GAHC010185432026

2026:GAU-AS:16992

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

Case No. : Bail Appln./2505/2026

SAYEED RAJA MOZUMDER
S/O LATE TUTA MIA MAZUMDER VILL PURBOGOOL P.S. AND DIST
HAILAKANDI ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A H M R CHOUDHURY, MR N RAHMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE

HONOURABLE MR. JUSTICE PRANJAL DAS

O R D E R

18.11.2026

Heard Mr. AHMR Choudhury, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Addl. P.P. appearing for the State respondents.

2. Invoking under Section 483 of BNSS, the petitioner is seeking regular bail

in connection with Special (NDPS) Case No. 42/2026, corresponding to Ramkrishna Nagar P.S. Case No.04/2026, under Sections 22(c)/25/29 of the NDPS Act. The case arose out of Ramakrishna Nagar P.S. case no. 4/2026, which was registered based on an FIR.

3. The gist of the allegations in the FIR is recovery of contraband in the nature of 2000 numbers of yaba tablets from the possession of the petitioner and that these were wrapped in 10 packets and weighed 208 grams. It is alleged that at the time of the incident, the petitioner was coming on a motorcycle without number plate and he was stopped and in the presence of witnesses, searched, leading to recovery of the contraband.

4. The petitioner is stated to have been arrested on 20.01.2026, and since then, he is in under trial detention, presently in judicial custody.

5. The learned counsel submits that he's seeking bail on the ground of length of detention and also the fact that the petitioner's wife recently suffered from miscarriage.

6. Mr. B. Sharma, the learned Additional P.P. opposing the bail, submits that charge-sheet was filed on 29.04.2026, followed by framing of charges on 05.08.2026 under the penal provisions of NDPS Act, including those pertaining to commercial quantity. I find from the charge-sheet that eight witnesses are listed in the charge-sheet. However, it is not clear at this stage as to how many witnesses have been examined so far.

7. The scanned record is received and I have perused the relevant portions thereof.

8. The seizure witnesses have supported the seizure of the contraband. The private/independent seizure witnesses have also supported the allegations of

the FIR and stated about recovery of the contraband from the possession of the petitioner.

9. It is revealed from the materials that the body search of the accused petitioner was conducted and therefrom, the contraband were recovered.

10. In this context, the copy of the notice under section 50 NDPS Act is available in the scanned TCR, though the said notice is signed by the police officer, the accused petitioner and also two witnesses, purportedly the seizure witnesses, however, the police official has not even bothered to tick the options - I require/do not require about being searched in the presence of the nearest Gazetted officer.

11. It is well settled that when recovery of the contraband is pursuant to body search of the accused, compliance is with section 50 NDPS Act is necessary for a successful conviction, as otherwise the recovery of the contraband would be held to be vitiated during the trial.

12. However, no case law has come to notice that infirmity in the notice under Section 50 would automatically entitle the accused to bail, though certainly that aspect can be taken into account along with other relevant factors.

13. The non-compliance and/or infirmity in compliance with Section 50 of the NDPS Act would also be a relevant factor while adjudicating the test of section 37 of the NDPS Act. Further, in a situation involving commercial quantity, if the test of section 37 NDPS Act is not passed in favour of the accused, the Court will be statutorily barred from granting bail. However, as indicated in section 36(A) of the NDPS Act, the rigor of section 37 is in addition to the other provisions of the criminal procedure regarding bail. Therefore, in a suitable case, especially pertaining to commercial quantity, even if the test of Section 37 is

passed in favour of the accused, the Court considering other serious factors may still be constrained to grant bail to the accused.

14. Coming back to the instant case, there is undoubtedly infirmity in the notice under Section 50 of the NDPS Act. Nevertheless, the alleged offences are of extremely serious, being recovery of 2,000 number of yaba tablets, which if circulated in the society, especially among the youth, could play havoc in matters of drug addiction. It is also appears that the private witnesses, especially the seizure witnesses have not yet been examined during the trial.

15. In view of the same, the Court is of the considered view that it may not be prudent to grant bail to the accused at this stage, despite the under trial detention since 20.01.2026.

16. It also needs to be stated and observed that the notice under Section 50 NDPS Act, which was purportedly given to the accused has a defective format. The said notice should clearly indicate that it is the right of the accused before body search to be searched before a nearest Gazetted officer or Magistrate and thereafter, the accused has to be given an option of whether he wishes to exercise that right.

17. As already mentioned above, in this case, despite the serious nature of the alleged offence and the significant recovery of psychotropic substances, the concerned Police Official has not even bothered to tick the option which is indicated by the accused at the time of furnishing of the notice under Section 50 of the NDPS Act. Such lapses cannot be taken lightly in such serious offences with such significant social impact.

18. Therefore, a copy of this order shall be sent to the Superintendent of Police, Sribhumi, who in turn shall seek an explanation from the concerned

Police Official as to why this careless lapse was conducted with regard to the notice under Section 50 of the NDPS Act.

19. A copy of this order shall be sent to the Superintendent of Police, Sribhumi, drawing his attention specifically to above para nos. 15 & 16 of this order.

20. In the given facts and circumstances, the bail petition stands **rejected** at this stage.

21. This bail application stands disposed of.

JUDGE

Comparing Assistant