

HIGH COURT OF TRIPURA
A G A R T A L A
B.A. No.92 of 2026

Safali Akter,
W/o Sri Anowar Hossain, resident of Vill Srimantapur, P.O. Rabindrangar, P.S. Sonamura, Dist. Sepahijala, Pin 799131.(Wife)

..... **Petitioner(s)**

For and on behalf of
Anowar Hossain,
S/o Lt. Ali Ashab, resident of Vill Srimantapur, P.O. Rabindrangar, P.S. Sonamura, Dist. Sepahijala, Pin 799131.

..... **Applicant**

- V e r s u s -

The State of Tripura

.....**Non-Applicant/Respondent(s)**

B.A. No.93 of 2026

Habil Miah,
S/O Sri Hasem Miah, resident of Vill & P.O. Durgapur, P.S. Sonamura, Dist. Sipahijala, Tripura, Pin 799131. (Elder brother)

..... **Petitioner(s)**

For and on behalf of
Mariam Bibi,
W/O Ali Hossen, resident of Vill & P.O. Durgapur, Ward No. 05, P.S. Sonamura, Dist. Sipahijala, Tripura, Pin 799131.

..... **Applicant**

- V e r s u s -

The State of Tripura

.....**Non-Applicant/Respondent(s)**

For the Petitioner/Applicant

:

Mr. S. Kar Bhowmik, Senior Advocate.
Mr. N. Debnath, Advocate.
Mr. Sharlock Homes Roy, Advocate.
Mr. E.L. Darlong, Advocate.

For the Respondent(s)

:

Mr. Raju Datta, P.P.

Date of hearing

:

18th May, 2026.

Date of delivery of
Judgment & Order

:

3rd June, 2026.

Whether fit for reporting

:

YES	NO
	√

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

Heard learned counsel of both sides.

[2] Since both the bail applications arise out of the same FIR, they were heard together and are being disposed of by this common judgment.

[3] These bail applications have been filed seeking bail of accused Anowar Hossain and Mariam Bibi who have been detained in connection with Sonamura PS case No. 6 of 2026 registered under Sections 22(c)/25/27A/29 of the NDPS Act and under Section 25 (1B)(a) of the Arms Act and also under Section 61 of BNS, 2023.

[4] The allegations in the FIR are that on the basis of a secret information, on 06.02.2026, police authority raided the house of accused Ali Hossen of Durgapur, Sonamura wherefrom they recovered huge quantity of yaba tablets, illegal arms, ammunition and foreign currencies and thereafter, both the above said accused persons were detained by the police authority and since then, they are in custody.

[5] Mr. S. Kar Bhowmik, learned senior counsel argues that the house owner is one Ali Hossen and just because the present petitioner Mariam Bibi is his wife, based on such relationship, she has been falsely implicated in this case along with their son, who was at the time of alleged search and recovery at Hyderabad for pursuing his studies. Mr. Kar Bhowmik, learned senior counsel also submits that despite the son was at Hyderabad, in the FIR, false assertion has been made that just prior to the raid, he fled away from his house and he was also involved in such drug trafficking.

[6] The next point as raised by Mr. Kar Bhowmik, learned senior counsel is that as per the contents of the FIR itself, the raid was conducted at around 0150 hours i.e. 1:50 am in the midnight and Mariam Bibi has been shown arrested at 4:10 pm. Therefore, it is quite clear that in violation of Section 43(5) of BNSS, 2023, the accused Mariam Bibi was arrested during midnight before rising of the sun. Learned senior counsel also refers to the Sonamura PS G.D. Entry No.02 dated 06.02.2026 of 00:40 hours regarding receipt of secret information by police for the first time in the P.S., but in the printed form of FIR against Sl. No. 3(b), time of receipt of information has been

shown as 15:07 hours of that day i.e. 3.07 pm in the evening. He also submits that one Gazetted Officer of BSF was present during raid, who was the party to that raid and he cannot be treated as an independent Gazetted Officer. Therefore, there is violation of Section 50 of NDPS Act.

[7] Learned senior counsel refers to a decision of Hon'ble Supreme Court in the case of **Ahmed vs. State of Gujarat, (2000) 7 SCC 477**, wherein at paragraph No.4 while dealing with the compliance of Section 50 of NDPS Act, the followings were observed by the Hon'ble Supreme Court, which read thus:-

"4.....A combined reading of the provisions of Section 42 and Section 50 would make it crystal clear that whenever a search of a person is about to be made on the basis of personal knowledge or information received in that behalf, then if the person to be searched requires to be taken to a gazetted officer or the nearest Magistrate, the same must be complied with and failure to comply with the same would constitute an infraction of the requirements of the provision of Section 50, which would ultimately vitiate the conviction. For the purpose of complying with the provisions of Section 50, no differentiation can be made on a plain reading of the language used in Section 50, depending upon the officer who is going to search the person concerned. In our considered opinion, since the search is about to be effected on the basis of any prior information or personal knowledge, which the person going to search has the reasons to believe that an offence under the Act is being committed, then for the sanctity of the search itself, the person to be searched has been afforded the minimum right to be searched before another gazetted officer or the Magistrate and that right cannot be taken away merely because the officer going to search happens to be a gazetted officer, who has been empowered either by the Central Government or by the State Government by a general or special order.....".

[8] In this regard, he further relies on another decision of Bombay High Court in **Criminal Appeal No.1069 of 2024** in between **Mr. Joseph Achola Ouma vs. State of Goa and others**, wherein at paragraph No. 23, the High Court observes that while complying the provisions of Section 50 of the NDPS Act, the accused should be taken in front of an independent and a responsible officer. This independent and responsible officer in Section 50 has been mentioned as either a gazetted officer or a Magistrate. Even though raiding party could be accompanied by a gazetted officer, such a gazetted officer would not be an independent or responsible officer contemplated under Section 50, as he cannot be considered to be an independent officer. It is also

observed by the High Court, in paragraph No.24, referring to a decision of Hon'ble Supreme Court, that the gazetted officer should not be interested in the result of success of the raid and he should not be connected with the raid or should not be connected with the object of achieving the conviction against the accused.

[9] Learned senior counsel referring to the pre-search memo submits that from the said memorandum, it appears that Mariam Bibi had to cause search the person of S.I. Subhankar Debbarma, constable Tafajjal Hossain and woman constable Ayesha Khatun. Learned senior counsel further submits that as per the search memo, the time of seizure was 05.10 hours i.e. according to him, it was prior to sunrise. Even in the document containing the declaration of house owner prior to search, owner of the house is shown only as Ali Hossen and the declaration after the search shows that both Ali Hossen and Mariam Bibi are joint owners of the house. He further submits that neither the husband nor the wife was the owner of the house rather they reside in a rented house. Again, referring to the notice of search, issued under Section 50 of NDPS Act, learned senior counsel submits that the specific reply of the accused was not recorded and only her signature was obtained. Even, it shows that S.I. Subhankar Debbarma himself searched the person of the accused Mariam Bibi. Learned senior counsel submits that very mechanically notice under Section 50 was served upon the accused and moreover, illegally caused personal search of Mariam Bibi.

[10] On that point, he relies on a decision in case of ***State of Punjab vs. Baldev Singh, (1999) 6 SCC 172***, wherein at paragraph No. 24, it is observed that it is an obligation of the empowered officer to inform the suspect that he has the right to require his search being conducted in presence of a gazetted officer or a Magistrate and that the failure to so inform the suspect of his right, would render the search illegal because the suspect would not be able to avail of the protection which is inbuilt in Section 50. Similarly, if the person concerned requires, on being so informed by the empowered officer or otherwise, that his search be conducted in presence of a gazetted officer or a Magistrate, the empowered officer is obliged to do so and failure on his part to do so would also render the search illegal and the conviction and sentence of the accused.

[11] Learned senior counsel also adds that Section 42 of NDPS Act was not complied with in this case as the ground of belief of the police officer receiving the secret information was not properly communicated to his higher authority. According to him, the ground of belief and secret information received by a police officer are not same thing. In this regard, he also relies on a decision of Delhi High Court in case of **Mohan Babu Gupta vs. State Govt. of NCT of Delhi, Bail Application No. 1450 of 2025**, decided on 28.03.2026. On that point, learned senior counsel further refers to another decision of Chhattisgarh High Court in the case of **Rakesh Verma vs. State of Chhattisgarh**, decided analogously with two other such cases on 30.11.2022, in **MCRC No.5184 of 2022** wherein, at paragraph No.10 said Hon'ble High Court also relies on a decision of Hon'ble Supreme Court in **Chunna alias Mehtab vs. State of M.P., (2002) 9 SCC 363**, wherein the Hon'ble Apex Court found non compliance of proviso to Section 42 in case of a search occurred between sunset and sunrise. In the said case, the High Court also relies on another decision of Hon'ble Supreme Court in the case of **State of Rajasthan vs. Jagraj Singh alias Hansa (2016) 11 SCC 687**, wherein also similarly it was observed by the Hon'ble Supreme Court that under the proviso to Section 42(1), if a search officer has to carry out such search between the sunset and sunrise he must record the grounds of his belief. It appears from the said decisions that Hon'ble Supreme Court also discussed about Section 50 of NDPS Act that on prior information the empowered officer or authorized officer while acting under Section 41(2) or 42 should comply with the provisions of Section 50 before the search of a person is made. The Hon'ble High Court also relied on another judgment of Hon'ble Supreme Court in the case of **Vijaysinh Chandubha Jadeja vs. State of Gurarat, (2011) 1 SCC 609**, wherein it was observed that the obligation of an authorized officer under sub-section (1) of Section 50 of NDPS Act is mandatory and requires strict compliance.

[12] Learned senior counsel also submits that ground of arrest as was communicated to Mariam Bibi was also vague one and effective communication of the same was not there. According to him, the reason of such arrest was not embodied in the document containing ground of arrest.

[13] In respect of bail application of accused Anowar Hossain, learned senior counsel referring to the arrest memo submits that his time of arrest is shown to be 16:20 hours i.e. 4:20 pm and as per the document containing

ground of arrest as was served upon him, it appears that allegations were brought against him that he along with some other miscreants have kept those items in the house of Ali Hossen and they were also engaged along with Ali Hossen in such drug trafficking, arms dealing and dealing with Bangladeshi currency. In another portion of ground of arrest, it was also mentioned that for keeping those items stocked in the house, he was being arrested. Learned senior counsel in this regard further submits that except one mobile phone nothing was recovered from him. Learned senior counsel also submits that while forwarding both the accused persons before the Court on 07.02.2026, the I.O. mentioned that he gave requisition for CDR and SDR analysis of mobile phone of both the accused persons to establish communication between both of them. Therefore, in the case diary it may be looked into whether the same were collected and examined by the police or not.

[14] Referring to another document under Annexure 12 of the said bail application of Anowar Hossain, learned senior counsel further submits that the accused is having one car servicing centre and even he did not know any person namely Ali Hossen or Mariam Bibi whose house is situated at least 6 km away from the house of Anowar Hossain.

[15] Learned senior counsel while arguing that as per the FIR, based only on the statement of a co-accused made before the police the present accused was arrested, relies on a decision of Hon'ble Supreme Court in the case of ***P. Krishna Mohan Reddy vs. State of Andhra Pradesh, 2025 SCC OnLine SC 1157***, wherein at paragraph No. 53, it is observed by the Hon'ble Apex Court that police statement of an accused which is in the form of a confession is *per se* inadmissible and no reliance whatsoever can be placed on such statements either at the stage of bail or during trial.

[16] Finally, Mr.Kar Bhowmik, learned senior counsel refers to a decision of the Hon'ble Supreme Court in the case of ***Sarija Banu (A) Janarthani alias Janani and another vs. State through Inspector of Police, 2004 AIR SCW 7488***, wherein at paragraph no.7, an observation was made by the Hon'ble Supreme Court that in the said bail application, it was alleged that there was serious violation of Section 42 of NDPS Act but in the impugned order, nothing was stated by the High Court about the alleged violation of Section 42, and it further was observed in the impugned order that it was not necessary to consider such violation at this stage. In this context,

Hon'ble Supreme Court observes that compliance of Section 42 is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application.

[17] Learned P.P. at the time of argument regarding arrest of accused person, namely, Mariam Bibi after sunset and before sunrise, relies on a decision of this Court in case of **Anawora Begam vs. the State of Tripura, BA No.137 of 2025** wherein at paragraph No.12, the following were observed:

*"12. Taking note of all the above said decisions, it appears that there are divergent views of the High Courts in this regard and Madras High Court, Delhi High Court and Rajasthan High Court are of the view that in every case, strict compliance of Section 46(4) of Cr.P.C. may not be feasible. Hon'ble Supreme Court in above said decision of **State of Maharashtra vs. Christian Community Welfare Council of India and another** (Supra), has also taken the note of the fact that on every occasion it may not be practicable for strict compliance of the direction of the Bombay High Court regarding arrest of female as indicated above and same may even give a scope to the unscrupulous accused person for evading the process of law. No doubt, Section 46(4) of Cr.P.C. [corresponding to Section 43(5) of BNSS] has been introduced by the law makers with the solemn object to protect the women from undue police harassment and to give a safeguard to their dignity, but, there may be some cases or situations where adherence to strict compliance to said provision may not be appropriate and practicable for the interest of the investigation. Therefore, the contention of Mr. Pandey, learned counsel that for non-compliance of Section 46(4) of Cr.P.C. [corresponding to Section 43 (5) of BNSS], the accused person will accrue an indefeasible right to be released on bail on that ground in every case, cannot be accepted".*

[18] Regarding the matter of compliance of Section 50 of the NDPS Act, learned P.P. relies on a decision of this court in case of **Shri Shambhu Paswan vs. the State of Tripura, BA No.53 of 2026**, decided on 02.04.2026, wherein at paragraph No.22 of the said judgment, the followings were observed:

*"22. Therefore, in view of the decision of **Baldev Singh** (supra) and **Vijaysinh Chandubha Jadeja** (supra), the prosecution should get scope during trial to establish whether searching officer had complied with the provision of Section 90 of the NDPS Act. As per the decision of **Md. Nawaz Khan** (supra), the compliance or non-compliance of Section 52 of the NDPS Act should be raised in the course of trial. The Coordinate Bench of this Court in **Mahabul Alam** (supra) also observed that the procedural violation, if any, shall be taken into consideration*

during the course of trial and not at the stage of consideration of bail application.”

Finally, at paragraph No. 24, it was further observed that it was not a proper stage to examine whether compliance of Section 50 of the NDPS Act was necessary or not, in the given facts of the said case.

[19] Regarding the challenge about non-compliance of Section 42 of the NDPS Act, learned P.P. further relies on a decision of this Court in **Sakil Hossain vs. the State of Tripura, BA No. 59 of 2026**, decided on 22.04.2026 and the relevant paragraph discussed therein is also reproduced hereunder:

*“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”.*

[20] While submitting that procedural violation if any, will not automatically make the accused entitled to get bail in a case concerning commercial quantity, learned P.P. relies on a decision of this Court in case of **State of Tripura represented by Ld. Public Prosecutor vs. Mahabul Alam and others, 2023 SCC OnLine Tri 777** wherein at paragraph No. 17 the followings were observed:

“17. From the aforesaid enunciations of law on the subject, it is abundantly clear, that the Courts while considering the application for bail must strictly adhere to the two conditions embodied in Section 37 of the NDPS Act, and must record its reason of satisfaction that there are substantial probable causes for believing that the accused is not guilty of committing such offence and that there is no likelihood of repetition of committing such offence by the accused while on bail. It is reiterated that while considering the bail application filed by the accused arrested under the penal provisions of the NDPS Act, learned Special Judges should be confined within the limits embodied in Section 37 of the NDPS Act. Procedural violations, if any, shall be taken into consideration during the course of trial, and not at the stage of consideration of bail application”.

[21] He further relies on another decision of Hon'ble Supreme Court in ***State of Punjab vs. Sukhwinder Singh @ Gora, 2026 SCC OnLine SC 671***, wherein at paragraph No.10 it was observed that the matters under Article 21 of the Constitution, is undoubtedly a precious Constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. The Constitutional right under Article 21 and the special provision of law under Section 37 of NDPS Act are to be read harmoniously and not placed in opposition to each other.

[22] Learned P.P. further relies on a 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*** and referred paragraph Nos. 28, 29, 32 and 33 of the said decision wherein it is also observed that absence of possession of the contraband on the person of the accused does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

[23] Learned P.P. also disputes the contention of learned senior counsel, Mr. S. Kar Bhowmik that Sunil Kumar Singh, the Inspector of BSF was not a party to the said raid. In this regard, he also refers to the contents of the FIR wherein the informant has mentioned that Inspector Tapas Das, O.C., Sonamura P.S. conveyed the secret information to said Sunil Kumar Singh to assist the police at the time of raid, search and seizure of the said house of accused Ali Hossen.

[24] Finally, learned P.P. relies on a decision of Constitutional Bench of Hon'ble Supreme Court in the case of **Vijaysinh Chandubha Jadeja vs. State of Gujarat, (2011) 1 SCC 609**, wherein at paragraph No.31, the Hon'ble Supreme Court 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 and it would neither be possible nor feasible to lay down any absolute formula in that behalf.

[25] This Court has appreciated the submission of both sides and has gone through the case diary.

[26] The GD entry No.02 of 0040 hrs of 06.02.2026 mentions of the secret information received by the duty officer about storage of such yaba tablets, illegal arms, ammunition and foreign currencies in the house of Ali Hossen and Mariam Bibi. It is noted therein that the matter was immediately informed to the O/C, Sonamura P.S. The GD entry No.03 of 0055 hrs on the same date shows that OC of the Sonamura P.S. thereafter communicated the said information to SP (C/S), Sepahijala and SDPO, Sonamura. Thereafter, the police went out of the police station for such raid. On alleged recovery of contraband items and arrest of the accused persons, the informant informed in writing the details of the same to the O/C of the Sonamura P.S. namely, Inspector Tapas Das. Said report also shows that Inspector Tapas Das who is a gazetted officer, and who is the higher authority of the informant himself participated in the raid.

[27] A considerable length of argument was also placed by Mr. S. Kar Bhowmik, learned senior counsel regarding non compliance of Section 50 of the NDPS Act, however, as per the case diary, there is nothing that any search was conducted on the person of the accused Mariam Bibi or her husband rather the raided party only searched their house. Therefore, prima facie, compliance of Section 50 of the NDPS Act is found not necessary in this case. In the case diary, there are statements of independent witnesses that said Ali Hossen and his wife Mariam Bibi kept those contraband items in their house for the purpose of trafficking and said Anowar Hossain was financing in the said business and he would regularly visit the house of Ali Hossen and thereafter, they would distribute the profit amongst themselves from said business and even on the night of said raid also, Anowar Hossain visited the house of said Ali Hossen.

[28] So far the plea of not informing the grounds of arrest is concerned, it appears that in an exhaustive manner the grounds of arrest was communicated to the arrested accused persons. Now the contents of the said allegations contained in the documents of communication of grounds of arrest are correct or not, will be decided during trial and cannot be examined at this stage.

[29] Though as per arrest memo, Mariam Bibi has been shown arrested at 16.10 hours (04.10 pm) on 06.02.2026 but as per the FIR itself, at 01.50 hours, the police arrived in the house of said Ali Hossen and Mariam Bibi and search and seizure were made in between 04.30 hours to 05.40 hours and according to Mr. Kar Bhowmik, learned senior counsel, sun rise on that day was at 06.03 hours. However, this Court in **Anowara Begam (supra)**, already held that failure to comply with the provision of Section 43(5), BNSS, the accused person will not accrue an indefeasible right to be released on bail in every case. The matter is required to be examined taking note of other related facts and circumstances, but it is also true that in the midnight, the police went to the house of Ali Hossen with definite information that Ali Hossen and his wife were dealing with contraband items. In such a situation, it was certainly within the mind of the raiding officers that if the secret information is found to be true said female accused would also be required to be arrested. Now, in view of the same, what steps were taken by the said raiding police officers for compliance of Section 43(5) of BNSS is required to be inquired. The police officials cannot be permitted to violate the said provision of Section 43(5) blatantly without giving due attention to said provision.

[30] It is already observed in **Anowara Begam (supra)** that Section 46(4) of Cr.P.C. [corresponding to Section 43(5) of BNSS] has been introduced by the law makers with the solemn object to protect the women from undue police harassment and to give a safeguard to their dignity. Therefore, strict compliance of said provision is required to be adhered to. In the arrest memo, as it appears, an artificial time has been shown as the time of arrest of the accused Mariam Bibi.

[31] In view of above, the SP, Sepahijala is directed to cause an inquiry into this matter and if deliberate violation of the provision of Section 43(5) of BNSS is noticed, necessary departmental action may be initiated against the officer(s) responsible for the same.

[32] So far accused Anowar Hossain is concerned, it is categorical assertion of the arresting authority that he was arrested from his dwelling house and nothing is mentioned in the FIR that they visited the shop of said Anowar Hossain, whereas in the seizure list, relating to seizure of mobile phone of the accused, the place of seizure is shown to be his shop. Therefore, there is also a doubt about the actual place of his arrest. Anyway, for such doubt, he cannot be granted bail unless twin conditions as provided in Section 37 of the NDPS Act are mitigated.

[33] As indicated earlier that incriminating materials are there against both the accused Mariam Bibi and Anowar Hossain in the case diary, it cannot be said at this stage that they were not involved in the alleged offence or that they have been falsely implicated therein. The case is concerning commercial quantity of contraband items. The twin conditions as provided in Section 37 of the Act are also not satisfied in this case. Considering thus, both the bail applications are rejected.

Return the case diary to learned P.P.

Communicate a copy of this order to SP, Sepahijala for compliance.

Re-consign the Trial Court record.

The bail applications are accordingly disposed of.

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

JUDGE