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2026:GAU-AS:15160

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

Case No. : Bail Appln./2419/2026

TAPAN CHANDRA SHIL
S/O LATE SAPAN SHIL, VILLAGE- KHALILPUR, (NEAR DURGA MANDIR)
P.S. AND DIST. - DHUBRI, ASSAM, PIN-783324

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR D DAS, D.N. DASS

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date :08.10.2026

Heard Mr. D. Das, learned counsel for the accused. Also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This petition, under Section 483, BNSS, 2023 is preferred by accused, namely, Tapan Chandra Shil, who has been languishing in jail hazot in connection with Dhubri P.S. Case No. 215/2026, under Sections 22(c)/25 of the

NDPS Act, 1985, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by SI(P) Dibya Kamal Dutta on 15.06.2026. The essence of allegation in the aforesaid FIR is that one Nur Alom Hoque was apprehended by local public of Jhagrapara Part-I, suspecting him to be a peddler of narcotic drugs and psychotropic substances. Thereafter, the said person was released by the local people and then, a search was conducted in the house of Nur Alom Hoque and a total 80 strips of Pyeevon spas Pls tablets, each containing 8 numbers of tablets, weighing 0.52 grams, suspected to be NDPS, weighing 338.8 grams in total; 30 strips of Pyeevon spas Pls tablets, weighing 124.8 grams in total; 20 strips of Nitrazepam tablets, weighing 110 grams in total; 85 numbers of Triprolidine Hydrochloride and Codeine Phosphate syrup KOFFTRIP cough syrup; and some mobile phones and rice bags were recovered; and during interrogation, Nur Alom Hoque disclosed that he bought the said suspected drugs from local peddler and he did not know the name of the person, but he disclosed the name of one Tapan Chandra Shil as his associate and accordingly, Tapan Chandra Shil was also apprehended and taken into custody.

4. Mr. Das, learned counsel for the accused, submits that the accused was arrested on 15.06.2026 and since then, he has been languishing in jail hazot. Mr Das also submits that except the statement of the co-accused and his own statement, there were no other materials to show involvement of the present accused with the offence alleged in the FIR, and that nothing has been recovered from his possession also. Mr. Das further submits that the statement of the co-accused and his own statement are not admissible under the NDPS Act. Further, referring to the arrest memo under Section 35 of the BNSS, 2023,

which is annexed with the petition as Annexure-3, Mr. Das submits that the reason/ground for arrest in the arrest memo has been shown as same and that the said reasons are copy-paste from another case where one woman is involved, and as such, Section 35 of the BNSS, 2023 is violated here in this case, and therefore, he has contended to allow the petition.

5. Per contra, Mr. Lahkar, learned Additional Public Prosecutor has opposed the petition. By referring to the scanned copy of the record received from the learned trial Court, Mr. Lahkar submits that the I.O. has already completed investigation and submitted charge-sheet in this matter against the present accused, under section 22(c)/25/29 of the NDPS Act. Mr. Lahkar also submits that apart from the statement of the co-accused and his own statement, there is one independent witness, who has also implicated the accused with the offence alleged, and as such, it cannot be said that only on the basis of statement of the co-accused and his own statement, he has been charge-sheeted. Further, referring to the submission in respect of ground of arrest in the arrest memo made by Mr. Das, Mr. Lahkar submits that there may be some mistake which is clerical in nature and the same may not be the ground to grant bail to the accused of serious offences.

5.1. In support of his submission, Mr. Lahkar has referred to a decision of Hon'ble Supreme Court in the case of **Radhika Agarwal vs. Union of India and Others**, reported in **(2025) 5 SCC 260**, wherein in paragraph No. 12, Hon'ble Supreme Court has held as under:

> "**12. It is pertinent to note that the Special Acts are enacted to achieve specific purposes and objectives. The power of judicial review in cases of arrest under such Special Acts should be exercised very cautiously and in rare**

circumstances to balance individual liberty with the interest of justice and of the society at large. Any liberal approach in construing the stringent provisions of the Special Acts may frustrate the very purpose and objective of the Acts. It hardly needs to be stated that the offences under the PMLA or the Customs Act or FERA are the offences of very serious nature affecting the financial systems and in turn the sovereignty and integrity of the nation. The provisions contained in the said Acts therefore must be construed in the manner which would enhance the objectives of the Acts, and not frustrate the same. Frequent or casual interference of the courts in the functioning of the authorized officers who have been specially conferred with the powers to combat the serious crimes, may embolden the unscrupulous elements to commit such crimes and may not do justice to the victims, who in such cases would be the society at large and the nation itself. With the advancement in Technology, the very nature of crimes has become more and more intricate and complicated. Hence, minor procedural lapse on the part of authorized officers may not be seen with magnifying glass by the courts in exercise of the powers of judicial review, which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Acts. Such offences are against the society and against the nation at large, and cannot be compared with the ordinary offences committed against an individual, nor the accused in such cases be compared with the accused of ordinary crimes."

5.2. Under such circumstances, Mr. Lahkar has contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, this Court has carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the

learned trial Court.

7. It appears that the present accused has been charge-sheeted under Section 22(c)/25/29 of the NDPS Act. It is, however, a fact that nothing has been recovered from the possession of the present accused. But, it appears that apart from the statement of the co-accused and his own statement, one independent witness has also implicated him with the offence alleged in the FIR. The offences are indeed serious and the I.O. has already submitted charge-sheet against him under Section 29 of the NDPS Act also besides Sections 22(c) and 25 of the NDPS Act.

8. Further, the contraband substance, allegedly recovered here in this case, is of commercial quantity, and as such, the accused has to satisfy the twin requirements of Section 37 of the NDPS Act. But, from the materials available in the scanned copy of the record and also from the submission of Mr. Das, learned counsel for the accused, this Court fails to derive satisfaction about satisfying the twin requirements of Section 37 of the NDPS Act here in this case by the accused. It is well settled that in the case of Union of India vs. Ajay Kumar Singh @ Pappu, in Criminal Appeal No. 952 of 2023 [arising out of SLP(Crl.) No. 2351 of 2023], that unless the twin conditions in Section 37 of the NDPS Act are satisfied, bail cannot be granted to the accused involved in commercial quantity of contraband substances.

9. It also appears from the Annexure No. 3 of the petition that the grounds of arrest and reason of arrest in the memo of arrest, the accused was referred to as a woman. But, as held in the case of **Radhika Agarwal (supra)**, especially in paragraph No. 12, minor procedural lapse on the part of the investigating agency, when the nature of crime is serious, the benefit of such mistake cannot

be extended to the accused.

10. Accordingly, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused at this stage and accordingly, this bail application stands dismissed.

JUDGE

Comparing Assistant