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2026:GAU-AS:16252

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

**Case No. : Bail Appln./3017/2026**

MOSLEM UDDIN AND ANR
SON OF ABDUL GONI SK, RESIDENT OF VILLAGEDHENARKHUTI, POLICE STATION- SOUTH SALMARA, DISTRICT- SOUTH SALMARA MANKACHAR, ASSAM.

2: ROBIAL HOQUE
SON OF SONAB ALI
RESIDENT OF VILLAGEDHENARKHUTI
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner** : MR. M AHMED, MR A HAI

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**
**HON'BLE MRS. JUSTICE MITALI THAKURIA**

O R D E R

Date : 05.11.2026.

Heard Mr. M. Ahmed, learned counsel for the petitioners. Also heard Ms.

S.H. Bora, learned Addl. P.P., Assam appearing for the State respondent.

2. This is an application filed under Section 483 of BNSS, 2023, praying for grant of bail to the accused/petitioners, namely, (1) Moslem Uddin and (2) Robial Hoque, in connection with the Special (N) Case No. 49/2025, arising out of South Salmara P. S. Case No. 12/2025, registered under Sections 22(C)/29 of NDPS Act, which is pending before the Court of learned Special Judge, South Salmara Mankachar.

3. The scanned copy of the Trial Court Record along with the Case Diary has already been received and perused the same.

4. It is submitted by Mr. M. Ahmed, learned counsel for the petitioners that initially one anticipatory bail application was moved before this Court vide A.B. No.317/2026, seeking pre-arrest bail which was rejected on 25.08.2026, directing both the petitioners to appear before the Court of learned Special Judge, South Salmara Mankachar within 15 days from the date of order and as an interim, it was directed that no coercive action shall be taken against them. As per direction given by this Court, both the petitioners surrendered before the learned Trial Court on 08.09.2026 and since then, they are in custody.

5. Mr. Ahmed, the learned counsel for the accused petitioners basically stressed on the following points in his argument:

*(i) The charge sheet was filed only on the basis of the statement made by the co-accused.*

*(ii) There is no recovery of contraband from the conscious possession of*

*the accused petitioners.*

*(iii) There is no allegation brought in the charge sheet and there is no material as to what role attributed by the accused petitioners for which they were charge sheeted in the present case.*

6. It is submitted by Mr. Ahmed, the learned counsel for the accused petitioners that during the *naka checking*, as per the FIR, one person, namely, Abu Bakkar Siddique was apprehended by the police and it is stated that out of four persons, coming on two motor cycles, three fled away and subsequently, one more accused got arrested in connection with the case and on interrogation, the arrested accused persons had revealed the name of the present two accused petitioners stating that they have also accompanied the arrested co-accused. From the FIR itself, it is seen that except the statement made by the co-accused that his friends also accompanied him and on the basis of which the name of the present accused petitioners were also reflected in the FIR as the accused Nos. 3 & 4. The learned counsel further submitted that from the statement made in the charge sheet also it is seen that there is no mention as to what role was attributed by these two accused petitioners to file charge sheet against them, except the statement of the co-accused that these two petitioners have also accompanied the arrested co-accused on the day of *naka checking*. He further submitted that these accused petitioners are innocent and nothing has been recovered from their possession even during investigation on the basis of statement made by the arrested co-accused. Further, these accused petitioners are law abiding citizens and after rejection of their anticipatory bail prayer, they surrendered before the learned Special Judge, complying the order of this Court and since then, they are in custody. The accused petitioners are

permanent resident of the addressed locality and will appear before the learned Trial Court on each and every date, to be fixed by the learned Court below.

7. To substantiate his plea, Mr. Ahmed, the learned counsel for the accused petitioners relied on the following decisions of the Hon'ble Apex Court as well as co-ordinate Bench of this Court which are:

*(1) P. Krishna Mohan Reddy -Vs- State of Andhra Pradesh, reported in 2025 SCC Online SC 1157.*

*(2) Bail Application No. 1080/2026 ( Papu Das & anr -Vs- The State of Assam).*

*(3) Bail Application No. 1102/2025 (Abul Kalam Azad -Vs- The State of Assam).*

*(4) Bail Application No. 1872/2026 (Resim Ali @ Tutu Ali -Vs- The State of Assam)*

*(5) A.B. No. 748/2026 (Md. Ainudin Alias Ayu Uddin -Vs- Narcotics Control Bureau)*

*(6) Bail Application No. 3585/2025 (Shamim Ahmed Tapadar -Vs- The State of Assam).*

*(7) Bail Application No. 1721/2026 (Somir Uddin -Vs- The State of Assam).*

*(8) Bail Application No. 3398/2025 (Md. Rekib Ali -Vs- The State of Assam).*

*(9) 2024 Live Law (Sc) 337 (Sharif Ahmed & Anr -Vs- State of Uttar Pradesh).*

8. It is submitted by Mr. Ahmed, the learned counsel for the accused petitioners that in case of *P. Krishna Mohan Reddy (Supra),* the Hon'ble Apex Court had observed in para 53(iv) of the judgment that the confessional statement of an accused will be admissible if it is not hit by Section 24 or 25 respectively and the statement of the accused before the police in the form of

confession is inadmissible and no reliance, what so ever can be placed on such statement, either at the stage of bail or during trial. Para 53(iv) of the said judgment reads as under:

> "*53. (Iv) Where such police statement of an accused is confessional statement, the rigour of Section(s) 25 and 26 respectively will apply with all its vigour. A confessional statement of an accused will only be admissible if it is not hit by Section(s) 24 or 25 respectively and is in tune with the provisions of Section(s) 26, 28 and 29 of the Evidence Act respectively. In other words, a police statement of an accused which is in the form of a confession is per se inadmissible and no reliance whatsoever can be placed on such statements either at the stage of bail or during trial. Since such confessional statements are rendered inadmissible by virtue of Section 25 of the Evidence Act, the provision of Section 30 would be of no avail, and no reliance can be placed on such confessional statement of an accused to implicate another co-accused".*

9. Mr. Ahmed, the learned counsel further relying on the decisions of *P. Krishna Mohan Reddy (Supra),* the coordinate Bench of this Court in *Bail Application No.1080/2026 (Papu Das & anr. Vs. State of Assam)* has also granted bail considering that the arrest on the basis of the statement made by the co-accused deserves bail and not to be detained in custody wherein there is no recovery from the conscious possession of the arrested accused. Same principle has been adopted by the coordinate Bench of this Court, while passed the order in *Bail Application No.1102/2025 (Resim Ali @ Tutu Ali vs. State of Assam)* dated 28.07.2025 and bail was granted considering the judgment of the Hon'ble Apex Court in the case of *Toofan Singh vs. State of Tamil Nadu* reported in *(2011) 4 SCC 1,* that the statement of the co-accused cannot be used as an evidence in trial involving offence under the NDPS Act. The other coordinate Bench of this Court also granted bail considering the observations made by the Apex Court in the case of *Toofan Sing (Supra)* as well as in *P. Krishna Mohan Reddy (Supra)* as discussed above.

10. Mr. Ahmed, the learned counsel for the accused petitioners further

submitted that in the case of *Sharif Ahmed and another (Supra),* it is specifically held by the Apex Court in para 22 to 31 that it is the duty of the investigating officer to complete all the entries and columns in the charge sheet and to specify as to what offence was committed by the accused and the material available against the said accused person. The para 24, 26 and 31 of the said judgment read as under:

> "*24. It is the police report which would enable the Magistrate to decide a course of action from the options available to him. The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence. It is on the basis of this record that the court can take effective cognizance of the offence and proceed to issue process in terms of Section 190(1)(b) and Section 204 of the Code. In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other options which are available to him.*
>
> *26. The object and purpose of the police investigation is many fold. It includes the need to ensure transparent and free investigation to ascertain the facts, examine whether or not an offence is committed, identify the offender if an offence is committed, and to lay before the court the evidence which has been collected, the truth and correctness of which is thereupon decided by the court.*
>
> *31. Therefore, the investigating officer must make clear and complete entries of all columns in the charge sheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. Statements under Section 161 of the Code and related documents have to be enclosed with the list of witnesses. The role played by the accused in the crime should be separately and clearly mentioned in the charge sheet, for each of the accused persons."*

11. Citing the above referred judgment, it is submitted by Mr. Ahmed, the learned counsel for the accused petitioners that from the plain reading of the charge sheet also, it is seen that the police could not collect any material against the present accused petitioners to show the offence committed by them and the role attributed by them except the statement of the co-accused that the present accused petitioners also accompanied him on the day of *naka checking.* Apart from that there is no recovery from the conscious possession of the accused petitioners, even after the end of the investigation, till the filing of the charge sheet. So, considering all these aspects of the case, it is prayed that the

accused petitioners may be allowed to go on bail on any stringent conditions and they are ready to abide by all conditions which may be imposed upon them and to furnish the necessary surety before the learned Special Judge.

12. Ms. S.H. Bora, the learned Addl. Public Prosecutor, Assam raised objection and submitted that these two accused petitioners are also the FIR named accused and from the FIR itself, it is seen that these two petitioners also accompanied the arrested accused, namely, Abu Bakkar Siddique on the day of *naka checking* and they could not be apprehended as they fled away from the place of incident and subsequently after filing of the charge sheet only, they have surrendered before the learned Trial Court. The learned Addl. P.P., Assam further submitted that it is the settled law that conviction cannot be based on the statement made by the co-accused or the statement made by the co-accused is also not admissible in the trial. But the police to investigate the case basing on the statement of the co-accused, as at the relevant point of time there may not be available any evidence before the investigating officer. But here in the instant case, it is seen that there are sufficient evidence collected by the investigating officer during the course of investigation, on the basis of which the charge sheet has been laid. She further submitted that it is an organized crime and the case is involved commercial quantity of contraband and hence, the rigors of Section 37 of the NDPS Act will follow. But from the materials in the case diary, it is seen that there is no reason to believe that these two accused petitioners are innocent and will not commit such nature of offence, if they are released on bail. Ms. Bora, the learned Addl. P.P., Assam accordingly raised vehement objection and submitted that it is not at all a fit case to grant bail to the accused petitioners at this stage.

13. Mr. Ahmed, the learned counsel for the accused petitioners, replying to the extent that the probability of identifying the present petitioners by the independent witnesses cannot be expected as it is the case of the prosecution that by taking advantage of fog and darkness, the other accused persons fled away and the police was only able to apprehend the co-accused Abu Bakkar Siddique.

14. Hearing the argument of both sides, I have also perused the case record and the scanned copy of the TCR, received from the learned Trial Court below.

15. After hearing the submission made by the learned counsel for the parties and perusal of the record, it is found that no recovery was made from the conscious possession of the accused petitioners during the investigation and even at the time of filing the charge sheet. In the same time, it is also an admitted position that the name of the present two petitioners are reflected in the FIR only on the basis of the statement made by the co-accused, who was apprehended by the police on the day of *naka checking.* Further, it is the case of the prosecution that three numbers of co-accused also accompanied the apprehended Abu Bakkar Siddique but taking advantage of fog and darkness, fled away from the place of incident and subsequently, one more accused was arrested during the investigation. But the present two accused petitioners could not be arrested at the time of investigation.

16. After filing of the charge sheet, the present accused petitioners preferred an anticipatory bail application before this Court seeking bail but that was rejected with direction to them to surrender before the learned Special Judge. However, some interim protection was provided to both the accused petitioners.

17. It reveals from the record that complying the order of this Court, both the accused petitioners had surrendered before the Court of learned Special Judge on 08.09.2026 and since then they are in custody.

18. The main contention of the petitioner is that they are not at all involved in the alleged crime, though their names have been reflected in the FIR as well as in the charge sheet, only on the basis of statement made by the co-accused at the time of his apprehension.

19. Admittedly from the statement made in the FIR, it is seen that their names are reflected on the basis of statement made by the co-accused and that apart, there is no mention about the offence committed by these two accused petitioners as to how they are involved or what role was attributed by the accused petitioners. There is no reflection to that regard in the investigation. However, one statement is made by the police that during investigation, sufficient materials were found against the present accused petitioners on the basis of which the charge sheet was filed against them.

20. It is the allegation of the prosecution that these two accused petitioners were also carrying contraband at the relevant time of *naka checking* though the investigating team was able to apprehend only one of the co-accused. But on perusal of the case diary and the statement made by the co-accused, it is seen that except the statement that these two accused petitioner were accompanying the other co-accused, nothing specific mention is there, even in the statement of the co-accused as to whether they were also drug peddlers or were carrying the contraband at the relevant time of incident. Further, it is seen that the independent witnesses also could not identify the other co-accused as they fled away from the place of incident, taking advantage of darkness and fog.

21. Admittedly the case is of commercial quantity, wherein it is alleged that the present accused petitioners along with the co-accused were carrying huge quantity of contraband and thus, the rigor of Section 37 of the NDPS Act will also be attracted in the present case. But considering the overall circumstances of this case, it is seen that the police could not collect any other specific evidence against the present accused petitioners during investigation or before filing the charge sheet against them. However, it cannot be stated at this stage that the present accused petitioners are innocent or they are not involved in the present case. But considering the *prima facie* case and the materials available in the charge sheet, it cannot be denied that the entire case is based on the statement of the co-accused and till date, there is no mention about the role attributed by the present accused petitioners, which may come out during the trial of the case.

22. Considering the above circumstances of the case and also considering the view expressed by the Hon'ble Apex Court in the case of *Toofan Sing (Supra)* as well as in *P. Krishna Mohan Reddy (Supra)* vis-à-vis the observation made in the case of *Sharif Ahmed and another (Supra),* it is the opinion of this Court that the present accused petitioners are entitled to bail. Further, it is seen that both the petitioners have surrendered before the learned Trial Court, complying the order of this Court passed in A.B. No.317/2026, date 25.08.2026 and considering this aspect also, it is found that the petitioners are entitled to bail.

23. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only with 2 (two) sureties of like amount, for each, to the satisfaction of the learned Special Judge, South Salmara Mankachar, the

present two accused petitioners, namely, (1) Moslem Uddin and (2) Robial Hoque be enlarged on bail, subject to the following conditions:

(i) That the petitioners will not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;

(ii) That the petitioners will not leave the jurisdiction of the learned Special Judge, South Salmara Mankachar, without prior permission; and

(iii) that the petitioners will submit their Aadhar Card and PAN Card before the learned Special Judge, South Salmara Mankachar.

24. In terms of above, this bail application stands allowed and disposed of.

JUDGE

**Comparing Assistant**