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2026:GAU-AS:16186

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

Case No. : Bail Appln./3086/2026

ROHIM UDDIN LASKAR ALIAS RAHIM UDDIN LASKAR
SON OF MUSLIM UDDIN LASKAR, VILLAGE AND P O GANGANAGAR PART III, P S KACHUDARAM, DISTRICT CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. SAYED SALIM AHMED,S NAZNIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : ***04.11.2026***

Heard Mr. HRA Choudhury, learned Senior Counsel assisted by Mr. S. S. Ahmed, learned counsel for the accused applicant. Also heard Mr. K. K. Parasar, learned Addl. Public Prosecutor for the State of Assam.

2. This is an application filed under Section 483 of the Bharatiya Nagarik

Suraksha Sanhita (BNSS), 2023, praying for grant of bail to the accused applicant in connection with Special (NDPS) Case No.77/2025, arising out of Bazarichera P.S. Case No. 31/2026, registered under Sections 22(c)/25 of NDPS Act, 1985.

3. The brief fact of the case is that the informant, one SI Niranjan Das lodged an FIR dated 02.06.2026 before the Officer-in-Charge, Churaibari Police Station, alleging, *inter alia* that on 01.06.2026, as part of routine checking, a NAKA checkpoint was set up at Churaibari Watch Post on National Highway No. 08. During the course of NAKA checking, one six-wheeler container-body truck bearing registration No. AS-01-NC-5624, belonging to Aradhya Transport Agency, which was coming from the Lowairpowa side and proceeding towards Tripura, being driven by the accused person, was intercepted. The vehicle was loaded with online parcels, including a consignment belonging to Rivigo Transport. Upon searching the vehicle, the police found five (05) cartons concealed beneath the other goods, each containing 300 bottles, totalling 1,500 bottles of suspected Codeine Phosphate and Chlorpheniramine Maleate Syrup, namely, Eskuf Cough Syrup. The said bottles were accordingly recovered and seized, and the accused person was apprehended by the police.

4. On receipt of the FIR, the police registered Bajarichara P.S. Case No. 31/2026 under the aforementioned sections.

5. The accused applicant was arrested on 01.06.2026 and has remained in judicial custody for the last 157 days.

6. Mr. Choudhury learned Senior Counsel appearing for the accused

applicant, submits that the accused applicant was merely the driver of the vehicle and had no knowledge whatsoever about the illegal consignment loaded in the vehicle. He submits that, in fact, the consignment had been loaded at Boragaon, Guwahati, and that the accused applicant was unaware of the contents of said containers.

7. The learned Senior Counsel further refers to the forwarding report submitted by the police, annexed as Annexure-2 to the bail application, wherein the following grounds of arrest have been mentioned:

> "*…..5. That during preliminary interrogation, the accused could not satisfactorily explain the source, ownership, and lawful transportation of the seized contraband.*
>
> *6. That there are reasonable grounds to believe that the accused was knowingly involved in the illegal possession and transportation of the seized narcotic substance and has committed offences punishable under the relevant provisions of the NDPS Act.*
>
> *7. That custodial interrogation of the accused is necessary to ascertain the source of procurement, ownership of the contraband, intended destination, financial transactions involved, and the identity of other persons connected with the illegal trafficking network….*"

8. The learned Senior Counsel also refers to the grounds for seeking police remand, wherein, at serial No. 2, it has been stated that "*that the accused has disclosed during preliminary interrogation that the consignment was loaded at Boragaon, Guwahati, through a transport agency. His custodial interrogation is*

necessary to identify and apprehend the consignor, transporter, financier, supplier, receiver and other persons involved in the illegal trafficking network."

9. Referring to the aforesaid paragraphs, the learned Senior Counsel submits that the police had sought custodial interrogation of the accused applicant primarily to ascertain the identity of the actual culprits involved in the alleged offence, particularly the consignor and consignee aforesaid contraband substances that have been recovered by the police. The learned Senior Counsel further submits that the charge-sheet in the instant case has already been filed vide Charge-Sheet No. 54/2026 dated 31.07.2026, wherein the accused applicant has been solely charged and no conclusive allegations as such have been alleged against him in the Charge-sheet. He submits that the charge-sheet primarily contains the details of the investigation and the procedural steps undertaken by the police in connection with the arrest of the accused applicant and the seizure of the contraband substances. The learned Senior Counsel also submits that the vehicle involved in the instant case has already been released. He contends that, in the absence of conscious possession of the contraband substances by the accused applicant, the statutory presumption under Section 54 of the NDPS Act would not be attracted in the instant case.

10. He further submits that the rigours of Section 37(1)(b)(ii) of the NDPS Act would not be attracted in the instant case, as the contraband substances were not recovered from the conscious possession of the accused applicant. With regard to the concept of conscious possession, the learned Senior Counsel refers to the decision of the Hon'ble Supreme Court in ***Madan Lal & Anr. v. State of Himachal Pradesh*****,** reported in ***(2003) 7 SCC 465***, wherein the Hon'ble Supreme Court observed that unless possession is coupled with the

requisite mental element, i.e., conscious possession, mere custody without awareness of the nature of such possession would not attract the relevant provisions of the NDPS Act. In view of the aforesaid submissions, the learned Senior Counsel contends that further detention of the accused applicant in custody is not warranted, particularly when he has already spent more than five months in judicial custody, and, accordingly, prays for his release on bail.

11. On the other hand, Mr. Parasar, learned Additional Public Prosecutor opposes the prayer for bail, contending that a huge quantity of narcotic substances has been recovered from the vehicle driven by the accused applicant, which falls within the category of commercial quantity under the NDPS Act. Therefore, in view of the restrictions imposed under Section 37 of the NDPS Act, the accused applicant ought not to be enlarged on bail at this stage, particularly when the trial has already commenced and the matter is still pending consideration before the learned Trial Court.

12. The Trial Court Records (TCR) in the instant case has been received and the same is perused. This Court has carefully perused the materials available in the TCR and has also taken into consideration the materials available in the FIR, seizure list, forwarding report as well as the charge-sheet filed in the instant case.

13. This Court has also considered the decision of the Hon'ble Supreme Court in ***Madan Lal*** *(supra)*. In the said decision, the Hon'ble Supreme Court, in paragraphs 22 and 23, observed as follows:

"22. The expression 'possession' is a polymorphous term which assumes

different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors., to work out a completely logical and precise definition of 'possession' uniformly applicable to all situations in the context of all statutes.

23. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended."

14. Taking into consideration the aforesaid observations of the Hon'ble Supreme Court and the factual matrix of the instant case, this Court is of the *prima facie* opinion that the conscious possession of the contraband substances allegedly recovered from the truck driven by the accused applicant appears to be doubtful, as the same were recovered from the vehicle driven by him and not directly from the person of the accused applicant. Accordingly, this Court is of the *prima facie* view that the rigours of Section 37(1)(b)(ii) of the NDPS Act may not be attracted in the facts and circumstances of the instant case.

15. Taking into consideration the aforesaid facts and circumstances of the case, this Court is of the considered opinion that, since the accused applicant has already spent five months in judicial custody, he should be released on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty Thousand) only, with two local sureties of like nature to the satisfaction of the learned Sessions Judge, Sribhumi, subject to the following conditions:

(i) that the accused applicant shall appear before the learned Trial Court as and when required and shall cooperate with the conduct of the trial;

(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 such person from disclosing such facts to the Court or to any police officer, nor shall he tamper with the evidence in any manner, whatsoever; and

(iii) that the accused applicant shall not commit any offence of similar nature or indulge in any criminal activity during the period of bail.

16. In the event of any breach of the bail conditions, the prosecution shall be at liberty to approach the appropriate Court for cancellation of bail.

17. With the aforesaid directions, the instant bail application stands disposed of, as allowed.

JUDGE

Comparing Assistant