GAHC030007372026

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

Case No. : Bail Appln./107/2026

Sh. Sakir Hussain
S/o Abdul Kaiyum, R/o Bagarsangan, Karimganj, Assam, Presently lodged in District Jail, Armed Veng, Aizawl, Mizoram

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Jordan Rohmingthanga

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

BEFORE
HONOURABLE MR. JUSTICE NCHUMBEMO MOZHUI
JUDGMENT / ORDER

Date : **03-11-2026**

Heard Mr. Jordan Rohimgthanga, learned counsel for the applicant/accused. Also heard Ms. Linda L. Fambawl, learned Addl. P.P for the State.

2. The instant bail application is filed under Section 483 of the BNSS, 2023, praying for grant of bail to the applicant/accused namely, ***Sakir Hussain,*** in connection with Special Narcotics P.S Case No. 20/2026 dated 17/07/2026.

3. The prosecution story in brief is that on 17.07.2026 at 04:00 P.M

information was received from reliable person stating that some unknown person(s) were strongly suspected of possessing contraband drugs at Chanmari, Aizawl, Mizoram by committing an offence in contravention of the provision of the ND&PS Act 1985. In this regard, information report was submitted immediately to Dy. SP, CID (SB). CID (SB) operation team was formed. As search warrant could not be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, the information was reduced in writing.

4. The learned counsel for the applicant/accused submits that despite no contraband found in his possession nor without any specific allegation, transportation or recovery attributable to him, he was arrested by the CID(SB) Mizoram on 17/07/2026.

5. In this regard, the counsel for the applicant/accused has drawn the attention of this Court to the Inquiry Report/FIR wherein, the applicant/accused was arrested on the ground of suspected to be involved in the commission of the offence, though no contraband was recovered from his possession. It is further the contention of the counsel for the applicant/accused that intimation of arrest was also communicated to his relatives.

6. It is further submitted by the learned counsel for the applicant/accused that the arrest of the applicant/accused by the Investigating Agency was in complete violation of section 48 of the BNSS. In this regard, the learned counsel for the applicant/accused has drawn attention of this Court to the notice under section 48 of the BNSS which has been annexed to the bail application. The translated version of the notice is reproduced herein below:

"*ARREST INTIMATION U/S 48 BNSS*

Case Reference:

Arrested Person: Sakir Hussain (21 years), Son of Abdul Kaiyum of Bagarsangan, Karimganj District, Assam. P/A Chanmari, Aizawl, Mizoram
Under Sections 22(c)/29(1) of the NDPS Act, 1985, he has been arrested for illegally possessing Methamphetamine (a prohibited narcotic drug). The offence is punishable with imprisonment up to 20 years and a fine up to Rs. 1,00,000. On 17.07.2026, at about 6:20 PM, he was apprehended red-handed at New Look Restaurant, ChanmariKawn, Aizawl, while in possession of Methamphetamine. He was arrested in the presence of witnesses. A video recording of the seizure of the narcotic substance was also made.

Reasons for Arrest
1. He has been arrested for being involved in the offence of illegal possession/transport of Methamphetamine under Section 29(1) of the NDPS Act, 1985.
2. He may engage a lawyer of his choice.
3. He was arrested because there is a high possibility that he may abscond (escape from the investigation).
4. He was arrested because he may destroy or tamper with evidence.
5. He was arrested to ensure a proper and fair investigation of the offence.

Received & Acknowledge by: *Arresting Officer:*

MLom CHOUDURY *SI H. Lalthlanfela*
Date: 17.07.2026 at 8:10 PM *CID (SB), Mizoram, Aizawl."*

7. A reading of the aforesaid notice under section 48 of the BNSS 2023, indicates that the applicant/accused on being arrested, the intimation of arrest was communicated to his relatives namely, MLom Choudhury, and duly received and acknowledge on 17/07/2026 at 08:10 P.M. In this regard, the counsel for the applicant/accused submits that the name of the relative reflected in the arrest intimation is not known to him nor his relative. The said person is a non-existing person.

8. The applicant/accused through his counsel filed RTI before the District Administration of the different districts of the State to ascertain the identity of the purported relative namely, MLom Choudhury. In response to the RTI, it was ascertained no ILP was issued in the name of MLom Choudhury before the past

three years till date. As such, the counsel submits that MLom Choudhury is a non-existing person and not a relative as claimed by the Investigating Officer.

9. Further, the counsel for the applicant/accused submits that the provision of section 48(3) of the BNSS, 2023 has been grossly violated inasmuch as under Column III of the Annexure-C of the Notification No. C-3012/9/2025-HM-Part(2), dated 14.11.2025, provides that the person mentioned who is nominated by the person on his behalf has been informed of the arrest. However, in the instant case, the same has not been followed as claimed by the Investigating Officer and as per the intimation of arrest.

10. Under such circumstances, the mandatory requirement under Section 48 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 applicant/accused.

11. In support of his submission, the learned counsel relied on the decision of the case of **Vihaan Kumar**Vs. **State of Haryana and Another**, reported in **2025, SCC Online SC 269, Mihir Rajesh Shah** Vs. **State of Maharashtra,** reported in (**2026) 1 SCC 500** and order dated 21/08/2025 passed by the Division Bench of this Court in Crl. Appeal No. 234/2025.

12. The learned Addl. P.P for the State, Ms. Linda L. Fambawl fairly submitted that the mandate of law provided under Section 48 of the BNSS has been complied with for the fact that the relative of the applicant/accused namely MLom Choudhury was informed of the arrest. The learned Addl. P.P for the State has drawn the attention of the Court to the Case Diary wherein it has been specially stated that since the family members of the applicant/accused are residing in other State, the arrest intimation letter in writing was served to Mr. MLom Choudhury who is the friend and they are staying together.

13. 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 applicant/accused during trial.

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

15. Upon consideration of the submission of the learned counsel for the parties and to properly scrutinize whether the procedure has been followed, this Court has taken into consideration the provision of section 48 of the BNSS, 2023.

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

17. 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 arresteein 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 22 included in Part III of the Constitutionunder the heading of Fundamental Rights.

18. 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.

19. 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:

> "*42. The purpose of inserting Section 50-ACrPC, making it obligatoryon 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 be 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.*"

20. 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 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 the applicant/accused relative MLom Choudhury which as per the available record before this Court happens to be a non-existing person and not known to the applicant/accused.

21. Moreover, as per the available records, at the time of the arrest of the applicant/accused no contraband substance was seized from his possession.

22. 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/accused, as mandated under Article 22 of the Constitution of India, and non-compliance of Section 48 of the BNSS, 2023.

23. Taking consideration of the factual aspect and the settled position of law, this Court is of the view that applicant/accused be released who is presently in judicial custody.

24. Accordingly, the bail application is allowed and the applicant/accused shall be released on bail, subject to the fulfilment of the conditions and satisfaction of the learned Court of Special Judge, NDPS,Aizwal:

(1) The accused/petitioner shall be released on bail on furnishing a bail bond of Rs.1,00,000/- (Rupees one 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.

25. 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.

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

JUDGE

Comparing Assistant