GAHC030007172026

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

Case No. : Bail Appln./101/2026

Sh. Lallianmawia and Anr.
S/o Roneiha, Saikhum Leilet, Falam District, Myanmar, present address- Chhinga Veng, Aizawl

VERSUS

The State of Mizoram and Anr.
Aizawl

Advocate for the Petitioner : Mr B Lalramenga

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

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA
ORDER

06.10.2026

Heard Mr. B. Lalramenga, learned counsel for the petitioners. Also heard Mrs. Mary L. Khiangte, learned Addl. P.P. for the State.

2. This is an application under Section 483 (1) of BNSS, 2023 read with Section 37 of the ND&PS Act, 1985 for enlargement of the petitioners on bail in connection with SC (NDPS) No. 22/2025 under Section 21(c)/25/29 of ND&PS Act, 1985 read with Section 14(b) of Foreigners Act.

3. The petitioners were arrested on 20.03.2025 while they were in the process of transporting 259.28 grams of suspected heroin along with two other co-accused persons in a Santro vehicle. The charge-sheet has already been submitted and trial is also underway and a number of witnesses have already been examined. The charge has been framed under Section 21(c)/25/ 29 of the NDPS Act read with Section 14 (b) of the Foreigners Act.

4. The learned counsel for the petitioners submits that there has been total non-compliance with the provisions of Section 47 and 48 of the BNSS which renders the arrest illegal and unconstitutional. The case diary, the scanned copy of the TCR was called for and the same has been received.

5. It is fairly submitted by learned Addl. P.P. that no notice under Section 47 or Section 48 of the BNSS is available in the record indicating thereby that no such notice have been served upon the petitioners or their family members. However, it is submitted by learned Addl. P.P. that no prejudice has been caused to the petitioners in this regard due to non-furnishing of the such grounds and moreover, the petitioners earlier bail application was rejected and in the previous bail application, no such grounds were taken by the petitioners. Perusal of the order dated 02.09.2026 passed by the learned Trial Court in the Bail Application No. 178 of 2026 submitted on behalf of the petitioners reveals that the learned Trial Court had recorded the submission of the learned counsel that

the petitioners were not furnished with any written arrest intimation at the time of arrest and that during course of cross examination of the seizing officer, the witness himself admitted that the arrest intimation was conveyed to the respective families of the petitioners through mobile phone and that mere telephonic communication to the family members cannot by itself be treated as a substitute for proper written communication of arrest. However, the aforesaid submission was not addressed by the learned Trial Court while rejecting the aforesaid bail application.

6. Perusal of the evidence of PW-1, the seizing officer would show that he has explicitly stated in his cross-examination that the arrest intimation was conveyed to the families of the accused through mobile phone. This means that it was only the intimation of arrest that was made and that too by mobile phone and does not show that the grounds of arrest were furnished to the families of the accused. Furthermore, the said witness during cross-examination also admitted that the grounds of arrest were not given to the accused persons in writing. Furthermore, no such written communications under Section 47 or 48 of the BNSS is found on the record as submitted by learned Addl.P.P. Furthermore, the order of first remand dated 20.03.2025 passed by the learned Chief Judicial Magistrate, Lunglei has no reference to any such notice under Section 47 and 48 of BNSS which *prima facie* indicates that the learned C.J.M failed to satisfy

himself/herself that the statutory requirements of arrest have been complied with by the police. Furthermore, no legal assistance was provided to the petitioners to oppose the prayer for remand as it is merely reflected in the said order that the accused persons have been informed of their right to free legal aid. But no such Legal Aid Counsel was heard before the order of remand was passed by the court.

7. In view of the aforesaid failures of the police to comply with the statutory as well as constitutional requirements as explained by the Hon'ble Apex Court in a catena of decisions including ***Vihaan Kumar v. State of Haryana*** reported in ***2025 SCC OnLine SC 269*** and ***Mihir Rajesh Shah v. State of Gujarat*** reported in ***Criminal Appeal No. 2195 of 2025***, the arrest of the petitioners are rendered illegal and accordingly they are entitled to bail.

8. Consequently, it is directed that the petitioners in connection with the aforesaid case shall be released on bail on furnishing a bail bond of Rs. 1,00,000/- each with two sureties, one of whom must be a government official. The petitioners shall cooperate with the investigation and shall not try to influence or intimidate the witness or witnesses acquainted with the facts of the case.

9. Bail petition stands allowed and disposed of accordingly.

JUDGE

Comparing Assistant