GAHC010116012026

2026:GAU-AS:14964

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

**Case No. : Bail Appln./1595/2026**

ABDUL LATIF AND 4 ORS
SON OF LATE TAYAB ALI, RESIDENT OF KWAKTA, WARD NO. 06, P.S.- PHOUGAKCHAO IKHAI PS, DISTRICTBISHNUPUR, MANIPUR.

2: MD AJMIR KHAN
SON OF MD. HAKIM KHAN
RESIDENT OF NAHARUP PANGONG MAKHONG
P.S.- IRILBUNG PS
DISTRICTIMPHAL EAST
MANIPUR.

3: TAHER ALI
SON OF LATE YAKUB ALI
RESIDENT OF KWAKTA
WARD NO. 08
P.S.- PHOUGAKCHAO IKHAI PS
DISTRICTBISHNUPUR
MANIPUR.

4: MD LATIP
SON OF LATE YAKUB ALI
RESIDENT OF KWAKTA
WARD NO. 04
P.S.- PHOUGAKCHAO IKHAI PS
DISTRICTBISHNUPUR
MANIPUR.

5: MD ISLAMUDDIN
SON OF LATE MD. TAIJUDDIN
RESIDENT OF KWAKTA
WARD NO. 08
P.S.- PHOUGAKCHAO IKHAI PS
DISTRICT- BISHNUPUR
MANIPUR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner** : MR. N J DUTTA, MR. M M ZAMAN,MR N AHMED

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

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

**ORDER**

**Date : 06.10.2026**

Heard Mr. N.J. Dutta, learned counsel, appearing on behalf of the accused-applicants. Also heard Mr. K.K. Parasar, learned Addl. P.P., representing the State respondent.

**2.** This is an application filed under Section 483 of BNSS, 2023, praying for release of the accused-applicants on bail in connection with North Guwahati Police Station Case No. 45/2026 (GR-369(K)/2026), registered under Sections 21(c)/17/29 of NDPS Act, 1985.

**3.** The prosecution case, in brief, is that on 14.05.2026, at around 5:10 PM, an FIR was lodged by SI (P) Abinash Saikia before the Officer-in-Charge, Saitual Police Station to the effect that at 10:05 AM on 14.05.2026, a source information was received by Sri Kalyan Kumar Pathak, APS that a huge consignment of narcotics would be transported from Kwakta, Manipur to a neighboring state via Amingaon by bus bearing Registration No. AS-06-AC-7775. Based on the input, a police team was formed and at 1:50 PM, the bus was intercepted at Amingaon and found only five persons in the bus, including the driver and handyman. The bus was thoroughly

searched and recovered 197 soap boxes/packets of heroin weighing 2 kg 561 grams (without soap box cover) and 8 kg of opium (without cover) hidden in a secret compartment in the dicky of the bus. The five persons in the bus were detained, as they were found to be in possession of narcotic contraband materials. Police seized the narcotics and the vehicle. It is alleged that the value of the contraband was around 21 crores 36 lakhs.

**4.** On receipt of the FIR, police registered North Guwahati Police Station Case No. 45/2026, under the aforementioned sections.

**5.** Mr. N.J. Dutta, learned counsel appearing for the accused-applicants, submits that though they were arrested on 14.05.2026 at around 1:50 PM, they have not been produced before the learned Chief Judicial Magistrate, Kamrup (M) within 24 hours of their arrest. He submits that as per the FIR dated 14.05.2026, they were detained at 1:50 PM on 14.05.2026. He submits that however, in the forwarding report, they have been shown to be arrested on 14.05.2026 at 6:05 PM. He submits that the time has been wrongly shown in the forwarding report as it is apparent from the FIR that they have been detained at 1:50 PM on 14.05.2026. He submits that similarly, in the arrest memos issued to the accused-applicants, the time of arrest has been shown as 6:05 PM on 14.05.2026. Similarly, the inspection memos also show the time of arrest to be 6:05 PM. He submits that as per the seizure list (MR No. 41/26), the date and time of seizure has been shown as 2:45 PM on 14.05.2026. He submits that the accused-applicants were produced before the Chief Judicial Magistrate, Kamrup (M) only at 4:30 PM on 15.05.2026, which is clearly beyond 24 hours which is in violation of the mandate under Section 58 of the BNSS. He submits that since there is a violation of Section 58 of the BNSS, as well as violation of the mandates of Constitution of India, under Article 22(2) therefore, their continued detention is illegal and untenable under the law. Accordingly, he prays that since the arrest of the accused-applicants is illegal, the accused-

applicants should be enlarged on bail on that ground alone.

**6.** In support of his submission, the learned counsel for the accused-applicants has referred to the case of **Directorate of Enforcement vs. Subhash Sharma**, reported in **2025 SCC Online SC 240**, the case of State of **Haryana and others vs. Dinesh Kumar**, reported in **2008 (3) SCC 222**, and the case of **Nazirul Islam, vs. State of Assam (Bail Application No. 218/2026)**, decided by this Court on **19.09.2026**.

**7.** On the other hand, Mr. K.K. Parasar, the learned Addl. PP submits that the vehicle of the accused-applicants was intercepted at 1:50 PM. However, the search and seizure took some time and the same was completed only about 6:05 PM, and therefore, the arrest memo was issued at 6:05 PM on 14.05.2026. Therefore, there is no delay in production of the accused-applicants before the Chief Judicial Magistrate, Kamrup (M). He submits that therefore, there is no violation of Article 22(2) of the Constitution of India as alleged by the learned counsel appearing for the accused-applicants.

**8.** Case diary in the in the instant case has been produced and the same is perused by this court. This Court has also heard the submissions made by the learned counsel appearing for the respective parties.

**9.** It is seen from the FIR dated 14.05.2026 that, the bus was intercepted at 1:50 PM at Amingaon. In terms of the seizure list also, it is seen that the seizure was made at 2:45 PM on 14.05.2026. However, on perusal of the Case Diary, it is found that the accused-applicants were produced before the Chief Judicial Magistrate, Kamrup (M) only at 4:30 PM. Therefore, their production is beyond 24 hours of their detention and/or arrest by the police. If the traveling time is also taken into account, the delay could not have been explained. From the Case Diary, it is also seen that the police team has, in fact, left the North Guwahati Police Station only at

3:00 PM on 15.05.2026 for the court, which is clearly beyond 24 hours of the arrest of the accused-applicants.

**10.** In this connection, the relevant statutory provision regarding detention of an accused person by police, i.e., Section 58 of BNSS being relevant is quoted herein below: -

> "58: No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not."

**11.** It may also be relevant to consider Article 22(2) of the Constitution of India, which provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, and no such person shall be detained in custody beyond the said period without authority of a Magistrate.

**12.** In the case of **Directorate of Enforcement (supra)**, the arrest of the petitioner-accused was held to be vitiated as he was detained at IGI Airport, Delhi on 05.03.2022 at 11:00 a.m., though formally arrested on 06.03.2022 at 1:15 a.m., and he was produced before the Court on 06.03.2022 at 3:00 p.m. Calculating the period of 24 hours from 11:00 a.m. on 05.03.2022, the production was held to be beyond 24 hours and therefore, the arrest and further detention vitiated. In this connection, paragraph numbers 6, 8, and 9 being relevant are extracted herein below: -

> "6. This argument cannot be accepted. Admittedly, the LOC was

issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order (Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

8. 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. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights

guaranteed under Articles 21 and 22 of the Constitution.

**9.** Therefore, when arrest is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA."

**13.** The other case relied upon by the learned counsel appearing for the accused-applicants is **Dinesh Kumar (supra)**, wherein the Hon'ble Supreme Court, under similar facts, held that law relating to the concept of "arrest" or "custody" has been correctly stated in the case of **Niranjan Singh vs. Prabhakar Rajaram Kharote**, reported in **(1980) 2 SCC 559**. In the aforesaid case of **Dinesh Kumar (supra)**, the Hon'ble Supreme Court referred to Paragraphs 7, 8, and the relevant portion of Paragraph 9 of the case of **Niranjan Singh (supra),** which are provided herein below: -

"**7.** When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibbling and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady

facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrest him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions."

**14.** From a reading of the aforesaid two cases of the Hon'ble Supreme Court, it is clear that once a person is taken under control by the police authorities, though the formal arrest memo was not issued to the arrested person, the action of the police authorities can be termed as the "arrest" of the accused person. Paragraph 7 of the case of **Niranjan Singh (supra)** has made the issue very clear in the following words: -

".....The equivocatory quibbling and hide-and-seek niceties sometimes heard in court that police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody, and other like terminological dubieties are unfair evasions of the straightforwardness of the law."

**15.** Coming back to the facts of the instant case, it is already discussed that though the accused-applicants were arrested at 1:50 PM on 14.05.2026, they had been produced before the court of learned Chief Judicial Magistrate, Kamrup (M) only at 4:30 PM, which is clearly beyond 24 hours as mandated in Section 58 of

BNSS. Therefore, in the instant case, there is clear violation of Section 58 of BNSS as well as Article 22(2) of the Constitution of India

**16.** Taking into account the entire facts of the case as discussed above, it is evident that there is a clear violation of Article 22(2) of the Constitution of India in the instant case by not producing the accused-applicants before the learned CJM, Kamrup (M) within a period of 24 hours of their arrest. Consequently, this violation vitiates the entire process of arrest and production of the accused-applicants. Accordingly, the further detention of the accused-applicants cannot be sustained due to the illegality in their arrest and production before the learned trial court beyond the time mandated by Article 22(2) of the Constitution of India. Accordingly, in the facts and circumstances of the case and in view of the above discussion, this Court directs that the accused-applicants shall be released on bail upon furnishing a bail bond of Rs. 1,00,000/- (Rupees One Lakh) each with sureties of the like amount to the satisfaction of the learned CJM, Kamrup (M), subject to the following conditions: -

***1.*** *That the accused-applicants shall fully cooperate with the investigation and make themselves available as and when called for by the Investigating Officer (I.O.);*

***2.*** *That the accused-applicants shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or police.*

***3.*** *That the accused-applicants shall not commit any illegal activities or offenses, including any offense under the NDPS Act.*

**17.** In the event of any violation of the bail conditions, the police/prosecution

authorities shall be at liberty to file an application seeking cancellation of bail.

**18.** In terms of the aforesaid directions, the instant bail application stands disposed of.

**19.** Case Diary to be returned.

**JUDGE**

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