

GAHC010252442025



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

Case No. : Bail Appln./3775/2025

ANOWAR HUSSAIN CHOUDHURY
S/O ABDUR RASID CHOUDHURY, R/O NARAJNPUR, BIDYARATANPUR, P.S.
DHOLAI, DIST. CACHAR, ASSAM, PIN 788114

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM.

Advocate for the Petitioner : MR. S C BISWAS, MR P SARMA, MS. J GHOSH

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

19.02.2026

Heard Mr. SC Biswas learned Council appearing for the petitioner and also heard Mr. B Sharma learned Additional Public Prosecutor for the State of Assam.

2. This is an application under section 483 of the BNSS 2023 for granting

regular bail to the accused petitioner who, as per the memo of arrest, was arrested on 1 July 2025 and has been behind bars since then. The petitioner was arrested in connection with NDPS case number 92/2025, corresponding to Government Railway Police Station Badarpur Case No. 20 of 2025, under section 21(c) of the NDPS Act.

3. Drawing the attention of this Court to the notice under section 47 and 48 of the BNSS served upon the petitioner and his wife respectively, the learned counsel for the petitioner has submitted that the notice under section 47, BNSS had been served on the petitioner in English language, with which he was not conversant. Referring to the notice under section 48 of the BNSS, the learned counsel submitted that the grounds of arrest declared therein were not sufficient for the wife of the petitioner to understand the grounds in a manner to effectively defend her husband. By drawing the attention of this Court to the arrest memo under Section 36 of the BNSS, Counsel for the petitioner has submitted that the said memorandum of arrest is not attested as required under the provisions of the BNSS, 2023.

4. Mr. B. Sarma, learned Additional Public Prosecutor, Assam submitted that the guidelines under Section 36 of the BNSS, 2023 was incorporated after the guidelines passed in the case of D.K. Basu & Anr. vs. State of West Bengal, reported in AIR 1997 SC 610, only to monitor the proper procedure of arrest.

The present is a case of commercial quantity and therefore, the rigor of Section 37 of the NDPS Act is applicable and because of the procedural lapses, the accused petitioner shall not be entitled to the privilege of bail. He submits that since there was substantial compliance of the provisions of Sections 47 & 48 of the BNSS, 2023, non-compliance of Section 36(b) of the BNSS, 2023 cannot lead to an inference of violation of the Article 21 or Article 22(1) of the Constitution of India.

5. Mr. Sarma, the learned Additional Public Prosecutor submits that bail cannot be granted in cases under the NDPS Act, without satisfying the twin conditions under Section 37 of the NDPS Act. Accordingly, it is submitted by Mr. Sarma, the learned Addl. P.P., Assam that considering the gravity of the offence, it is not at all a fit case to grant bail to the accused petitioner at this stage, who are allegedly involved in a case of commercial quantity.

6. This Court has considered the rival submissions and is of the opinion that the fundamental rights are paramount under the Constitution of India, where Article 21 provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law and Article 22 of the Constitution of India further provides for protection of a person against arbitrary arrest and detention, including the right to be informed of the grounds of arrest and that a citizen should not be detained without informing him of

such grounds.

It is not in dispute that in the case of NDPS Act also, the provisions of arrest of a person as laid down in the BNSS, 2023 must be complied with. For the purpose of the present case Section 36 and Section 62 of the BNSS being relevant are quoted herein:- "36. Procedure of arrest and duties of officer making arrest- Every police officer while making an arrest shall- (a) Bear an accurate, visible and clear identification of his name which will facilitate easy identification; (b) Prepare a Memorandum of Arrest which shall be- (i) attested by at least one witness, who is a member of the family of the arrested person or a respectable member of the locality where the arrest is made; (ii) countersigned by the person arrested; and (c) Inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest." "62. Arrest to be made strictly according to Sanhita- No arrest shall be made except in accordance with the provisions of this Sanhita or any other law for the time being in force providing for arrest".

It is apparent from a conjoint reading of the aforesaid two provisions that Memorandum of Arrest is a necessary document that serves as confirmation that the individual in question was arrested under certain circumstances. In other words, it creates a point of reference to determine the circumstance under

which a citizen was detained/arrested. Therefore, it must provide the particulars that are specific to the arrest. A minimum of one witness is required, who should be a member of the accused person's family and where a family member is unavailable, a respectable individual of the locality in which the arrest is made, has to be called upon to testify as a witness. The arrested person is required to countersign the arrest memo himself. Section 62 provides that no arrest shall be made except in accordance with the provisions of the BNSS or any other law for the time being in force providing for arrest. Therefore, non-compliance with such provisions at the time of arrest is to be considered a violation of the mandatory provisions, which would render that arrest is illegal, and once the arrest is rendered illegal, the arrested person shall have an unfettered right to have the arrest and detention to be set at naught.

7. Although Section 37 of the NDPS Act provides for certain conditions to be fulfilled before granting bail to an arrested person in cases involving seizure of commercial quantity, the same shall apply only when the arrest itself is not illegal. However, if any arrest is made in violation of the mandatory provisions as laid down in the BNSS, 2023, the very initial arrest becomes illegal and the rigor of the said provision would not be attracted.

8. Accordingly, this Court, therefore directs that the petitioner be released

on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh), with two suitable sureties of the like amount, at least one of whom shall be a Government Servant and at least one of whom shall have immovable property, within the jurisdiction of the learned Trial Court to the satisfaction of the said Court, subject to the following conditions:

- i) the petitioner shall appear before the learned Special Judge, on each and every date, as fixed by the learned Special Judge and also cooperate with the investigation and and when called upon;
- ii) the petitioner shall refrain from such activities with which they are alleged;
- iii) the petitioner shall not leave the territorial jurisdiction of the learned Special Judge, without prior written permission;
- iv) the petitioner shall not hamper and tamer with the evidence of the case'
- v) the petitioner 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 him from disclosing such facts to the Court or to any Police Officer.
- vi) the petitioners shall provide their contact details including

photocopies of their Aadhar Card or Driving License or PAN Card, mobile number, and other contact details before the learned Trial Court, if the same are not yet seized;

vii) the learned Special Judge shall be at liberty to impose such other condition or conditions as may be deemed necessary to ensure the participation of the petitioners in the trial;

viii) the prosecuting authority shall be at liberty to bring any violation of the conditions imposed to the notice of the competent court and request for a recall/cancellation of bail.

10. The bail application stands disposed of.

JUDGE

Comparing Assistant