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

Case No. : Bail Appln./2801/2026

SAMIR UDDIN KHAN @ TARA KHAN
S/O LATE SIRAJUDDIN KHAN, R/O WARD NO. 10 BIDYAPARA, P.S. AND DIST- DHUBRI, ASSAM
VERSUS
THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. SURAJIT DAS, A MISHRA,MD A RAHMAN
Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE ANJAN MONI KALITA

20.11.2026

Heard Mr. S. Das, learned counsel appearing for the accused applicant and also heard Mr. K. K. Parasar, learned Addl. PP for the State of Assam.

2. This is an application under Section 483 of the BNSS, 2023 praying for granting bail to the accused applicant, namely, Samir Uddin Khan @ Tara Khan in connection with Dhubri P.S. Case No.300/2025 registered under Section 22 (c) of NDPS Act.

3. The prosecution story, in brief, is that an FIR was lodged before the

Officer-in-Charge, Dhubri Police Station on 01.07.2025 alleging that on receipt of secret information at around 12.31 AM on 01.07.2025 regarding one person, namely, Tara Khan @ Samiruddin Khan has kept and concealed Narcotics Substances in his house in Bidyapara, Dhubri, the Police reached the house of Tara Khan @ Samiruddin Khan. The person present there identified himself as Tara Khan and on search, the Police recovered 232 nos of Pyeevon Spas Plus Capsules and another 252 nos of Pyeevon Spas Plus Capsules weighing 311 gms in total.

4. On receipt of the FIR, the police registered Dhubri P.S. Case No. 300/2025 under the aforementioned Sections.

5. On completion of the investigation, the Police have filed the charge sheet, vide charge sheet No.353/2025 dated 28.09.2025 and accordingly, Special Case No. 228/2025 under Section 22 (c) of NDPS has been registered against the accused applicant and now the case is at the trial stage.

6. Mr. S. Das, learned counsel appearing for the accused applicant submits that the accused applicant has been arrested in violation of the mandates of Article 22 (2) of the Constitution of India as well as Section 58 of the BNSS, 2023. He submits that the accused applicant was apprehended at 12.40 AM in the intervening night of 30.06.2025 and 01.07.2025. The accused applicant was produced before the learned CJM, Dhubri only after 01.21 PM on 02.07.2025. He submits, therefore, due to the aforesaid violation of the settled law, the accused applicant has a indifeasable right to be released on bail. He submits that by keeping in police custody for more than 24 hours, the liberty of the accused applicant has been illegally curtailed and therefore, the arrest is illegal which is in

violation of Article 22 (2) of the Constitution of India and Section 58 of the BNSS, 2023.

7. In support of this submission, the learned counsel appearing for the accused applicant has referred to the case of ***Sujit Das & Ors***-vs-***Union of India***; reported in ***2026 Supreme (SC) 1332***.

8. Mr. K. K. Parasar, learned Addl. PP, on the other hand, opposes the bail prayer of the accused applicant by stating that huge quantity of narcotic substances was recovered from the conscious possession of the accused applicant and the trial has also begun in the instant case and therefore, the accused applicant should not granted bail, at this stage.

9. The TCR in the instant case has been received and the same is minutely perused.

10. This Court has considered the submissions advanced by the learned counsel appearing for the parties.

11. From the FIR, it is seen that the Police received the information at around 12.31 AM on 01.07.2025 and the police reached the house of the accused applicant at 12.40 AM on the same night. On perusal of the TCR, it is seen that the GD Entry No. 038 was recorded by the Police at around 12.31 AM on 01.07.2025 regarding their departure to the residence of the accused applicant. It is also seen that as per the seizure list, the police seized the narcotic substances at 12.31 AM on 01.07.2025. Though, it is seen that the accused applicant was shown arrested at around 04.30 AM on 01.07.2025 in his arrest memo, from the materials available, it is seen that the accused applicant was apprehended at around 01.00 AM on 01.07.2025. From the GD Entry No.008 dated 02.07.2025, it is seen that

the accused applicant was taken to the Court from the Police Station after 01.21 PM on 02.07.2025. From the above factual position, it is clear that the accused applicant was produced before the learned CJM, Dhubri only after 01.21 PM on 02.07.2025 which is beyond 24 hours as mandated by the Constitution of India as well as BNSS, 2023. Therefore, apparently the arrest is in violation of provisions as mandated under Article 22 (2) of the Constitution of India as well as Section 58 of BNSS, 2023.

12. In this connection, the relevant statutory provision regarding detention of an accused person by police, i.e., Section 58 of BNSS being relevant is quoted herein below: -

> "***58: No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not."***

13. It may also be relevant to consider Article 22(2) of the Constitution of India, which provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, and no such person shall be detained in custody beyond the said period without authority of a Magistrate.

14. In the case of ***Directorate of Enforcement*** Vs. ***Subhash Sharma***, reported in ***2025 SCC OnLine SC 240***, the Hon'ble Apex Court held that the arrest of the petitioner-accused was held to be vitiated as he

was detained at IGI Airport, Delhi on 05.03.2022 at 11:00 a.m., though formally arrested on 06.03.2022 at 1:15 a.m., and he was produced before the Court on 06.03.2022 at 3:00 p.m. Calculating the period of 24 hours from 11:00 a.m. on 05.03.2022, the production was held to be beyond 24 hours and therefore, the arrest and further detention vitiated. In this connection, paragraph numbers 6, 8, and 9 being relevant are extracted hereinbelow: -

> "***6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order (Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated".***
>
> "***8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the***

arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution".

"***9. Therefore, when arrest is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA."***

15. Similarly, in the case of ***State of Haryana and others*** v. ***Dinesh Kumar***, reported in ***(2008) 3 SCC 222***, the Hon'ble Supreme Court, under the similar facts, held that law relating to the concept of "arrest" or "custody" has been correctly stated in the case of ***Niranjan Singh*** vs. ***Prabhakar Rajaram Kharote***, reported in ***(1980) 2 SCC 559***. In the aforesaid case of ***Dinesh Kumar*** (supra), the Hon'ble Supreme Court referred to Paragraphs 7, 8, and the relevant portion of Paragraph 9 of the case of Niranjan Singh (supra), which are provided herein below: -

"***7. When is a person in custody, within the meaning of Section 439***

CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibbling and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose".

"*8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court".*

"*9. He can be in custody not merely when the police arrest him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions."*

16. From a reading of the aforesaid two cases of the Hon'ble Supreme Court, it is clear that once a person is taken under control by the police authorities, though the formal arrest memo was not issued to the arrested person, the action of the police authorities can be termed as the "arrest" of the accused person. Paragraph 7 of the case of Niranjan Singh (supra) has made the issue very clear in the following words: -

".....The equivocatory quibbling and hide-and-seek niceties sometimes heard in court that police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody, and other like terminological dubieties are unfair evasions of the straightforwardness of the law."

17. The Hon'ble Supreme Court in the recent case of ***Sujit Das*** (supra), has reiterated the settled position of law regarding Article 22(2) of the Constitution of India as well as Section 58 of BNSS, 2023, wherein the Hon'ble Supreme Court has held that the rights conferred by Article 21 of the Constitution of India are not only constitutional rights. These are fundamental rights. Right to life and liberty, as enshrined in Article 21, is the core of all constitutional jurisprudence. These fundamental rights cannot be tinkered with so lightly, even under special statutes. When there is a violation of Article 21 of Constitution, the rigor of Section 37 of NDPS Act or similar such provisions under the special statutes would have to

give way.

20. In the instant case, as it has already been discussed that the accused applicant was apprehended at 01.00 AM on 01.07.2025 and produced before the learned CJM, Dhubri only after 01.21 PM on 02.07.2025, which is beyond 24 hours as mandated under Article 22 (2) of the Constitution of India as well as Section 58 of the BNSS.

21. Taking into account the entire facts of the case as discussed above, it is evident that there is clear violation of Article 22(2) of the Constitution of India as well as Section 58 of BNSS in the instant case by not producing the accused applicant before the court of learned CJM, Dhubri within a period of 24 hours of his arrest. Consequently, this violation vitiates the whole process of arrest and the production of the accused-applicant. Accordingly, the further detention of the accused-applicant cannot be sustained due to the illegality in his arrest and production before the court of learned CJM, Dhubri which was beyond the time mandated by the aforesaid provisions.

22. Accordingly, in the facts and circumstances of the case and in view of the discussion made above, this court directs the accused-applicant, namely, ***Samir Uddin @ Tara Khan*** be released on bail on furnishing of a bail bond of Rs. 2,00,000/- (Two Lakhs) with a surety of like nature to the satisfaction of the learned Special Judge (NDPS), Dhubri, subject to the following conditions:

> ***(i) That the accused-applicant shall fully cooperate with the proceedings of the trial, and make himself available as and when required before the trial court;***
>
> ***(ii) That the accused-applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court, or police;***

(iii) That the accused-applicant shall not commit any illegal activities or offences, including any offence under the NDPS Act;

(iv)That the accused-applicant shall not leave the jurisdiction of the learned court of Special Judge (NDPS), Dhubri, without prior intimation and consent.

23. In the event of any violation of the bail conditions, the police/prosecution authorities shall be at liberty to file an application seeking cancellation of bail.

24. In terms of the aforesaid directions, the instant bail application stands disposed of.

JUDGE

Comparing Assistant