GAHC010201942026

2026:GAU-AS:16914

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

Case No. : Bail Appln./2788/2026

RABIAL MIYA
SON OF MD. UPI MIYA, RESIDENT OF PATARKUCHI, P.S. BASISHTHA, DISTRICT KAMRUP METRO, ASSAM PERMANENT ADDRESS VILLAGE KHAPANBARIA BHITHA, P.S. DISTRICT BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N J DUTTA, IMDADUL ISLAM,MR. M M ZAMAN,MR N AHMED
Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

17.11.2026

Heard Mr. N. J. Dutta, learned counsel appearing for the accused petitioner. Also heard Mr. P. S. Lahkar, learned Addl. P.P., Assam appearing for the State respondent.

2. This petition under Section 483 of the BNSS, 2023 has been filed by the accused-petitioner, namely, **Rabial Miya** praying for grant of bail in connection with **NDPS Case No.308/2025** under Sections

21(C)/25/29 of NDPS Act arising out of **Basistha PS Case No. 313/2025 under Section 21(C)/25/29 of NDPS Act** pending in the court of learned Special Judge (NDPS), Kamrup(M). The petitioner was arrested on 04/06/2025 and presently in judicial custody.

3. The gist of the allegations in the FIR dated 04/06/2025 lodged by the police official of Basistha PS is that during Naka checking, one vehicle bearing registration No. AS 01 LC 1253 was found coming and inside the vehicle there was the driver and handyman. The information was received that the vehicle was carrying heroin and accordingly it was stopped and in the presence of two witnesses the vehicle was searched. It is stated that upon giving a notice under Section 50 NDPS

Act, the bodies of the persons were also searched. Subsequently, during search inside the vehicle a bag was found beneath the seat and upon opening it 22 numbers of soap boxes were found containing heroin which were seized and the weight of the same was found to be 295.46 295.46 grams.

4. It is submitted by the learned counsel for the petitioner that though charges were framed on 17/10/2025 but trial has not yet started. The learned counsel further submits that as per the materials available including the scanned TCR, the operation was started in the morning of 04/06/2026 and the seizure was completed around 12:12 PM. Referring to an annexed medical document of Health City Hospital in the scanned record, it is submitted that the accused persons were examined there at 12:25 PM and the remand order was dated 05/06/2025, it would thereby indicate that the production was beyond the period of 24 hours and thereby constituting infraction of Article 22(2) of the Constitution of India.

5. In support of his contention, the learned counsel relies on the decision of the Hon'ble Apex Court in *Directorate of Enforcement v. Subhash Sharma in Special Leave Petition (Criminal) No. 1136/2023* contention of the learned counsel is that though the contraband were allegedly recovered from beneath the seat inside the truck but their bodies were also searched and in this connection the notice under Section 50 does not indicate as to whether the accused persons sought search before gazetted officer/Magistrate or refused the same. In support of this contention, the learned counsel relies on the decision of the Hon'ble Apex Court rendered in the case of *State of Rajasthan v. Parmanand and Another, (2014) 5 SCC 345*.

6. On the other hand, the learned Additional Public Prosecutor opposing the bail submits that though body search was conducted but contraband was recovered from a bag in the truck and therefore, even if there is any infirmity in the notice under Section 50 NDPS Act, the same would not vitiate the search and the recovery from the bag. In support of his contentions, he relies on the decision of *State of HP v. Pawan Kumar, (2005) 4 SCC 350*.

7. The scanned record is available.

8. I have considered the rival submissions, the materials, and the case laws.

9. As per the seizure list, the seizure was completed at 12:30 PM on 04.06.2025. It is also revealed from the materials that soon thereafter, the police party along with the materials and the apprehended accused persons proceeded to the police station.

10. Mr. Lahkar, the learned Additional Public Prosecutor fairly submits that as per the medical examination report dated 05.06.2025, the accused persons were examined in Health City Hospital OPD on 05.06.2025 at 12:25 PM. It is admitted that the said document has come into the record from the side of the investigating authority/prosecution and therefore, the endorsement therein regarding the date and time of examination is accepted by this Court. The first production order of the accused persons are on 05.06.2025 though from the said order it is not discernible as to at what time they were made available for production for the first time before the Remand Court.

11. The constitutional mandate under Article 22(2) of the Constitution of India requires production of an arrested person before the learned Magistrate within the period of 24 hours excluding journey time. In the instant case from the materials it could not be ascertained as to what was the journey time from the police station to the Remand Court. However, as indicated by the medical examination report dated 05.06.2026 the accused persons were examined in the hospital at 12:25 PM on that date and the 24-hour period from 12:30 PM on 04.06.2026 was almost over. Therefore, from the said factual matrix it cannot be held that the accused persons within the next 5 minutes were produced before the Court located at another side of the city of Guwahati even taking into account the aspect of journey time.

12. Thus, as fairly indicated by the learned Additional Public Prosecutor, Mr. Lahkar in the instant case by the time the accused persons were produced before the learned Remand Court for the first time the period of 24 hours from the date of their formal apprehension on 04.06.2026 at

12:30 PM was already over. Of course, both the accused persons were formally arrested on 04.06.2026 at 9:30 PM. However, the Hon'ble Apex Court in the case of *Subhash Sharma (supra)* has clarified the legal position that for calculating the period of 24 hours within the meaning of Article 22(1) the starting point has to be the time of initial apprehension rather than the date or time of formal arrest. In any case, in a more recent decision of the Hon'ble Apex Court in the case of *Sujit Das and Others vs. Union of India, 2026 SCC OnLine SC 2358*, the Hon'ble Apex Court has extensively delved into this subject and laid down the following principles in para 69, which may be reproduced herein below:

> *"69. In the circumstances, we would like to summarize our conclusions as under:*
>
> *(i) the 24 hours timeline as mandated under clause (2) of Article 22 of the Constitution of India would commence from the date and time of detention of the person detained when his liberty stands curtailed and not from the time of his formal arrest;*
>
> *(ii) in the event, such detention continues beyond 24 hours before the person is produced before a magistrate, he shall be forthwith released from custody;*
>
> *(iii) while computing the 24 hours deadline, no other time period is permitted to be excluded therefrom except the time necessary for the journey from the place of arrest to the court of the magistrate;*
>
> *(iv) the decisions of the Orissa High Court in Aryaman Pattnayak, Madras High Court in Kannan and Kerala High Court in Arun K. Thomas do not lay down the correct law qua interpretation of clause (2) of Article 22 of the Constitution of India;*
>
> *(v) the detaining authority should keep in mind not only the 24 hours deadline mandated by clause (2) of Article 22 of the Constitution but also ensure that such detention should not extend beyond a reasonable period within the 24 hours period considering the circumstances of the case in terms of Section 58 BNSS (Section 57 CrPC);*

(vi) at the time of production, the magistrate is duty bound to record the actual date and time of detention of the person produced before him when his liberty stood curtailed and examine whether the 24 hours deadline has been complied with or not from the time of such detention. If there is breach of the 24 hours deadline, the concerned person shall be released forthwith from detention;

(vii) the magistrate shall also examine at the time of production whether the detention of the person produced, though is within the time frame of 24 hours, has exceeded the period which can be construed to be reasonable in the circumstances of the case. If he is satisfied that detention in custody has been for a longer period than what is reasonable, he may decline remand;

(viii) in so far the present case is concerned, for the reasons cited in paragraphs 65, 66 and 67 above, the detention of the appellants was not only in breach of clause (2) of Article 22 of the Constitution of India but was for a period beyond what can be construed to be a reasonable period considering all the circumstances of the case which was in contravention of Section 58 BNSS (Section 57 CrPC);

(ix) consequently, we set aside the impugned judgment and order of the High Court dated 29.04.2026 and direct that the appellants shall be produced before the jurisdictional Special Court within a maximum period of 7 days from today whereafter they shall be released on bail on such terms and conditions as may be deemed appropriate."

13. Coming back to the facts of the instant case, considering the infraction of Article 22(2) and keeping in mind the principles laid down as narrated above, despite the very serious nature of the alleged offences, the petitioners are required to be released on bail at this stage on the ground of infraction of Article 22(2) of the Constitution of India.

14. Accordingly, both the accused persons are allowed to go on bail of **Rs. 1,00,000/- (Rupees One Lakh)** each with two sureties of the like amount each to the satisfaction of the learned Trial Court. At least of the two sureties for each of the two accused persons has to be from the State

of Assam.

Further, the following bail conditions are imposed:

(i) The accused persons shall not abscond.

(ii) The accused persons shall not hamper or tamper with evidence.

(iii) The accused persons shall not in any manner intimidate or harass or threaten or try to influence any witnesses.

(iv) The accused persons shall not misuse their liberty to commit any illegal activities or offences, including any activities prohibited under the NDPS Act.

Violation of the bail conditions would entail cancellation of the bail.

15. Before parting, the following may be observed and stated.

Due to the failure of the concerned police official to produce the accused persons before the learned Remand Court within the period of 24 hours, they became eligible to get bail due to infraction of constitutional provisions and on such technical grounds. This was despite the fact that a huge quantity of heroin falling in the bracket of commercial quantity was allegedly seized from them and if such a huge quantity of heroin is injected into the market it can play havoc with the lives of people, especially the youth. Such procedural failures would weaken the concerted effort of the Government in fighting the menace of drugs.

16. Therefore, the learned Commissioner of Police, Guwahati may call for an explanation from the concerned police official regarding his failure to produce the accused persons before the learned Remand Court within the period of 24 hours calculated from the time of initial apprehension,

rather than the time of formal arrest.

17. It is also to be mentioned that in view of the latest judgment of the Hon'ble Apex Court in *Sujit Das (supra),* making it abundantly clear that this stipulation has to be followed meticulously, failing which the accused persons would be entitled to be released on bail, for infraction of Article 22(2) of the Constitution - it has become necessary for the police officials/investigating officials to be adequately trained on the subject so that the time stipulation can be followed despite the challenges of completing all the procedural formalities and producing the accused persons before the learned Remand Court within the stipulated period of 24 hours counted from the time of initial apprehension.

18. A copy of this order shall be forwarded to the learned Commissioner of Police, Guwahati for his kind information and the needful, if any.

19. The instant bail petition stands **allowed** and **disposed of** on the aforesaid terms.

JUDGE

Comparing Assistant