

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Jurisdiction) CNR: SKHC01-000144-2026

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Bail Application No. 03 of 2026

Debrata Saha @Dabu
Age 37 years,
S/o Dulal Chandra Saha,
R/o Madhya Chayan Para, Siliguri,
P.O. Siliguri, P.S.-Siliguri,
District-Darjeeling
Pin No.734006.
Presently Lodged at Boomtar

..... Applicant

Versus

State of Sikkim

..... Respondent

**Application under Section 483 of Bharatiya Nagarik
Suraksha Sanhita, 2023.**

Appearance:

Mr. Sourav Lohani and Mr. Lahang Limboo, Advocates for the Applicant.

Mr. S.K. Chettri, Additional Public Prosecutor and Mr. Sujan Sunwar, Assistant Public Prosecutor for the Respondent.

Date of Hearing : 14.08.2026
Date of Order : 17.08.2026
Date on which uploaded : 17.08.2026

ORDER

Bhaskar Raj Pradhan, J.

1. Debrata Saha @ Dabu (accused no.3) has moved this application under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) filed on 14.07.2026 for bail after a similar

application was rejected by the learned Special Judge on the same grounds.

2. When a person accused of an offence seeks bail the considerations for keeping the accused in custody must be tested against the guarantees enshrined in Articles 21 and 22 of the Constitution of India. Justice Krishna Iyer's formulation of the Indian jail jurisprudence i.e. "*bail is the rule, jail is the exception*" strongly emphasises the presumption of liberty pending trial as against the presumption of custody. The necessity of custody should therefore be examined on the presumption of liberty in favour of the accused. It is only in those cases where the necessity of custody far outweighs the grant of liberty the court should deny bail to the accused. These considerations for necessity of custody may stem from special requirements under special legislations as well as other considerations, which permit the Courts to grant custody and deny bail.

3. The facts necessary to decide this application must be stated for proper appreciation. The case relates to an accusation under section 22(b) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) for seizure of 57.39 gms. of brown sugar (heroin) on 06.03.2026 from the involved vehicle driven by Abhimanyu Rawat (accused no.1) intercepted and searched on the basis of information received. The accused persons are also accused of offences under section 111 and section 3(5) of the Bharatiya Nyaya Sanhita, 2023 (BNS). On such search it is alleged 57.39 gms. of brown sugar was found underneath the co-

passengers seat in a black coloured plastic carry bag containing 55 number of white plastic pouches of brown sugar.

4. The prosecutions further story is that on investigation it was found that Gopal Sharma (accused no.2), who had a history of arrest in similar drug cases, had ordered the brown sugar. Gopal Sharma (accused no.2) was arrested on 07.03.2026. During custodial interrogation of Gopal Sharma (accused no.2) and analysis of Call Detail Records (CDR) of Gopal Sharma (accused no.2), Abhimanyu Rawat (accused no.1) and the bank statements of Gopal Sharma (accused no.2) it was revealed that the drug seized was supplied by Debrata Saha @ Dabu (accused no.3) whose mobile number and Union Bank Saving Account number were identified. According to the prosecution further investigation revealed that on 06.03.2026 Abhimanyu Rawat (accused no.1) travelled to Siliguri as instructed by Gopal Sharma (accused no.2) to collect the consignment of drugs from Debrata Saha @ Dabu (accused no.3) who was the supplier, collected the consignment and was transporting it back when he was arrested. The Call Data Records corroborated the fact that the three accused persons were in touch during the relevant time and the Unified Payment Interface (UPI) transactions reveal that Gopal Sharma (accused no.2) had made online payment of Rs.82,500/- to Debrata Saha @ Dabu (accused no.3) after which he supplied the drugs to Abhimanyu Rawat (accused no.1). Further investigation also reveal that from January 2024 till date a total of Rs.15,06,050/- was transferred by Gopal Sharma (accused no.2) from his Indian Overseas Bank Account to Debrata Saha @ Dabu's (accused no.3)

Union Bank Account. The Call Data Records and the bank statements of Debrata Saha @ Dabu (accused no.3), according to the prosecution, confirms the above facts.

5. The prosecution then filed the charge sheet alleging prima facie case under section 22(b) of the NDPS Act, 1985 and section 111/3(5) of the Bharatiya Nyaya Sanhita, 2023 (the BNS) against all the accused persons.

6. On 06.05.2026 the learned Chief Judicial Magistrate, Namchi District took cognizance of the offences, registered NDPS Case No.06 of 2026, took Abhimanyu Rawat (accused no.1) and Gopal Sharma (accused no.2) into judicial custody and issued summons to Debrata Saha @ Dabu (accused no.3) returnable on 14.05.2026.

7. The order dated 26.05.2026 of the learned Chief Judicial Magistrate records that the bailable warrant of arrest issued to Debrata Saha @ Dabu (accused no.3) returned duly served and executed and he was present with his learned Counsel. Since section 22(b) of the NDPS Act, 1985 was punishable with rigorous imprisonment for a term which may extend up to 10 years and was exclusively triable by the learned Special Court, NDPS Act the learned Chief Judicial Magistrate committed the case to the said Court.

8. On 01.07.2026 Debrata Saha @ Dabu (accused no.3) (hereinafter he will now be referred to as the applicant) filed a bail application before the learned Special Judge.

9. The learned Special Judge considered the application, the submissions of the learned Counsel for the applicant and rejected the application for bail on the ground that there was a prima facie

case against the applicant as alleged by the prosecution. The learned Special Judge was also of the view that the record reflected that despite repeated efforts Jorethang Police could not apprehend the applicant at his disclosed address and continued to remain absconding. Considering that the seized heroin was 57.39 grams (which is greater than small quantity and lesser than commercial quantity), the charge was yet to be framed, seizure witnesses yet to be examined, the scale of the network, serious nature of allegation against the applicant, and if released on bail the possibility of the applicant absconding, the learned Special Judge declined to grant bail.

10. The bail application filed by the applicant reiterates all the arguments made by him before the learned Special Judge and also questions the correctness of the order dated 01.07.2026 by the learned Special Judge. The applicant submits that: his continued detention is contrary to the Constitutional guarantee of personal liberty enshrined in Article 21 of the Constitution of India; the prosecution case is only circumstantial in nature; the CDRs and banking transactions raises suspicion but it still requires strict proof during trial; he is a permanent resident of Siliguri having deep roots in society; he had voluntarily surrendered; undertakes to remain present during trial; cooperate with the prosecution; and would not tamper with prosecution evidence or influence the witnesses. The applicant further submits that he is the sole breadwinner of the family and his wife is suffering from serious medical condition requiring constant care and attention. It is

submitted that he is in judicial custody since 26.05.2026 and therefore, he should be released on bail.

11. After the filing of the present bail application under section 483 of the BNSS, 2023 it has been pointed out by the learned counsel for the applicant that Abhimanyu Rawat (accused no.1) has since been released on bail. I have perused the order dated 31.07.2026 granting bail to Abhimanyu Rawat (accused no.1). It is noticed that the learned Special Judge granted bail to him on consideration of the certificate of the concerned Doctor of his father which recorded that he was suffering from multiple ailments, including chronic heart disease and had been advised to undergo immediate surgery. The learned Special Judge also took note of the Panchayat report which reflected that Abhimanyu Rawat (accused no.1) is the only son and sole earning member and care giver for his ailing father. The learned Special Judge satisfied himself that Abhimanyu Rawat (accused no.1) if granted bail on such grounds would not flee from justice as he was a permanent resident of Jorethang having his home and hearth there. Thus, bail was granted to him.

12. Section 483 of the BNSS, 2023 reads as under:

"483. Special powers of High Court or Court of Session regarding bail.-

(1) A High Court or Court of Session may direct,-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 480, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under Section 65 or sub-section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(2) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under section 65 or sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

(3) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

13. Pursuant to the notice issued, the State of Sikkim has filed its objections to the application for bail. It is pleaded that Debrata Saha @ Dabu (accused no.3) is the principal supplier of contraband substances, he has strong financial links with the other two co-accused, there were frequent communications between them establishing criminal conspiracy, there is evidence of organised and repeated drug trafficking, he is part of an organised drug trafficking network, there is possibility of tampering evidence, influencing witnesses and of repeating similar offences.

14. When an application for bail under section 483 of the BNSS is being considered for offences under the NDPS Act it is important to consider the conditions prescribed in the Special Act over and above the considerations under section 483 of the BNSS. Therefore, it is important for the Courts to keep in mind the necessary conditions to consider such an application as propounded by the Supreme Court in ***Prasanta Kumar Sarkar vs. Ashish Chatterjee***¹ which are :

- (i) Whether there is prima facie case or reasonable ground to believe that the accused had committed the offence;
- (ii) Nature and gravity of the accusation;
- (iii) Severity of the punishment in the event of conviction;
- (iv) Danger of the accused absconding or fleeing, if released on bail;
- (v) Character, behaviour, means, position and standing of the accused;
- (vi) Likelihood of the offence being repeated;
- (vii) Reasonable apprehension of the witnesses being influenced;
- (viii) Danger, of course, of justice being thwarted by grant of bail.

15. In addition to the limitation prescribed by the BNSS, 2023 it is necessary for this Court to consider the limitation prescribed in the NDPS Act itself before taking a call whether to grant bail or not. In the present case as correctly pointed out by the learned Counsel for the applicant the limitation prescribed in section 37 of the NDPS Act would not apply to the applicant since the offence alleged did not involve section 19, section 24, section 27-A or offences

¹ (2010) 14 SCC 496

involving commercial quantity. Even so, I am of the view that we cannot still lose sight of the fact that the case involves the NDPS Act keeping in mind the menace of drug abuse in our society today.

16. At this juncture it is important to note two judgments of the Supreme Court i.e. ***Union of India* vs. *Mohd. Nawas Khan***² and ***Union of India* vs. *Themboi @ Themboi Singson***³. Although there were cases in which the twin condition mandated in section 37 of the NDPS Act were applicable, the menace of drug trafficking in the country and the increase in offences under NDPS Act were noted. It was held that the damage was caused to the society at large and not restricted between private individuals. We cannot ignore the fact that substance abuse is a major cause of concern in the State of Sikkim. Therefore, while examining the gravity of the accusation it is also important to consider that the allegation against the applicant is for supplying the brown sugar (heroin) for use in the State of Sikkim.

17. Although under section 483 of the BNSS 2023 concurrent jurisdiction is given to the Sessions Court as well as the High Court, the fact that the Sessions Court has refused to grant bail under section 483 of the BNSS, 2023 should not operate as a bar for the High Court entertaining a similar application for the same offence. However, it is quite clear that even though both the courts can exercise independent power under section 483 of the BNSS 2023, when the High Court exercises such power after the rejection

² (2021) 10 SCC 100

³ Criminal Appeal No 1616 of 2026

of bail under the same section by the Sessions Court, it does not exercise any revisional jurisdiction over the order of rejection of bail by the Sessions Court.

18. A change in circumstances, which would have a serious bearing in the case between the rejection of the bail by the Sessions Court and the consideration of the bail application by the High Court, may permit the High Court to consider the changed circumstances. It should be weighed with the factors to be borne in mind while considering a bail application for an offence under the NDPS Act. It would be nevertheless important to keep in mind all the while, the paramount consideration of “personal liberty”.

19. The relevant facts are therefore:

- (i) The applicant has been in custody for just about two months and fifteen days.
- (ii) Although the charge sheet has been filed by the prosecution liberty to file a supplementary charge sheet has also been taken as the prosecution is yet to receive Caller Address and Identification Form (CAIF) and certificate under section 63(4)(C) of Bharatiya Sakshya Adhiniyam (BSA) from Telecom Service Provider and Bank Officials.
- (iii) Charges have not yet been framed and therefore no prosecution witnesses have been examined.
- (iv) The allegation against the applicant is for offence under section 22 (b) of the NDPS Act in which the prescribed punishment is rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees.

- (v) The applicant is also accused of the commission of offences of organised crime under section 111 of the BNS 2023 and for commission of criminal act done by several persons in furtherance of common intention of all in which circumstance each of such persons is liable for that act in the same manner as if it were done by him alone under section 3(5) of the BNS, 2023.
- (vi) Although the learned Counsel for the applicant argues that he has voluntarily surrendered before the Court the records reveal that he appeared before the Court only after bailable warrant of arrest was served upon him.
- (vii) The allegations against the applicant are grave as it is alleged that he was the supplier supplying narcotic drugs to Gopal Sharma (accused no.2) the main dealer/peddler and the leader of organised peddling syndicate on multiple occasions. The applicant is alleged to be the supplier of drugs from Siliguri operating as a member of organised drugs syndicate along with Gopal Sharma (accused no.2).
- (viii) The gravity of the accusation is a serious one.
- (ix) The materials collected by the prosecution do seem to establish a prima facie or a reasonable ground to believe that the applicant had committed the alleged offence. In the event of conviction, the applicant is liable to be punished for rigorous imprisonment to the extent of ten years.
- (x) The prosecution's apprehension that there is danger of the applicant absconding or fleeing, if released on bail is a serious one. The reasonable apprehension of the prosecution that if released on bail the applicant may influence witnesses cannot be ruled out.

- (xi) Considering there is allegation that the applicant has been involved in such offences before and is said to be a supplier of brown sugar to Gopal Sharma (accused no.2) the main dealer in Sikkim, who is still in jail, the prosecution's apprehension that the applicant may continue committing such offences after grant of bail also cannot be ruled out.

20. The only change in circumstances noticed is the grant of bail to Abhimanyu Rawat (accused no.1). However, the applicant cannot claim parity with him as his bail was granted on other grounds, which are not applicable to the applicant.

21. Thus, on an overall examination of all the relevant factors- the necessary conditions to be considered under section 483 of the BNSS and the fact that the applicant is alleged to be the supplier of brown sugar (heroin) to the State of Sikkim, I am of the considered view that this is not a fit case for grant of bail and the applicant's personal liberty, at this juncture, must heed to the need of the society to protect itself from this growing menace.

22. Resultantly, the application for bail is rejected.

23. A copy of this order shall be forwarded to the learned Special Judge, NDPS, Namchi as well as the Jail Superintendent, Boomtar, Namchi both by email as well as in the usual course. A copy shall also be granted to the learned counsel for the applicant to enable him to provide effective assistance to the applicant.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**

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