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2026:GAU-AS:16419

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

Case No. : Bail Appln./3494/2026

SRI SANKAR JYOTI SAIKIA
SON OF LATE BANESWAR SAIKIA, AGED ABOUT 27 YEARS, PERMANENT RESIDENT OF JUNGLE BLOCK, P.S. - MARIANI, DISTRICT JORHAT, ASSAM, PRESENTLY RESIDING AT MEJENGA, P.S. TITABAR, DISTRICT - JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR P J DAS,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

10.11.2026

Heard Mr. P. J. Das, learned counsel for the accused and Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 483 of the Bharatiya Nagarik Suraksha

Sanhita (BNSS), 2023 is preferred by the accused, namely, **Sankar Jyoti Saikia**, who has been languishing in jail hajot in connection with Titabar P.S. Case No. 128/2026, corresponding to G.R. Case No. 327/2026, registered under Sections 21(a)/25/27A/29 of the NDPS Act, 1985, pending before the Court of the learned SDJM, Titabar, Assam, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR lodged by one Mithun Taye, SI of Police, Titabar Police Station, on 14.10.2026.

4. The essence of allegation against the present accused, in the FIR dated 14.10.2026, is that the informant has apprehended him near Tipomia bridge, at about 3:45 PM, while he was riding a KTM motorcycle ,bearing Registration No. AS 03 AL 7597. And after conducting search, he found 2 Nos. of containers, one blue and one yellow, containing 1.19 gram of suspected Heroin; 8 Nos. of empty Tobacco containers, One purple coloured lighter and Rupees 900 in cash.

5. Mr. Das, learned counsel for the accused submits that while conducting search, the I.O. has not complied with the provision of Section 50 of the NDPS Act, and that the quantity of contraband allegedly recovered from the possession of the accused is small quantity, being 1.19 gram, only.

5.1 Mr. Das further submits that the accused is an addicted person and he has been languishing in jail hajot since 13.10.2026, and though the case has been registered under Section 27A of the NDPS Act, along with some other sections of NDPS Act, yet, the embargo under Section 37 of the NDPS Act, in respect of Section 27A of the NDPS Act, is not attracted herein this case as the contraband

substances are small in quantity, and under such circumstances, he has contended to allow this application.

6. Per contra, Mr. Baruah, learned APP for the State respondent, has vehemently opposed the petition. Producing the case diary before this Court, he submits that the I.O. has collected sufficient incriminating materials against the accused and the case is registered under Section 27A of the NDPS Act, in respect of harboring the accused, and to that effect, the I.O. has collected sufficient incriminating materials. He also submits that Section 37 of the NDPS Act is attracted irrespective of the quantum of the contraband substances and under such circumstances, he has contended to dismiss the application.

7. Having heard the submissions of the learned counsel for both the parties, this Court has carefully gone through the application and the documents placed on record and also gone through the case diary produced before this Court by Mr. Baruah, learned APP.

8. The case diary indicates that the I.O. has collected sufficient incriminating materials against the accused, who has been languishing in jail hajot since 13.10.2026. Further, it appears that number of cases under the NDPS Act, are pending against the accused.

9. Indisputedly, the contraband substance, allegedly recovered from the possession of the accused is of small quantity, i.e., 1.19 gram. But it appears that the I.O. has also registered the case under Section 27A of the NDPS Act, where the minimum punishment prescribed is 10 years and the maximum is 20 years, and the fine amount is Rs. 1,00,000/-.

10. Though, the learned counsel for the applicant submits that the embargo under Section 37 of the NDPS Act, is not directed herein this case, being he quantity of contraband is of small quantity, yet, the said submission of the learned counsel for the accused has left this Court unimpressed, in as much as under Section 27A of the NDPS Act, the quantity of contraband substance has not been prescribed, to attract the section.

11. Section 27A punishes financing, directly or indirectly, any of the activities specified in the relevant clauses of Section 2 defining illicit traffic or harbouring any person engaged in any of the aforementioned activities. The prescribed punishment is rigorous imprisonment of 10-20 years and a fine of ₹1-2 lakh (higher fine possible for recorded reasons). This punishment does **not** depend on whether the quantity involved is small, intermediate, or commercial. Quantity-based gradation of punishment, small/intermediate/ commercial, applies primarily to offences such as possession, manufacture, sale, transport, etc. under Sections 17-23. Whereas, Section 27A is a distinct provision aimed at those who fund or shelter the illicit traffic; it can, in principle, be invoked even when only a small quantity is recovered, if the prosecution proves the specific ingredients of financing or harbouring.

11.1. The twin conditions under Section 37 apply to offences under Sections 19, 24 and **27A**, and also to offences involving commercial quantity. If Section 27A is properly attracted on evidence, the stricter bail regime applies irrespective of quantity. If it is not made out and only a small/intermediate quantity case remains, ordinary bail principles apply.

12. In the instant case, the I.O. has collected sufficient incriminating materials

in support of continuous illicit trafficking. The present case is not the only instance where the accused is involved. He is involved in as many as three numbers of cases, and out of the three, two relates to cases- under NDPS Act and one involves commercial quantity of contraband substances.

13. And in that view of the matter, this Court is of the view that Section 27 A is attracted herein this case. And as such the accused has to satisfy the twin conditions Section 37 of the NDPS Act. And from the materials collected so far in the case diary and also from the submissions of learned counsel for the accused, this Court is unable to derive satisfaction about the satisfying the twin conditions.

14. Under the given factual and legal position, this Court is of the view that this is not a fit case where the privilege of bail can be granted. And accordingly, this Court is inclined to dismiss this application.

15. In terms of the above, this bail application stands disposed of.

16. Case diary be returned.

JUDGE

Comparing Assistant