GAHC030006952026

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

Case No. : Bail Appln./95/2026

Sh. Vanlalrorelpuia
S/o Sh. Lianhnuna, Bethel Veng, Champhai, 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:::

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment is reserved : **06.10.2026**

Date of pronouncement of judgment : **08.10.2026**

Whether the pronouncement is of the operative part of the judgment ? : N/A

Whether the full judgment has been pronounced? : Yes

ORDER (CAV)

1. Heard Ms. Lalngaihsaki Fanai, learned counsel for the petitioner. Also heard Mrs. Mary L. Khiangte, learned Addl. PP for the State.

2. This application is filed u/s 483 BNSS r/w section 37 ND&PS Act for grant of bail to the accused/applicant in connection with Sairang P.S Case No. 47/2026 u/s 22(C)/25/29(1) ND&PS Act.

3. The instant case has arisen due to recovery of 20,200 Methamphetamine tablets on 24.07.2026 by Excise Personnel from a vehicle bearing registration No. TR 05/H 1728 at Sairang which was proceeding towards Tripura via Rawpuichhip Village. Upon further investigation, the instant accused/applicant was arrested on 25.07.2026 in connection with the said recovery of contraband item.

4. I have heard the learned counsels for both the parties.

5. Scanned copy of the Case Diary is also produced.

6. Ms. Lalngaihsaki, learned counsel for the applicant has submitted that the main grounds for seeking bail are violation of section 47 & 48 BNSS. The provision of section 47(1) BNSS was not complied with in as much as the same was not communicated forthwith with specific particulars of the offence and the precise grounds of arrest. According to the learned counsel, there was violation of section 48 BNSS in as much as even though the Investigating Officer claimed that the arrest was intimated to the wife of the accused over phone, the same is not supported by any call detail record (CDR), no written memo, no screenshot and that such mere bolt statement of intimation through phone cannot regarded as compliance of the provisions of section 48 BNSS.

7. On a pointed query from this Court as to whether the applicant has approached the Special Court, ND&PS Act, the learned counsel for the applicant has submitted that they had approached the said Court but have subsequently withdrawn their application with liberty to file afresh and thereafter approached this Court without filing bail application before the special Court.

8. Mrs. Mary L. Khiangte learned Addl. PP has submitted that inspite of the fact that in terms of section 438 BNSS, the Sessions Court/Special Court and the High Court has the power to deal with bail application but such practice is not encouraged and the proper procedure would be to first approach the competent Trial Court. On the facts of the case, the learned Addl. PP has submitted that from the Case Diary, the involvement of the accused/applicant can be clearly seen and that the record shows that there was compliance of section 47 BNSS and the purpose of section 48 BNSS was served. Since the seized contraband is a commercial quantity the embargo of section 37 ND&PS Act would be there.

9. The applicant has approached this Court directly without exhausting the remedy before the learned Special Judge, ND&PS Act at Aizawl and the application for bail submitted before the said Court was abandoned by withdrawal, without filing a fresh application before the same Court.

10. This Court in the case *of* ***Kwmta Gwra Brahma Vs. State of Assam*** reported in ***2015 (2) GLT 665*** it has been held as follows :-

> *17. It is therefore necessary that normally a person/accused should file an anticipatory bail application u/s 438 of the Cr.PC or a bail application u/s 439 of the Cr.PC before the Sessions Court and thereafter he can approach the High Court. However, this is not an inviolable rule. In exceptional circumstances a person/accused can directly approach the High Court. The following are the circumstances under which a person/accused can directly approach the High Court.*
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> *(i) When a person/accused from other State has to move an application for grant of anticipatory bail u/s 438 of the Cr.PC, if it is convenient for him to move such application before the High Court directly, which is nearer from the point of distance, in such a case the application filed before the High Court need not be rejected on the ground that he can approach the Sessions Court unless the Sessions Court is also located in the same place*
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> *(ii) Whenever in a Session jurisdiction a particular incident or crime has attracted a lot of public and media attention with an adverse public opinion having been built up against the person/accused, in such cases the 438 Cr.PC applications and 439 Cr.PC applications can be filed directly before the High Court*
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> *(iii) When the Sessions Court has already rejected an application for grant of bail u/s 438/439 of the Cr.PC where one of the persons accused is similarly placed it is not necessary that the similarly placed person/accused*

should approach the Sessions Court for grant of bail, he can file an application before the High Court u/s 438/439 of the Cr.PC.

18. The above circumstances are illustrative and not exhaustive. There could be other exceptional circumstances which would always depend upon the facts and circumstances of each case.

19. In view of the reasons and discussions made above it is held that normally a person/accused should exhaust his remedy u/s 438 or 439 of the Cr.PC before the Sessions Judge before making an application before the High Court as 68 or 439 of the Cr.PC. However in exceptional illustrated circumstances a person/accused can approach the High Court without exhausting his remedy before the Sessions Judge.

11. The High Court of Jammu & Kashmir and Ladakh in ***Khursheed Ahmad Kann Vs. UT of J&K 2021:JKLHC-SGR:647*** have dismissed the bail application which was filed directly to the High court on the ground that no exceptional circumstance was made out to approach the High Court directly without first actually exhausting the remedy before the learned Trial Court. Similar decisions are to be found in the Order passed by the High Court of Karnataka in the case of ***Smt. Savitri Samson Vs. State of Karnataka*** reported in ***2001 CriLJ 3164,*** the High Court of Madhya Pradesh in the case of ***Smt. Manisha Neema Vs. State of Madhya Pradesh,*** reported in ***2003(2) MPLJ 587*** and Delhi High Court in ***Gopal Goyal Vs. State of NCT of Delhi (Bail Appln. No. 1565/2012 decided on 19.11.2012)***

12. From the analysis of the case laws on the subject, it is clear that even though the provision of section 439 Cr.PC confers concurrent jurisdiction on the High Court and the Sessions Court, an application should ordinarily be filed before the Sessions Court/Special Court at the first instance and not directly to

the High Court and in order to file the application directly to the High court, it is necessary to demonstrate and exceptional, rare and unusual reasons.

13. Upon examining the instant case on the backdrop of the decisions referred above, it is noticed that no exceptional circumstances have been made out by the applicant to approach the High Court directly without first exhausting the alternative remedy in the Court of first instance i.e., the Special Court, ND&PS Act.

14. In view thereof and without discussing on the merit of the application, the instant application is dismissed.

15. The applicant, if he so desires, may approach the Court of the learned Special Judge, ND&PS Act for bail.

16. The application stands disposed of.

JUDGE

Comparing Assistant