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

Case No. : Bail Appln./1789/2026

DAITHUN BORO
S/O. GAJEN BORO, R/O. VILLAGE HOLONGBARI, P.S. GORESWAR,
DISTRICT TAMULPUR BTAD, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM.

Advocate for the Petitioner : MR. S MUNIR, MS. N.A. BEGUM,MR. T HUSSAIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 05.11.2026

Heard Mr. S. Munir, learned counsel, appearing on behalf of the accused-applicant. 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-applicant on bail in connection with NDPS Case No. 369/2025, registered under Sections 20(b)(ii)(c) of NDPS Act, 1985, pending before the court of learned Addl. Sessions Judge No. 2, Kamrup (M), Guwahati, corresponding to Gorchuk P.S. Case No. 233/2025.

3. The gist of the case is that one SI Sailendra Kalita, lodged an FIR before Garchuk Police Station on 03.08.2025, stating that at around 8:47 AM, a specific intelligence report was received regarding transportation of suspected NDPS substance from Goreswar towards Khanapara. Accordingly, Garchuk PS GD No. 11, dated 03.08.2025, was entered. The police proceeded towards Boragaon side and conducted a naka-checking at Boragaon NH-27. During the naka-checking, a suspected vehicle, bearing Registration No. AS-01-ES-9991 was intercepted and during interrogation of the person, namely, Daithun Boro and search, the police recovered cannabis weighing 30.560 kgs from the vehicle.

4. On receipt of the FIR, the police registered Garchuk Police Station Case No. 233/2025, under the aforementioned sections.

5. After completion of the investigation, the police filed charge-sheet, vide Charge-Sheet No. 257/2025 dated 16.10.2025, before the court of the learned SDJM No. 1, Kamrup (M), Guwahati. Since his arrest on 03.08.2025, the accused-applicant is behind bars for 58 days.

6. The learned counsel appearing for the accused-applicant has submitted that though the accused-applicant was arrested before 11:45 AM on 03.08.2025, he was produced before the learned SDJM No. 1, Kamrup (M), Guwahati, on 04.08.2025 after 12:45 PM. He submits that from the FIR itself, it is apparent that the accused-applicant was arrested sometime before 11:45 AM when the seizure was made and from the medical report, it is clear that he was produced after 12:45 PM on 04.08.2025, thereby committing a violation of Article 22 of the Constitution of India

as well as Section 58 of BNSS, 2023. He submits that, since the settled law by the Hon'ble Supreme Court, a person arrested by police has to be produced before the concerned Judicial Magistrate within 24 hours of his arrest. In the instant case, since the same has not been done, and the accused-applicant was produced much after 24 hours, the whole process of arrest becomes illegal and his continued detention in judicial custody is not permissible under the law. In view of the above, he submits that the accused-applicant should be granted bail on that ground alone.

7. Mr. K.K. Parasar, the learned Addl. PP, on the other hand, opposes the prayer of the bail, submitting that huge quantity of cannabis has been recovered from the conscious possession of the accused-applicant, and therefore, the twin conditions of Section 37 of the NDPS Act are applicable in the instant case. He submits that taking into account the gravity of the offence, and since a huge quantity of narcotic substances has been recovered, the accused-applicant should not be granted bail.

8. Trial Court Record in the instant case has been received, and the same is perused by this Court. This court has also taken into consideration, the submissions made by the respective counsel in the instant case.

9. It is seen from FIR that police received the information at around 8:47 AM on 03.08.2025. Thereafter, the police put up a Naka checking, and during the Naka checking, the accused person was apprehended. From the FIR, it is also clear that after completion of all formalities, police went to Garchuk Police Station at 11:45 AM on 03.08.2025 along with the seized items and the apprehended person. This fact makes it clear that the accused-applicant was apprehended prior to 11:45 AM on 03.08.2025.

10. Medical report in the instant case is available in the TCR, which reveals that the accused person was examined in a Primary Health Center in Garchuk at around 12:45 PM on 04.08.2025. It is also seen from the Forwarding Report that the

accused-applicant was produced on 04.08.2025 before the learned SDJM No. 1, Kamrup (M).

11. From the Remand Order dated 04.08.2025, there is no time to be found out as to at what time the accused-applicant was produced before the learned SDJM No. 1. However, taking into account the materials available, it can be safely concluded that the accused-applicant was not produced before the learned SDJM No. 1, Kamrup (M), Guwahati within the mandatory period of 24 hours, and thereby a violation of Article 22 of the Constitution of India as well as Section 58 of BNSS is apparent.

12. 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."

13. 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.

14. In the case of **Directorate of Enforcement Vs. Subhash Sharma,** reported in **2025 SCC OnLine SC 240,** the Hon'ble Apex Court held that 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."

15. Similarly, in the case of **State of Haryana and others v. Dinesh Kumar**, reported in **(2008) 3 SCC 222**, the Hon'ble Supreme Court, under the 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."

16. 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."

17. In the instant case, as it has been already discussed that the accused-applicant was produced before the learned SDJM No.1, Kamrup (M), Guwahati only after 12:45 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 of the Constitution.

18. Taking into account the entire facts of the case as discussed above, it is evident that there is clear violation of Article 22 of the Constitution in the instant case by not producing the accused-applicant before the learned SDJM No. 1, Kamrup (M), within a period of 24 hours of his arrest. Consequently, this violation vitiates the processes of arrest and the production of the accused-applicant. Accordingly, the further detention of the accused-applicant cannot be sustained due to illegality in his arrest and production before the learned SDJM No. 1, Kamrup (M), Guwahati beyond the time mandated by Article 22 of the Constitution. Accordingly, in the facts and circumstances of the case, and in view of the above discussion, this court directs that the accused-applicant shall be released on bail on furnishing a bail bond of Rs. 50,000/- (Fifty Thousand) with a surety of like nature to the satisfaction of the learned Special Judge (NDPS), Kamrup (M), subject to the following conditions:

(1) That the accused-applicant shall fully cooperate with the proceedings of the trial, and make himself available as and when required before the trial court;

(2) That the accused-applicant 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-applicant shall not commit any illegal activities or offences, including any offence under the NDPS Act.

19. 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.

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

21. TCR to be returned.

JUDGE

MiriamDegu
(SPA)