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

Case No. : Bail Appln./2949/2026

ABDUL HASIB ALIAS ABDUL HASIM
S/O SRI AZAD OJHA, R/O FCI ROAD, WARD NO 19, P S HOJAI, DISTRICT HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS, MS N SULTANA

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE ANJAN MONI KALITA

16.11.2026

Heard Ms. S. K. Nargis, learned counsel appearing for the accused applicant and 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 in connection with Azara P.S. Case No. 87/2026 under Section 20 (b) (ii) (c) of the NDPS Act.

3. The gist of the facts is that on 08.07.2026 at 10.00 AM at Azara Police Station on 05.07.2026, a complaint was lodged by one Nupur Bania to the effect that the Department of Post, India O/O-Inspector Post, GH-1 Sub Division, RMSGH Division LGBI AP TMO, Borjhar, thrugh Guwahati reference letter No.A-1/LGBI AP TMO/Misc/Corr, dated 05.07.2026 intimating about the detection of parcels suspected to contain prohibited narcotic substances (cannabis/ganja) during screening at AAICLAS LGBI Airport for transmission by air and to take over and requested to formally seize the detained parcels in accordance with the provisions of law and conduct necessary investigation. It is intimated that the informant's office has already handed over 111 (One Hundred Eleven) nos. of parcels weighing 663.684 KGs.

4. On the receipt of the FIR, the Police registered Azara P.S. Case No. 87/2026 under the aforementioned sections.

5. The learned counsel appearing for the accused applicant submits that the accused applicant was detained by the Hojai Police on 06.07.2026 in connection with the instant case and thereafter, he was brought to the Azara Police Station on 07.07.2026 and he was formally shown to have been arrested on 08.07.2026 at around 10.00 AM and thereafter, he was produced before the learned Special Judge, NDPS, Kamrup (M), Guwahati on 08.07.2026. She submits that the learned Special Judge, NDPS, Kamrup (M), Guwahati remanded the accused applicant for 3 days police remand and thereafter, he was sent to judicial custody and since then he is in the judicial custody. She submits that though the accused applicant was

arrested on 06.07.2026 in the midnight at around 01.39 AM, but he was produced only on 08.07.2026 before the learned Special Judge, NDPS, Kamrup (M), Guwahati and therefore, there is a clear violation of Article 22 (2) of the Constitution of India as well as Section 58 of the BNSS, 2023. She submits that the settled law by the Hon'ble Supreme Court, is that a person arrested by the Police has to be produced before the concerned Judicial Magistrate before 24 hours of his/her arrest and in the instant case, the same has not been done and the accused applicant was produced after 24 hours. Therefore, the whole process of arrest becomes illegal and his continued detention in judicial custody is not permissible under the law. In view of the above, she submits that the accused applicant should be granted bail on that ground alone.

6. Mr. K. K. Parasar, learned Addl. PP, on the other hand, opposes the bail prayer of the accused applicant stating that the involvement of the accused applicant in the instant case of transportation of narcotics is apparent from the materials available in the Case Diary and therefore, the accused applicant should not be granted bail, at this stage.

7. The TCR in the instant case along with the GD Entries made by the Investigating Authority are produced before this Court and the same are perused by this Court.

8. This Court has also considered the submissions made by the learned counsel appearing for the respective parties.

9. From the relevant materials, it is seen that Hojai Police Station made a GD Entry i.e. 008 dated 06.07.2026 at 12.34 hours about the receipt of the information from the DCP, West Guwahati regarding tracing of a parcel sent by an unidentified person at Hojai Head Post Office on 19.06.2026. Thereafter, another GD Entry i.e. 010 dated 06.07.2026 was made at 14.31 hours, wherein, the police made enquiry and the CCTV footage is collected along with the consignment slips. The GD Entry i.e. 030 at 23.26 hours dated 06.07.2026 was made for further enquiry in the matter and subsequently, GD Entry i.e. 034 at 01.39 hours dated 07.07.2026 was made, wherein, it was mentioned that some other accused persons along with the accused applicant were apprehended by the Hojai Police and the information of their apprehension had been communicated to the office of the DCP West, Guwahati through the proper channel. It is seen from the record that GD Entry i.e. 013 was made, wherein, it has been mentioned that the Police Personnel from Azara Police Station arrived at Hojai Police Station for interrogation of the accused person along with the accused applicant.

10. From the above entries, it is clear that the accused applicant was apprehended at 01.39 hours on 07.07.2026 (intervening night of 06.07.2026 and 07.07.2026).

11. From the TCR, it is seen that the accused applicant was produced before the learned Special Judge, NDPS, Kamrup, (M) only on 08.07.2026, which is clearly beyond 24 hours of the apprehension of the accused applicant. If we take travelling time to Hojai to the Court of learned Special

Judge, NDPS, Kamrup, (M), Guwahati, which could be within 5-6 hours, then also, the accused applicant was produced beyond 24 hours of his apprehension. It is settled that time starts running from the time the accused person is apprehended by the Police and only necessary time required for travelling from the place of apprehension to the nearest Magistrate Court can be excluded from 24 hours time mandated under Article 22 (2) of the Constitution of India as well as Section 58 of the BNSS.

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 herein below: -

> ***"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 4 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***-vs-***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 interrogation but not taken him into formal custody, and other like terminological dubieties are unfair evasions of the straightforwardness of the law".***

17. In the instant case, as it has been already discussed that the accused applicant as produced before the learned SDJM No.1, Kamrup (M), Guwhati only on 08.07.2026 while he was arrested in the intervening night of 06.07.2026 and 07.07.2026 at 01.39 AM, which is clearly beyond 24 hours as mandated under Article 22 (2) of the Constitution of India and Section 58 of the BNSS, 2023.

18. 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 in the instant case by not producing the accused-applicant before the learned SDJM No. 1, Kamrup (M), within a period of 24 hours of his arrest. Consequently, this violation vitiates the process of arrest and the production of the accused-applicant. Accordingly, the further detention of the accused-applicant cannot be sustained due to illegality in his arrest and production before the learned SDJM No. 1, Kamrup (M), Guwahati beyond the time mandated by Article 22 of the Constitution of India. Accordingly, in the facts and circumstances of the case, and in view of the above discussion, this court directs that the accused-applicant, namely, ***Abdul Hasib @ Abdul Hasim*** shall be released on bail on furnishing a bail bond of Rs. ***50,000***/- (Fifty Thousand) with a surety of like nature to the satisfaction of the learned Special Judge (NDPS), Kamrup (M), 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.

19. 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.

20. In terms of the aforesaid directions, the instant bail application stands disposed of, as allowed.

21. TCR to be returned.

JUDGE

Comparing Assistant