



HIGH COURT OF TRIPURA
AGARTALA

BA No.111 of 2026

Smt. Anamika Chakraborty,
W/O- Sri Nandu Saha, resident of Jagaharimura, Near Ram Thakur Sangha,
P.S- East Agartala, District- West Tripura, Pin-799004.
.....Petitioner(s);

For and on behalf of
Sri Nandu Saha,
S/o Late Dulal Chandra Saha, resident of Jagaharimura, P.S- East Agartala,
District- West Tripura, Pin-799004.
..... Accused person;

V E R S U S

The State of Tripura.
.....Respondent(s);

For Petitioner (s) : Mr. Sankar Lodh, Advocate,
Mr. Chinmoy Debnath, Advocate.
For Respondent(s) : Mr. Raju Datta, Public Prosecutor.
Date of hearing and delivery of Order : **22.06.2026.**
Whether fit for reporting :

YES	NO
	√

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

O R D E R

Heard learned counsel of both sides.

[2] The prayer has been made seeking bail of the accused person namely Sri Nandu Saha who has been arrested on 24.01.2026 in connection with East Agartala P.S. Case No.2025EAG121 registered under Sections 21(a), 21(c), 25, 27(A), 29 of NDPS Act, 1985.

[3] The prosecution case is that based on secret information the informant SI Narayan Deb, raided the shop of one Diptanu Saha on 01.11.2025 and recovered 180 nos. of small plastic container containing suspected heroin and 22 nos. of bottles of Eskuf cough syrup (each

containing 100 ml). Said person was arrested thereafter and the instant case was accordingly registered. Police on completion of investigation has also laid charge-sheet under Sections 21(c), 22(a), 25, 27A, 29 of NDPS Act, 1985 against Diptanu Saha, Hridoy Das, Tapan Banik, Krishna Biswas, Samar Gowala, Ratnadip Dey @ Chand, Nazir Hossain, Shyam Kumar Singh and the present accused person namely Nandu Saha.

[4] Learned counsel, Mr. Sankar Lodh, has sought for bail of the accused person on two grounds - firstly, that in the arrest memo signature of the wife of the present accused was not obtained in violation of Section 36 of BNSS which according to learned counsel was incorporated in the statute following the decision of Hon'ble the Supreme Court in case of **D. K. Basu versus State of West Bengal [(1997) 1 SCC 416]**. Learned counsel relies on that decision and also another decision of Hon'ble the Supreme Court in case of **Directorate of Enforcement versus Subhash Sharma** (decided on 21.01.2025 in Criminal Appeal No...../2025 in connection with Special Leave Petition (Criminal) No.1136/2023) wherein it is observed by the Hon'ble Supreme Court that requirement of clause 2 of Article 22 has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 and there is no inconsistency between the provisions of the PMLA and Section 57 of Cr.P.C. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. According to learned counsel said case was regarding the allegation of violation of Article 22(2) of the Constitution. On the same issue, learned counsel, Mr. Lodh, further relies on a decision of

Gauhati High Court in case of **Tinku Das versus the State of Assam** [Bail Application no.3338 of 2025]. In said case taking into consideration the non-compliance of Sections 36 and 48 of BNSS which according to said Hon'ble Court is of mandatory nature in terms of **D.K. Basu (Supra)**, was not complied with by the arresting authority and also considering that for more than 250 days the accused was behind the bars, bail was granted to the accused person.

[5] The next point as is raised by learned counsel, Mr. Lodh, is that during investigation the investigating officer examined witnesses namely Kingshuk Bhandari, Nanigopal Das, Rubel Miah and Ratna Sharma who only stated adversely against the present accused but their statements are not sufficient to implicate him in the present case. According to learned counsel said Kingshuk Bhandari stated that during integration by police the arrested accused Diptanu Saha stated that said Nandu Saha was also involved with such drug trafficking but such statement was made by a co-accused in the custody of the police, and therefore same cannot be taken into consideration. According to learned counsel, Mr. Lodh, other witnesses as named above gave only generalized statements that the present accused was engaged in drug dealing with said Diptanu Saha and apart from that nothing is there in the record connecting the present accused with contraband items as were recovered from the shop of Diptanu Saha. Learned counsel therefore prays for bail of the accused person on any condition.

[6] Learned Public Prosecutor, Mr. Raju Datta, however, seriously opposes the bail prayer. According to him, there are incriminating materials against the present accused person that the present accused is also

involved in dealing of illicit drugs along with said Diptanu Saha. Therefore, prima facie materials are there against him to go for trial and due to the barring provisions of Section 37 of NDPS Act, bail cannot be granted to him.

[7] Learned Public Prosecutor in this regard relies on a decision of Hon'ble the Supreme Court in case of **State of Punjab versus Balraj Singh alias Billa [2026 SCC OnLine SC 1058]** wherein the Hon'ble Supreme Court took note of another decision of Hon'ble the Supreme Court in case of **Union of India versus Namdeo Ashruba Nakade [2025 SCC OnLine SC 3049]** and observed that when it comes to the cases involving commercial quantity of narcotics, the mandatory requirement of Section 37 ought to be considered. In said **Namdeo Ashruba Nakade (Supra)** it is observed by Hon'ble the Supreme Court at paragraph no.12 that prima facie there were materials that the accused of that case that was involved in drug trafficking in an organized manner and consequently, no case for dispensing with mandatory requirement of Section 37 of the NDPS Act was made out. Ultimately the bail granted by the High Court was cancelled by the Hon'ble Supreme Court in said case.

[8] Learned Public Prosecutor further submits that after the accused was produced before the Court for the first time, he was represented by his own engaged counsel and for three or four consecutive days, he prayed for bail but nowhere he agitated this issue of violation of section 36 of BNSS. Therefore, it is quite clear that his family members were fully informed about the arrest of the accused person.

[9] Learned Public Prosecutor further relies on a decision of this Court in case of **Smt. Ratna Das on behalf of Sri Sujit Das versus Union**

of India [B.A. No.72 of 2026] decided analogously with some other bail applications on 29.04.2026 wherein the issue of violation of Section 36 of BNSS was raised and ultimately this Court did not grant bail to the accused persons as twin conditions of Section 37 of NDPS Act was not satisfied.

[10] Learned Public Prosecutor also relies on a recent decision of this Court in case of **Smt. Jaya Rani Debbarma on behalf of Shri Bishu Kumar Tripura versus the State of Tripura [B.A. No.103 of 2026]** decided on 03.06.2026 wherein an issue was raised that for long incarceration in the jail that for about 373 days, the fundamental rights of the accused under Article 21 of the Constitution was violated, and therefore, the accused in such type of cases under NDPS Act was entitled to get bail. While taking note of different decisions of Hon'ble Supreme Court, it was noted in that judgment that recently the Hon'ble Supreme Court in **Tasleem Ahmed versus State Government of NCT of Delhi [Cri. Appeal No..... of 2026 @ SLP (CRL) No.2867 of 2026]** decided on 22.05.2026] referred the issue to the larger Bench to decide as to how Article 21 is to be applied in a statutory field where Parliament has consciously imposed restrictions on bail in respect of offences alleged to affect the security of the State and the stability of civic life, and to settle the correct approach to bail under special statutes where Art.21, prolonged incarceration and statutory restrictions intersect. Said decision is yet to be received.

[11] Court has considered the rival contentions of the parties and has also given due consideration to the above referred decisions of the High Courts and the Supreme Court. It is a fact that in terms of the direction given in **D. K. Basu (Supra)**, Section 41(B)(b) of Cr.P.C. was later on incorporated in the Statute which carried over in Section 36 of BNSS. Section 37 of the

NDPS Act starts with a non-obstante clause 'notwithstanding anything contained in the Code of Criminal Procedure, 1973' with further embargo that no person accused of an offence punishable for 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 the Public Prosecutor has been given an opportunity to oppose the application for such release and 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** (*emphasis laid*) and that he is not likely to commit any offence while on bail. Therefore, such twin conditions as enumerated hereinabove are required to be fulfilled first to grant bail in a case concerning commercial quantity of contraband items. In paragraph no.34 of **D. K. Basu (Supra)** it was also noted by the Hon'ble Supreme Court that to bring in transparency and accountability the arresting officer should prepare a memo of arrest at the time of arrest in presence of at least one witness who may be a member of the family of the arrestee or a respectable persons of the locality from which the arrest is made. In the case in hand, there is no dispute regarding the date and time of arrest of the accused person. From the arrest memo it appears that it is a printed form and said form itself was prepared in a defective manner as it does not contain any column specifying any place to contain the signature of any member of the family of the arrestee or a respectable person of the locality. This may be the reason, the arresting officer was misguided and failed to obtain the signature of the wife of the accused person whose name and address are noted in the arrest memo. It is the demand of the Section 36 of BNSS that the memorandum of arrest should 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. Immediately such arrest memo is required to be rectified.

[12] The DGP, Tripura is, therefore, directed to ensure that such defect is immediately removed from the printed form of arrest memo and a proper place is kept therein for obtaining the signature of a family member of the arrested person or a respectable member of the locality where the arrest is made, as a proof of such attestation, to ensure proper compliance of Section 36 of BNSS.

[13] However, in the case in hand, Court is of the opinion that for such omission on the part of the arresting officer, in a case involving commercial quantity of narcotic items, bail cannot be granted to the accused person unless twin conditions of Section 37 of NDPS Act are satisfied.

[14] Now, in view of above, the Court proceed to consider the second submission of learned counsel, Mr. Lodh, that there are no prima facie materials against the present accused person to establish his complicity with the alleged offence.

[15] So far, the statement of constable Kingshuk Bhandari is concerned, it is already stated that according to said witness, the co-accused Diptanu Saha implicated Nandu Saha during police interrogation. Therefore, Court is not taking the said statement into consideration at this stage. Another witness namely Nanigopal Das stated that said Diptanu Saha from whose custody the contraband items were recovered was engaged in such drug dealing of heroin, cough syrup, and other contraband items for last 5-6 years along with Diptanu Saha, Rajib Saha, Ratnadip Dey @ Chand

and **Nandu Saha**. Ratnadip Dey @ Chand and Rajib Saha would financially help Diptanu Saha for this business. Whatever profit would be earned from the said drug dealing, they would distribute it amongst themselves and presently they have become owners of huge money and property. Another witness, Ratna Sharma, has also given similar version like Nanigopal Das.

[16] It is fact that no item was recovered from the accused Nandu Saha, rather it was recovered from the shop of Diptanu Saha. There is no prima facie materials or statement of any witness that Nandu Saha is directly connected with said Diptanu Saha in the matter of supply, dealing with or storage of the contraband items which were recovered from the shop of Diptanu Saha, except the general statements that the present accused is also involved with said Diptanu Saha in drug dealing.

[17] Learned Public Prosecutor, though strenuously argues that by virtue of provisions of Section 29 of NDPS Act, the complicity of Nandu Saha cannot be ignored, but prima facie nothing is found in the record that he abetted such offence with Nandu Saha or any other co-accused, or that he was a party to a criminal conspiracy for storage of such items in the said shop of Diptanu Saha. There is also nothing in the record that he was previously arrayed as accused person in any other case for commission of any offence under the provisions of NDPS Act.

[18] In view of above, it appears to this Court that the twin conditions of Section 37 of the Act are satisfied in the case of the present accused person. Accordingly, the bail prayer is allowed.

[19] It is ordered that the accused person, namely Nandu Saha, may go on bail on furnishing a bond of Rs.2,00,000/- [Rupees Two Lakh only] with one surety of the like amount to the satisfaction of the learned Special Judge, West Tripura, Agartala, with the following conditions that:

(a) he will give his attendance once in a fortnight in the East Agartala Police Station till the trial is complete or said condition is relaxed by learned Special Judge;

(b) the accused shall not try to make any contact, either directly or indirectly through any other person, with any witness of the case, so as to influence or terrorize them for the purpose of preventing them from divulging the truth before the Court;

(c) he will not involve himself in any of the activities which are prohibited under the NDPS Act, 1985;

(d) he will not leave the State of Tripura without prior permission of the learned Special Judge;

(e) he will regularly attend the Court to face trial.

With such observations and directions, the bail application is disposed of.

It is however clarified that whatever are observed hereinabove are made only for limited purpose to examine the merit of the instant bail application and any such observations made hereinabove will have no bearing in the matter of framing of charge and trial.

Communicate a copy of this order to learned Special Judge West Tripura, Agartala, immediately. Also communicate a copy of this order to the DGP, Tripura.

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

Also return the Trial Court record.

Interim order, if any, stands vacated.

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

JUDGE

