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

Case No. : Bail Appln./3061/2026

SHRI KAMBOITHANG MANGTE
S/O LATE LENSAT MANGTE, R/O KULBUNG, PO KULBUNG, PS AND DIST CHURACHANDPUR, STATE MANIPUR, PIN 795128

VERSUS

UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, DRI

Advocate for the Petitioner : MR D MEDHI, MR. G DUTTA,MR. S SARKAR

Advocate for the Respondent : SC, DRI,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 19.11.2026

Heard Mr. D. Medhi, learned counsel, appearing on behalf of the accused-applicant. Also heard Ms. P. Chakraborty, learned Standing Counsel, DRI.

2. This is an application filed under Section 483 of BNSS, 2023, praying for release of the accused-applicant on bail in connection with NDPS Case No.

143/2025, registered under Sections 8(c)/21(c)/22(c)/23(c)/25/29 of NDPS Act, 1985.

3. DRI has filed DRI Case No. 19/CL/NDPS/Heroin/DRI/GZU/ 2024-25 dated 12.12.2024 before the court of learned CJM, Kamrup (M), Guwahati, alleging, inter alia, that in the morning of 12.12.2024, a specific information was received by the DRI officers to the effect that a blue coloured Maruti-Suzuki Zen car bearing Registration No. WB-02-S-3308 with two persons, both hailing from Manipur, was carrying substantial quantity of narcotic drugs and the aforesaid car was travelling from Nagaon side towards Guwahati. After complying with the due procedure, it is alleged that the vehicle was intercepted at around 14:00 hours on 12.12.2024. On search, the officers recovered 870.420 grams of Heroin, which is categorized as commercial quantity under the NDPS Act, 1985.

4. On the basis of the aforesaid DRI case, NDPS Case No. 143/2025 was registered against the accused-applicant and the co-accused.

5. The trial in the instant case has started and two (2) PWs have been examined till date.

6. The respondent DRI has filed an objection to the instant bail application.

7. In their objection, the respondent DRI has mainly stated that the accused-applicant along with the co-accused was caught red-handed along with the narcotics, which is of commercial quantity, valued more than Rs. 6 crores. It is contended that since there was no violation of any procedure as laid down under the law while arresting the accused-applicant and the co-accused and the trial is going on in the instant case, the accused-applicant should not be released on bail at this stage.

8. The learned counsel for the accused-applicant submits that the vehicle of the accused-applicant wherein the accused-applicant and his co-passenger were

travelling was intercepted by police on 5:30 hours in the morning on 12.12.2026. He submits that as per the Panchnama prepared by the prosecution, it can be clearly seen that at around 5:30 hours, the DRI officers intercepted the vehicle near Khanapara flyover and thereafter, the accused-applicant along with the co-accused were apprehended by the police. He submits that at around 14:00 hours, on the same day, the DRI officers seem to have completed the search and seizure. He submits that as per the records, the accused-applicant and the co-accused were medically examined in Dhirenpara FRU, an annexee of GMCH, at 12:32 PM on 13.12.2024. He submits that the accused-applicant and the co-accused were produced before the court of learned CJM, Kamrup (M), Guwahati on 13.12.2024 and on the same day, the accused-applicant and the co-accused were remanded to judicial custody. The learned counsel submits that since the accused-applicant and the co-accused were apprehended on 5:30 hours in the morning of 12.12.2024 and they were produced only after 12:32 hours on 13.12.2024 before the learned CJM, Kamrup (M), which is beyond 24 hours of their arrest, is clearly in violation of Article 22(2) of the Constitution as well as Section 58 of the BNSS, 2023. He submits that since there is a violation of Article 22(2) whereby, the liberty of the accused-applicant has been wrongfully curtailed and the arrest was also in violation of the statutory provision of Section 58 of BNSS, it is a settled law that such violation gives the accused-applicant an indefeasible right to be enlarged on bail. Accordingly, he prays for bail of the accused-applicant. To support his argument, the learned counsel for the accused-applicant has referred to the case of **Sujit Das & Ors., Vs Union of India**, reported in **2026 Supreme (SC) 1332**.

9. The learned Standing Counsel, DRI, however, submits that the accused-applicant and the co-accused were caught with huge commercial quantity of narcotic substances, i.e., Heroin. Therefore, rigors of Section 37 of the NDPS Act shall be applicable in the instant case and hence, the accused-applicant should not

be released on bail at this stage.

10. The Trial Court record in the instant case has been received and the same is perused by this Court. This Court has also considered the submissions made by the learned counsel appearing for the respective parties and had the occasion to peruse the objection filed by the DRI.

11. From the initial DRI complaint filed before the court of learned CJM, Kamrup (M) dated 12.12.2024, it reveals that information about movement of the accused-applicant as well as the co-accused was received on 12.12.2024 in the morning itself. Though no time has been mentioned about the interception of the vehicle in the complaint, a mention has been made that at around 14:00 hours on 12.12.2024, the narcotic substances were seized after apprehension of the accused-applicant and the co-accused. However, on perusal of the Panchnama that has been prepared by the DRI officials, it is clear that the DRI officials were standing near the Khanapara flyover at around 4:15 hours on 12.12.2024 and they intercepted the vehicle and apprehended the accused-applicant and the co-accused at around 5:30 hours on 12.12.2024. Therefore, though there is a mention that the seizure was made at around 14:00 hours, on the same date, it is clear that the accused-applicant along with the co-accused were, in fact, apprehended sometime around 5:30 hours in the morning on 12.12.2024.

12. The medical report reveals that the accused-applicant and the co-accused were examined only at 12:32 p.m. on 13.12.2024 before production in the court of the learned CJM Kamrup (M).

13. The aforesaid facts make it clear that the accused-applicant along with the co-accused were apprehended/arrested at 5:30 hours in the morning on 12.12.2024. However, they were produced before the court of learned CJM, Kamrup (M) only after 12:32 hours on 13.12.2024, which is clearly beyond 24 hours of their

apprehension/arrest. Therefore, apparently, there is a violation of the mandates provided under Article 22(2) of the Constitution as well as Section 58 of BNSS.

14. 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."

15. 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.

16. 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."

17. 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."

18. 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."

19. 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 been already discussed that the accused-applicant was produced before the court of learned CJM, Kamrup (M) only after 12:32 hours on 13.12.2024, which is clearly beyond 24 hours as mandated under Article 22(2) of the Constitution of India as well as Section 58 of BNSS. Therefore, in the instant case, there is a clear violation of Section 58 BNSS as well as Article 22(2) of the Constitution.

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, Kamrup (M) 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, Kamrup (M), 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 to 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), Kamrup (M), 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 Special Judge (NDPS), Kamrup (M), 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

Miriam Degu
(SPA)