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2026:GAU-AS:16373

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

Case No. : Bail Appln./2534/2026

DILIP DEBNATH
SON OFLT. MOHAN DEBNATH RESIDENT OF VILL- PACCA ALI, BOKAJAN BAZAR P.S BOKAJAN DISTRICT- KARBI ANGLONG PIN 782480 STATE- ASSAM.

VERSUS

THE UNION OF INDIA
REPRESENTED BY SPECIAL PP, NCB GUWAHATI

Advocate for the Petitioner : MR. N J DUTTA, MR K THAKUR,MR. A HUDA,MR D MEDHI

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06.11.2026

Heard Mr. N.J. Dutta, learned counsel for the accused and Mr. R.K.D. Chudhury, learned Senior Counsel-cum-Dy. SGI, assisted by Ms. L. Devi, for the respondent/NCB.

2. This petition, under Section 483, BNSS is preferred by accused, namely,

Dilip Debnath, who has been languishing in jail hazot in connection with NDPS Case No. 323/2024, arising out of NCB Guwahati Crime No. 4/2024, under Section 8(C), read with Sections 22(C)/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of a complaint lodged by one Anil Kushwaha, Inspector of NCB, Guwahati, on 08.04.2026.

3.1. The essence of allegation in the said complaint dated 08.04.2026, is that on 16.03.2024, NCB, Guwahati Zonal Unit seized Tramadol capsules and Nitrazepam Tablets, amounting to commercial quantity, at Platform No. 1 of Guwahati Railway Station, and the statement of one suspect, namely**, Nitya Nanda Singh** was recorded, who disclosed that he was trafficking the aforesaid contraband substances for delivering it to one **Dilip Paul @ Dilip Debnath,** the accused herein this petition.

4. Mr. Dutta, learned counsel for the accused, submits that earlier, the accused had received one notice issued by NCB, under Section 67 of the NDPS Act. Thereafter, he preferred one pre-arrest bail application, being AB No. 867 of 2026, before this Court and vide order dated 03.08.2026, this Court was pleased to dispose of the same by directing the accused to appear before the investigating agency. Mr. Dutta also submits that thereafter, the accused had appeared before the investigating agency, and then the investigating agency arrested him and forwarded him to jail, and since then, he is languishing in jail for the last 80 days.

4.1. Mr. Dutta also submits that nothing has been recovered from the possession of the present accused, and he was arrested only on the basis of the statement of co-accused, which according to him, are not admissible in

evidence. And under such circumstances, he has contended to allow this petition.

5. Mr. Choudhury, learned Senior Counsel-cum-Dy. SGI for the respondent/NCB, referring to the objection filed by the NCB submits that even though the contraband substances were not recovered from the possession of the present accused, but from the co-accused arrested earlier, the investigating agency has collected sufficient incriminating materials, including the CDR, and subsequent enquiry conducted by the NCB also shows his complicity with the co-accused arrested earlier, from whose possession the contraband substances were recovered. He also submits that the offences are serious in nature and it involves commercial quantity of contraband substances, and under such circumstances, Mr. Choudhury has contended to dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record, including the objection filed by the respondent/NCB.

7. Indisputably nothing has been recovered from the possession of the present accused. The alleged contraband substances were recovered from the possession of co-accused. And the present accused was arrested solely on the basis of the statement of co-accused, which is inadmissible in view of the decision of the Hon'ble Supreme Court in the case of **Tofan Singh vs. The State Of Tamil Nadu,** reported in **(2021) 4 SCC 1,** wherein Hon'ble Supreme Court held that officers under Section 53 NDPS Act are ' ' 'police officers' under Section 25 of the Evidence Act. Consequently, confessional statements recorded under Section 67 are inadmissible as evidence against the maker. A co-accused's Section 67 statement has no substantive evidentiary value

against another accused and cannot form the sole basis of conviction as held in the case of **Surinder Kumar Khanna v. Intelligence Officer, DRI,** reported in **(2018) 8 SCC 271).**

8. Absence of recovery from the accused, lack of corroborative evidence, financial trails linking to the contraband, etc., and implication solely through co-accused statements are routinely treated as factors favouring the accused at the bail stage, under Section 37. Though Mr. Choudhury, learned Senior Counsel-cum-Dy.SGI for the respondent/NCB, submits that in this case that CDRs, subsequent enquiry conducted by the NCB also shows his complicity with the co-accused arrested earlier, the same were neither enclosed with the objection filed by it, nor placed before this Court at the time of hearing.

9. It is well settled in the case of **Narcotics Control Bureau v. Mohit Aggarwal,** reported in **(2022) 18 SCC 374,** that Section 67 confessions must be kept aside while examining the twin conditions under Section 37 of the NDPS Act. If, after discarding them, no credible independent material remains, the "reasonable grounds for believing not guilty" threshold is met.

10. In the instant case, except the statement of co-accused under Section 67 NDPS Act, nothing has been placed on record against the present accused.

11. Under the given facts and circumstances, this Court is of the view that a prima-facie case for granting bail to the accused is made out and accordingly, this Court is inclined to allow this petition.

12. Accordingly, it is provided that on furnishing a bond of Rs. 1,00,000/- with one surety of like amount, to the satisfaction of the learned Special Judge (NDPS), Kamrup(M), Guwahati, the accused be enlarged on bail.

13. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant