GAHC030004972026

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

Case No. : Bail Appln./62/2026

Sh. Karnamani Das and Anr.
S/o Kanu Das R/o Misamari, Nutun Bazar, District- Nagaon, Assam Pin No-782426
2: Sh. Ganesh Da

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Manojit Biswas

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

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR
ORDER

05.08.2026

Heard Mr. M. Biswas, learned counsel, appearing for the petitioners and Mrs. Vanneihsiami, learned Additional Public Prosecutor for the State. By this application filed under Section 483 of the BNSS-2023, the petitioners have prayed for grant of bail in connection with Saitual PS case No. 54 of 2026 registered under Section 21(c)(b)/25/29 of the NDPS Act, 1985.

2. The petitioners had been arrested on 31st May, 2026, based on the FIR lodged with the Saitual Police Station by an Additional Sub-Inspector of Police, claiming that during checking, the police officials intercepted a vehicle bearing registration number AS01-JC-9512, which was carrying 6.683 kilograms of suspected morphine and one soap case containing 12 grams of suspected heroin. The petitioners, who were passengers in the aforesaid vehicle, were arrested and produced before the Court of the learned Chief Judicial Magistrate, Aizawl on 31-5-2026. The learned counsel for the petitioners has submitted that the arrest of the petitioners has been vitiated due to the fact that the arresting authority had failed to inform the grounds of arrest to the petitioners as required under Section 47 of the BNSS and had also failed to inform their nominated family member as required under Section 48 of the BNSS.

3. The learned counsel for the petitioner has drawn attention of this Court to the notice under Section 47 of the BNSS issued to the Petitioner No. 1 to urge that a perusal of the said notice would show that barring the sections of the NDPS Act involved in the arrest, there is no ground for arrest recorded in the

notice. He has submitted that the notice contains a noting in the hands of the Petitioner No.1 that he has been arrested since the vehicle in which he was travelling was found to be carrying drugs and the reason for his arrest has been explained to him in Assamese. Referring to the notice under Section 47 of the BNSS issued to the Petitioner No. 2, the learned counsel for the petitioner has submitted that it is substantially the same notice which also contains a note by the accused/arrested that he had been arrested since the vehicle in which he was travelling was carrying drugs and the grounds of arrest had been explained to him in Assamese.

4. The learned counsel for the petitioner has submitted that the notices do not reflect that the accused had been intimated about the grounds of their arrest in writing by the arresting authority; rather, the petitioners had been made to make notes in the notice itself. The learned counsel for the petitioners has submitted that in similar circumstances, this Court in the case of Onkhothang Haikop and another versus State of Mizoram, (Bail Application No. 49 of 2026), had held that such a mode of notice does not suffice the requirements of law and the arrest of the petitioners in that Bail Application had been found to be illegal, entitling the petitioners therein to the privilege of bail.

5. The learned counsel for the petitioners has thereafter referred to the notices allegedly issued under the provisions of Section 48 of the BNSS to the wives of the petitioners and has submitted that apart from the fact that the said notices were not addressed to any particular person, the notices reflected that since the family members of the arrested person were residing outside the state and since they could not come to the police station, the information of their arrest had been conveyed to their respective wives over their individual phone

numbers. The information was also provided to the community leaders for awareness. The arrested persons themselves had acknowledged the notice, and there is nothing to indicate that such notices had, in fact, been sent in any manner to the wives of the petitioners herein, either through post or through the concerned police station of their residences. He has submitted that in BA No. 59 of 2026 (supra), this aspect of the matter had also been considered, and this Court had held that such notices do not suffice the requirements of Section 48 of the BNSS and the petitioners were accordingly found to be entitled to the grant of bail by this Court. The learned counsel for the petitioner has also referred to the order 3.7.2026 passed in Bail Application No. 51 of 2026, order dated 21.8.2025 passed in Criminal Appeal No. 234 of 2025, order dated 23.4.2026 passed in Bail Application No. 20 of 2026 to submit that in similar circumstances, this Court has considered the arrest to be vitiated and the petitioners in all the above cases were found to be entitled to be enlarged on bail. He has also referred to the judgments of the Apex Court rendered in Mihir Rajesh Shah, reported in 2025 SCC Online SC 2356, Vihan Kumar v. State of Haryana and another, reported in 2025 SCC online, 269 to impress that not only should the ground of arrest be furnished in writing to the accused in order to attain the true intended purpose of Article 22(1) but the requirement of communicating the grounds of arrest in writing is directed towards the friend, relative or such other person as may be disclosed or nominated by the arrested person, so as to make the application of Article 22(1) of the Constitution meaningful and effective, failing which such arrest may be rendered illegal.

6. In such circumstances, the learned counsel for the petitioners has submitted that the petitioners may be granted the privilege of bail.

7. The learned Additional Public Prosecutor, on the other hand, submits that the petitioners were informed about the grounds of arrest and they had sufficient knowledge of the basic facts constituting the ground of their arrest. She submits that the purpose of section 47 of the BNSS is that the person arrested is made to understand the grounds of his arrest and the fact that he has a right to consult a legal practitioner to seek bail. She submits that the mode and method of communication must be such that the object of the constitutional safeguard is achieved. She submits that a bare perusal of the notice supplied to the petitioners under section 47 of the BNSS would reveal that the petitioners knew the grounds of his arrest and therefore there was no doubt that the requirements of section 47 of the BNSS had been complied with. She has submitted that the notice under section 47 of the BNSS had contained all the relevant details and therefore there can be no fault found with the said notice.

8. Turning her arguments to challenge to the notice under section 48 of the BNSS, the learned Additional Public Prosecutor has submitted that it would be apparent from the notices issued to the wives of the petitioners that not only were the information regarding the arrest of their husbands and the grounds of arrest had been informed to the wives by the petitioners themselves, the phone numbers on which the petitioners had passed on the information to the wives are also available and in the absence of the wives, the only manner in which a seal of validity could be given to the notices under Section 48, BNSS was to have the same signed by the accused in acknowledgement of having forwarded the grounds of arrest to the wives. She has accordingly submitted that there is nothing illegal in the aforesaid notices and the grounds taken by the petitioners to pray for bail before this Court do not require further consideration and may

be dismissed.

9. She has relied upon the judgment of this Court in Bail Application No. 55 of 2026, which was disposed of on the 16th of July 2026, to stress that under similar circumstances the prayer for bail by the petitioners therein had been rejected by this Court. The learned Additional Public Prosecutor has relied upon the judgment of the Apex Court rendered on 23rd of July 2026, in the case of State of Meghalaya versus Sonam Raghuvanshi, reported in 2026 SCC Online SC 1392, to stress that in that case the petitioner was found to be not entitled to bail. She has submitted that there is a fundamental difference between non-service of grounds of arrest and non-furnishing of adequate reasons thereunder. She has submitted that when the grounds of arrest have been served, this Court would not be required to look into whether the grounds given were adequate or not. She has thereafter submitted that in the case of State of Punjab versus Balraj Singh alias Billa versus State of Punjab, reported in 2026 SCC online SC 1058, the Apex Court had held that when there are materials to indicate that the petitioner/ arrested accused was dealing in a commercial quantity of NDPS, the courts would be loath to grant bail, in view of the restriction imposed by Section 37 of the NDPS Act.

10. She has accordingly prayed that the prayer for bail by the petitioners be rejected by this Court.

11. I have heard the learned counsels for the parties, and I have applied the judgments relied upon by the learned counsels for the contesting parties to the facts of the present case. Having carefully perused the materials on record, I find that the order dated 16-7-2026 in Bill Application No. 59 of 2026 was passed in circumstances very similar to the case at hand. In the aforesaid case,

this Court had held that requiring the arrested accused to make notings on the column made available for recording of grounds of arrest by the arresting authority is in itself a bizarre action. This Court had held that notices similar in nature to the one which have been assailed in this bail petition had been found to be in violation of the provisions of section 47 and section 48 of the BNSS, and this Court had granted bail to the petitioners therein, framing a mind that the arrest of the petitioner had been rendered illegal in view of the violation of the provisions of section 47 and section 48 of the BNSS.

12. The law that the grounds of arrest must be furnished in writing both to the accused and, at the earliest point of time, to the nominated relative, friend or of the accused is settled. In the present case, it is seen that the notices under section 48 of the BNSS had not been sent either by post to the police station nearest to the residence of the arrested persons to have the notices served upon their family, nor were any other efforts made to have the notices in writing served on the family. This Court has already held that mere telephonic calls to the petitioners' family would not suffice the requirements of section 48 of the BNSS.

13. In view of what has been discussed above, I find that the continued detention of the petitioners herein in view of the arrest which has been rendered illegal due to non-compliance with the provisions of section 47 and section 48 of the BNSS needs to be curtailed. When the protection envisaged under Article 22(1) of the Constitution of India stands violated, as a consequence, the arrest is rendered illegal. The rigors of Section 37 of the NDPS Act would not restrain the Court from enlarging the arrested person on bail. Accordingly, I deem it fit to direct that the petitioners be released on bail

instead of setting them at liberty without fetters. I have also noticed that in the case of Mihir Rajesh Shah (supra), the Apex Court had held as follows:-

> *55. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.*

> *60. As far as the Criminal Appeal No. 2189 of 2025 and Criminal Appeal No. 2190 of 2025 are concerned, this Court while granting leave on 22.04.2025 had by way of ad interim relief directed the Appellants to be released on bail during pendency of these Appeals, the same shall continue. However, the prosecution may move an application for remand or custody, if required, along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing to the accused, before the magistrate if the case has not been committed for trial and in case the trial having commenced before the Trial Court as the case may be.*

14. Accordingly, the petitioners, namely Karnamani Das s/o Kanu Das and Ganesh Das s/o Subodh Das in connection with Saitual P. S Case No. 54/2026 shall be released on bail on furnishing a bail bond of Rupees 50,000/- each with one local surety of the like amount to the satisfaction of the Special Judge NDPS Court, subject to the following conditions:-

1. The petitioners will appear before the investigating officer as and when

called for.

2. The petitioners will not influence any witness connected to the instant case.

3. The petitioners will not hamper or tamper any evidence in respect of the present case.

4. The petitioners shall not leave the State of Mizoram without the permission of the investigating officer.

5. Nothing in this order shall prevent the investigating agency from praying for remand of the accused petitioners after complying with the conditions laid down in the case of Mihir Rajesh Shah (supra), before the appropriate Court.

15. The bail application is accordingly disposed of.

JUDGE

Comparing Assistant