GAHC010067792026

2026:GAU-AS:11874

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/367/2026

JITU KUMAR SARMA
S/O. LATE SURENDRA NATH SARMA, VILL.- CHAMATA HATIR PITHI, P/S. BELSOR, DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MAHIBUR RAHMAN, MS. NISHA BEGUM

Advocate for the Respondent : PP, ASSAM,

Linked Case : Crl.A./135/2026

JITU KUMAR SARMA
S/O. LATE SURENDRA NATH SARMA VILL.- CHAMATA HATIR PITHI
P/S. BELSOR
DIST. NALBARI
ASSAM.

VERSUS

THE STATE OF ASSAM
REP BY THE PP

ASSAM

Advocate for : MAHIBUR RAHMAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

19.08. 2026

Heard Mr. M. Rahman, learned counsel for the appellant/petitioner.

2. This interlocutory application has been filed in the connected criminal appeal No.135/2026, for suspension of the sentence imposed upon the applicant herein by the Court of the learned Special Judge, Nalbari, through the order dated 13.02.2026 passed in NDPS Act case No.04/2017. By the aforesaid order, the petitioner herein had been convicted and sentenced to undergo rigorous imprisonment for 5 (five) years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment of 6 (six) months for offences punishable under Section 21(b)/29 of the NDPS Act.

3. The petitioner had been granted the privilege of pre-arrest bail by the order dated 25.06.2018 and did not suffer detention during the trial for the purposes of Section 428 of the IPC.

4. Mr. M. Rahman, learned counsel for the appellant/petitioner herein, has submitted that the learned Trial Court had committed a grave error in convicting the petitioner herein.

5. The learned counsel has submitted that there had been a flagrant violation of the procedure laid down for sampling of the seized alleged contraband.

6. The learned counsel has further submitted that there had been a severe violation of the provision of Section 52A of sub-Section (2).

7. The learned Counsel has further submitted that there is a gap in the chain of custody of the seized items and the samples, which were sent for forensic examination and, therefore, there is a fair chance of the acquittal of the petitioner in the appeal.

8. The learned counsel has referred to the evidence adduced by the different prosecution witnesses to indicate that there is a contradiction in the amount of contraband being recovered and there are specific statements to show that the prosecution witnesses did not see the contents of the cartons, which allegedly contained the contraband. He has submitted that out of the 114 seized bottles, only 2 bottles had been sent for FSL. There is no indication to show that 2 bottles which were sent for FSL represented the contents of both the cartons, which were allegedly seized.

9. The learned counsel has submitted that in the absence of the cartons being executed or shown during the trial, coupled with the fact that the prosecution did not establish safe and continuous custody of the alleged contraband, the conviction of the petitioner cannot be sustained in law.

10. The learned counsel has further submitted, without admitting that the petitioner was found in possession of any contraband, that it is demonstrable

that possession of only a small quantity could have been proved against him and even in that view of the matter, the conviction and sentence would require an interference. The learned counsel has submitted that without appreciating the entire evidence for the purposes of adjudicating this present interlocutory application, the aforesaid could be enough to entitle the petitioner to the grant of an interim bail by suspending the sentence imposed upon the petitioner.

11. The learned Addl. P.P has submitted that the allegations against the petitioner are grave at this stage, since the evidence need not be appreciated in totality, the petitioner would not be released on bail.

12. I have gone through the impugned judgment, the submissions of the learned Senior counsel and the learned Addl. P.P, and I am of the *prima facie* view that the Interlocutory Application seeking suspension of the sentence deserves to be considered in the positive and the petitioner would be entitled to the privilege of bail during the pendency of the appeal.

13. Accordingly, the impugned sentence imposed upon the petitioner, namely, Jitu Kumar Sarma, by the Court of the learned Special Judge, Nalbair, through the order dated 13.02.2026 passed in NDPS Act case No.04/2017 is hereby kept under suspension, allowing the petitioner to go on bail on furnishing a bail bond of Rs. 15,000/-, with two local sureties of the like amount to the satisfaction of the learned Special Judge, Nalbari.

14. The learned Special Judge shall be at liberty to impose such further conditions on the petitioner to ensure their appearance before the Court to carry

out the remaining sentence in the event the connected appeal is dismissed.

15. Interlocutory Application accordingly disposed of.

JUDGE

Comparing Assistant