GAHC030006222026

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

Case No. : Bail Appln./78/2026

Sh. Lalvenhima
S/o Vanlalsanga, Zotlnag, Champhai

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Ms. Vanlalmuanawmi

Advocate for the Respondent : P.P./Addl.PP, Mizoram

:::BEFORE:::

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment was reserved : 01.10.2026

Date of pronouncement of judgment : 06.10.2026

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

Judgment & Order (CAV)

Heard Ms. Vanlalmuanawmi, learned counsel appearing for the applicant. Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor appearing for the State.

2. The instant application is filed under Section 483 of the BNSS, 2023 read with Section 37 of the ND&PS Act, 1985 for enlargement of the accused/applicant on bail. The applicant was arrested on 21.04.2026 in connection with Excise Case No. 95/2026 under Section 21(c) of the ND&PS Act after an alleged recovery and seizure of 258 grams of Heroin was made from a Renault Duster car on 21.04.2026 at Hunthar Veng, Aizawl and the vehicle was driven by the co-accused Lalchungbika.

3. During the investigation, it was found that the instant accused/applicant, who is a mechanic by profession and originally from Champhai was alleged to have facilitated the concealment and transportation of the seized contraband items, which was recovered and seized on 21.04.2026. Hence, he was arrested on 21.04.2026 in connection with the aforementioned case.

4. I have heard the learned counsels.

5. Ms. Vanlalmuanawmi, learned counsel for the applicant submitted that earlier, the applicant had approached the court of the learned Special Judge,

ND&PS by filing bail application, which was registered as Bail Application No. 318/2026 and the same was disposed of vide order dated 29.06.2026, by which the application was rejected.

6. It is the case of the applicant that even before the learned Trial Court, the issue of non-compliance of Section 47 & 48 of the BNSS was raised. The learned counsel submitted that the accused/applicant is innocent and that he has been falsely implicated in the case and the investigation also revealed that no recovery was made from him and possession was also not proved by the prosecution. It is the submission of the learned counsel for the applicant that no narcotic substance or any incriminating article was recovered either from his physical possession, residence or vehicle and the entire prosecution case rests solely on the allegation that he facilitated the concealment and transportation of the alleged contraband material and because of this allegation he was subsequently arrested.

7. The learned counsel submitted that the arrest of the petitioner suffers from serious constitutional and statutory infirmities. In particular the learned counsel has drawn the attention of this Court with regard to non-compliance of Section 47 of the BNSS regarding the Grounds of Arrest which was supplied to the petitioner, which according to the learned counsel is vague, incomplete and

mechanical and does not serve the purpose, nor does it disclose the actual grounds of arrest. In this regard the learned counsel has placed reliance in the case of ***Prabir Purkayastha Vs State (NCT of Delhi)*** reported in ***(2024) 8 SCC 254*** wherein, it was categorically held that the Grounds of Arrest must contain all details available with the Investigating Officer which necessitated the arrest and the arrestee must be communicated on the basic facts so that he can actively oppose custodial remand and seek for bail.

8. The learned counsel has also placed reliance in the case of ***Vihaan Kumar Vs State of Haryana*** reported in ***(2025) SCC OnLine SC 269*** and ***Mihir Rajesh Shah Vs State of Gujarat*** in ***Criminal Appeal No. 2195 of 2025*** wherein, it was observed that failure to communicate proper Grounds of Arrest and inform relatives or friends about the arrest is violation of Article 22(1) of the Constitution and renders the arrest illegal.

9. It is submitted that non compliance of Section 47 has resulted in the violation of Article 22(1) of the Constitution and renders the arrest of the accused/applicant illegal.

10. The next argument is that there was violation of Section 48 of BNSS. By this Section, intimation of arrest has to be given to the family, relatives or friends of the accused. The learned counsel submitted that though in the

intimation of arrest under Section 48, it was addressed to the wife of the accused, the intimation does not bear the signature of the addressee. The learned counsel by relying on the order passed by this Court in the case of ***F. Lathankunga Vs State of Mizoram*** (Bail Application No. 12/2026) submitted that the arrest intimation under Section 48 of the BNSS must contain the signature of the person to whom it was addressed and also the grounds of such arrest. It is further argued that the intimation was written only in English which was not understood by the addressee and there is no material to show that the intimation was actually served upon the addressee. Therefore, the manner in which the provision of Section 48 of the BNSS was carried out does not comply with the intention of the provision.

11. The learned counsel also submitted that the applicant is a resident of Zotlang, Champhai District, Mizoram, having deep roots in the society and there is no danger of absconding and that he does not have criminal antecedents and since he has been in judicial custody since 21.04.2026, it therefore means that interrogation is no longer required. The learned counsel also submitted that the petitioner is not likely to influence, threaten or intimidate any prosecution witness and that he is the sole earning member of the family and his continued detention has caused serious hardship to his family. According to the learned counsel, the twin conditions prescribed under Section 37 of the NDPS Act are

also satisfied in the peculiar facts and circumstances of the case and thus prayed to release the accused on bail.

12. On the other hand, Mrs. Linda L. Fambawl, learned Public Prosecutor submitted that from the scanned copy of the TCR as well as from the enclosure made to the application itself, which include the intimation given under Section 47 & Section 48 of the BNSS, it is clear that there was substantial compliance with the aforesaid provision and as such, the mandate of Article 22(1) of the Constitution have not been violated. In support of her submission, the learned Public Prosecutor has placed on record the decision of this a coordinate Bench of this Court in its Order dated 16.07.2026, passed in Bail Application No. 55/2026 (Samsul Haque Vs. State of Mizoram & Anr.).

13. The learned Public Prosecutor submitted that considering the seriousness of the offence and the substantial compliance of the provision of Section 47 & 48 of the NSS and the order of the learned Special Court while rejecting the bail application was reasonable and that in the facts and circumstances of the case, there is no reasonable ground to enlarge the accused on bail and thus prays for rejection of the application.

14. In the case at hand, the instant applicant was arrested subsequent to the search and recovery of the seized contraband items as his involvement as

transporter and facilitating the concealment were revealed during the course of investigation.

15. The main contention of the applicant is violation of section 47 & 48 of the BNSS, 2023. In the case of ***Prabir Purkayastha (supra)*** reasonable details of the arrest which are specific to the accused have to be incorporated in the grounds of arrest and explained the difference between the reasons of arrest and grounds of arrest. Relevant portion of the judgment is extracted below:-

> *"21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.*
>
> *30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal(supra) laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.*
>
> *48. It maybe reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest and 'grounds of arrest! The 'reasons for arrest' as indicated in the arrest memo are purely formal*

parameters, viz., to prevent the accused person from committing any further offence; for proper nvestigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making 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 the Investigating Officer.

These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated 'with the reasons of arrest which are general in nature."

16. Thereafter, the Hon'ble Apex Court in the case of ***Vihaan Kumar (supra)*** held that grounds of arrest was to be furnished to the accused and his family/relatives or nominated person as per the provisions of section 47/48 BNSS(then sec.50/50A Cr.PC) so as to fulfill the mandate of Article 22(1) of the Constitution. It was further held that arrest in violation of the procedure would render the arrest fatally infirm and that once a person is found entitled to bail on ground of procedural lapse in the process of arrest, the aforesaid right of bail

will prevail over statutory limitations for bail. Relevant portion of the judgment in ***Vihaan Kumar (supra)*** is extracted below:-

> *"26. Therefore, we conclude:*
>
> *26.1. The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);*
>
> *26.2. The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;*
>
> *26.3. When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);*
>
> *26.4. Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article.*
>
> *Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);*

26.5. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

26.6. When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The Criminal Appeal @ SLP(Crl.) 13320 of 2024 Page 28 of 36 statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established."

42. The purpose of inserting Section 50A of the CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detenue, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as

guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal."

17. Thereafter, in the case of ***Mihir Rajesh Shah Vs State of Maharashtra*** reported in ***(2026) 1 SCC 500*** the Hon'ble Apex Court further emphasized on the subject and further held that the mode of communicating the grounds of arrest must be communicated to the arrestee in such a manner that he has sufficient knowledge of the facts constituting the offence and that effectively communicated in the language known to the arrestee. Relevant portion of the Judgment is extracted below:-

"52. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse.

53. The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the

Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard. The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1).

66. In conclusion, it is held that:

66.1. The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC, 1860 (now BNS 2023);

66.2. The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

66.3. In cases) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the Magistrate.

66.4. In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

18. Upon turning to the facts in hand the record shows that the accused/applicant was arrested on 21.04.26 at 4:30 pm. The Grounds of Arrest given to the accused u/s 47 of the BNSS is written in Mizo language, which is known to the accused and it bore the signature of the accused. The intimation conveyed the offence for which the accused was arrested as well as an intimation with regard to his right to engage a Counsel. This Court in the case of Bail Appln No. 15/2026 (Lalchhuanliana Vs State of Mizoram) under similar facts have held the same to be substantial compliance of Section 47 of the BNSS.

19. As regards the provision of Section 48 of the BNSS, it is seen that the same is given in a format addressed to the wife of the accused and it also contains her mobile phone number. The main grievance of the applicant it that the same does not bear the signature of the addressee, i.e., wife of the accused/applicant and that it was written only in English which is not understood by the wife of the accused and that there is no document to show that the same was actually served on the wife of the accused.

20. Section 48 of the BNSS reproduced herein below:

> *"48. (1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the*

arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under subsection (1) as soon as he is brought to the police station.

3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide (4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisty himselt that the requirements of sub-section (2) and subsection (3) have been complied with in respect of such arrested person."

21. In the backdrop of the aforesaid provision and upon appreciation of the arrest intimation given under Section 48 of the BNSS in the present case, the irregularity is clear and palpable. The intimation not only lacks the signature of the addressee, but it also fails to mention the place where the arrested person is being held.

22. Considering the principles laid down by the Hon'ble Supreme Court in ***Prabir Purkayastha (supra)*** and ***Vihaan Kumar (supra)***, the investigating agency failed to comply with the mandate of Section 48 of the BNSS. Communicating the grounds of arrest not only to the accused but also to their family, friends, or nominated persons is essential for the full and effective realization of Article 22(1) of the Constitution, ensuring that an individual whose liberty has been curtailed can secure release at the earliest to actualize their

fundamental right under Article 21.

23. Although it was not explicitly pleaded that this irregularity prejudiced the applicant, this Court cannot presume the absence of prejudice. Instead, the Court must uphold the constitutional rights guaranteed to the accused under Article 22(1) of the Constitution.

24. The learned Public Prosecutor cited the decision of this Court in Samsul Haque Vs State of Mizoram (Bail Appin No. 55/2026). However, the facts in that case differ from the present case, as the accused/petitioner therein admitted that intimation had indeed been conveyed to his relative.

25. This Court is therefore of the view that sufficient grounds exist to enlarge the accused on bail due to the procedural violation of Section 48 of the BNSS.

26. Accordingly, the accused, Shri Lalvenhima, is directed to be released on bail upon furnishing a bail bond of Rs. 1,00,000/- (Rupees One Lakh) with one reliable surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:

i) He shall make himself available to the Investigating Officer as and when required;

ii) He shall not hamper the investigation or tamper with evidence;

iii) He shall not threaten, contact, or influence any prosecution witnesses; and

iv) He shall not misuse his liberty to commit any illegal activities or offences.

27. With the above order, the bail application stands disposed of.

JUDGE

Comparing Assistant