GAHC030003672026

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

Case No. : Bail Appln./42/2026

Sh. Jerry Lalruatkima
S/o Biakcheuva, R/o Electric Veng, Aizawl, Mizoram

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Lalthangmawia

Advocate for the Respondent : P.P./Addl.PP, Mizoram

B E F O R E

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

13.07.2026

Heard Mr. Lalthangmawia, learned counsel for the petitioner. Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor for the State.

2. By this application, the petitioner has prayed for bail in connection with Excise Case No. 211/2025 dated 01.12.2025 registered under Section 22(c) read with Section 28/29 of the ND&PS Act, 1985.

3. It is the case of the petitioner that he was arrested in connection with the aforesaid case on the allegation that he was hired by one Biaka a.k.a Eric to collect Rs. 26 lakhs at Falkawn which was the money connected with sale of contraband i.e. Methamphetamine to non-Mizo truck Driver. The learned counsel for the petitioner submits that the aforesaid case resulted in submission of a chargesheet on 17.12.2025, by which the petitioner alongwith a co-accused were arrayed as accused persons under the aforesaid Sections by the Excise and Narcotics Department, Mizoram.

4. The learned counsel for the petitioner had taken three grounds for bail of the petitioner. The first ground is that there is violation of Section 36 of the BNSS, 2023. He submits that under Section 36 of the BNSS, 2023, it is provided that the Police Officer, should prepare a memorandum of arrest while making the arrest of an accused person, and in the said memorandum, attestation of at least one witness, who is the member of the family of the person arrested or a respected member of the locality, where the arrest is made, should be present.

5. He submits that in the instant case, the memorandum of arrest was prepared by the Police Officer, but the same was not attested by any witness be it the member of the family or the respective member of the locality. He as such submits that there is a clear violation of Section 36(b) which is a mandatory requirement provided under the law.

6. The second ground that he has raised is violation of Section 47 of the BNSS Act, 2023. Section 47 of BNSS Act, 2023 provides that grounds of arrest should be given to the person arrested which should include the details of the offense charged with the accused person. He submits that although a notice under Section 47 has been given to the petitioner, but the said notice did not include the detailed particulars of the offense.

He relied on the judgment of *Prabir Purkayastha Vs. State (Nct Of Delhi)* delivered by the Hon'ble Supreme Court and cited in *(2024) 8 SCC 254.*

7. He has also relied on the judgment delivered by the Supreme Court in *Vihaan Kumar Vs. State of Haryana* reported in *(2025) 5 SCC 799*. In both the cases, the Hon'ble Supreme Court has directed that the petitioner or the accused person should be served with the grounds of arrest containing full particulars of the offense and in a language which the petitioner or the accused person understands.

8. The learned counsel has also taken additional ground of violation of Section 48 of BNSS, 2023. He submits that the relative of the accused person was not informed of the petitioner's arrest, in writing. He, also submits that some information was given by telephone as it was revealed to the petitioner. But the same was not given in writing, which is mandated by law, as well as held by the Hon'ble Supreme Court.

9. On the other hand, Mrs. Linda Fambawl, learned Public Prosecutor for the State of Mizoram submits that notice under Section 47 was given to the petitioner with particulars mentioned therein. She has placed notice given under Section 47 of BNSS to the petitioner wherein it was stated that the petitioner was charged under Section 8(c) of the ND&PS Act, 1985 and that he was also informed that the offense is non-bailable and that he can meet his lawyer before and at the beginning of his interrogation. She also submits that the information that he can take recourse to his legal remedies was also informed to the petitioner. She further submits that a notice under Section 48 of BNSS, 2023 was also given to the relatives and she places reliance on the said notice wherein it was informed that information by way of telephone was given to the father of the petitioner about the arrest of the accused person. As far as the memorandum of arrest is concerned, she submits that the same was prepared in view of Section 36 of the BNSS, 2023.

10. I have heard the counsels and have carefully gone through the records.

11. It is mandated under Section 36 of the BNSS, 2023, that the Police Officer while making arrest of an accused person should first give proper name of the person who was arrested to facilitate the easy identification and thereafter, should prepare a memorandum of arrest and the same should be signed by at least one witness, who is either the member of the family of the arrested person or a respected member of the locality where the arrest is made. It is also provided that the memorandum of arrest should be thereafter countersigned by the person arrested. The provision further makes it clear that the attestation by at least one witness in the memorandum of arrest should be there and the word used in the said provision is shall which makes the same mandatory for all purposes.

12. In the instant case, a bare perusal of the memorandum of arrest shows that the accused person has put his signature but there is no signature of witness as provided under Section 36 of the BNSS, 2023. The original copy of the arrest memo was also seen and the same position emerged.

13. As far as notice under Section 47 of BNSS is concerned, it is provided that the person arrested has to be informed of the grounds of arrest and he shall be also informed of his right to bail. In the said provision, it is provided that the Police Officer or any other person arresting the accused person shall communicate to the said accused person full particulars of the offense for which he is arrested and other grounds for such arrest. Further, it is provided that the person arrested should also be informed that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

14. In the instant case by a simple reading of the notice given under Section 47 of the BNSS, it is noticed that the petitioner was informed that he is charged as a

lawbreaker under Section 8(c) of the ND&PS Act, 1985, and that he is accused of being a carrier of contrabands intended for sale. He was also informed that the offense is non-bailable and that he can take legal steps to establish his rights provided under the law. However, it is seen that the detailed particulars of the case, to the effect, as from where the contrabands were recovered and from whose possession, it was recovered and also the associated facts under which he was charged under Section 8(c) of the ND&PS Act, 1985.

In *Prabir Purkayastha (supra)*, the Hon'ble Supreme Court, had observed that the grounds of arrest should contain all such details in hand of the Investigating Officer, which necessitated the arrest of the accused. It was also observed that grounds of arrest should contain information conveying to the arrested accused, all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Further observation made that the ground of arrest cannot be equated with reasons of arrest which are generally required. In the instant case, although the petitioner was informed of the case number and also his right to approach advocates for his legal remedies, but the facts which necessitated his arrest or the details which were in the hands of the Investigating Officer, were not given in the said notice. As such, there appears violation of Section 47 of the BNSS, 2023.

15. Further, the violation of Section 48 of the BNSS is also noticed in the instant case. It is stipulated in the said notice, meant to be delivered to the father of the petitioner under Section 48 of the BNSS, 2023 that the father of the petitioner, could not come to the office, or the place of occurrence and as such, the information was given to him, by calling him over the telephone. The said exercise is not contemplated under Section 48 of the BNSS, 2023. It is no longer res integra, that in case the relative of the arrested accused person, stays elsewhere, away from the jurisdiction of the said Police Station, where the accused person is arrested, the information should

be given to the concerned Police Station, who is mandated to serve the notice, upon the relative of the arrested accused person. The said exercise is however, not being done in the instant case and as such, the mandatory requirement that grounds of arrest should be given, to the relatives of the accused person, in writing, as held by the Hon'ble Supreme Court in a number of decisions and the same has been violated in the present case.

16. In view of the same, the petitioner namely, Sh. Jerry Lalruatkima is directed to be released on bail, on furnishing of a bail bond of Rs. 20,000/- with one local surety of the like amount, to the satisfaction of the learned Special Judge, ND&PS Act, Aizawl, Mizoram under the following conditions:-

1) The petitioner shall appear before the Special Judge, ND&PS, Aizawl District, on each and every date, he is called for by the Court.

2) The petitioner must not contact, threaten or influence any witness, connected with the said case.

3) The petitioner shall not make any attempts to re-associate with other co-accused of this case and also to continue with any illegal activities.

4) The learned Trial Court may impose any such other conditions as may be necessary to avoid or to cause delay in the trial proceedings.

5) In the event of any violation of the said terms and conditions, the learned Trial Court shall be at liberty to cancel the bail.

The Bail Application stands disposed of.

JUDGE

Comparing Assistant