

GAHC010135372025



2026:GAU-AS:4689

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

Case No. : Crl.A./226/2025

JITUL BORAH AND ANR.
S/O. LT. NITYANANDA BORAH, R/O. VILL.- NOWBOISHA, P/S. JORHAT,
DIST. JORHAT, ASSAM

2: DIPTI BORAH
W/O. JITUL BORAH
VILL.- NOWBOISHA
P/S. JORHAT
DIST. JORHAT
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM.

Advocate for the Petitioner : MR A BRAHMA, B C SANGTAM, MR. A LAL

Advocate for the Respondent : PP, ASSAM,

Linked Case : I.A.(Crl.)/1270/2025

JITUL BORAH
S/O. LT. NITYANANDA BORAH
R/O. VILL.- NOWBOISHA
P/S. JORHAT
DIST. JORHAT
ASSAM

2: DIPTI BORAH
W/O. JITUL BORAH
VILL.- NOWBOISHA
P/S. JORHAT
DIST. JORHAT
ASSAM.
VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PP
ASSAM.

Advocate for : MR A BRAHMA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA
ORDER

01.04.2026

Heard Mr. A. Lal, learned Counsel for the applicant. Also heard Ms. R.J. Baruah, learned Addl. Public Prosecutor for the State of Assam.

2. This I.A has been preferred seeking suspension of the sentence imposed by the learned Trial Court vide impugned Judgment and Order dated 17.05.2025, passed by the learned Special Judge, Jorhat, Assam in Special (NDPS) case No. 02/2023 convicting the accused/applicants u/s 20(b)(ii)(b)/25 of the NDPS Act, 1985 sentencing them to undergo R.I for 10 years and also to pay a fine of Rs. 1000/- and in default, the appellants shall undergo R.I for 1 month.

3. Mr. A. Lal, learned counsel for the applicant submits that there are glaring errors of law as well as on facts committed by the learned Trial Court while convicting and sentencing the accused/applicant as aforesaid.

4. It is further submitted that with reference to the impugned Judgment that the contraband allegedly seized were never produced before the Magistrate as require under Section 52(A) NDPS Act, nor were any samples ground in her presence as would be evident from the deposition from the witnesses available in the TCR. It is further submitted that neither the bulk of the contraband said to have been seized nor the samples thereof prepared in accordance with the provisions of Section 52(A) NDPS Act, were produce before the learned Trial Court therefore, the impugned order of judgment of conviction is vitiated by illegality as the prosecution had failed to prove that the seized contraband was in fact prohibited narcotic drugs.

5. The learned counsel for the applicant also referred to the decision of the Hon'ble Apex Court in ***Surepally Srinivas Vs. The State of Andhra Pradesh*** (Now State of Telengana), ***Criminal Appeal No. 1474 of 2025 [Arising Out of SLP (Crl.) NO. 14265 of 2014]*** wherein the Hob'ble Apex Court set aside the Judgment of conviction due to non-compliance of the provisions of Section 52(A) of the NDPS Act, and similarly in ***Simranjit Singh Vs.State of Punjab 2024 14 SCC 222***, the Hon'ble Apex Court had set aside the judgment of conviction on the same ground.

6. On the other hand, the learned PP, Mr. R.J. Baruah has submitted that the prosecution has been to prove the guilt of the accused beyond all reasonable doubt.

7. On perusal of the impugned Judgment, I find ample force in the submissions of the learned counsel for the applicant.

8. The learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in **Kiran Kumar Vs. State of M.P.**, reported in **(2001) 9 SCC 211**, wherein it has been held that the normal rule is that when the appeal of a person convicted and sentenced is pending, the sentence passed on him should be suspended unless any exceptional reason existing therein requires the denial of the same.

9. In Supreme Court Legal Aid Committee representing **Undertrial Prisoners Vs. Union of India & Ors**, reported in **(1994) 6 SCC 731**, it was held as follows:

"15. We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

ii) Where the undertrial accused is charged with an offence(s) under

the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount."

10. In ***Narcotic Control Bureau Vs. Lakhwinder Singh, 2025 INSC 190***, the Hon'ble Supreme Court held that the above Judgment does not take away the power of the Court to grant regular bail even if the period undergone by a prisoner is less than what is provided in the said judgment. It was further held that in the case of fixed-term sentences, if the courts start adopting a rigid approach, in a large number of cases, till the appeal reaches the stage of the final hearing, the accused would undergo the entire sentence. This will be a violation of the rights of the accused under Article 21 of the Constitution. Moreover, it will defeat the right of appeal.

11. In the instant case, I have perused the material on record. The applicant has been in jail since his conviction vide Judgment Order dated 17.05.2025 and Sentence Order dated 17.05.2025 and the sentence is for a fixed period of 10 years.

14. Further, during the pendency of the connected criminal appeal, the applicant is allowed to go on bail on furnishing a bail bond of Rs. 50,000/- with one surety of like amount subject to the satisfaction of the Special Judge, Jorhat, Assam, with a condition that, in the event of dismissal of the connected Criminal Appeal No. 226/2025, the applicant shall surrender before the Trial Court to serve out the remaining part of his sentence imposed by the impugned judgment or as may be directed by the Appellate Court.

15. The Interlocutory Application is accordingly disposed of.

JUDGE

Comparing Assistant