GAHC010229372026

2026:GAU-AS:16253

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

Case No. : Bail Appln./3344/2026

SAMKANG HAKHUN
S/O SAMKANG HAKHUN, R/O MALU GAON, LEDO, PS MARGHERITA, DIST TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A TALUKDAR, D A SERENG,H ALAM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

ORDER

05.11.2026

1. Heard Mr. H. Alam, learned counsel for the petitioner. Also heard Mr. R.R. Kaushik, learned Addl. Public Prosecutor for the State.

2. This is an application under Section 483 of BNSS, 2023 for granting regular

bail to the petitioner namely SRI SAMKANG HAKHUN in connection with NDPS Case No. 14(M)/2026 (arising out of Margherita P.S. Case No. 6/2026 registered Sections 17(c)/29 of the NDPS Act, 1985 read with Section 21 of the Immigration and Foreigners Act, 2025, who was in judicial custody with effect from 07.01.2026.

3. The present petitioner was apprehended by the police alongwith other co-accused persons while traveling in a vehicle on 06.01.2026 on the Deomali-Margherita Road and a commercial quantity of opium i.e. "Fita Khani" weighing 2.757 KG. was recovered from the said vehicle.

4. It is the submission of the learned counsel for the petitioner that although the recovered quantity has been shown to be 2.757 kg, which is above the commercial quantity of opium (2.5 kg), the said weight included the cloth and if the weight of the cloth is deducted, then the residual opium would be below the threshold of commercial quantity.

5. Per contra, the learned Addl. Public Prosecutor submits that the cloth cannot be separated from the opium because the cloth i.e., "kani" cannot be separated from the opium which does not have a separate existence apart from the cloth in which the opium has been absorbed. The contraband i.e., "fita kani", includes the cloth as well as the opium absorbed in the said cloth and as per the decision of the Hon'ble Apex Court in ***Hira Singh v. Union of India***

reported in ***(2020) 20 SCC 272***, the weight of the cloth is also required to be included while determining the category under which the contraband falls. Therefore, the recovered quantity is undoubtedly commercial quantity, submits the learned Addl. Public Prosecutor.

6. It has been further urged on behalf of the petitioner that he has spent more than 300 days in custody and although the charge-sheet was filed way back in the month of February 2026, the trial is yet to commence and therefore, the petitioner is entitled to be released on bail.

7. A perusal of the Trial Court Record (TCR) would show that the case is presently pending for production due to the non-appearance of one of the accused who happens to be the wife of the present petitioner and who was granted bail earlier. It also appears that because of such non-appearance, a warrant has also been issued against the said absentee accused/wife of the petitioner. Therefore, it appears that the accused party itself has been deliberately delaying the commencement of the trial and therefore, the contention of the learned counsel has no legs to stand on.

8. At this stage, it cannot be determined whether the cloth is separable from the actual opium or whether even such separation is feasible and it is a matter that is to be decided at the trial. Therefore, the Court has to proceed on the basis that the recovered quantity of contraband would be included within the

category of commercial quantity and therefore, the rigors of Section 37 of the NDPS Act would be squarely attracted. There is nothing in the material on record that would go to overcome the bar set by the aforesaid Section 37 of the NDPS Act.

9. Having regard to the above, the prayer for bail stands rejected at this stage.

10. The petition stands dismissed.

JUDGE

Comparing Assistant