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2026:GAU-AS:16069

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

Case No. : Bail Appln./2482/2026

AHIDUR RAHMAN
S/O- BHAINUR ALI, R/O- VILLAGE - BORNI, P.S- HAJO, DISTRICT- KAMRUP (R), ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR. Y S MANNAN, M BEGUM,MR. T HUSSAIN

Advocate for the Respondent : PP, ASSAM,

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

03.11.2026

Heard Mr. Y.S. Mannan, the learned counsel appearing for the petitioner. Also heard Mr. Bhaskar Sharma, the learned Addl. Public Prosecutor, Assam.

2. This is an application under Section 483 of the BNSS, 2023 whereby the petitioner Md. Ahidur Rahman, who is facing trial in N.D.P.S. Case No.14/2026 pending in the court of the Special Judge, Nalbari has prayed for releasing him on bail.

3. On 29.12.2025, police got information that a person was selling illegal cough syrups at Kuriha under Adabari P.P. The I/c of Adabari P.P., arrived at the place of occurrence and found that the present petitioner Ahidur Rahman was selling illegal cough syrups. 100 bottles of Triprolidine Hydrochloride & Codeine Phosphate was recovered from a Maruti Swift car bearing Registration No.ML-05-U-2702. The car was being driven by the present petitioner.

4. After investigation, police filed the *charge sheet* against the present petitioner.

5. The prosecution side has examined two witnesses.

6. I have given my anxious considerations to the submissions made by the learned counsels for both sides.

7. In *State of Kerala v. Rajesh*, (2020) 12 SCC 122, the Supreme Court has held as under:

> "18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In *Union of India* v. *Ram Samujh* [*Union of India* v. *Ram Samujh*, (1999) 9 SCC 429 : 1999 SCC (Cri) 1522] , it has been elaborated as under:
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> > "*7*. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier* v. *State (UT of Goa)* [*Durand Didier* v. *State (UT of Goa)*, (1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)
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> > > '*24*. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances

have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.'

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(*i*) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(*ii*) that he is not likely to commit any offence while on bail

are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

8. In *Union of India v. Mohd. Nawaz Khan*, (2021) 10 SCC 100, the Supreme Court has held as under:

"19. With regard to the grant of bail for offences under the NDPS Act, in *Union of India* v. *Shiv Shanker Kesari* [*Union of India* v. *Shiv Shanker Kesari*, (2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505] this Court observed that bail may be cancelled if it has been granted without adhering to the parameters under Section 37 of the NDPS Act. Further, in *Union of India* v. *Prateek Shukla* [*Union of India* v. *Prateek Shukla*, (2021) 5 SCC 430 : (2021) 2 SCC (Cri) 597] , one of us (D.Y. Chandrachud, J.), speaking for a two-Judge Bench, noted that non-application of mind to the rival submissions and the seriousness of the allegations involving an offence under the NDPS Act by the High Court are grounds for cancellation of bail.

This extract is taken from *Union of India v. Mohd. Nawaz Khan*, (2021) 10 SCC 100 : (2021) 3 SCC (Cri) 721 : 2021 SCC OnLine SC 1237 at page 110

20. Section 37 of the NDPS Act regulates the grant of bail in cases involving offences under the NDPS Act. Section 37 reads as follows:

"37. *Offences to be cognizable and non-bailable*.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),—

(*a*) every offence punishable under this Act shall be cognizable;

(*b*) *no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial*

quantity shall be released on bail or on his own bond unless—

(*i*) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

(*ii*) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail*.

(2) The limitations on granting of bail specified in clause (*b*) of sub-section (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

(emphasis supplied)

21. Under Section 37(1)(*b*)(*ii*), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27-A and also for offences involving a commercial quantity are:

(*i*) The Prosecutor must be given an opportunity to oppose the application for bail; and

(*ii*) There must exist "reasonable grounds to believe" that : (*a*) the person is not guilty of such an offence; and (*b*) he is not likely to commit any offence while on bail.

22. The standard prescribed for the grant of bail is "reasonable ground to believe" that the person is *not* guilty of the offence. Interpreting the standard of "reasonable grounds to believe", a two-Judge Bench of this Court in *Shiv Shanker Kesari* [*Union of India* v. *Shiv Shanker Kesari*, (2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505] , held that : (SCC pp. 801-02, paras 7-8 & 10-11)

"*7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.*

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

'*7*. … *Stroud's Judicial Dictionary*, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.'

[See *MCD* v. *Jagan Nath Ashok Kumar* [*MCD* v. *Jagan Nath Ashok Kumar*, (1987) 4 SCC 497] , SCC p. 504, para 7 and *Gujarat Water Supply & Sewerage Board* v. *Unique Erectors (Gujarat) (P) Ltd.* [*Gujarat Water Supply & Sewerage Board* v. *Unique Erectors (Gujarat) (P) Ltd.*, (1989) 1 SCC 532]]

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> *10*. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See *Municipal Corpn. of Greater Mumbai* v. *Kamla Mills Ltd.* [*Municipal Corpn. of Greater Mumbai* v. *Kamla Mills Ltd.*, (2003) 6 SCC 315])
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> *11*. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."
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> (emphasis supplied)"

9. The court while considering a bail application of a petitioner with reference to Section 37 of the NDPS Act is not called upon to record a finding of not guilty. It is for a very limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds.

10. This Court is of the opinion that there are no reasonable grounds to believe that the petitioner is not guilty of the offence alleged against him. Therefore, the bail application is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant