GAHC010087882026

2026:GAU-AS:9440

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

**Case No. : Bail Appln./1180/2026**

RAHENA BEGUM
W/O KABIR UDDIN
R/O ERALIGOOL, PT.I,
P.S. PATHARKANDI, DIST. SRIBHUMI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

**Advocate for the Petitioner** : MR. A AHMED, MR A AHMED,MISS. P M AHMED,U U KHAN,MR. M A CHOUDHURY

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**
**HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

**ORDER**

**Date : 08.10.2026**

Heard Mr. A. Ahmed, learned counsel appearing for the accused-applicant. Also heard Ms. A. Begum, learned Addl. P.P., representing the State respondent.

**2.** This is an application under Section 483 of the BNSS, 2023, praying for

granting bail to the accused-applicant in connection with Patharkandi Police Station Case No. 20/2026, registered under Sections 22(C)/25/29 of NDPS Act, 1985.

**3.** The gist of the facts involving the instant case is that one Manash Jyoti Boro, Inspector of Patharkandi Police Station, lodged an FIR on 26.02.2026 before the Officer-in-Charge, Patharkandi Police Station, alleging, *inter alia* that a reliable information was received by the Officer-in-Charge, Patharkandi Police Station, about 9:30 PM, about two suspected vehicles going towards Eraligool Part-I carrying narcotic substances. Accordingly, the police followed the suspected vehicles and they came to know that both the vehicles moved towards the house of one, Taj Uddin and parked the vehicles in his premises. A GDE entry was made vide, GDE No. 23 dated 26.02.2026 and informant along with his team left for the aforesaid place. It is alleged that on arrival at the house of aforesaid Taj Uddin, the vehicles were found to be parked in his premises. On seeing the police team, one person fled away from the WagonR vehicle and two more persons who were sitting inside one Alto vehicle also fled away. The police could apprehend one person who was sitting inside the WagonR vehicle. On questioning, the apprehended person introduced himself as Injamamul Haque, and he stated that the aforesaid Taj Uddin fled away from the vehicle leaving him and suspected Yaba tablets were there inside the vehicle, which were brought by the aforesaid Taj Uddin from a neighboring state. The apprehended person disclosed that he was working with Taj Uddin since long. Accordingly, following due procedures, police team searched both the vehicles bearing Registration no. AS-10G-3829 (Alto) and MZ-01L-1699 (WagonR) parked in the premises of Taj Uddin. During the search, police recovered 3 nos. of bundles suspected to be Yaba tablets from the WagonR vehicle, but nothing was recovered from the Alto vehicle. On further questioning, the apprehended person, namely, Injamamul Haque, revealed that some more

suspected Yaba tablets were inside the residence of Taj Uddin, as Taj Uddin gave some bundles to his mother, namely, Rehana Begum, to keep the same concealed inside. Soon after, WPC went for searching the room and apprehended the aforesaid Rehana Begum. On questioning, she deposed that narcotic substances were there in the secret locker of the bed. Accordingly, the police searched and recovered three more bundles of suspected Yaba tablets from the bed locker and seized the same along with other items. The weight of the total seized contraband substances was found to be 8.455 kg.

**4.** On receipt of the FIR, police registered Patharkandi PS Case No. 20/2026, under the aforementioned sections.

**5.** The accused-applicant was arrested on the same date, i.e., on 26.02.2026, and produced before the learned Chief Judicial Magistrate, Sribhumi, on 27.02.2026, and since then she is behind bars.

**6.** The learned counsel appearing for the accused-applicant submits that the accused-applicant, who is a lady, has been arrested without following the procedures laid down under Section 43(5) of the BNSS. He submits that the police arrested the accused-applicant in the intervening night of 26.02.2026 and 27.02.2026 at 12:10 AM. He submits that the accused-applicant, being a woman, could have been arrested only after obtaining prior permission from the Judicial Magistrate of First Class within whose jurisdiction the offense is alleged to have been committed, as contemplated under Section 43(5) of the BNSS. He submits that in the instant case, no such permission was obtained from the competent Judicial Magistrate before effecting the arrest of the accused-applicant. He further submits that, though the accused-applicant was shown to have been arrested on 27.02.2026 at 1:30 PM and a bare perusal of the FIR in the instant case would reveal that the accused-applicant was arrested during the night of 26.02.2026. Therefore, he

submits that the mandatory procedure laid down under Section 43(5) of BNSS while arresting a woman during the night is blatantly violated in the instant case. He, therefore, submits that since the arrest has been made in violation of Section 43(5) of BNSS, thereby curtailing the liberty granted to the accused-applicant under the Constitution of India, the same vitiates the whole process of arrest, and therefore, the accused-applicant has an unfettered right to be set at liberty on this ground alone.

**7.** On the other hand, Ms. A. Begum, learned Addl. PP, submits that the documents available, namely, the arrest memo under Section 36 of the BNSS as well as the grounds of arrest under Section 47 BNSS, show that the accused-applicant was arrested on 27.02.2026 at 1:30 PM. She submits that though the FIR reveals that the accused-applicant was detained, no formal arrest was made until 1:30 PM on 27.02.2026. Therefore, there is no violation of the statutory provisions of BNSS in the instant case. She further submits that a huge quantity of narcotic contraband materials has been recovered from the possession of the house wherein the accused-applicant was residing; therefore, the rigors of Section 37 of the NDPS Act are attracted in the instant case, and accordingly, she opposes the prayer of bail of the accused-applicant.

**8.** The TCR in the instant case has been received, and the same is minutely perused by this Court.

**9.** From the FIR itself, it is seen that the police received the information at about 9:30 PM on 26.02.2026, and accordingly, a GDE No. 23 dated 26.02.2026 was entered. It is also seen from the records that the police detained and questioned, and subsequently arrested, the accused person along with other persons during the night of 26.02.2026 at around 12:10 AM of the intervening night of 26.02.2026 and 27.02.2026. Though the arrest memo as well as notice under Section 47 of BNSS

were issued to the accused-applicant at 1:15 PM on 27.02.2026. Therefore, from the facts and materials available in the TCR, it is clearly revealed that the accused-applicant was arrested during the night of 26.02.2026.

**10.** On an inquiry to the learned Addl. PP about any material to suggest that any permission has been taken from the concerned Judicial Magistrate regarding arrest of the lady during the night, the learned Addl. PP could not produce any material in that regard.

**11.** This Court has also gone through the materials and could not find any material to suggest that any permission has been taken by the police while arresting the accused-applicant during the night of 26.02.2026.

**12.** Section 43(5) of BNSS specifically provides that no woman shall be arrested after sunset and before sunrise, and in the event, any arrest is required to be made in exceptional circumstances, only a woman police officer shall do the arrest after making a written report and obtaining prior permission of the Judicial Magistrate of First Class within whose jurisdiction the offence has been committed. In this regard, Section 43(5) of BNSS being relevant is reproduced herein below: -

> "(5) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made."

**13.** As discussed above, in the instant case, no such written report was submitted. It is also seen that neither any report was submitted by any police officer nor was any prior permission obtained from the Judicial Magistrate of First

Class within whose local jurisdiction the offense was allegedly committed, and the arrest of the accused-applicant has been effected in the instant case.

**14.** The Hon'ble Gauhati High Court, in a catena of decisions, including **Tanuja Roy vs. State of Assam and Others**, reported in **2016 SCC OnLine Gau 786**, has clearly held that a woman can be arrested after sunset and before sunrise only in exceptional circumstances. Such arrest must be effected by a woman police officer after obtaining prior permission from the jurisdictional Judicial Magistrate of First Class upon submission of a written report.

**15.** From the foregoing discussion, it is evident that there has been a clear violation of Section 43(5) of the BNSS in the instant case while effecting the arrest of the accused-applicant. Consequently, the arrest of the accused-applicant is rendered illegal and unsustainable in the eyes of law.

**16.** Since the arrest of the accused-applicant is found to be illegal on account of the violation of Section 43(5) of the BNSS, the rigours of Section 37 of the NDPS Act would not be applicable in the facts and circumstances of the present case.

**17.** In view of the aforesaid, the accused-applicant is directed to be released from custody forthwith on furnishing a bail bond of Rs. 1,00,000/- (One Lakh) with one surety of the like amount to the satisfaction of the learned Sessions Judge, Sribhumi, subject to the following conditions:–

*(i.) that the accused-applicant shall appear before the Trial Court as and when required;*

*(ii.) that the accused-applicant shall not leave the jurisdiction of the Sessions Judge, Sribumi without prior permission of the Sessions Judge, Sribumi;*

*(iii.) that the accused-applicant shall not directly or indirectly make any*

*inducement, threat or promise to any person, who may be acquainted with the facts of the case, so as to dissuade such person from disposing such facts before the investigating authority against the accused-applicant.*

**18.** In the event of violation of any of the conditions of bail imposed hereinabove, the present bail order shall be liable to be cancelled upon an appropriate application being filed by the investigating agency/prosecution before the competent Court.

**19.** In terms of the aforesaid direction, the instant bail application is disposed of.

**20.** Trial Court Record to be sent back.

**JUDGE**

***Miriam Degu***
***(SPA)***