GAHC010139662026

2026:GAU-AS:14795

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

Case No. : Bail Appln./1860/2026

SRI SHIBA DEKA ALIAS SIVA DEKA
S/O SHRI GANGADHAR DEKA, RESIDENT OF BILPAR, P.S TAMULPUR,
DIST.-TAMULPUR, ASSAM. PIN-781367

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN, MR H ROHMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 05-10-2026

Heard Mr. Y.S. Mannan, the learned counsel appearing for the accused applicant and Mr. M. P. Goswami, learned Public Prosecutor for the State.

2. This is an application under Section 483 of the BNSS, 2023, praying for grant of bail to the accused applicant in connection with N.D.P.S. Case No. 05/2026, arising out of Dallai P.S. Case No. 55/2025, registered under Sections 21(C)/25/29 of the NDPS Act read with Sections 61(2)/123 of the BNS, 2023.

3. An FIR was lodged on 31.10.2025 by one WSP(P) Munmi Chutiya before the Officer-in-Charge of Dallai Police Station, alleging, *inter alia*, that on receipt of source information, a Naka checking was set up at NH-29 at Dallai on 30.10.2025 at about 10:15 p.m. One vehicle bearing registration No. NL-01AG-2554, coming from the Dimapur side and proceeding towards the Manja side, was intercepted. During the course of checking, the police team noticed a secret chamber inside the upper portion of the cabin of the vehicle. Upon search of the said concealed chamber, the police recovered 6 (six) packets of suspected contraband weighing 2.990 kg. It is stated that a drug test was conducted on the spot and the substance was found to be positive for *Morphine*.

4. On receipt of the FIR, the police registered Dallai P.S. Case No. 55/2025 under the aforementioned sections.

5. Upon completion of the investigation, the police filed charge-sheet being Charge-Sheet No. 60/2025, dated 15.12.2025. The case is presently pending for evidence and out of the 10 (ten) witnesses cited by the prosecution, 4 (four) witnesses have already been examined. The accused applicant was arrested on 31.10.2025 and has been in custody since then.

6. Mr. Mannan, learned counsel appearing for the accused applicant, specifically submits that though, according to the prosecution, the accused applicant had nominated one *Saina Begum Chowdhury* for service of notice under Section 48 of the BNSS, in fact, the said person was never nominated by the accused applicant. He further submits that the aforesaid nominated person is a resident of Silchar and as per the arrest memo issued in respect of the co-accused, namely, *Akram Hussain Chowdhury*, it is seen that a WT message was transmitted and the aforesaid *Saina Begum Chowdhury* was intimated

through her mobile number, i.e., 7629868083. He submits that the fact that there was a requirement to call and intimate her indicates that the aforesaid *Saina Begum Chowdhury* could not have been present at the same place, i.e., at the place of arrest and at the police station.

7. Learned counsel for the accused applicant further submits that the prosecution has falsely stated that the signature of the aforesaid *Saina Begum Chowdhury* was obtained in the arrest memo of the accused applicant as well as in the arrest memo of the co-accused person. He submits that the aforesaid *Saina Begum Chowdhury* could not have been present at the same place when, on the one hand, a telephone call was made to her and on the other hand, she is shown to have been present in the police station itself. He, therefore, submits that, in view of the aforesaid discrepancies, the credibility of the Section 48 notice, insofar as the accused applicant is concerned, is seriously affected and consequently, the accused applicant deserves to be enlarged on bail on this ground alone.

8. Mr. M. P. Goswami, learned Public Prosecutor, on the other hand, opposes the prayer for bail made on behalf of the accused applicant. He submits that there has been no non-compliance with Section 48 or any other statutory provisions of the BNSS in the course of arrest of the accused applicant. Learned Public Prosecutor further submits that the quantity of contraband recovered in the present case is commercial quantity and therefore, the rigours of Section 37 of the NDPS Act are attracted. He submits that, out of the 10 (ten) witnesses, 4 (four) witnesses have already been examined and therefore, there is no justification for interfering with the ongoing trial at this stage.

9. This Court has considered the submissions advanced by the learned

counsel appearing for the respective parties and has also perused the Trial Court Record received in connection with the case.

10. On perusal of the Trial Court Record, it appears that the accused applicant had nominated one *Saina Begum Chowdhury*, who happens to be the sister of the co-accused, as the person to receive the notice under Section 48 of the BNSS. It is also evident from the said Section 48 notice that the aforesaid *Saina Begum Chowdhury* had put her signature on the notice under Section 48 of the BNSS as well as on the arrest memo furnished to the accused applicant. Though a contention has been raised by the learned counsel appearing for the accused applicant that the aforesaid *Saina Begum Chowdhury* was never nominated by the accused applicant, this Court is of the considered view that such a disputed question of fact cannot be conclusively determined at this stage of the proceeding.

11. As regards the other contention raised by the learned counsel for the accused applicant that the prosecution team had called the mobile number of *Saina Begum Chowdhury* and had also transmitted a WT message to her number and therefore, being a resident of Silchar, she could not have been present at the place of arrest, this Court has duly considered the said submission. However, this Court is not convinced by the said contention. The fact that a telephone call was made to her and a WT message was transmitted to her number, by itself, cannot lead to the conclusion that she could not have been physically present at the place of arrest or at the police station. The possibility of a telephone call being made or a WT message being transmitted, even when the person concerned was physically present, cannot be ruled out.

12. It is also evident from the materials available on record that her presence

has been shown at the time of preparation and issuance of the arrest memo. At this stage, therefore, this Court does not find sufficient ground to discard the said document merely on the basis of the aforesaid contention raised on behalf of the accused applicant.

13. This Court also takes note of the fact that the quantity of contraband allegedly recovered from the accused applicant and the co-accused is of commercial quantity. Consequently, the provisions of Section 37 of the NDPS Act are clearly attracted in the present case.

14. This Court has also taken note of the stage of the trial. It is seen that, out of the 10 (ten) witnesses cited by the prosecution, 4 (four) witnesses have already been examined and the trial is proceeding at a reasonably good pace, therefore, the progress of the trial also does not warrant any interference at this stage by release of the accused applicant. It should be allowed to come into its conclusion.

15. Having regard to the facts and circumstances of the case, the nature and quantity of the contraband allegedly recovered, the applicability of Section 37 of the NDPS Act as well as the stage and progress of the trial, this Court is not inclined to grant the privilege of bail to the accused applicant at this stage.

16. Accordingly, the instant bail application stands rejected.

17. The Trial Court Record be sent back forthwith.

JUDGE

Comparing Assistant