

HIGH COURT OF TRIPURA

AGARTALA

BA 68 OF 2026

Sanjida Aktar,

Wife of Saddam Hossain, resident of UNC Nagar,
Fakiradola, P.S. Sonamura, District Sepahijala, Tripura.

....Applicant

On behalf of accused persons in custody, namely,

1. Idrish Miah,

Son of Late Ali Akbar, resident of UNC Nagar, Fakiradola,
P.S. Sonamura, District Sepahijala, Tripura.

2. Manoyara Khatun,

Wife of Idrish Miah, resident of UNC Nagar, Fakiradola,
P.S. Sonamura, District Sepahijala, Tripura.

3. Saddam Hossain,

Son of Idrish Miah, resident of UNC Nagar, Fakiradola,
P.S. Sonamura, District Sepahijala, Tripura.

....Accused persons

Versus

The State of Tripura

....Respondent.

BEFORE

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

For the Applicant/petitioner(s) : Mr. Somik Deb, Sr. Advocate.
Mr. Jishan Sahed, Advocate.

For the Respondent(s) : Mr. Raju Datta, P.P.

06.04.2026

ORDER

Heard learned counsels of both sides.

2. The allegations in the FIR are that on 08.09.2025 at around 14.05 hours, on the basis of a secret information, the informant with other police personnel taking aid of BSF authority, one of whom was Assistant Commandant, raided the house of accused person namely, Idrish Miah where on search they found total 100 nos. of 'Eskuf' cough syrup and 30 Nos. of blue colour plastic pouch containing 'Yaba' tablets of weighing 600

grams. They then detained said Idrish Miah and his wife Manoyara Khatun. During such raid, their sons, namely, Saddam Hossain, Iman Hossain and Manir Hossain was found absconding. The police officer thereafter returned to the police station and finally lodged the Ejahar on 08.09.2025 at 23:36 hours which was registered as Sonamura P.S. Case No.75/2025, under Sections 21(c)/22(c)/25/29 of NDPS Act.

3. In the Arrest Memo, the accused Idrish Miah was shown arrested on 09.09.2025 in the night at 00.40 hours whereas accused Manoyara Khatun was shown arrested on the following morning i.e.09.09.2025 at 08.05 hours. They were forwarded to the Court of learned Special Judge on 09.09.2025. It is reported that accused Saddam Hossain was arrested later on.

4. Regarding the accused Idrish Miah and Mayonara Khatun, learned senior counsel Mr. Somik Deb submits that after expiry of 180 days of detention of both these two accused persons, the charge sheet was submitted but despite the same, default bail was not granted to them. As per the record, the learned Special Judge received the charge sheet filed under Sections 21(C)/22(C)/25/29 of NDPS Act on 07.03.2026. During hearing, while re-calculating the period of detention, learned senior counsel fairly submits that on 180th day of their detention the charge sheet was submitted, and therefore, the challenge on this point made by the petitioner is not further dealt with and examined in this case.

5. Learned senior counsel, Mr. Deb also submits that Section 50 of the NDPS Act was not complied with and that as per the report of the Tehasildar, the house from which the said contraband items were seized falls within the Govt. Khas land and the concerned Tehasildar who submitted the report to the I.O. mentioned in his report that the said house was identified by the I.O. and therefore, according to learned senior counsel, the conscious possession of the accused persons were not established in the present case.

6. In this regard, learned senior counsel, Mr. Deb relies on a decision of Hon'ble Supreme Court in the case of **Mohan Lal Vs. State of**

Rajasthan, (2015) 6 SCC 222 and relevant paragraphs nos. 21 and 22 as relied on by Mr. Deb, is extracted hereunder:

“21. From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.

22. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion. As the factual matrix would exposit, the appellant -accused was in possession of the prohibited or contraband substance which was an offence when the NDPS Act came into force. Hence, he remained in possession of the prohibited substance and as such the offence under Section 18 of the NDPS Act is made out. The possessory right would continue unless there is something to show that he had been divested of it. On the contrary, as we find, he led to discovery of the substance which was within his special knowledge, and, therefore, there can be no scintilla of doubt that he was in possession of the contraband article when the NDPS Act came into force. To clarify the situation, we may give an example. A person had stored 100 bags of opium prior to the coming into force of the NDPS Act and after coming into force, the recovery of the possessed article takes place. Certainly, on the date of recovery, he is in possession of the contraband article and possession itself is an offence. In such a situation, the appellant-accused cannot take the plea that he had committed an offence under Section 9 of the Opium Act and not under Section 18 of the NDPS Act.”

7. The last point as argued by learned senior counsel, Mr. Deb is that accused Mayonara Khatun was shown arrested on 09.09.2025 at around 8:05 hours whereas on the previous night she was taken to the police station under their custody and therefore, an artificial time has been shown in the Arrest Memo by the police authority to save them from any allegation of violation of Section 43 (5) of BNSS. In this regard, learned senior counsel relies on a decision of this Court in the case of **Anawora Begam vs. State of Tripura, Bail Application No.137 of 2025**, decided on 16.03.2026. Therefore, learned senior counsel prays for bail of the accused persons on the said grounds.

8. Learned P.P., however, opposes the bail prayer of the accused persons and submits that there are prima facie materials that the accused persons are involved in dealing with the commercial quantity of narcotic items, and therefore, rigour of Section 37 of NDPS Act is applicable here in their cases and thus bail cannot be granted to them.

9. This Court has considered the submissions of learned counsels of both sides.

10. It appears from the statements of two witnesses, namely Firoz Miah and Joynal Miah that the alleged raid and search was conducted by the police officer in the house of Idrish Miah and police found both Idrish Miah and Mayonara Khatun available there during such search and both the said two witnesses also were present there at that time. Though the Tehasildar has reported that said hut was constructed in the Govt. Khas land, but in view of statements of witnesses as indicated above, apart from statements of other witnesses like the informant, prima facie, there are materials that from the house of the accused persons said contraband materials were recovered, and therefore, whether the owner of the land was the accused persons or the State is irrelevant, for, there are materials that they had dominion and control over said alleged contraband items.

11. Now, regarding the second point in respect of arrest of Mayonara Khatun as shown by the police on 09.09.2025 at 08.05 hours is concerned, it appears that as per the contents of the FIR itself on

08.09.2025 the police raided her house at around 14.50 hours and thereafter such contraband items were recovered and she was also detained and finally, she along with her husband with recovered contraband items were brought to the police station. Her husband was shown arrested at 00:40 hours on the same day whereas she was shown arrested on 08.05 hours of that day. There is no explanation as to why there is mentioning of different times of their arrest, one is during night and in case of another it was during day hours on the same day, though both of them were simultaneously detained in the house of Idrish Miah and together they were brought to the police station. But there is no clear materials available as to exactly when they were detained. As per the contents of the FIR, on 14:50 hours they arrived in the house of the accused Idrish Miah and found both Idrish Miah and Mayonara Khatun available there and they after observing necessary formalities conducted search and recovered those items from the kitchen room of the said hut.

12. FIR also further indicates that the search and seizure including packing etc., were done in between 15:05 hours to 17:00 hours and at that time they were detained and then police left the said house with the detained persons and seized items. Therefore, it cannot be decided with certainty at this stage, whether detention of female accused was effected after sunset or not. Anyway, if the accused Mayonara Khatun has any grievance in this regard for alleged violation of Section 43, sub Section (5) of BNSS, she may approach the competent authority in this regard seeking relief but on that ground she cannot be said to be entitled to grant bail in this case which relates to commercial quantity of narcotic items and rigour of Section 37 of the NDPS Act is there.

13. In **Anawora Begam** (supra) also this Court did not accept the contention of the petitioner of that case that for non-compliance of Section 46(4) of CrPC [corresponding to Section 43(5) of BNSS], the accused cannot claim as an indefeasible right to be released on bail on that ground in every case.

14. Considering all these aspects, the bail prayer is rejected.

15. Return the C.D. with a copy of this order to learned P.P.

16. Also re-consign the trial Court record to the learned Court below with a copy of this order.

JUDGE



SANJAY GHOSH

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Date: 2026.04.08 12:45:01 +05'30'

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