

**HIGH COURT OF TRIPURA  
AGARTALA**

**B.A. No.105 of 2025**

**Abdul Rahaman**

S/O Abul Kashem of  
Baghair Char,  
Police Station-Jatrapur,  
District-Sepahijala, Tripura.

**---- Applicant(s)**

**AND**

**Alamgir Hossain @ Sagar Miah**

S/O Abdul Rahaman of  
Baghair Char,  
Police Station- Jatrapur,  
District-Sepahijala, Tripura.

**----(Accused person in custody)**

**Versus**

**The State of Tripura.**

**----Respondent(s)**

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|                   |   |                              |
|-------------------|---|------------------------------|
| For Applicant(s)  | : | Mr. Subrata Sarkar, Sr. Adv, |
|                   |   | Mr. Arpan Jamatia, Adv.      |
| For Respondent(s) | : | Mr. Raju Datta, P.P.         |

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**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Order**

**13/11/2025**

This bail application under Section 483 of BNSS is filed for granting bail to the accused-in-custody namely Alamgir Hossain @ Sagar Miah in connection with Jatrapur P.S. case No.55 of 2024 under Sections 20(b)(ii)(B)/25/29 of NDPS Act.

Heard Learned Senior Counsel, Mr. S. Sarkar assisted by Learned Counsel, Mr. Arpan Jamatia appearing on behalf of the accused-in-custody and also heard Learned P.P., Mr. Raju Datta appearing on behalf of the State-respondent. As ordered earlier, we have received from the Learned Trial Court also Learned P.P. has produced the case diary.

Taking part in the hearing, Learned Senior Counsel first of all drawn the attention of the Court referring the contents of the FIR and submitted that on the basis of *suo moto* complaint submitted by one Amar Kishore Debbarma on 06.10.2024 to O/C, Jatrapur P.S. this present case has been registered against the accused. But surprisingly in this case nothing was recovered from the possession of the accused-in-custody rather the contraband item was seized from an abandoned house which was not belonging to the accused. However, in course of investigation, the accused-in custody approached for anticipatory bail before this Court earlier which was rejected vide order dated 04.12.2024 in connection with A.B. No.61 of 2024. After that challenging the order the accused approached for bail before the Supreme Court of India and the Hon'ble Supreme Court of India initially by order dated 15.01.2025 in Special Leave to Appeal (Crl.) No.345 of 2025 granted interim protection for six weeks and thereafter, by order dated 02.05.2025, his prayer for anticipatory bail was

rejected. After that he has surrendered and he is in custody for a period of around 106 days.

Learned Senior Counsel further submitted that even if the prosecution case is true that the accused possessed contraband items of 17.5 kg in that case, the same will come under the category of intermediate quantity and as such the restriction of the provision of Section 37 would not attract. It was further submitted that the legislature has framed the law in such a manner that the fundamental right of the accused is not curtailed and more so, there are series of judgments of different High Courts as well as the Apex Court that in a case of intermediate quantity the accused is to be released on bail. So, Learned Counsel urged for releasing the accused on bail in any condition.

It was further submitted by Learned Senior Counsel that as submitted by Learned P.P. representing the prosecution that in this case the charge-sheet was submitted within time and for that there is no legal bar to release the accused on bail in the case at hand at this stage. To buttress his contention, Learned Senior Counsel relied upon one citation of the Hon'ble Apex Court of India in **2023 SCC OnLine SC 1418 [titled as *Puranmal Jat vs. State of Rajasthan*]** wherein in para No.3, Hon'ble the Apex Court observed as under:

**"3. The allegations against the appellant relate to commission of offences under the provisions of**

Sections 8 and 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called "the Act"). Alleged recovery from him is about 35 kgs. and 150 grams Doda Posh (Poppy straw). The commercial quantity for poppy straw is 50 kgs. The appellant is in custody for over seven months. Charge sheet has been submitted in the case. The recovered contraband item having weight less than the stipulated commercial quantity, the restriction on grant of bail under Section 37 of the Act does not apply in his case. We do not think his continued detention pending trial is necessary in the given circumstances."

Referring the same Learned Senior Counsel submitted that in view of the observation of the Hon'ble Apex Court the accused is entitled to be released on bail.

He further relied upon another citation of the High Court of Gujarat in **Goganbhai Rambhai Shekh vs. State of Gujarat** reported in **2023 SCC OnLine Guj 817**, wherein in para No.4, the High Court of Gujarat observed as under:

"4. Having heard the learned advocate for the applicant as also learned APP for the respondent - State as also going through the FIR as also the impugned order and papers of investigation, it reveals that on prior information about cultivation of plant of Ganja, the Police swung into action and recovered six plants, as claimed in the FIR, of Ganja weighing 5.05 kilograms. Since the applicant who is said to be in possession of that cultivation part of the filed, he is booked under "the NDPS Act" and prosecuted. However, considering the papers of investigation, it reveals that the quantity even if presumed to be all parts of the plants to be Ganja is less than the commercial quantity and higher than the small quantity, therefore, considering the provisions of "the NDPS Act", rigors of Section 37 would not be applicable in the present case. At the same time, as coming out from the record, the applicant is also not having any other criminal antecedents, apart from the antecedents of the very same nature, I deem it fit to release the present applicant on bail."

Referring the same, he submitted that considering the facts and circumstances of the present case, the accused is entitled to be released on bail in this case.

Finally, Learned Senior Counsel again referred another citation of the Hon'ble High Court of Jammu & Kashmir in **BA No.64 of 2024 (Crl.M.981/2024) titled as Arshid Ahmad Ganie vs. Union Territory of Jammu & Kashmir (Home)** in para No.7, the High Court of Jammu & Kashmir & Ladakh observed as under:

"7. Having held that the quantity of the drug allegedly recovered from the petitioner herein is of intermediate quantity, the next question for consideration of this Court would be as to whether the petitioner becomes entitled to the concession of bail at this stage by this Court. A reference in this regard to the settled position of law would become imperative, hereunder to the observations and findings of the co-ordinate bench again in the case supra, wherein at Paras 8,9,11,12 and 13 following has been held.

08. The settled position of law, as evolved by the Supreme Court in a catena of judicial dictums on the subject governing the grant of bail, is that there is no strait jacket formula or settled rules for the use of discretion, but, at the time of deciding the question of 'bail or jail' in non-bailable offences, the Court has to utilize its judicial discretion, not only that, as per the settled law, the discretion to grant bail in cases of non-bailable offences has to be exercised according to rules and principles as laid down by the Code and various judicial decisions. In bail applications, generally, it has been laid down, from the earliest times, that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative, but the learned trial Court appears to have applied it in the reverse. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody, pending completion of trial, could be a cause of great hardship. From time to time, necessity demanded that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial, but, in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty

enshrined in the Constitution that any person should be punished in respect of any matter, upon which he has not been convicted or that, in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses, if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

09. The expression 'judicial discretion' has been very well explained by an eminent jurist Benjamin Cardozo. In the words of Benjamin Cardozo, "the Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Wide enough, in all conscience, is the field of discretion that remains." Even so, it is useful to notice the tart terms of Lord Camden that "the discretion of a Judge is the law of tyrants. It is always known, it is different in different men; it is causal, and depends upon constitution, temper and passion. In the best, it is often times caprice, in the worst, it is every vice, folly and passion to which human nature is liable."

11. To categorize the materials in terms of quantity as small, medium and commercial is to allow escape routes for those to whom the rigor of section 37 of the NDPS Act does not apply. Had the intention of the Legislators been to treat those who are found to be in possession of the small and medium quantity of the drugs and Narcotic substances on par with those from whom commercial quantity of such substances is recovered, it could not have pierced and scaled it in different categories. The conflict between the human tendencies and the rules of society is an eternal one which cannot ever be solved or ended to the entire satisfaction of idealistic puritans. World of human society will always remain imperfect. It creates a false ethical self- importance on the part of the Courts who sit in judgment to decide or determine such cases not in accordance with the law, but by sentimental proverbs.

12. Testing the instant application from the above perspective, it requires to be recapitulated that the Proviso of Section 37 of the NDPS Act does not apply to the instant case. It also needs to be said that the case of the applicant does not fall within the parameters of the offences that are punishable with death or imprisonment of life. Therefore, there appears to be no reasonable ground for declining bail to the applicant. The maxim of the law of bails, which has its application to the case on hand where the quantity of narcotics recovered from the applicant falls within the scales of an intermediary one, for which the punishment provided is upto 10 years and a fine of rupees one lac, is "bail and not jail". 13. Deprivation of liberty is tantamount to punishment. The principle that punishment begins after conviction and that every man is deemed to be innocent unless duly tried and duly found guilty, has its application to the facts of the instant case in all the fours. The object of the bail is to seek attendance and appearance of the accused at the trial by a reasonable amount of bail. Bail cannot be withheld as a means of punishment. Prison hell destroys the tender sentiments of a person. The applicant/accused has been languishing in the jail for so many months by now. The applicant/accused has to prepare for his defence which is of an essence in a criminal trial. The discretion has to be exercised on well based foundations of law and one cannot get swayed by sentiments. Temper and passion have no role to play in exercising the discretion for the grant of bail."

Referring the same, Learned Senior Counsel submitted that this present case is squarely covered by the said judgment and urged for releasing the accused on bail in any condition.

On the other hand, Learned P.P. strongly opposed the submission made by Learned Senior Counsel for the accused and submitted that in this case the accused approached for pre-arrest bail before this Court which was rejected with an observation that there is no scope to grant bail to any accused in a case of this nature. Learned P.P. thereafter submitted that he approached for anticipatory bail

before the Hon'ble Apex Court which was also rejected but the accused did never surrender rather he was arrested and was produced under arrest before the Court, so, there is no scope to release the accused on bail. It was further submitted by Learned P.P. that the charge-sheet was submitted by I.O. within time as such the accused as a matter of right cannot claim for bail and further submitted that in this case the prosecution has submitted prayer for holding custody trial of the accused which is still pending for disposal and if at this stage the bail is allowed then the purpose of the prayer of the prosecution would be frustrated and urged for rejection of the bail application. Learned P.P. also submitted that there are materials in the C/D against the accused that the contraband items was seized from his residence.

I have heard both the sides at length and perused the record of the Learned Trial Court. In this case the prosecution was set into motion on the basis of an FIR laid by the informant, Amar Kishore Debbarma to O/C, Jatrapur P.S. alleging interalia that on 06.10.2024 at about 1215 hours on the basis of a secret information that some suspected dry ganja was sealing/packing in the house of one Alamgir Hossain for the purpose of smuggling to Bangladesh. The fact was entered in Jatrapur P.S., GD Entry No.-16, dated 06.10.2024. The matter was informed to the higher authority and SDPO Sonamura and after that the informant along with staff arrived

in the house of Alamgir Hossain and cordoned the house, but the house main door, other doors and windows were opened and in the meantime, Addl. BDO of Kathalia R.D, Block appeared and called the house owner but got no response and found no family members were there. Thereafter, he arranged two independent witnesses. Issued notice under Section 42 of NDPS Act but that could not be served. He prepared pre-search memo, house search memo in presence of witnesses and thereafter, he conducted search in the dwelling house of Alamgir Hossain in presence of witnesses and found 19 Nossky colour plastic pouches and on measuring it was found that 17 kg and 500 grams of dry ganja in those packets. After that those packets were seized after observing all formalities and the *suo moto* complaint was made by the informant to O/C of the concerned P.S. Accordingly, the case was registered. By this time the accused was produced under arrest before the Learned Trial Court on 28.07.2025 and since then he has been lodging in custody and in the meantime, I.O. has laid charge-sheet against the accused under Sections 20(b)(ii)(B)/25/29 of NDPS Act.

Now for the sake of convenience, I would like to refer herein below the relevant provision of Section 37 of NDPS Act 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 3 [offences under section 19 or section 24 or section 27A 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.”**

From the aforesaid provision, it appears that the restriction of Section 37 of NDPS Act would only apply in case of the contraband items of commercial quantity. Here in the case at hand the contraband item recovered by I.O. was 17.5 kg which was higher than smaller quantity but lesser than commercial quantity. I have also perused the citations referred by Learned Senior Counsel appearing on behalf of the accused-in-custody.

So, considering the facts and circumstances of the case and the materials on record and also the citations referred by Learned Senior Counsel for the accused-in-custody, it appears to this Court that the restriction of Section 37 of NDPS Act would not attract in this case and as such, I do not find any scope to detain the accused furthermore in judicial custody, since the investigation by this time completed.

Accordingly, the prayer filed on behalf of the accused is allowed. The accused Alamgir Hossain @ Sagar Miah may be enlarged on bail of his furnishing bail bond of Rs.100,000/- with one surety of like amount who must be a

public servant, i.d. the accused shall remain in J/C as before with the following terms and conditions:

- (i) That the accused shall attend the Learned Trial Court once in a week till completion of trial.
- (ii) That the accused shall not leave the jurisdiction of the concerned Court without prior permission of the Court.
- (iii) That the accused shall not make any attempt to tamper evidence on record of the prosecution during the period of bail.

In case of violation of the terms and condition of bail, the prosecution shall be at liberty to move for cancellation of bail to the concerned Learned Trial Court.

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

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

Return back the Case Diary to IO through Learned P.P. along with a copy of this order.

**JUDGE**

**MOUMITA  
DATTA**

*Purnita*

Digitally signed by MOUMITA  
DATTA  
Date: 2025.11.13 17:21:00 +05'30'