

**HIGH COURT OF TRIPURA
AGARTALA**

CrI.P. No.23 of 2025

Union of India,

Represented by Shri Sumanta Chowdhury,
Sr. Intelligence Officer, Directorate of Revenue Intelligence,
Agartala Regional Unit, Agartala, Tripura
Under Ministry of Finance, Department of Revenue,
Govt. of India.

....Petitioner(s).

Versus

1. Shri Rahul Ghosh,

S/O- Shri Hridoy Ghosh of Phultali Bazar,
P.O.- Pandavpur, P.S.- Amtali,
West Tripura, Pin-799130.

2. Shri Mohammed Dawit,

S/O- Md. Abdul Gaffar of Mantriphekri Muslim Colony,
Heingang, village- Mantriphekri,
P.S. & Sub-Division Porampat, Imphal East,
Manipur, Pin- 795002.

.....Accused-Respondents.

For Petitioner(s)	:	Mr. Arindam Ray, Adv.
For Respondent(s)	:	Mr. Sankar Lodh, Adv, Mr. Subham Majumder, Adv.
Date of Hearing	:	16.02.2026
Date of delivery of Judgment and Order	:	23.02.2026
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This petition under Section 482 of Cr.P.C.
corresponding to Section 528 of BNSS read with Section 37 of
NDPS Act is filed by the Union of India being represented by its

Officer as petitioner against the respondent-accused person who were granted bail by Learned Special Judge, Court No.1, West Tripura, Agartala on 30.11.2024 passed in case No.03/CL/NDPS/DRI/AGT/2024-25 corresponding to Spl. NDPS.

02. Heard Learned Standing Counsel, Mr. A. Ray appearing on behalf of the petitioner and also heard Learned Counsel, Mr. S. Lodh representing the respondent-accused persons.

03. At the time of hearing, Learned Standing Counsel for the Union of India submitted that the petitioner-Union of India has challenged the order dated 30.11.2024 passed by Learned Special Judge, Court No.1, West Tripura, Agartala in the aforementioned case. The Learned Special Judge at the time of passing of order did not consider the provision of Section 37 of NDPS Act and passed the order because according to Learned Standing Counsel, until and unless the twin conditions as mentioned in Section 37 of NDPS Act are fulfilled, in that case there is very least scope to grant any order of bail in a case of this nature and furthermore, in this case before completion of statutory period of detention of 180 days, Learned Special Judge granted bail to the accused which was totally illegal and beyond the mandate of law.

Learned Standing Counsel further submitted that Learned Trial Court on completion of 179 days granted bail to the respondent-accused persons without any cogent reasons which were totally impermissible and contrary to the law because in view of the regors of the provision of Section 37 of NDPS Act, there is no scope to grant bail in a case of this nature. So, the order passed by Learned Special Judge was beyond jurisdiction and the same needs to be interfered with.

It was further submitted that in the case at hand there was allegation of possession of contraband items of commercial quantity by the accused persons, so, the order suffers from infirmity and further, Learned Special Judge on the ground of illness of one of the accused, Rahul Ghosh allowed bail is not a justified and legal ground to consider bail to the said accused. It was further submitted that for medical exigency to the extent Learned Trial Court could grant bail for interim period but that was not being done and in respect of another accused nothing has been explained in the order as to why he was given bail. So, Learned Standing Counsel, Mr. Ray urged for setting aside the order passed by Learned Special Judge with direction to the accused persons to surrender before the Learned Trial Court.

04. On the other hand, Learned Counsel, Mr. S. Lodh first of all drawn the attention of the Court referring the contents of the complaint filed before the Court initially,

wherein the name of the present respondent-accused persons were there and thereafter, again on 30.11.2024 another complaint was filed by one, Mr. Sumanta Chowdhury, Senior Intelligence Officer involving another accused, Moudad Ahmed Choudhury. But the complaint was filed by Union of India not represented by any Authorized Officer. So, the filing of initial complaint was without jurisdiction and in this regard, Learned Counsel for the respondent-accused persons drawn the attention of the Court referring sub-clause-(d) of Section 36-A of the NDPS Act and further submitted that in view of the judgment of the Hon'ble the Apex Court in **Tofan Singh vs State of Tamil Nadu** reported in **(2021) 4 SCC 1** wherein Hon'ble the Apex Court in para Nos.137 & 140 observed as under:

"137. The language of Section 53(1) of the NDPS Act is crystal clear, and invests the officers mentioned therein with the powers of "an officer in charge of a police station for the investigation of the offences under this Act". The expression "officer is defined in the CrPC as follows:

"2. (o) officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;"

The expression "police report" is defined in Section 29r) CrPC as follows:

"2. (r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173;"

140. What is clear, therefore, is that the designated officer under Section 53 of the NDPS Act, invested with the powers of an officer in charge of a police station, is to forward a police report stating the particulars

that are mentioned in Section 173(2) CrPC. Because of the special provision contained in Section 36-A(1) of the NDPS Act, this police report is not forwarded to a Magistrate, but only to a Special Court under Section 36-A(D)(d). Raj Kumar Karwal case, when it states that the designated officer cannot submit a police report under Section 36-A(1)(d), but would have to submit a "complaint" under Section 190 CrPC misses the importance of the non obstante clause contained in Section 36-A(1) of the NDPS Act, which makes it clear that the drill of Section 36-A is to be followed notwithstanding anything contained in Section 2(d) CrPC.

140.1. It is obvious that Section 36-A(1)(d) is inconsistent with Section 2(d) and Section 190 CrPC and therefore, any complaint that has to be made can only be made under Section 36-A(1)(d) to a Special Court, and not to a Magistrate under Section 190. Shri Lekhi's argument, that the procedure under Section 190 has been replaced only in part, the police report and complaint procedure under Section 190 not being displaced by Section 36-A(1)(d), cannot be accepted. Section 36-A(1)(d) specifies a scheme which is completely different from that contained in the CrPC. Whereas under Section 190 CrPC it is the Magistrate who takes cognizance of an offence, under Section 36-A(1)(d) it is only a Special Court that takes cognizance of an offence under the NDPS Act.

140.2. Secondly, the "complaint" referred to in Section 36-A(1)(d) is not a private complaint that is referred to in Section 190(1)(a) CrPC, but can only be by an authorised officer."

Referring the same, Learned Counsel submitted that in view of the aforesaid observation of the Hon'ble Supreme Court, the complaint filed by the Union of India was a defective one and on the basis of that there was no scope to entertain the petition filed by the Union of India and urged for quashing of the proceeding. It was further submitted by Learned Counsel for the respondent-accused persons that admittedly another accused Moudad Ahmed Choudhury was later on impleaded in

this case and by a judgment dated 27.11.2025 of this Court he was granted bail and the Learned Trial Judge considering the materials on record rightly granted bail to the respondent-accused persons and finally, Learned Counsel submitted that there is no merit in the petition filed by the petitioner-Union of India and as such the same is liable to be dismissed henceforth.

To counter the reply, Learned Standing Counsel for the Union of India also referred few citations of the Hon'ble Supreme Court of India:

(i) State of Kerala Etc. vs Rajesh Etc. arising out of SLP(Crl.) No(s). 7309-7312 of 2019 dated 24.01.2019,

(ii) Sujit Tiwari vs State of Gujarat & Anr. arising out of Criminal Appeal No.1897 of 2019 dated 28.01.2020,

(iii) Union of India vs. Ajay Kumar Singh @ Pappu arising out of SLP (Crl.) No.2351 of 2023,

(iv) Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan arising out of SLP (Crl.) No.1771 of 2021 dated 22.09.2021,

(v) State through Narcotics Control vs. Kulwant Singh Intelligence arising out of SLP (Crl.) No.3816 of 2002 dated 11.02.2003.

Referring all the aforesaid cases, Learned Standing Counsel for the Union of India submitted that in view of the observation of the Hon'ble the Supreme Court in the aforesaid cases, there was no scope to grant bail to the respondent-accused persons by the Learned Trial Court but the Learned Trial Court ignoring the spirit of the provision of Section 37 of NDPS Act granted bail to the respondent-accused persons within the stipulated period of filing of final report illegally which was contrary to the mandatory provision of law and as such Learned Standing Counsel urged for allowing this petition by setting aside the order of the Learned Special Judge.

Considered.

05. Admittedly, in this case, initially a complaint was filed by the Intelligence Officer on behalf of Union of India i.e. the Directorate of Revenue Intelligence on 05.06.2024 when at the time of filing the complaint, the I.O. forwarded the present respondent-accused persons under arrest. They were in custody for a considerable period of time but in the meantime, on 30.11.2024 the final complaint was submitted by one Sri Sumanta Chowdhury, Senior Intelligence Officer, Directorate of Revenue Intelligence involving another accused person, Moudad Ahmed Choudhury and from the order dated 30.11.2024, it appears that the Learned Special Judge by the said order admitted that the final complaint was submitted by

the I.O. of this case. Later on by order dated 05.12.2024 cognizance of offence was taken by Learned Special Judge against the respondent-accused persons including said Moudad Ahmed Choudhury and accordingly, cognizance of offence punishable under Section 21(c)/22(c)/23(c)/25/25A/28/29 of the NDPS Act was taken by the Learned Special Judge.

In this regard, I would like to refer herein below the relevant provision of Sub-clause-d of Section 36-A of NDPS Act which provides as under:

Sub-clause-(d) of Section 36-A of NDPS Act:

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

From the aforesaid provision of law, it appears that the Special Court based upon the report of police or upon complaint made by an officer of the Central Government or a State Government authorized in his behalf may take cognizance of offence.

06. So, here in the case at hand the Learned Special Judge upon the complaint submitted by the Senior Intelligence Officer of the Department of Directorate of Revenue Intelligence took cognizance of offence. So, regarding taking of cognizance of offence, I find no infirmity in the order passed by Learned Special Judge. Now, here in the case at hand, the

main challenge of the petitioner-complainant was that the Learned Trial Judge at the time of passing order on 30.11.2024 did not follow the spirit of the provision of Section 37 of NDPS Act.

Now for the sake of convenience, let us reproduce herein below the relevant provision of Section 37 of NDPS Act which provides as under:

"[37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, 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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]."

From the aforesaid provision, it appears to this Court that until and unless the twin conditions as mentioned in the aforesaid provisions are complied with, there is no scope to pass any order of bail in a case involving commercial quantity under NDPS Act.

07. Here in the case at hand, the allegation of the complainant was that on 04.06.2024 at about 1315 hours the

Officers of DRI received one secret information that huge quantum of Yaba tablets were being transported in a Maruti Suzuki SL6 bearing Reg. No.AS-11-AB-3690 from Silchar to Agartala via Khowai-Sidhai Mohanpur-Agartala Road. It was the information that the said vehicle will pass near Kamalghat bridge at about 1600 hours to 1800 hours. The officer upon received the said information reduced the same into writing in compliance with the provisions of Section 42(1) of the NDPS Act and immediately, the information was communicated to his superior officer and upon receiving the said information, the superior officer gave authorization to the Intelligence Officer to proceed for the interception of the vehicle in-accordance-with the provision of NDPS Act. After that the Intelligence Officer of DRI then formed a team consisting of other staff of DRI and personnel of 42 Bn. Of BSF and G. Branch of Gokulnagar sector and proceeded to the spot of seizure. The officer near Salbagar Bazar approached two persons and introduced himself to them informed about the secret information and requested them to become witnesses of the whole operation to which both the witnesses agreed. The officer then along with other staff of DRI and BSF and witnesses proceeded towards the Kamalghat Bridge on Khowai-Agartala road and upon reaching near Kamalghat Bridge at about 16:30 hours on 04.06.2024 started waiting for the targeted vehicle to arrive. At around 17:00 hours on 04.06.2024, one silver colour four wheeler vehicle of Maruti Suzuki XL6 model bearing No.AS-11-AB-3690 was

spotted coming towards Agartala from Khowai side and on spotting the said vehicle, the officer of DRI signaled it to stop. But the said vehicle instead of stopping tried to accelerate its speed with the intention to flee away from the spot but the officers of DRI and personnel of BSF were able to intercept before it could flee away from the spot and upon interception, it could found that two male persons were sitting in the driver seat and passenger seat of the front side of the vehicle bearing No.AS-11-AB-3690 and after observing all formalities, search was carried out and the complainant party found 07 nos. of plastic packets wrapped with adhesive tapes inside the in-build box on the left side of the back side of the vehicle and also found 08 nos. of plastic packets with adhesive tapes from the front side of the vehicle and after examination of all the plastic packets containing pink coloured tablets believed to be Metamphetamine in a digital weighing scale, it was found 15 kgs (net) and 17.032 Kgs (gross). Accordingly, the seizure was made and on 05.06.2024, the seizing officer arrested both the accused persons under Section 43(b) of the NDPS Act and after that forwarded them to the Court on the same day with a forwarding report.

This was the sums and substance of the case of the prosecution/complainant.

08. Now, regarding authorization at the time of hearing, Learned Standing Counsel for the Union of India produced notifications, Ministry of Finance issued in this aspect:

NOTIFICATION

New Delhi, the 30th October, 2019

S.O. 3900(E).-In exercise of the powers conferred by clause (d) of sub-section (1) of section 364 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue number S.O. 763(E), dated the 27th September, 1989, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), except as respects things done or omitted to be done before such supersession the Central Government, hereby authorises the officers of and above the rank of inspectors in the Central Board of Indirect Taxes and Customs, Central Bureau of Narcotics, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau and of and above the rank of Junior Intelligence Officer in Narcotics Control Bureau for filling of complaints relating to an offences under the said Act, before Special Courts.

**F.No.N/11011/1/2019-NC-II]
BISWAJIT SARKAR, Under Secy.**

NOTIFICATION

New Delhi, the 30th October, 2019

S.O. 3901(E).-In exercise of the powers conferred by sub-section (1) of section 42 and section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), and in supersession of the S.O. 822(E), dated the 14th November, 1985, published in the Gazette of India. Extraordinary, Part II, Section 3, Sub-section (ii), except as respects things done or omitted to be done before such supersession the Central Government hereby empowers the officers of and above the rank of sub-inspector in Central Bureau inspectors in the Central Board of Indirect Taxes and Customs, Directorate of Revenue Intelligence. Central of Narcotic and Junior Intelligence Officer in Narcotics Control Bureau and of and above the rank of Economic Intelligence Bureau to exercise the powers and perform the duties specified in section 42 within the area of their respective jurisdiction and also authorise the said officers to exercise the powers conferred upon them under section 67.

**[F. No. N/11011/1/2019-NC-II)
BISWAJIT SARKAR, Under Secy.**

09. From the aforesaid notifications, it appears that the Government of India, Ministry of Finance by the said notifications duly authorized the officers of the Customs and DRI or Revenue Intelligence to file complaints relating to an offence, i.e. under NDPS Act before the Learned Special Court and by the subsequent notification the Ministry of Finance authorized the officers of the Revenue Intelligence and others to perform the duties as required under Section 42 of the NDPS Act. From the aforesaid notifications of the Government of India, Ministry of Finance, it appears that there was no illegality to file the complaint submitted by the officers of the Revenue Intelligence before the Special Court. So, the submission of Learned Counsel for the respondent-accused persons that the same was not filed in-accordance-with law is cannot be accepted as valid submission as per law.

At the time of hearing, Learned Standing Counsel for the Union of India also referred few citations as indicated above. For the sake of convenience, all the judgments are referred herein below:

Hon'ble the Apex Court in **State of Kerala & Ors. versus Rajesh and Ors.** reported in **(2021) 4 SCC 1** wherein Hon'ble the Apex Court in para Nos.11, 17, 19, 20, 21 & 25 observed as under:

"11. The learned Senior Counsel further submits that the conditions for granting bail, specified in Section 37(1)(4)() are in addition to the limitations provided under CrPC, or any

other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the NDPS Act is uncalled for. In support of his submission, the learned Senior Counsel has placed reliance on the judgment of the three-Judge Bench of this Court in Saipal Singh v. State of Punjab: 2018(13) SCC 813

17. The jurisdiction of the court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that the accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:

"37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, 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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 @ of 1974), or any other law for the time being in force on granting of bail."

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the

second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

21. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.

25. In the result, the appeals are allowed and the impugned order passed by the High Court releasing the respondents on bail is hereby set aside. Bail bonds of the respondent-accused stand cancelled and they are directed to be taken into custody. The trial court is directed to proceed and expedite the trial.

Further, Hon'ble the Apex Court in **Sujit Tiwari vs. State of Gujarat & Anr.** reported in **(2020) 13 SCC 447** wherein Hon'ble the Apex Court in para Nos.8, 11, 13, & 14 observed as under:

"8. On the other hand, Mr K.M. Nataraj, learned ASG appearing for the respondents submits that keeping in view the bar of Section 37 of the NDPS Act, no bail can be granted to the appellant. As far as default bail is concerned,

he submits that since the complaint was filed within time, the appellant cannot get benefit of Section 167 CrPC read with Section 36-A of the NDPS Act, even if investigation has not been completed. While deciding this bail application, we are conscious of the provisions of Section 37 of the NDPS Act which lays down two limitations: one, that the court is prima facie of the view that the appellant is not guilty of the offence and

secondly, that he is not likely to commit any offence while on bail.

11. At this stage, without going into the merits, we feel that the case of the appellant herein is totally different from the other accused. Reasonable possibility is there that he may be acquitted. He has been behind bars since his arrest on 4-8-2017 i.e. for more than 2 years and he is a young man aged about 25 years. He is a BTech graduate. Therefore, under facts and circumstances of this case, we feel that this is a fit case where the appellant is entitled to bail because there is a possibility that he was unaware of the illegal activities of his brother and the other crew members. The case of the appellant is different from that of all the other accused, whether it be the Master of the ship, the crew members or the persons who introduced the Master to the prospective buyers and the prospective buyers.

13. We direct that the appellant Sujit Tiwari be released on bail upon furnishing a bail bond in the sum of Rs 10,00,000 (ten lakhs only), with two sureties of the like amount to the satisfaction of the Special Judge, NDPS Court at Porbandar on the following conditions:

13.1. The appellant shall deposit his passport, if any with the court.

13.2. The appellant shall either stay in Porbandar or Kolkata. He shall not go to any other place.

13.3. The appellant shall give his cellphone number to the police authorities and shall not change his cellphone number without permission of the trial court.

13.4. Whether the appellant remains in Porbandar or Kolkata, in Kolkata he shall report to the Entally police station daily at 9.00 a.m., and in Porbandar he shall report to the investigating officer of NCB at 9.00 a.m. everyday.

13.5. The appellant shall join the investigation as and when called upon to do so before the authorities of NCB.

13.6. The appellant shall not in any manner hamper or try to interfere in the investigation.

13.7. Once the trial begins, the appellant shall not in any manner try to delay the trial.

14. If the appellant violates any of these terms, NCB shall be entitled to straightaway apply to the Special Judge for cancellation of his bail."

Hon'ble the Apex Court in **Union of India vs. Ajay**

Kumar Singh @ Pappu vs Ajay Kumar Singh alias Pappu

reported in **(2023) SCC OnLine SC 346** in para Nos.16, 17, & 18 observed as under:

"16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

17. The quantity of "ganja" recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not prima facie guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.

18. In view of the aforesaid facts and circumstances and considering the role assigned to the respondent-accused and the illegality committed in releasing him on bail, we set aside the impugned final order dated 17.10.2022 passed by the High Court of judicature at Allahabad and allow the appeal."

Again, Hon'ble the Apex Court in **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan** reported in **(2021) 10 SCC 100** in para Nos.32, 33, 34, 36, 37 & 39 observed as under:

"32. Further, it was held 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 decision in *Karnail Singh*': (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887 was recently followed by this Court in *Boota Singh vy. State of Haryana*": (2021) 19 SCC 606 : 2021 SCC OnLine SC 324.

33. In the complaint that was filed on 16-10-2019 it is alleged that at about 1400 hours on 26-3-2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not

complied with is prima facie misplaced. The question is one that should be raised in the course of the trial.

34. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

34.1. The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused.

34.2. The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him.

34.3. The quantity of contraband found in the vehicle is of a commercial quantity.

34.4. The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.

36. The High Court has clearly overlooked crucial requirements and glossed over the circumstances which were material to the issue as to whether a case for the grant of bail was established. In failing to do so, the order of the High Court becomes unsustainable. Moreover, it has emerged, during the course of the hearing that after the respondent was enlarged on bail he has consistently remained away from the criminal trial resulting in the issuance of a non-bailable warrant against him. The High Court ought to have given due weight to the seriousness and gravity of the crime which it has failed to do.

37. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 1-10-2020 in Mohd. Nawaz Khan y. Union of India: 2020 SCC OnLine All 1838.

38. The application for bail filed by the respondent shall stand dismissed. The respondent shall accordingly surrender forthwith. Pending application(s), if any, stand disposed of."

In **State through Narcotics Control Bureau v.**

Kulwant Singh reported in **(2003) 9 SCC 193**, wherein in

para No.29, the Hon'ble Apex Court observed as under:

29. This Court in Jasbir Singh v. Vipin Kumar Jaggi [(2001) 8 SCC 289 : 2001 SCC (Cri) 1525] expressed a similar view when it observed: (SCC p. 302, paras 24-25)

"24. Under Section 4(1) of the Act, the Central Government is obliged to take all such measures as are deemed necessary for the purpose of preventing and combating the abuse of narcotic drugs and psychotropic substances and the illicit traffic therein. By Notification SO No. 96(E) dated 17-3-1985, the Central Government constituted the Narcotics Control Bureau (NCB) in exercise of its powers under Section 4(3) of the Act to discharge the powers and functions of the Central Government under the Act subject to the superintendence and control of the Central Government.

25. It is, in the circumstances, clear that when cases are started on the complaint of NCB, it is not a mere complainant but is the executive and it must act in discharge of a mandate statutorily cast upon it to effectively check among other activities, the illegal dissemination and smuggling of drugs."

I have also perused the aforesaid judgments referred by Learned Standing Counsel for the Union of India and it appears that in a case of this nature until the twin conditions as mentioned in Section 37 of NDPS Act are being followed then there is no scope to grant bail to an accused in a case whether there is allegation of possession of contraband items of commercial quantity.

From the order dated 30.11.2024, it appears that the Learned Special Judge at the time of delivery of judgment/order of the bail application failed to consider the mandatory provision of Section 37 of NDPS Act rather came to the observation that the accused persons were in custody for 179 days and the final report was submitted within the stipulated period which in the considered opinion of this Court

the order dated 30.11.2024 suffers from infirmity and the same is liable to be interfered with.

10. In view of the above the order dated 30.11.2024 passed by Learned Special Judge, Court No.1, West Tripura, Agartala stands aside. The respondent-accused persons are to surrender before the Learned Trial Court on or before 05.03.2026 failing which the Learned Trial Court shall make all endeavour to ensure presence of the respondent-accused person before the Court in-accordance-with law. From the record, further, it appears that the case is at the stage of framing of charge, so, the Trial Court shall make all endeavour to dispose of the case on top priority in-accordance-with law. It is also necessary to be mentioned here that the petitioner-Union of India has challenged the order dated 30.11.2024 before this High Court on 07.05.2025 after a considerable long period and in this regard, no satisfactory explanation was given. However, at the time of hearing, Learned Standing Counsel for the complainant could not give any specific reasons for such delay, however, such type of practice is deprecated and the officers of the department should be more vigilant and cautious in dealing with such type of matter in future.

Learned Standing Counsel for the complainant is asked to take up the matter with the authority of the department immediately.

Send down the record to the Learned Trial Court along with a copy of this order. Also supply a copy of this order to the Learned Standing Counsel for the Union of India.

With this observation, this petition stands disposed of on contest.

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

JUDGE



Purnita

**AMRITA
DEB**

Digitally signed by
AMRITA DEB
Date: 2026.02.26
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