section 44(1)(b) of PMLA would be governed by sections 200 to 204 CrPC. Similarly, in the present case also, such provisions are applicable.

23. The Apex Court, while holding that when an accused appears before the Special Court on a summons being served on him, he cannot be deemed to be in custody, further observed as under:

“15. There are provisions in CrPC which show that an accused who appears before the court under a summons issued on a complaint cannot be treated as if he is in a deemed custody. One such provision is Section 205CrPC, which reads thus:

“205. *Magistrate may dispense with personal attendance of accused.*—(1) *Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.*

(2) *But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.*”

16. We will examine whether Section 205CrPC will apply to a complaint under Section 44(1)(b) PMLA. Sections 65 and 71 PMLA read thus:

“65. *Code of Criminal Procedure, 1973 to apply.*—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

71. *Act to have overriding effect.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

17. After carefully perusing the provisions of PMLA, we find that there is no provision therein which is in any manner inconsistent with Section 205CrPC. Hence, it will apply to a complaint under PMLA. A summons is issued on a complaint to ensure attendance of the accused before the criminal court. If an accused is in custody, no occasion

arises for a court to dispense with the personal attendance of the accused. We may note here that Section 205 empowers the court to grant exemption only when a summons is issued. Sub-section (2) of Section 205 provides for enforcing the attendance of the accused before the court at the time of the trial. If the accused who appears pursuant to the summons issued on a complaint were deemed to be in custody, the lawmakers would not have provided for Section 205. Hence, we reject the argument of the learned ASG that once an accused appears before the Special Court on a summons being served to him, he shall be deemed to be in custody.”

24. At paragraph No.20, the law relating to submission of bond for appearance under section 88 of CrPC by the accused on his appearance on receipt of summons issued by the Special Court, the Hon’ble Supreme Court further observed thus:

“20. Firstly, after examining the provisions of PMLA, it is apparent that Section 88 is in no manner inconsistent with the provisions of PMLA. Therefore, Section 88 will apply after filing of a complaint under Section 44(1)(b) PMLA. If Section 88 is to apply even before a summons is issued or served upon a complaint, there is no reason why it should not apply after the service of summons. A discretionary power has been conferred by Section 88 on the court to call upon the accused to furnish bonds for his appearance before the court. It does not depend on the willingness of the accused. The object of Section 88 is to ensure that the accused regularly appears before the court. Section 88 is a part of Chapter VI CrPC under the heading “Processes to Compel Appearance”. Section 61, which deals with the form of summons and mode of service of summons, is a part of the same Chapter. When a summons is issued after taking cognizance of a complaint to an accused, he is obliged to appear before the criminal court on the date fixed in the case unless his presence is exempted by an express order passed in the exercise of powers under Section 205CrPC. Therefore, when an accused appears pursuant to a summons issued on the complaint, the court will be well within its powers to take bonds under Section 88 from the accused to ensure his appearance before the court. Therefore, when an accused appears before the Special Court under a summons issued on the complaint, if he offers to submit bonds in terms of Section 88, there is no reason for the Special Court to refuse or decline to accept the bonds. Executing a bond will aid the Special Court in procuring the accused's presence during the trial.

25. While holding that acceptance of bond under section 88 of CrPC does not amount to grant of bail, at paragraph No.24, the followings were also observed:

“24. Now, we come to the issue of whether an order of the court accepting bonds under Section 88 amounts to grant of bail. If an accused appears pursuant to a summons issued on the complaint, he is not in custody. Therefore, there is no question of granting him bail. Moreover, even if the accused who appears before the court does not offer to submit bonds under Section 88 CrPC, the court can always direct him to do so. A bond furnished according to Section 88 is an undertaking to appear before the court on the date fixed. The question of filing bail bonds arises only when the court grants bail. When an accused furnishes a bond in accordance with Section 88 CrPC for appearance before a criminal court, he agrees and undertakes to appear before the criminal court regularly and punctually and on his default, he agrees to pay the amount mentioned in the bond. Section 441 CrPC deals with a bond to be furnished by an accused when released on bail. Therefore, in our considered view, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail.”

26. While deprecating the procedure of taking of an accused into custody, when he appears on receipt of a summons issued from the Special Court, on the complaint and thereafter compelling him to file a bail application, the Apex Court at paragraph No. 31 further observed that such practice was completely illegal.

27. Therefore, law is settled by the Hon’ble Supreme Court that in such a case when summons is issued by the Court and accused appears on receipt of the same, the Court can ask for a bond under Section 88 of CrPC and cannot take him into custody. In the present case in hand also, the Directorate of Revenue Intelligence did not arrest the present accused before the final complaint after investigation was submitted by them in the Court of learned Special Judge.

28. In view of above position of law, the Court is not willing to further enter into the merits of the case to examine the applicability of Section 37 of the NDPS Act, inasmuch as, the accused is not required to ask for bail on his surrender before the learned Special Judge.

29. So far as the pleas raised by the petitioner that the complaint filed on behalf of the Union of India is not maintainable is concerned, the provision of Section 36-A(1)(d) of the Act envisages that a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, [**emphasis laid**] take cognizance of that offence without the accused being committed to it for trial.

30. Therefore, on a plain reading of the said provision, it appears that when such a complaint is filed by any officer of the Central Govt. or the State Govt., it is filed on behalf of the said appropriate government, and therefore, it will be too technical approach if such contention is accepted, for, it is clearly mentioned in the complaint that it is being filed by the Union of India being represented by the said authorized officer of Revenue Intelligence, and therefore, such contention of the petitioner cannot be accepted.

31. In view of the above, it is ordered that the present accused person, namely, Moudud Ahmed Choudhury, shall be released on his furnishing a bond under Section 88 of CrPC with a suitable amount to be determined by the learned Special Judge, with one surety on his giving of an undertaking before the learned Special Judge that he shall regularly and punctually appear before the learned Special Judge on the date fixed to face the trial.

32. The bail application is accordingly disposed of in the above said terms. Pending application(s), if any, shall also stand disposed of.

33. Registry shall return the record of the learned trial Court with a copy of this order immediately, and shall also return the record of prosecution to Mr. Arindam Ray, learned counsel for the respondent.

(S. DATTA PURKAYASTHA, J)



SANJAY GHOSH

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Sanjay