GAHC030007532026

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

Case No. : Bail Appln./109/2026

Smt. Vungngailun
D/o Thangpi, Tuila village, Hanglep P.S, Churachandpur, Manipur

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr Nei Chunga Darlong

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

BEFORE
HON'BLE MRS. JUSTICE HELEN DAWNGLIANI
ORDER

16.11.2026

Heard Mr. N J Dutta, learned counsel for the applicant. Also heard Ms. Mary L. Khiangte, learned Addl. PP for the State.

2. This application is filed under section 483 BNSS, 2023 for grant of bail to the accused who was arrested on 10.08.2026 in connection with Saitual P.S Case No. 87/2026 under Section 21(c) of the ND&PS Act, 1985. **3.** Mr. N J Dutta, learned counsel for the applicant has prayed for the release of the

accused on bail mainly on two grounds:-

Firstly, violation of Section 48 BNSS. In this regard, the learned counsel submitted that it as clearly reflected in the arrest intimation under Section 48 BNSS that since the family members of the accused were residing outside the State they were unable to come to Saitual Police Station and so information regarding the arrest of the accused was given to her father in the mobile phone number given by the accused which belongs to the relative of the accused. The information was given through phone as well as through whatsapp message which clearly signifies not notice under Section 48 BNSS was not served in writing as mandated by the statute to any of the family/relatives of the accused. The reason given by the arresting officer that information was given through phone and whatsapp as the relative/family of the accused were residing outside the State of Mizoram is not an effective service as mandated under Section 48 BNSS and thus amount to violation of fundamental right under Article 21 of the Constitution. In this regard, the learned counsel has placed reliance in the decision of the co-ordinate Bench of this Court vide Order dated 06.02.2026 in the Bail Application No. 4109/2025 (*Bappi Sarkar & 2 Ors v. State of Assam*).

The second ground raised by the learned counsel is violation of Section 50 of the ND&PS Act. The learned counsel submitted that the arresting authority

did not inform the accused of her right to be searched either before a Gazetted Officer or a Magistrate. The accused was simply informed that she would be searched before the Sub-Divisional Police Officer at Saitual. The learned counsel argued that under Section 50 of the ND&PS Act there are only two options, i.e., the Gazetted Officer or Magistrate and as such, the arresting officer committed illegality in giving the third option, i.e., the SDPO or Police Officer which is not provided in the statue. In connection with their submission, he has placed reliance in the case of ***State Himachal Pradesh Vs. Surat Singh*** reported in ***(2026) INSC 240*** **.**

The learned counsel submitted that in the case at hand, the accused/applicant was only informed that she would be search in front of the SDPO and she did not consent to her personal search in front of the SDPO and that she was not offered any option.

4. On the other hand Ms. Mary L. Khiangte, learned Addl. PP opposed the application by submitting that there was substantial compliance of Section 48 BNSS inasmuch as photograph copy was sent to the leaders of the community in order to intimate the arrest and that written information was informed to the relative of the accused through an electronic means by way of whatsapp message. The learned Addl. PP therefore submitted that there was substantial

compliance of the said provision and no prejudice is caused to the accused/applicant. As reagrds the allegation of non-compliance of Section 50 ND&PS, the learned Addl. PP submitted that the SDPO was not part of the search team and no prejudice is caused to the applicant when body search was conducted in presence of the SDPO since the SDPO is a Gazzetted Officer and as such, there was substantial compliance of Section 50 ND&PS Act as well. The learned Addl. PP therefore submitted that no reasonable ground has been made out to enlarged the accused on bail.

5. Upon hearing the learned counsels and on perusal of the materials which was available on record with respect to the allegation of non-compliance of Section 48 BNSS, it is seen from the record that admittedly the intimation under Section 48 BNSS was conveyed to the father in the phone number of a relative given by the accused. The intimation indicates that a photo copy was also sent through whatsapp message during 72 hours and this information was provided to the community leaders for awarness. There is no other document to indicate that the whatsapp message was actually sent or received by the relative of the accused. It is seen from the intimation letter itself that the father of the accused was intimated over phone call belonging to the relative of the accused. It is a settled position that under such circumstances, if intimation is required to be given to a family/relative of accused outside the State of Mizoram. The same is

to be sent in writing to the Officer-in-Charge of the jurisdictional Police Station where the family reside to cause service to the family members. Failure to do the same by the arresting officer clearly amounts to violation of Section 48 BNSS.

6. With regard to the non-compliance of Section 50 of the ND&PS Act, the Hon'ble Apex Court in the case of ***State of Himachal Pradesh Vs. Surat Singh (Supra)*** the Hon'ble Apex Court upheld the finding of the High Court of Himachal Pradesh wherein the High Court in its Judgment & Order dated 08.10.2015 had made the following observation:-

> "*17. The accused was apprehended on 13.03.2013 while carrying a bag.However, despite that his personal search was carried out. The police has given option to the accused either to be personally searched before the Magistrate or the Gazetted Police Officer. The accused was also given option whether he wanted to be searched by the I.O. in the presence of witnesses mentioned in Ext.PW-I/A. According to Section 50 of the ND & PS Act, the accused has to be apprised of his legal right to be searched either before the Magistrate or the Gazetted Officer. There is no third option to be searched before the Police Officer. Thus, the consent obtained from the accused was not in conformity with Section 50 of the Act. It has vitiated the entire trial.*
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> *18. Their lordships of the Hon'ble Supreme Court in the case of Suresh and others versus State of Madhya Pradesh, reported in (2013) 1 SCC 550, have held that in a case where the accused were merely asked whether they would offer their personal search to police officer concerned or to gazetted officer and the appellants gave their consent for their personal search by police officer*

concerned, it will amount to non-compliance of Section 50(1) of the ND & PS Act. Their lordships have held as follows:

"16) The above Panchnama indicates that the appellants were merely asked to give their consent for search by the police party and not apprised of their legal right provided under Section 50 of the NDPS Act to refuse/to allow the police party to take their search and opt for being searched before the Gazetted officer or by the Magistrate. In other words, a reading of the Panchnama makes it clear that the appellants were not apprised about their right to be searched before a gazetted officer or a Magistrate but consent was sought for their personal search. Merely asking them as to whether they would offer their personal search to him, i.e. the police officer or to gazetted officer may not satisfy the protection afforded under Section 50 of the NDPS Act as interpreted in Baldev singh's case.

17. Further a reading of the judgments of the trial Court and the High Court also show that in the presence of Panchas, the SHO merely asked all the three appellants for their search by him and they simply agreed. This is reflected in the Panchnama. Though in Baldev Singh's case, this Court has not expressed any opinion as to whether the provisions of Section 50 are mandatory or directory but "failure to inform" the person concerned of his right as emanating from sub-section (1) of Section 50 may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law. In Vijaysinh Chan Jadeja's case (supra), recently the Constitution Bench has explained the mandate provided under sub-section (1) of Section 50 and concluded that it is mandatory and requires strict compliance. The Bench also held that failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. The concept of substantial compliance as noted in Joseph

Fernadez (supra) and Prabha Shankar Dubey (supra) were not acceptable by the Constitution Bench in Vijaysinh Chandubha Jadeja, accordingly, in view of the language as evident from the panchnama which we have quoted earlier, we hold that, in the case on hand, the search and seizure of the suspect from the person of the appellants is bad and conviction is unsustainable in law."

19. In the instant case the accused was to be apprised of his legal right to be searched either before the Gazetted Officer or before the Magistrate and not before the Police Officer.

20. Their lordships of the Hon ble Supreme Court in case of State of Rajasthan versus Parmanand and another, reported in (2014) 5 SCC 345, have held that if merely a bag is carried by person is searched without there being any search of his person, S. 50 will have no application but if bag carried by him is searched and his person is also searched, S. 50 would be attracted. Their lordships have also held that it was improper for PW-10 S.I. "O" to tell respondents that a third alternative was available. It has been held as follows:

15. "Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No. 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

Further, the Hon'ble Supreme Court in the case of ***Suresh & Ors Vs. State of Madhya Pradesh*** reported in ***(2013) 1 SCC 550*** *have held that in a case*

where the accused were merely asked whethe they would offer their personal search to police officer concerned or to gazetted officer and the appellants gave their consent for their personal search by police officer concerned, it will amount to non-compliance of Section 50(1) of the ND&PS Act.'

7. In the case at hand, it is the assertion of the applicant that option was not given at all to the accused and that she was informed that search would be conducted in front of the SDPO. The material available on the record does not contain any rebuttal to the said submission. In any view of the matter from the decision rendered by the Hon'ble Apex Court as aforesaid, the option available to the accused of being searched in front of a Police Officer cannot be considered as due compliance of Section 50 ND&PS Act.

8. From the discussions above, this Court is of the view that there was non compliance of Section 48 BNSS which amounts to violation of the fundamental right under Article 22(1) of the Constitution which vitiates the arrest itself.

9. Equally, there is also violation of the mandate of Section 50 of the ND&PS Act in the manner of giving option to the accused.

10. In terms of the decision of the Apex Court rendered in the case of ***Prabir Purkayastha v. State (NCT Delhi)*** reported in ***(2024) 8 SCC 254*** & ***Vihaan Kumar Kumar v. State of Haryana*** reported in ***(2025) 5 SCC 799***

this Court on the face of violation of the fundamental right of the accused on account of the lapse on the part of the arresting office is bound to ensure the liberty of the accused.

11. Accordingly, the Bail Application is allowed.

12. The accused shall be enlarged on bail with a bond of Rs. 1,00,000/- with two reliable sureties of the like amount to the satisfaction of the learned Trial Court who shall framed necessary conditions for the bail.

13. With the above, the Bail Application stands disposed of.

JUDGE

Comparing Assistant