GAHC030006892026

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

Case No. : Bail Appln./94/2026

Sh. Lalbiakhlua
S/o Sh. Lalrema, R/o Falam, Myanmar,Present Address- Zokhawthar, Champhai District,Mizoram-796321

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai

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

BEFORE
HONOURABLE MR. JUSTICE NCHUMBEMO MOZHUI
JUDGMENT / ORDER

Date : 26-10-2026

Heard Ms. Lalngaihsaki Fanai, learned counsel for the applicant. Also heard Ms. Vanneihsiami, learned Addl. P.P for the State.

2. The instant application has been filed under section 483 BNSS, 2023 r/w section 37 of NDPS Act, 1985 for released of the accused/applicant namely, ***Lalbiakhlua,*** in NDPS Case No. 121/2026 A/o Excise Case no. N-209/25 u/s 21(b) & 22(c) of NDPS Act, 1985.

3. The brief facts of the case is that the accused/appellant was arrested on 22/11/2025 at 5:00 P.Mon the accusation of involvement in the seizure of 41 grams of heroin and 5.894 kg (60,000 tablets) of methamphetamine, and since then, he has been in judicial custody till date.

4. The learned counsel for the applicant/accused submits that that on 21/11/2025 at around 5:00 PM, the excise person received information from their source, that one Biaksamseia of Khawmawi, Myanmar, along with his accomplice, was transporting contraband substances towards Aizawl in an unidentified vehicle. The report was recorded and a duty team was constituted to pursue the report. The investigating team proceeded towards Champhai to Aizawl road at Seling village and intercepted the suspected person, namely Kausar Uddin of Assam, who was suspected to be the intended buyer.

5. During investigation/interrogation, Kausar Uddin disclosed that his driver, namely Masuk Uddin Laskar from Assam, was waiting for him at Falkland, Aizawl. Thereafter, the investigating team intercepted Masuk Uddin Laskar, but no contraband was recovered. The arrested persons were duly interrogated by the investigating team, to which they confessed that they had come to Aizawl to collect the methamphetamine and heroin, but they had not knowledge for whom they are supposed to collect the contraband items.

6. Upon further interrogation, Kausar Uddin and Masuk Uddin Laskar informed the investigating team about the location and proceeded towards Champhai, West Aizawl, where they were taken to a house. On search, they recovered 41 grams of heroin concealed in three plastic soap case(olive green 1 color, and one blue in color). Further, they also recovered four hundred tablets of methamphetamine pack in two small sachets kept inside a black and orange color drugs bag. They also recovered 59,600 tablets of methamphetamine pack

in six bundles in a black-colored drugs bag.

7. Accordingly, the duty team arrested the alleged accused/petitioner and fully recovered the heroin and methamphetamine on 22/11/2025 at 5:00 AM at Champhai West, Aizawl.

8. It is the contention of the learned counsel for the accused/ applicant that the contraband substances were seized from the residence, where the present accused/applicant was present as a guest and not the owner of the house, and as such, he had no knowledge about those seized contraband substances.

9. Further, the learned counsel for the applicant/accused submitted that there is no evidence to point out that the accused/applicant is in the possession of the contraband substance and that he was arrested on mere suspicion and on the ground that he was present at the house where the seized items were recovered.

10. The learned counsel for the applicant/accused further submits that during the course of arrest, there was a grave violation of the provisions of the mandatory provisions of Section 36 as well as Section 48 of the BNSS, 2023 on the ground that there was no mandatory compliance of the mandate provisions of law.

11. In this regard, the learned counsel for the applicant/accused has drawn the attention of the Court to the arrest intimation report.

12. It appears from the records that the arrest intimation was given to one Mr. Hramchimang, who is not a friend, a relative, or a family member of the applicant/accused but the owner of the house. On further scrutiny of the records, it appears that the arrest intimation does not contain under what provision of law the applicant/accused has been booked, nor was it intimated to

him in the language known to him as mandated by law.

13. It is also further contention of the learned counsel that in the arrest memo/intimation, the arrest witness, who is either a member of the family of the person arrested or a respectable member of the locality where the arrest is made, has not been duly complied with. The only witness as to the arrest made, who had been named in the arrest intimation, was one Mr. Hramchimang happens to be the owner of the house, but he is neither cited to be a prosecuting witness in the list of witness, or an accused person, or a seizure witness also, no statement of such witness under section 180 BNSS has also been recorded.

14. Under such circumstances, the mandatory requirement under Section 36 of BNSS has not been complied with, rendering the arrest procedurally defective in violation of the statutory requirement of law which is entitled to the accused/ applicant.

15. The learned counsel for the applicant/accused has further submitted that by order dated 01/10/2026 of this Hon'ble Court, the applicant/accused was directed to file additional documents as regard to the bail orders in connection with Bail Application No. 466 of 2026 in respect of co-accused,Kausar Ahmed and Bail Application No. 427 of 2026 in respect of co-accused Vanlalawi,arising out of the same FIR A/o Excise Case No. 209/2025 whereby the Court of the Learned Special Judge, NDPS Aizawl has granted regular bail to the co-accused persons.

16. In support of her submission,the learned counsel relied on the decision of the case of **Vihaan Kumar** v. **State of Haryana and Another**, reported in **2025, SCC Online SC 269.**

17. The learned Addl. P.P for the State, Ms. Vanneihsiami fairly submitted that the mandate of law provided under Section 36 and section 48 of the BNSS has been contravened and has not been complied with, as rightly pointed out by the learned counsel for the applicant/accused. She further submitted that in similar cases, the other two co-accused has been granted bail by the learned Court of Special Judge NDPS Aizawl on the ground that the mandate of the provision of law as required under Section 36 and section 48 of the BNSS Act has been violated and under such circumstances, the present applicant/accused also stands in the same footing and parity should be given to the present applicant/accused. However, she submitted that in the event of the Court granting bail to the present applicant/accused, this Court may impose strictures/conditions to secure the presence of the accused/applicant during trial.

18. Head the learned counsel for the parties at length.

19. Upon consideration of the submission of the learned counsel for the parties and to properly analyze whether the procedure has been followed, this Court has taken into consideration the provision of section 35 of the BNSS, 2023, where a Police Officer may arrest without warrant.

20. The provision of the Act provides that a Police Officer cannot casually arrest a person against whom the commission of an offense punishable with imprisonment for more than 7 years is alleged. He can arrest provided with condition in Clause- (b)(a) of section 35 of BNSS are satisfied.

21. The allegation of the violation of Article 21 and 22(1) of the Constitution of India have also been taken under consideration by this Courtinasmuch as, the requirement to communicate the grounds of arrest is concerned.

22. Article 22(1) of the Constitution requires that compliance can be made by communicating sufficient knowledge of the basic fact constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in a manner in which he will fully understand the same. Therefore, it follows that the ground of arrest must be informed in a language which the arrestee understands. Thus, the requirement of informing the person arrested of the ground of arrest is not a formality, but a mandatory constitutional requirement which is enshrined under Article 22included in Part III of the Constitutionunder the heading of Fundamental Rights.

23. Thus, it is a fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible.If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate, it would amount to violation of fundamental right. Thus, depriving the arrestee of his liberty.

24. This Court has also taken into consideration of the decision of the Apex Court in the case of *Vahaan Kumar (supra),* wherein the Apex Court has observed that:

> "*26. The stand taken before the High Court was that the appellant's wife was informed about the arrest. Information about the arrest is completely different from the grounds of arrest. The grounds of arrest are different from the arrest memo. The arrest memo incorporates the name of the arrested person, his permanent address, present address, particulars of FIR and Section applied, place of arrest, date and time of arrest, the name of the officer arresting the accused and name, address and phone number of the person to whom information about arrest has been given. We have*

perused the arrest memo in the present case. The same contains only the information stated above and not the grounds of arrest. The information about the arrest is completely different from information about the grounds of arrest. Mere information of arrest will not amount to furnishing grounds of arrest."

25. On perusal of the records, it has been found that arresting authority while arresting, the applicant/accused,had not complied with the mandatory provision of section 36 and 48 of the BNSS on the ground that, no communication in writing to the arrestee was made, nor to his relatives. Further, the mandated requirement under Section 48 of the NDPS Act, that is, arrest intimation was given to one Mr. Hramchimang, who is not related to the arrested person/applicant/accused.

26. Therefore, in the facts of the case, this Court has no hesitation in holding that the arrest of the applicant/accused was rendered illegal on account of failure to communicate the grounds of arrest to the applicant, as mandated under Article 22 of the Constitution of India, and non-compliance of Section 36 and Section 48 of the BNSS, 2023.

27. Further, this Court has also taken consideration the fact that similarly situated co-accused, namely, Kausar Uddin and Vanlalawiwere released by the same learned Special Judge (NDPS Aizawl) on the ground of violation of the mandated provision of Section 36 and 48 of the BNSS,2023.

28. Be that as it may, the learned Special Court (NDPS) Aizawl by order dated 13/02/2026 in Bail Application No. 24 of 2026, ought to have applied the same yardstick to the present applicant/accused.

29. Taking consideration of the factual aspect and the settled position of law, this Court is of the view that applicant/accused be released of the who is

presently injudicial custody.

30. Accordingly, the bail application is allowed and be released on bail, subject to the fulfillment of the conditions and satisfaction of the Learned Court of Special Judge, Aizwal:

(1) The accused/petitioner shall be released on bail on furnishing a bail bond of Rs.3,00,000/- (Rupees three lakh) with two separate sureties of the like amount.

(2) One of the sureties shall be a permanent resident of Aizawl residing in his/her own house, and the other surety shall be a regular Government servant, duly certified by the competent controlling authority.

(3) The accused/petitioner and sureties shall furnish photocopies of their Aadhaar Card/EPIC and three recent passport-size photographs.

(4) The accused/petitioner shall file Affidavit declaring his place of stay at Aizawl and shall not leave the territorial jurisdiction of this Court without prior permission of this Court.

(5) The accused/petitioner shall appear before the learned Trial Court on every date fixed for hearing and shall not commit any offence while on bail.

(6) The accused/petitioner shall furnish his mobile telephone number and the mobile telephone number of one responsible member of his family to the learned Trial Court and shall keep the same operational during the pendency of the trial.

(7) Any deliberate violation of these conditions above, without sufficient cause, shall render the ball liable to cancellation in accordance with law.

31. The applicant/accused shall approach the learned Special Judge, NDPS, Aziwal for execution of bond and other related formalities as prescribed by law for release.

32. With the above observations and directions, the bail application stands disposed. No order as to costs.

JUDGE

Comparing Assistant