

HIGH COURT OF TRIPURA
AGARTALA

BA No.01 of 2026

Saha Alam,

S/o Sri Gyan Mohammad, R/o Village & P.O. Ghunghrala, P.S. Hafizpur,
District- Hapur, U.P., Pin-245101.

**.....Applicant on behalf of
accused person in custody(s);**

Jubair,

S/o Sri Gyan Mohammad, R/o Village & P.O. Ghunghrala, P.S. Hafizpur,
District- Hapur, U.P., Pin-245101.

..... Accused person In-custody;

- V e r s u s -

The State of Tripura

.....Respondent(s);

along with

BA No.02 of 2026

Nazir Hossain,

S/o Sri Amjad Ali, R/o Village & P.O. Shukarur Kuthi, P.S. Sahebganj,
District – Koochbihar, West Bengal, Pin – 736168.

**.....Applicant on behalf of
accused person in custody(s);**

Nazrul Islam,

S/o Sri Amjad Ali, R/o Village & P.O. Shukarur Kuthi, P.S. Sahebganj,
District – Koochbihar, West Bengal, Pin – 736168.

..... Accused person In-custody;

- V e r s u s -

The State of Tripura

.....Respondent(s);

along with

BA No.03 of 2026

Mohd. Zaid,

S/o Sri Karrar Ahamed, R/o Village-Radhana Inayatpur, P.S. Kithore,
District-Meerut, U.P., Pin-250104.

**.....Applicant on behalf of
accused person in custody(s);**

Sarfraj Ahmed,

S/o Sattar, R/o House No.147, Sector-9, Shastrinagar, P.S Nanchandi,
District-Meerut, U.P., Pin-250004 .

..... Accused person In-custody;

- V e r s u s -

The State of Tripura

.....Respondent(s);

For the Applicant(s)	:	Mr. S. Kar Bhowmik, Sr. Advocate, Mr. E. L. Darlong, Advocate.				
For the Respondent(s)	:	Mr. Raju Datta, Public Prosecutor.				
Date of hearing	:	09.01.2026.				
Date of Judgment & Order	:	16.01.2026.				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER

All the above three bail applications have arisen from the same police case bearing No. 2025 JTP 034 registered under Sections 22(C), 25 and 29 of the NDPS Act, 1985. All the cases were heard together and are being disposed of by this common order.

[2] Heard Mr. Samrat Kar Bhowmik, learned senior counsel assisted by Mr. E. L. Darlong, learned counsel appearing for the applicant. Also heard Mr. Raju Datta, learned Public Prosecutor, appearing for respondent-State.

[3] Sub-Inspector of Police namely Bijoy Kumar Chakraborty, on 31.07.2025, lodged the suo motu FIR that on that day, on the basis of a secret information that one red colour chevrolate (AVEO-LS) vehicle (numberless) was parked at Jatrapur Para, Bashpukur, on the south side of the field of the office of the Inspector of school loaded with contraband NDPS items like yaba tablets, he wrote down the information and complied with other formalities under Section 42 of the NDPS Act, entered the said fact in GD entry No.4 dated 31.07.2025 and then arrived at the spot with police force. The BSF authority also accompanied them.

Inspector, Sitikanta Bardan, O/C of Jatrapur police station, also arrived there. Nobody was found inside the said vehicle and according to him, before searching the vehicle he tried to collect independent witnesses of Government Officials but none was found available. Thereafter, he prepared a search memo and conducted the search of the vehicle, and therefrom 14,000 (Fourteen thousand) nos. of yaba tablets of total weight 1.490 kg contained in blue coloured plastic packets kept in yellow coloured plastic bag were recovered. During preliminary investigation, it was also revealed that three persons carried those items by said vehicle and parked it beside the field at about 0200 hours and entered into the house of one Harun Miah of that locality. Thereafter, they detained the said three accused persons namely (1) Sarfraj Ahmed, (2) Jubair and (3) Nazrul Islam, from the said house and later on arrested them. The above three bail applications are filed by said three detained accused persons. Since their arrest, they are in custody.

[4] Learned senior counsel, Mr. Samrat Kar Bhowmik, submits that as per the arrest memo all the said three accused persons were arrested at 04:30 pm which was seriously doubtful as according to the FIR itself they were detained in the early morning from the said house. By referring to the air tickets, learned senior counsel also submits that all of them came to Agartala on 30.07.2025 from Delhi by flight and stayed at Hotel Grand Zuri, Airport Road at Agartala. But from the said hotel, their

friend Harun Miah picked them up, and therefore, after staying for a few hours in the hotel, they had to check out therefrom. Learned senior counsel also strenuously argued that nothing was found from the conscious possession of the accused persons and despite they were arrested from the house of Harun Miah, no allegation was levelled by the police against said Harun Miah for harbouring them which creates further doubt about their complicity.

[5] Learned senior counsel, Mr. Bhowmik, contends that the ground of arrest was not in proper sense communicated to the accused persons rendering the arrest illegal as in specific term it was not informed to them that they were arrested on the allegation of selling of said tablets. Learned senior counsel also placed a media clip of one news channel to show that at the spot of the seizure itself the police authority tore the packets compromising the sanctity of the seizure. According to him, no money was also recovered from the accused persons though according to the police they brought those tablets for selling purpose. Mr. Bhowmik, learned senior counsel, also argues that if at all they would sell the same, certainly there would be some amount of money in their possession. In the prescribed format of information of ground of arrest, the time of furnishing such information was not noted by said officer, as indicated by learned senior counsel.

[6] Finally, Mr. Bhowmik, learned senior counsel, also refers to a GD Entry No.5 of 0445 hours wherein receipt of such

secret information etc. was recorded by the said police officer though in his FIR he mentioned the same to be GD Entry No.4 incorrectly.

[7] Learned senior counsel, Mr. Bhowmik, also takes the Court to the pre-search memo prepared by said SI, Bijoy Kumar Chakraborty, but at the bottom of the same he has signed the same as 31.09.2025 in place of 31.07.2025. He also refers to the search memo of the vehicle of the said date wherein said Bijoy Kumar Chakraborty further put the date beneath his signature to be 31.05.2025 which is inconsistent.

[8] According to the learned senior counsel, all these incorrect inscription of dates and absence of mention of time about ground of arrest create a serious suspicion that those were artificially prepared later on to build up a case falsely against the accused persons. According to him, Section 36 of BNSS was not complied with and therefore, the same also rendered the arrest illegal. Finally, learned senior counsel has prayed for bail of above said three accused persons on any condition.

[9] Learned senior counsel also relies on some decisions in the matter of conscious possession and brief reference of the same are being made hereinbelow:

(i) In case of **Bharat Chaudhary versus Union of India [2021 Supreme (SC) 811]**, the Hon'ble Supreme Court granted bail to the accused cancelling the order of the High Court on the

ground that the Assistant Commercial Examiner could not do the quantitative analysis of the samples for want of facilities and therefore, it could not be said that he was in possession of commercial quantity of psychotropic substances and even in the seized tablets some were found to be herbs/medicines meant to enhance male potency and not any contraband item and further, nothing was seized from his office or residence at the time of search.

(ii) **State of West Bengal versus Rakesh Singh @ Rakesh Kumar Singh [2022 Supreme (SC) 592]** – In this case, the Hon'ble Supreme Court observed that no contraband article was recovered from the respondent or from any place under his exclusive control. Therefore, a doubt arose regarding complicity about trafficking of contraband items and said facts diluted the rigours of Section 37 of the NDPS Act.

(iii) **Sahil Firoz Shaikh versus State of Maharashtra [2024 Legal Eagle (SC) 1189]** – In this case, the appellants were accused in cases involving minor offences and one accused was aged about 18 years with no antecedents and there was no recovery of any contraband item. Another accused was a woman from whom no contraband was also allegedly recovered and all the offences except NDPS violation were minor in nature. The main accused was also granted regular bail. Considering thus, the interim order granting bail was made absolute.

(iv) **Dipesh Majumder & others versus State of Tripura**

[2019 Legal Eagle (TRI) 752] – In this case, accused persons were arrested with the allegations of trafficking and possession of narcotics. However, no contraband item was found at their premises during searches conducted by the police. The accused persons were also implicated for financing, illicit trafficking and harbouring of the offenders and also for abetment and criminal conspiracy. After considering the materials placed in the said case, it was observed by the High Court that there was no proof before the court to hold that the accused-persons were involved in any culpable act or that they had possessed commercial quantity or less quantity of narcotic and psychotropic substance and ultimately the bail was granted to them.

(v) **Jiauur Rahman @Babu @Dhan versus State of**

Assam [2023 Legal Eagle (GHC) 39] – In this case, the High Court observed that no contraband item was recovered from the possession of the accused except an amount of Rs.80,000/-. However, 66 grams of alleged heroin were allegedly recovered from the possession of one co-accused and 104 grams of heroin from the possession of another co-accused. Considering above said materials and considering the period of detention, the court observed that no further custodial detention was required for further investigation of the case and ultimately bail was granted to him.

(vi) **Gulshan Kumar versus State of Himachal Pradesh [2024 Legal Eagle (HP) 439]** – In this case, the petitioner was arrested during the police raid whereas contraband was recovered from the room of a co-accused with no direct evidence linking the petitioner to the possession of said contraband items. Ultimately bail was granted to the accused.

(vii) In case of **Suryapratap Singh versus State of Rajasthan [2024 Legal Eagle (RAJ) 2269]** though the petitioner was arrested but no contraband item was recovered from him and his contention was that he was implicated solely based on the interrogation report of the co-accused and there was likelihood of delay in trial though charge-sheet was submitted. Therefore, bail was granted to him.

(viii) **Naresh versus State of Rajasthan [2025 Legal Eagle (RAJ) 2316]** – In this case, the accused persons were arrested in connection with recovery of 55.526 kg Ganja from conscious possession of four other persons, and nothing was recovered from them. The High Court granted bail to the accused persons on the ground that challan was filed and trial was supposed to take sufficient long time but there was no discussion about Section 37 of the NDPS Act, in said case.

(ix) **Pratheesh versus State of Kerala [2023 Legal Eagle (KER) 166]** – In this case, the accused was arrested in said case with allegation of transporting 82 kg of ganja in a tourist bus, but no contraband was seized from him directly and nothing

was found in his possession. One bag was seized also from the driver's cabin wherein the covid vaccination certificate and an ATM card of the accused were also found. In that contexts, the High Court observed that rigour of Section 37 of the NDPS Act, could not be attracted against the accused person.

(x) **Joy Mitra versus Narcotics Control Bureau, Delhi [2025 SCC OnLine Del 3016]** – In this case, the High Court observed that the prosecution was unable to pin any financial trail or conversations/chats thereby establishing a link between the recoveries and the applicants. The primary materials against the applicants which was available in the record, was that their details were used on the seized parcels, and no other material was brought forth to draw a nexus between the applicants, the recovery and their complicity in the offence. Finally, the High Court granted bail to them as there was no material to link the accused persons with the recovery of commercial quantity of contrabands.

(xi) **Rabindra Debnath for and on behalf of accused Uttam Debnath versus State of Tripura [B.A. No.13 of 2021]** decided on **05.03.2021** – In this case, a coordinate Bench of this Court granted an interim bail to the accused on the ground of illness of his wife and minor son aged about seven years with a direction to the accused to appear before the learned Special Judge on completion of the period of interim bail, and learned Special Judge was also directed to consider his bail application on merit without being influenced by the said order of the Court. In

said order, reference was also made to another decision of Apex Court in case of **Kulwinder Singh & another versus State of Punjab [(2015) 6 SCC 674]** wherein further reference was made to another decision of the Apex Court in case of **Gunwantlal versus State of M.P. [(1972) 2 SCC 194]**. In **Gunwantlal (supra)**, it was observed that possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while person whom physical possession is given, holds it subject to that power of control.

(xii) **Kanchaman Yonjan versus State (Govt. of NCT of Delhi) [Bail Application No.2845/2023]** decided on **08.07.2024** – In this case, the Delhi High Court granted bail to an accused considering the clean antecedents of the accused and also on the ground of absence of independent witnesses and prolonged delay in the trial. While doing so, the High Court also relied on a decision of Hon'ble Supreme Court in case of **Mohd. Muslim versus State (NCT of Delhi) [2023 SCC OnLine SC 352]**, wherein it was observed that grant of bail on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too. The High Court also relies on a decision of the Apex Court in case of **Rabi Prakash versus State of Odisha [2023 SCC OnLine SC 1109]**, wherein it was observed that the prolonged incarceration, generally militates

against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

[10] In support of his submission that the ground must be communicated in writing to the arrestee in the language he/she understands and non-compliance thereof render the arrest and subsequent remand illegal, learned senior counsel, Mr. Bhowmik, further placed reliance on **Pankaj Bansal versus Union of India and others [(2024) 7 SCC 576]**; **Prabir Purkayastha versus State (NCT of Delhi) [(2024) 8 SCC 254]**; **Vihaan Kumar versus State of Haryana and another [(2025) 5 SCC 799]**; **Mihir Rajesh Shah versus State of Maharashtra and another [2025 SCC OnLine SC 2356]**; **Sajul Islam Purakayastha versus State of Tripura [2025 SCC OnLine Tri 478]**; **Anita Nama versus State of Tripura and another [2025 Legal Eagle (TRI) 264]**.

[11] Learned Public Prosecutor, Mr. Raju Datta, on the other hand, referring to the materials placed in the case diary submits that there are sufficient incriminating materials against all the three accused persons that they had their conscious possession of above said seized articles and therefore, rigour of Section 37 of the NDPS Act, will apply. Regarding certain discrepancy of the dates mentioned beneath the signature of said informant in the

pre-search memo etc. as indicated above, learned Public Prosecutor contends that these were mere unintentional errors committed due to un-mindfulness of the informant and the other persons signed in those documents put their respective date to be the correct date i.e. 31.07.2025.

[12] Learned Public Prosecutor also relies on a decision of the Hon'ble Supreme Court in the case of **Union of India through Narcotics Control Bureau, Lucknow versus Md. Nawaz Khan [(2021) 10 SCC 100]**, wherein it was observed that the fact of absence of possession of contraband on the person of the accused does not absolve it of the level of scrutiny required under Section 37(1)(2)(b)(ii) of the NDPS Act, 1985.

[13] The Court has considered the submissions of both sides and has gone through the decisions as referred by the parties. The Court has also taken note of all the relevant materials placed in the case diary.

[14] Though it was strenuously argued by the learned senior counsel, Mr. Bhowmik, that there was no material that the accused persons were in conscious possession of the alleged recovered items but it appears that there are prima facie materials in the case diary that all the said three accused persons went to that area with above said vehicle and as they were new in that area they took shelter in the house of said Harun Miah in the midnight after coming out from the said vehicle. Therefore, prima facie,

there is nothing to infer that they were not in conscious possession of the said contraband items.

[15] So far the plea as raised from the side of accused that grounds of arrest were not properly informed, the Court is also not convinced with such plea as the arresting authority informed them both in Hindi and in Bengali language respectively that on the basis of a written FIR lodged by SI, Bijoy Kumar Chakraborty that 400 nos. of psychotropic narcotic tablets of total 1.490 kg were recovered and they were arrested as prima facie materials were found against them that they were directly involved therein and they were illegally doing business of the same. These informations are sufficient to enable the accused persons to understand the reasons of their arrest in connection with said case and to take their defence accordingly.

[16] Learned senior counsel, Mr. Bhowmik, contends that it was not categorically informed to them that they were involved in the matter of selling of the same, but such grounds appear to be insubstantial.

[17] Learned senior counsel, Mr. Bhowmik, also raises the point that Section 36(b)(i) of the BNSS was not complied with which provides that the arresting officer will prepare a memorandum of arrest which shall be attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made. In

the relevant column of the said arrest memo, it is found that same was kept blank by the arresting authority and therefore such issue was raised. However, from the said arrest memo itself it is also prima-facie established that their close relatives were informed by the arresting authority over phone. The arresting authority has also mentioned those names in the arrest memo. Therefore, such plea is also not acceptable. Though it was argued from the side of the applicants, as noted earlier, that the pre-search memo and search memo contained different dates not in resemblance with the alleged date of seizure but on reading of those memorandums it appears that except said SI, Bijoy Kumar Chakraborty all other persons who signed in the pre-search memo and search memo specifically mentioned the date 31.07.2025 in correct form and the seizure list also reflects the correct date of seizure. Therefore, such mistakes on the part of the said police officer in preparing those memorandums mentioning different dates, at this stage does not create any grave doubt enabling the accused persons to get the bail.

[18] From the video clip as produced by learned senior counsel, it appears that the outer packet was being opened by the police but if same would not have been done, the police authority would not be able to understand as to what were there inside the inner packets.

[19] In view of the above discussions, it appears that there is no merit in the bail applications and, consequently, all the bail applications are rejected.

Re-consign the case diary to the learned Public Prosecutor with copy of this order.

Also, send a copy of this order to learned Special Judge.

JUDGE



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