

**HIGH COURT OF TRIPURA
AGARTALA**

B.A. No.106 of 2025

Sri Chandan Das,
S/O Lt. Biswambar Das,
Resident of Gajaria,
P.S.- Bishalgarh,
District-Sepahijala, Tripura.

**----(Petitioner on behalf of
the Accused Person in Custody)**

AND

Sri Anjan Das,
S/O Lt. Biswambar Das,
Resident of Gajaria,
P.S.- Bishalgarh,
District-Sepahijala, Tripura.

----(Accused Person-Custody)

Versus

The State of Tripura.

----Respondent(s)

For Applicant(s)	:	Mr. Arpan Jamatia, Adv, Ms. Megha Sarkar, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

14/11/2025

This bail application under Section 483 of BNSS is filed for granting bail to the accused-in-custody namely Anjan Das, in connection with Ambassa P.S. case No.ABS 010 of 2025 corresponding to SPL. (NDPS) 34 of 2025 under Sections 20(b)(ii)(B)/25/29 of NDPS Act.

Heard Learned Counsel, Mr. Mr. Arpan Jamatia along with Learned Counsel, Ms. Megha Sarkar appearing on behalf of the accused-in-custody and also heard Learned P.P. appearing on behalf of the State-respondent.

As ordered earlier, this Court has received the record from the Learned Trial Court and also Learned P.P. has produced the case diary.

Taking part in the hearing, Learned Counsel for the accused-in-custody first of all drawn the contents of the FIR and submitted that this present accused is not FIR named and he has been falsely implicated in this case. Secondly, Learned Counsel drawn the contention of this Court that on the basis of disclosure statement made under Section 67 of NDPS Act, there is no scope to presume that the accused is guilty. Learned Counsel also submitted that the prosecution in this case could not adduce any materials on record that this present accused is the owner-cum-driver of the alleged vehicle from where the contraband items was seized by police and more so, there is no evidence on record that he is directly involved with this crime. More so, the accused was not caught in red handed and there is no evidence on record that he was the possessor of the contraband items and possessed the same. Finally, in summing up, Learned Counsel urged for releasing the accused on bail in any condition.

To substantiate his contention, Learned Counsel relied upon one citation of the Hon'ble High Court of Delhi in **Vinod Nagar vs. Narcotics Control Bureau** reported in **(2024) SCC OnLine Del 1067**, wherein in para Nos.14, 15 & 16, the High Court of Delhi observed as under:

ANALYSIS

"14. The case of the prosecution is based upon the disclosure of the co-accused Justin Izuchukwu Samuel. It is relevant to note that while the veracity of the disclosure statement of the co-accused is to be tested at the time of the trial, however, this Court cannot lose sight of the decision of the Hon'ble Apex Court in the case of Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1. It was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration.

15. In the present case, apart from the CDR and CAF reports, and some unverified WhatsApp chats between the applicant and the co-accused, there is no evidence to show that the applicant was involved in the commission of the crime of drug trafficking. This Court, while dealing with somewhat similar facts, in the case of Dalip Singh v. State (NCT of Delhi), 2019 SCC OnLine Del 6494 had observed as under:

"11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence."

(emphasis supplied)

16. It is pertinent to note that no recovery has been effectuated from the applicant in the present case. In such circumstances, merely because the applicant was in regular touch with the co-accused, is not sufficient to prima facie establish the offence against the applicant."

Further reference was made in another case of the Hon'ble High Court of Gauhati wherein in **Lorik Ram vs. State of Assam represented by the Public Prosecutor** reported in **(2022) SCC OnLine Gau 975**, wherein in para Nos.8, the Hon'ble High Court of Gauhati observed as under:

"8. A perusal of the case diary, it is revealed that 10 cartons containing 3000 bottles of Phensedyl Cough Syrup were recovered and seized from the truck bearing registration No. AS 01 NC 3916 driven by the accused petitioner. The F.S.L. report shows that sample of Phensedyl Cough Syrup gave positive tests for Codeine (present as Codeine Phosphate) and contained 186.5 ml. per bottle. It further transpires that the accused petitioner is the driver of truck of VRL Logistics and it is his duty to deliver the consignments of various goods loaded by the said company to the consignee as per challan. After thorough investigation, the investigating officer in his note, dated 07.03.2022, noted that the seized cartons bore seal and pack of VRL Logistic Company and loaded for transportation by the company truck driven by the accused petitioner for delivery. It has been further noted that 'narcotic suppliers/peddlers' misused the 'vehicles of VRL Logistics to fulfil their malicious intent', which were just carried by the accused driver. This finding of the investigating officer is, of course, subject to final outcome in investigation. Therefore, this Court is prima facie of the opinion that rigors of Section 37 of the N.D.P.S. Act are not attracted in the peculiar backdrop of facts and circumstances concerning the present accused petitioner."

And finally, he referred another citation of the Hon'ble Supreme Court of India wherein in **In (2023) 18 SCC 166 [titled as Mohd. Muslim alias Hussain vs. State (NCT**

of Delhi)] wherein in para Nos.21 and 22, Hon'ble the Apex Court observed as under:

"21. A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

22. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Mallik [Union of India v. Rattan Mallik, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831]). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil [Satender Kumar Antil v. CBI, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1]). Having regard to these factors the Court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

Referring the same, Learned Counsel submitted that in the instant case the restriction of Section 37 would not be attracted against the present accused and as such Learned Counsel urged for releasing the accused on bail in any condition.

On the other hand, Learned P.P. appearing on behalf of the State-respondent strongly opposed the bail application and submitted that in course of investigation, this

present accused was taken into custody and from the materials so far collected by I.O., it appears that on the alleged day the accused was the owner-cum-driver of the alleged vehicle from where the contraband items was seized and furthermore, from the statement on record of the earlier owner of the vehicle, it transpires that the earlier owner had transferred the vehicle to the accused-in-custody and in this regard, one agreement was executed before the concerned notary at Sonamura Court whose statement was also recorded by I.O. in course of investigation and from his statement, it is clear that on the alleged date and time the accused possessed the contraband items and he was the owner of the vehicle.

In this regard, Learned P.P. relied upon one citation of the Hon'ble Supreme Court of India reported in **Union of India vs. Rattan Mallik alias Habul** reported in **(2009) 2 SCC 624**, wherein in para Nos.16 and 17, the 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 even it is found that the contraband items was not directly seized from the possession of the applicant-accused, still in view of the observation made by the Hon'ble Apex Court there is no scope to release the accused on bail.

Further Learned P.P. referred another citation of the Hon'ble Supreme Court of India reported in **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan** reported in **(2021) 10 SCC 100**, wherein in para Nos.26, 28 and 29, the Hon'ble the Apex Court observed as under:

"26. What amounts to "conscious possession" was also considered in **Dharampal Singh v. State of Punjab** [**Dharampal Singh v. State of Punjab**, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431] , where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In **Mohan Lal v. State of Rajasthan** [**Mohan Lal v. State of Rajasthan**, (2015) 6 SCC 222 : (2015) 3 SCC (Cri) 881] , this Court also observed that the term "possession" could mean physical possession

with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

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."

Referring the same he submitted that conscious possession is also tantamount to possession under the NDPS Act and in respect of conscious possession, the restriction of Section 37 of NDPS Act would apply.

Finally, Learned P.P. relied upon another citation of the Hon'ble Supreme Court of India in **CrI.A. Nos.2026-2027 of 2024** arising out of **SLP (CRL) Nos.3835-3836 of 2023** [titled as **Union of India vs. Om Prakash Yadav & Anr.**] wherein in para Nos.6, 7 and 8, the Hon'ble the Apex Court observed as under:

"6. Having regard to the submissions made by the learned counsel for the parties, we are of the opinion that the impugned order passed by the High Court is not in consonance with the provisions contained in Section 37 of the NDPS Act, which provides *inter alia* that no person accused of an offence involving commercial quantity shall be released on bail unless twin conditions are satisfied, namely, (i) the Public Prosecutor has been given an opportunity to oppose the bail application, and (ii) 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.

7. In the instant case, both the respondents were found to be in possession of the contraband substance, namely, Ganja, weighing about 3,842 Kg. in the truck driven by the respondent No.1-Om Prakash Yadav and he was accompanied by the respondent no.2 Amit Yadav. The allegations are also made that the very registration number of the vehicle, i.e., truck, was fake and the addresses mentioned on the consignments were also found to be forged.

8. Having regard to such a huge quantity being carried in the truck, it is not believable that the respondents were not aware about the contents of the consignments being carried in the truck. The respondents having prima facie failed to satisfy us that they were not guilty of the alleged offences, it could not be said that there was compliance of the Section 37 of the NDPS Act"

Referring the same, he also submitted that in view of the principle of law laid down by the Hon'ble Apex Court, there is no scope to grant bail to the accused in the instant case at this stage.

Finally, Learned P.P. submitted that since in this case the investigation is completed and the I.O. has laid charge-sheet against the accused and charge is already been framed by the Learned Trial Court, so, if, at this stage the accused is released on bail then the trial of the case would be hampered and urged for dismissal of this bail application.

In this case, prosecution was set into motion on the basis of an FIR laid by one S.I., Rajesh Bhattacharjee of Ambassa P.S. to O/C, Ambassa P.S. alleging *inter alia* that on 26/03/2025 at about 1420 hours S1 Rajesh Bhattacharjee left the PS for vehicle checking duty at Kulai and in course of his checking he found one vehicle B/R No. TROI-BU-0677 and gave signal to stop. But the driver of the vehicle did not stop the same rather fled away from the place of checking hurriedly. Immediately, after that the informant chased the vehicle and at Sudharam area the vehicle got stuck and the driver of the vehicle fled away from the spot. Accordingly, the information was shared to O/C Ambassa P.S. and the matter was entered in Ambassa PS GD Entry No. 26 Dated-26/03/2025. After that permission was sought for from SDPO, Ambassa as well as SP Dhalai to conduct search of the said vehicle and after getting permission from SDPO, the O/C of the P.S. along with staff rushed towards Sudharam area along with all the necessary articles like investigation kit box, Sample testing kits and electric weighing machine, seal gala etc. and at about 1610 hours the O/C along with staff arrived to the place of detention and on arrival to the place of detention they called two independent witnesses and after that made search in the vehicle in presence of O/C Ambassa P.S. and in course of search 57 nos. of packets of different size suspected to be dry

cannabis weighing total 251 kg was found in the vehicle B/R No.TROI-BU-0677 (Maruti Suzuki Baleno).

Thereafter, he arranged to conduct kit test by the PS investigation NDPS kit box at spot in presence of witnesses and found the colour changed as per kit box guideline which indicates the presumptive presence/sign of drugs (Ganja) and at about 1735 hours he has seized the contraband items sealed at spot after furnishing proper seizure memo in presence of independent witnesses as well as SDPO Ambassa and thereafter, he produced the seized contraband items and the vehicle before the O/C PS for taking suitable action against the driver of vehicle B/R No-TR01-BU-0677 and so, the case was registered. In course of investigation, the I.O. caused arrest of accused on 24.06.2025 and produced him before the Court and since then, the accused has been lodging in custody. By this time, the investigation of the case is completed and also charge has been framed by the Learned Trial Court and now the case is posted for evidence of prosecution witnesses.

I have also perused the case diary. In course of investigation, the I.O. has recorded the statements of so many witnesses who are conversant with the facts and circumstance of this case. From the statements of witnesses so far recorded by I.O., it appears that earlier the seized vehicle B/R No-TR01-BU-0677 was belonging to one Sanjit Sarkar and later on, on

07.08.2024 the vehicle was transferred to the accused-in-custody and thereafter, he was owning and running the vehicle. On the alleged day, the vehicle was being driven by the accused and seeing the police, he absconded from the place of occurrence leaving the vehicle and from the vehicle the alleged contraband items of commercial quantity was seized by the police.

Situated thus, considering the materials on record the principle 'of conscious possession' as observed by the Hon'ble Supreme Court of India in the aforementioned case as relied upon by the prosecution cannot be disbelieved and *prima facie* it appears that on the alleged date and time the accused-in-custody knowing fully that the seized article was contraband items of commercial quantity and he possessed the same knowing the same to be contraband items. As such in my considered view, the submission made by Learned Counsel for the accused person cannot be accepted and the accused in the case at hand is not entitled to be released on bail at this stage, in view of the restriction provided under Section 37 of NDPS Act and hence, the bail application filed on behalf of the accused stands rejected.

The accused is to remain in J/C as before. Learned Trial Court shall make all endeavour to dispose of the case giving top priority since the accused is languishing in jail.

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: 2025.11.14
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सत्यमेव जयते