GAHC030007772026

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

Case No. : Bail Appln./113/2026

Md. Saif Uddin @ Abu Saleh Md. Saif Uddin
S/o Abdul Fattah, Defalala, Sribhumi District, Assam

VERSUS

Union of India and Anr.
Aizawl

Advocate for the Petitioner : Mr. Azad Ahmed

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

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR
ORDER

29.10.2026

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. C. Zoramchhana, learned Senior Counsel and Special Public Prosecutor, Narcotics Control Bureau, assisted by Mr. Lalnunsanga, learned counsel.

2. This is the second bail petition under Section 483 of the BNSS, 2023, preferred by the petitioner, praying for grant of bail in connection with ND&PS

Case No. 65/2025, which is pending trial in the Court of the learned Special Judge, NDPS Act, Aizawl. The first bail petition before this Court had been numbered as Bail Appln. No. 60/2026, and the same was rejected on 17.09.2026. This Court had noticed on that occasion that the petitioner had not disclosed that he was arrayed as an accused in three other cases of similar nature. Unfortunately, the said disclosure has not been made in the present petition also.

3. Insofar as the incarceration of the petitioner in connection with ND&PS case No. 65/2025 is concerned, he was arrested on 20.11.2025. Records of the case reveal that a team of NCB officials had intercepted the petitioner at the Guwahati Railway Station at about 3 PM on 20.11.2025 and served a notice under Section 67 of the NDPS Act on the petitioner, requiring him to appear before the Investigating Officer. On his appearance before the concerned officer at the rendezvous, he was interrogated and thereafter taken into custody at around 2250 hrs on 20.11.2025. The petitioner was served with the notice under Section 47 of the BNSS, and his wife was informed of the details of his arrest through WhatsApp. The petitioner had talked to his cousin brother over the telephone, intimating him about his arrest on 20.11.2025 itself. He was produced before the learned remand Magistrate on 21.11.2025, and the learned Magistrate allowed a transit remand. He was then produced before the competent Court in Aizawl within the permitted period of transit remand and has remained in custody.

4. It, however, appears from the recording of the statement of the petitioner that he had fled from custody in connection with Mizoram Excise and Narcotics Case no 189/2023 while he was undergoing treatment. As already observed earlier, this present petition does not contain any reference by the petitioner to his antecedents found available in the records.

5. The learned counsel for the petitioner has submitted that the petitioner had been arrested on 20.11.2025 at 3 pm and therefore his production before the learned remand Magistrate at 5 pm on 21.11.2025 was beyond the stipulated period of 24 hrs from the time of his arrest. He has submitted that the records would reveal that the petitioner was "intercepted" at the railway station at 3 pm on 20.11.2025 and therefore, the restraint on the petitioner started from such time, although his formal arrest has been shown to be at around 2200 hrs on 20.11.2025. This Court does not find force in the said statement, since it is a matter of record that the petitioner had been intercepted at 3 pm at the railway station for serving him the notice under Section 67 of the NDPS Act, and there is nothing on record to indicate that the petitioner had been restrained immediately thereafter or that he was taken into custody immediately. The petitioner has not been able to assert by any material of probative value that he was either restrained or taken into custody at the railway station. Therefore, I do not find that the production of the petitioner

before the learned remand Magistrate at 5:00 pm on 21.11.2025, when he was arrested at 2250 hrs on 20.11.2025, suffers from an infirmity which would render the further custody illegal.

6. This Court has on the earlier occasion, in Bail Application No. 60/2026, dealt with the grounds taken by the petitioner regarding the alleged shortcomings in the notices served after the arrest of the petitioner. This Court had noted in paragraph 20 of the Order dated 15.09.2026 as follows:

> "*20. A final reliance was placed on behalf of the petitioner on the judgment and order dated 23.07.2026 passed by the Apex Court in the case of State of Meghalaya vs Sonam Raghuvanshi (SLP (Crl.) No. 11944 of 2026) where at paragraph 11, it was held that non-furnishing of grounds of arrest may vitiate the arrest itself. In my considered opinion, the judgment does not come to the aid of the petitioner, since in the present case, there is enough material to indicate that the grounds of arrest had been supplied to the petitioner. There is also enough material to indicate that the notice under Section 48 of the BNSS, 2023 had been served upon the wife of the petitioner. The bail petition does not contain any assertion that the wife of the petitioner was put to a disadvantage in defending the petitioner due to inadequacy, if any, in the notice served on her WhatsApp number.*"

7. The learned counsel for the petitioner has submitted that this Court, by relying on the "prejudice test", had rejected the bail of the petitioner, when it was recorded that there were no assertions that the wife of the petitioner had been put to any disadvantage in defending the petitioner due to inadequacy, if

any, in the notice served on her WhatsApp number. He has submitted that with the advent of the judgment of the Apex Court, in Jaskaran Jeet Singh Deol versus State of Punjab, reported in 2026 SCC Online SC 1939, there has been a change in law and the "prejudice test" will no longer hold the field.

8. First, this Court had not relied upon the prejudice test while dismissing the earlier bail petition. This Court had merely recorded that there were no assertions on behalf of the wife of the petitioner regarding any disadvantage from the contents of the notice served upon her.

Second, it is correct, as submitted by the learned Special Public Prosecutor, that the judgment in Jaskaran Jeet Singh Deol dealt with the question as to whether an accused, who had suffered breach of both Clauses (1) and (2) of Article 22 of the Constitution of India, could be re-arrested for the same offence. The Apex Court had dealt with a case where, admittedly, the grounds of arrest had not been served on the arrested person, thereby violating Article 22(1) of the Constitution of India read with Section 50(1) of the Criminal Procedure Code, 1973, and Section 47 of the BNSS, 2023. The Apex Court, at paragraph 22 of the judgment, held that the law in Mihir Rajesh Shah, reported in (2026) 1 SCC 500, laid down the correct law, which is binding. The judgment also quoted the conclusions arrived at in Mihir Rajesh Shah (supra), at paragraph 20.8, which are also quoted below for ease of reference:

"*In conclusion, it is held that:*

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

9. Although the argument of the learned counsel for the petitioner to the extent that a change in law would render a fresh bail petition maintainable is accepted, in the present case, in the considered opinion of the Court, no such change has been projected with regard to Section 48 of the BNSS, 2023 which could entitle the petitioner to prefer a fresh petition for bail, when, even as per the contention of the petitioner, the same grounds had earlier been considered by this Court.

10. It has been submitted by the learned counsel for the petitioners that the absence of signatures of independent witnesses on the arrest memo, coupled with the defective notice under Section 48 of the BNSS, 2023, would entitle the petitioner to enjoy the privilege of bail. It has been recorded at paragraph 15 of the earlier order dated 15.09.2026 that no arguments had been raised with regard to violations of the provisions of Section 36 of the BNSS, 2023 on that

occasion. In any event, the respondents have asserted the signatures of a respectable member of the society on the arrest memo, and the same has not been assailed by the petitioner.

11. Since all the grounds raised by the petitioner in this present petition had already been dealt with in the earlier order dated 15.09.2026, and no new grounds have been made out, this bail petition is not maintainable and accordingly stands rejected.

JUDGE

Comparing Assistant