GAHC010210732026

2026:GAU-AS:16536

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

Case No. : Bail Appln./2982/2026

HABIJUL HOQUE @ HABIJUR HOQUE
S/O LT. ABDUL JALIL, R/O VILLAGE BORDUBA TOOP, P.O. BHURAGAON,
P.S. BHURAGAON, DISTRICT- MORIGAON, ASSAM, PIN- 782121

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. KHAIRUL ISLAM, IMDADUL ISLAM,A S KHAN,M W AHMED,J S AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 11.11.2026

Heard Mr. J.S. Ahmed, learned counsel, appearing on behalf of the accused-applicant. Also heard Mr. B. Sarma, learned Addl. P.P., representing the State respondent.

2. This is an application filed under Section 483 of BNSS, 2023, praying for

release of the accused-applicant on bail in connection with Laharighat P.S. Case No. 133/2025, registered under Sections 20(b)(ii)(B) of NDPS Act, 1985.

3. The gist of the prosecution case is that WSI Rumi Doley lodged an FIR on 29.08.2026, alleging that reliable information was received at Lahorighat Police Station that one person was involved in the illegal possession of suspected narcotic substances at Tinsukia Bazar. Accordingly, police proceeded to the place of occurrence and apprehended one person, namely, Habijur Haque, who was riding a red-colored scooty bearing Registration No. AS-21-M-4700. During the course of the search, greenish-dried plant-like substance, suspected to be *ganja*, was recovered from the scooty of the accused person. The gross weight of the suspected *ganja* was found to be 3.104 kg, including the polythene.

4. On receipt of the FIR, police registered Lahorighat Police Station Case No. 133 of 2026, under the aforementioned sections.

5. The learned counsel appearing for the accused-applicant submits that though the accused-applicant was arrested at around 7:45 AM on 29.08.2026, he was produced before the concerned Judicial Magistrate only on 30.08.2026, and therefore, there is a violation of Article 22(2) of the Constitution of India as well as Section 58 of BNSS, 2023. He submits that the alleged *ganja* recovered, was of intermediate quantity. He submits that since the arrest of the accused-applicant is illegal as he has been detained by the police for more than 24 hours before he was produced before the concerned Judicial Magistrate, on that ground alone, the accused-applicant should be granted bail.

6. TCR in the instant case has been received.

7. On the other hand, Mr. B. Sharma, learned Addl. PP, has submitted that the accused-applicant has been produced before the learned Judicial Magistrate First Class, Morigaon, within the mandated time of 24 hours, as the GD entry in the

instant case shows that the accused-applicant was apprehended only at around 11:20 AM. Therefore, he opposes the prayer for bail.

8. From the materials available in the TCR, it is seen that the FIR was lodged on 29.08.2026, wherein there was a mention that the information about the illegal activity of carrying narcotic substances was received by police at 7:40 AM. Thereafter, the police team proceeded to the place of occurrence. It is seen that GD Entry No. 020, dated 29.08.2026, was entered by the police at about 7:40 AM. GD Entry No. 003, dated 29.08.2026, entered at 10:20 AM, reveals that WSI Rumi Doley along with UBC Deepmoni Das and other staffs arrived at the police station at 10:20 AM after apprehending the accused person as well as seizure of the alleged *ganja*. It is also seen from the godown memo that the seized substance was deposited in the godown at 8:40 AM on 29.08.2026. From the above particulars mentioned in the documents, it is clear that the accused-applicant was apprehended, and the seizure list prepared by the police also mentions the date and time of seizure as 29.08.2026 at 8:40 AM to 9:00 AM, respectively. From the above particulars, it is discernible that the accused-applicant was arrested prior to 9:00 AM on 29.08.2026.

9. From the records, it is seen that case records regarding Lahorighat P.S. Case No. 133 of 2026 were received by the Judicial Magistrate First Class, Morigaon, Assam, at 3:00 PM on 30.08.2026. Thereafter, the learned Judicial Magistrate First Class, Morigaon, passed the order dated 30.08.2026 by remanding the accused-applicant to judicial custody till 11.09.2026. Therefore, it is apparent that the accused-applicant was produced before the concerned Judicial Magistrate only after 3:00 PM on 30.08.2026, which is beyond 24 hours as mandated under Article 22(2) of the Constitution of India and also under Section 58 of BNSS, 2023.

10. From the above, it is seen that though the accused-applicant was detained and arrested by police before 9:00 AM on 29.08.2026, the accused-applicant was

produced before the learned JMFC, Morigaon, only after 3:00 PM on 30.08.2026, which is beyond 24 hours of his detention/arrest by the police. 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."

11. 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.

12. 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 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."

13. 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."

14. 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."

15. Coming back to the facts of the case, it is seen from the records that while producing the accused-applicant before the learned JMFC, Morigaon, there is a clear violation of the mandate of 24 hours as discussed above.

16. 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 in the instant case by not producing the accused-applicant before the learned JMFC,

Morigaon, 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 JMFC, Morigaon beyond the time mandated by Article 22(2) of the Constitution.

17. Accordingly, in the facts and circumstances of the case, and in view of the above discussion, this court directs that the accused-applicant shall be released on bail on furnishing a bail bond of Rs. 1,00,000/- (One Lakh) with a surety of like nature to the satisfaction of the learned JMFC, Morigaon, subject to the following conditions:

(1) 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;

(2) 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;

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

(4) That the accused-applicant shall not leave the jurisdiction of the learned court of JMFC, Morigaon, without prior permission.

18. 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.

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

JUDGE

Miriam Degu
(SPA)