

**HIGH COURT OF TRIPURA
A G A R T A L A**

B.A. No.59 of 2026

Sakil Hossain (25),

S/O Abdul Halim, resident of Daodharani, NC Nagar, Sonamura, PS Sonamura, Dist. Sepahijala, Tripura, Pin No.799131.

..... **Petitioner on behalf of accused person in Custody**

Sahinur Islam (22),

S/o Abdul Halim, resident of Daodharani, NC Nagar, Sonamura, PS Sonamura, Dist. Sepahijala, Tripura, Pin No.799131.

..... **Accused Person in Custody**

- V e r s u s -

The State of Tripura

(Represented by the Ld. Public Prosecutor), High Court of Tripura, Agartala

.....**Respondent(s)**

For the Petitioner(s)	:	Mr. Siraj Ali, Advocate. Mr. Tushar Ali, Advocate.
For the Respondent(s)	:	Mr. Raju Datta, P.P.
Date of hearing	:	31st March, 2026.
Date of delivery of Judgment & Order	:	22nd April, 2026.

Whether fit for reporting :

YES	NO
	√

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

Heard learned counsel of both sides.

[2] The accused person namely, Sahinur Islam has been arrested on 25.11.2025 in connection with Sonamura PS case No.98 of 2025 and since then he is in custody.

[3] The FIR was lodged against the accused by SI Rakesh Debnath that based on secret information on 25.11.2025, he went to Daodharani Chowmuhani under Sonamura P.S. and there, he detained the present

accused with one sack wherefrom total 58 Nos. of Eskuf syrup were recovered from him.

[4] Mr. Siraj Ali, learned counsel for the accused petitioner submits that Section 105 of BNSS was not complied with and no videography was made regarding the said search and seizure. Moreover, even if it was videographed, same was not uploaded in eSakshya portal and the necessary pendrive was also not forwarded to the learned Special Judge. On these grounds, Mr. Siraj Ali, learned counsel prayed for bail of the accused petitioner.

[5] Mr. Ali, learned counsel also relies on an administrative instruction issued by the Home Department of Tripura vide notification dated 10.04.2025 wherein against serial No. 2(g), followings were mentioned:

“2.....

g) “Sakshya” means any evidence collected/recorded as a document through- eSakshya Mobile Application. Sakshya consists of video recording(s) of events/proceedings, images including the images of investigating/recording officer. All evidence recorded through eSakshya Mobile Application shall generate a secure packet of the event (hereinafter referred to as “eSakshya Packet”) with a unique ID called S10, a unique 16-digit ID (SID) with opening and closing time stamp and geo-location. Each SID and its contents will have unique hash value to ensure integrity. Sakshya will be stored in immutable storage.”

[6] Mr. Siraj Ali, learned counsel further relies on a decision of Hon'ble Supreme Court in case of **Sarija Banu Alias Janarthani Alias Janani and another vs. State through Inspector of Police, (2004) 12 SCC 266** to buttress his submission that compliance of procedural law like Section 42 of NDPS Act should be looked into while hearing the bail application.

[7] Learned counsel also relies on a decision of Single Bench of Allahabad High Court in the case of **Shadab vs. State of U.P. (Criminal Misc. Bail Application No.40989 of 2025 decided on 05.01.2026)** which was a case relating to recovery of 40 Nos. of motor cycles. In the said case, apart from allegation of violation of Section 105, BNSS, pleas that two co-accused persons were already released on bail, that charge-sheet was already filed and long incarceration of accused in jail were also taken from the side of

accused person. The Court took consideration of the fact of overcrowding of jail and finally granted bail to the accused person. Incidentally, the High Court also observed at paragraph No.12 that the police did not conduct any videography of the recovery of motor cycles from the applicant and preparation of list of seized motor cycles, though, same was mandatory as per Section 105 of BNSS and uploading of the videography on the portal of eSakshya was also necessary but the police did not comply the aforesaid provisions and said fact showed not only the negligence but arbitrariness on the part of the police which created doubt over the prosecution story regarding the recovery of seized articles. The High Court also directed the Director General of Police, U.P., Lucknow to issue detailed SOP for mandatorily conducting audio video recording of search, seizure and possession of property and other incriminating material including the preparation of list of articles. Therefore, this case stands on a different footing.

[8] Learned counsel further relies on a decision of Kerala High Court in the case of **Suresh vs. the State of Kerala, 2025 Supreme(Ker) 2268** where, in an appeal against the conviction under Section 302 IPC, the appellant was acquitted on analysis of evidences led in that case by the prosecution and the sole witness of that case (PW-5) on whom the entire prosecution story was founded, was found not reliable. Incidentally at paragraph Nos.39 and 40, the High Court observes that the Central Government has also come out with the eSakshya platform that complements these reforms by enabling real-time capture, secure storage, authentication, and transmission of digital evidence to courts and therefore, the State Police is urgently required to ramp up their skills and prioritise adoption of these reforms, through updated protocols, training, and investment in technology and forensics, to meet legal mandates and public expectations for foolproof investigations, especially in heinous crimes like murder. eSakshya is the technological lynchpin of the BNSS reforms. It embodies the principle that evidence once created should be immediately saved and shared in digital form for the justice system to use. State police forces are therefore required to proactively embrace eSakshya to ensure that they comply with the provisions of the new law.

[9] Mr. Raju Datta, learned P.P., on the other hand, submits that videography of the search was duly done under Section 105 of BNSS and same was also uploaded in eSakshya portal. Learned P.P. further submits that there are prima facie materials against the accused person regarding recovery of commercial quantity of contraband item from him. Learned P.P. also submits that any sort of procedural lacuna in the investigation can be agitated during trial and not at this stage while deciding bail application. He also relies on a decision of Coordinate Bench of this Court in case of ***the State of Tripura vs. Sri Mahabul Alam and others (BA No.23 of 2023 decided on 27.09.2023)*** wherein learned Bench observed that procedural violations, if any, should be taken into consideration during the course of trial, and not at the stage of consideration of bail application. Learned P.P. further relies on the decision of Constitution Bench of Hon'ble Supreme Court in ***Vijaysinh Chandubha Jadeja vs. State of Gujarat, (2011) 1 SCC 609*** wherein regarding alleged violation of Section 50 of NDPS Act, it was observed by the Hon'ble Supreme Court that same might be considered during trial. Learned P.P. also relies on another decision of Hon'ble Supreme Court in case of ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, (2021) 10 SCC 100*** wherein it was observed by the Hon'ble Supreme Court that alleged violation of Section 42 of NDPS Act could be considered during trial.

[10] Court has considered the submission of both sides and also considered the materials placed in the record as well as in the case diary. As per the materials available in the case diary, sufficient prima facie materials are found that on the alleged date, time and place, the police authority recovered total 58 Nos. bottles of Eskuf syrup of commercial quantity from the possession of the present accused Sahinur Islam. Obviously therefore, rigours of Section 37 of NDPS Act will be applicable in the instant case to consider his bail prayer. Due to prima facie materials of recovery of commercial quantity of contraband item from the possession of the present accused petitioner, it cannot be said that the twin test of Section 37 of NDPS Act is fulfilled in the instant case to release the accused on bail.

[11] Now, so far the issue raised by Mr. Siraj Ali, learned counsel regarding violation of Section 105 of BNSS is concerned, it is a disputed fact, as according to learned P.P., Section 105 of BNSS was scrupulously followed

by the arresting officer before conducting search and seizure of said contraband items.

[12] In **Sarija Banu (supra)**, as relied on by Mr. Siraj Ali, learned counsel, after the police arrested the accused persons, one telegram was sent on their behalf to different authorities including Governor of Tamil Nadu, Home Secretary, Government of Tamil Nadu that the accused persons were missing and their illegal detention by the police also created a suspicious circumstance. Contextually, it was also observed by the Hon'ble Supreme Court that allegation was of violation of Section 42 of NDPS in that said case but the High Court did not deal with that point as raised from the side of accused persons rather the High Court observed that it was not necessary to consider such violation at that stage. Hon'ble Supreme Court in that aspect observed that compliance of Section 42 was mandatory and that was a relevant fact which should have engaged the attention of the Court while considering the bail application. However, the Constitution Bench thereafter in **Karnail Singh vs. State of Haryana, (2009) 8 SCC 539** observes that whether there is adequate or substantial compliance of Section 42 or not, is a question of fact to be decided in each case. In **Vijaysinh Chandubha Jadeja (supra)**, also the Constitution Bench observes that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 has been met, is a matter of trial. In **Md. Nawaz Khan (supra)**, the Apex Court observes that the issue of whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact. The Coordinate Bench of this Court in **Mahabul Alam (supra)**, also observes that procedural violations or irregularities should not be taken into consideration while deciding an application for granting bail filed by any accused arrested in connection with the penal provisions under the NDPS Act.

[13] In the instant case as already stated above, in the case diary there are documents along with one certificate issued by SI Rakesh Debnath showing prima facie materials regarding uploading of some materials in eSakshya portal (ICJS) regarding search and seizure. Therefore, the ground as agitated by the accused petitioner for granting bail cannot be considered and accordingly, the bail prayer is rejected.

With such observation and direction, the bail application is disposed of.

Re-consign the Trial Court record along with copy of this order.

Return the case diary to learned P.P.

Pending application(s), if any, shall also stand disposed of.

JUDGE

