GAHC030008042026

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

Case No. : Bail Appln./118/2026

Sh. T. Tongkhochon alias Thangchawn Haokip
S/o Sh. Doukholun(L), R/o Lamka, Churachandpur, Manipur

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai

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

B E F O R E

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

ORDER

16.11.2026

Heard Ms. Lalngaihsaki Fanai, learned counsel for the applicant. Also heard Mrs. Vanneihsiami, learned Additional Public Prosecutor for the State.

2. The instant application is filed under Section 483 of the BNSS for the grant of bail to the accused, who was arrested in connection with Excise Case No. N-237/2026 under Section 21(b) of the ND&PS Act, 1985. The brief facts of the

case, as it appears from the materials on record, is that on 27.09.2026 at around 1:30 am, C. Vanlalruati, Sub-Inspector of the Excise and Narcotics Department, received information from the Central Anti-Drug Squad (CADS) of the Central YMA regarding the detention of a male person named T. Tongkhochon @ Thangchawn Haokip for suspected possession of heroin at Zemabawk Kawn Veng. Upon receipt of information, a team of excise personnel proceeded to Zemabawk Kawn Veng. On reaching the reported place and after arranging for civilian witnesses, the aforesaid person, Thangchawn Haokip was interrogated and as per record, he voluntarily produced heroin from inside his wearing pants. Seizure and arrest were done on the spot in the presence of the witnesses, and the heroin produced by the accused weighed 11 grams.

3. Ms. Lalngaihsaki Fanai, learned counsel for the applicant, submitted that the accused/applicant was unauthorizedly detained by CADS (Central Anti-Drug Squad) of the Central YMA, which is a civilian organization and does not have any authority to detain any person, conduct search of any premises, or seize any suspected contraband under the ND&PS Act, rendering the detention of the accused by the members of CADS illegal and in violation of Article 21 of the Constitution. The learned counsel also submitted that the seized heroin weighs 11 grams, which falls under Section 21(b) of the ND&PS Act, and as such, the

rigors of Section 37 of the ND&PS Act are not attracted. Challenging the arrest and detention of the accused, the learned counsel submitted that there was total non-compliance of Section 42 of the ND&PS Act, inasmuch as no grounds of belief was recorded at all. The prosecution story is that on 27.09.2026 at about 1:30 am, the seizing officer recorded that she received information from CADS, Central YMA, that they have detained a person named T. Tongkhochon @ Thangchawn Haokip for possession of heroin. The place of occurrence or the place of arrest has not been clearly described, creating

serious doubt in the prosecution case. The information report merely states "Zemabawk Kawn Veng-II", which is vague and does not disclose whether it is a building, conveyance, or enclosed place as required under Section 42(1) of the ND&PS Act, or a public place under Section 43 of the Act.

4. Furthermore, the learned counsel submitted that the information was received at 1:30 am and search was conducted at 2:20 am, i.e., during night hours between sunset and sunrise. As per the proviso to Section 42(1), if a search is to be conducted at night or after sunset and before sunrise, the officer must record the grounds of belief upon receiving such information as to why search warrant or authorization could not be obtained without affording an opportunity for the concealment of evidence or facility to escape. Under Section

42(2), the officer must send a copy thereof to the superior officer within 72 hours. In the present case, the information report was prepared by the seizing officer (the complainant himself), but no grounds of belief were recorded and no forwarding was made under Section 42(2), which is a clear violation of statutory mandates.

5. Ms. Lalngaihsaki Fanai, learned counsel for the applicant further argued that there was a total violation of Section 50 of the ND&PS Act. The alleged recovery was from inside the wearing pants of the applicant, which amounts to a personal search. It is an admitted fact emerging from the record of the case that the applicant was not produced before any Magistrate or Gazetted Officer, that the search and recovery of the contraband heroin was not made from the person of the accused in the presence of a Magistrate or Gazetted Officer, and that none of the police or excise officials of the raiding party who recovered the contraband heroin from him were Gazetted Officers, nor were they empowered to make a personal search of the accused in the absence of a Magistrate or Gazetted Officer. Thus, there was a total violation of Section 50 of the ND&PS Act.

6. It was also submitted by the learned counsel that there is a gross, blatant, and fatal violation of Section 47 of the BNSS and Article 22(1) of the

Constitution. The grounds of arrest given under Section 47 of the BNSS do not disclose the full particulars of the offence as required under the statute, and the place of arrest is merely described as "Zemabawk Kawn Veng". The learned counsel submitted that the mere mention of penal provisions in arrest documents without communicating the specific factual grounds, material particulars constituting the alleged offence, and the role of the petitioner does not amount to effective communication of the grounds of arrest under Section 47(1) of the BNSS, violating the fundamental rights of the applicant.

7. It was also submitted that there was gross violation of the mandatory provision under Section 48 of the BNSS, which corresponds to Article 22(1) of the Constitution. In this regard, the learned counsel submitted that admittedly, the arrest memo bears the signature of one relative, however, merely obtaining a signature on the arrest memo does not amount to compliance with Section 48 of the BNSS and Article 22(1) of the Constitution. In the present case, in fact, no copy of the grounds of arrest was ever handed over to the petitioner or his relatives, and no separate acknowledgement or receipt exists on record. Furthermore, the intimation of arrest dated 27.09.2026 furnished to the brother is legally insufficient and defective, as it fails to mention the place of arrest and incorrectly states the punishment as imprisonment up to one year, whereas the

offence under Section 21(b) carries a different punishment. The learned counsel also submitted that the petitioner is a permanent resident of Lamka, Churachandpur, having deep roots in society and being the sole breadwinner of his family, and that there is no danger of his absconding.

In support of her submissions, the learned counsel has placed reliance in the cases of ***Arif Khan @ Agha Khan v. State of Uttarakhand*** reported in ***(2018) 18 SCC 380***, ***Karnail Singh v. State of Haryana*** reported in ***(2009) 8 SCC 539***, ***Mihir Rajesh Shah v. State of Maharashtra*** reported in ***(2026) 1 SCC 500, Vihaan Kumar v. State of Haryana*** reported in ***(2025) 5 SCC 799***.

8. Mrs. Vanneihsiami, learned Additional Public Prosecutor, on the other hand, submitted that it is clear from the record that when the excise personnel reached Zemabawk Kawn Veng, where the accused was detained by the Central Anti-Drug Squad of the Central YMA, the accused voluntarily produced heroin from inside his wearing pants, which weighed 11 grams upon being weighed. The learned Additional Public Prosecutor therefore submitted that there was no body search conducted on the person of the accused by the excise team, and as such, the provisions of Sections 50 & 42 of the ND&PS Act are not attracted, as the materials on record clearly indicate that the accused voluntarily took out the

contraband item from his person.

9. As regards the grounds of arrest under Section 47 of the BNSS, the learned Additional Public Prosecutor submitted that from a bare reading of the grounds of arrest furnished to the accused and enclosed to the bail application, it is evident that the grounds of arrest contained the particulars of the offence, namely, violation of Section 8(c) of the ND&PS Act for possessing 11 grams of heroin, and it was also mentioned that he was arrested on 27.09.2026 at 2:20 am in connection therewith. The grounds of arrest further recorded that he was arrested as he was believed to be the actual owner of the contraband item found in his physical possession. The information also stated that he was booked under Section 21(b) of the ND&PS Act along with the probable punishment provided thereunder, and he was informed of his right to engage counsel of his choice. The body of the intimation under Section 47 also confirmed that the grounds of arrest was given to the accused on 27.09.2026 at 2:40 am, the same was clearly explained to him, and it also bear the signature of the accused. Therefore, according to the learned Additional Public Prosecutor, the grounds of arrest given to the accused under Section 47 of the BNSS is complete and self-contained.

10. As regards the intimation under Section 48 of the BNSS, the learned

Additional Public Prosecutor submitted that the same was given to the brother of the accused on 27.09.2026 and it bear his signature. The learned Additional Public Prosecutor submitted that the intimation of arrest under Section 48 of the BNSS enclosed to the bail application shows that on 27.09.2026 at about 2:20 am, Thangchawn Haokip was arrested for possessing 11 grams of heroin, and his mobile phone was also seized. The information further stated that the violation amounts to an offence punishable under Section 21(b) of the ND&PS Act along with the penalty provided, that information was given regarding the right to engage counsel, and that from 27.09.2026, the arrested person was in excise custody at Khatla, Aizawl and that he was being informed of the arrest and the custody since he is the relative of the accused. The learned Additional Public Prosecutor therefore submitted that intimation of arrest given to the relative of accused under Section 48 of the BNSS is complete and without any irregularity. Consequently, the decisions of the Hon'ble Apex Court, such as ***Vihaan Kumar (supra)***, cited by the learned counsel for the applicant, have not been violated, and the provisions of Sections 47 & 48 of the BNSS have been fully complied with. Since there was no body search, the question of violating Sections 42 or 50 of the ND&PS Act does not arise. The learned Additional Public Prosecutor submitted that no reasonable grounds have been made out to enlarge the accused on bail and thus prayed for the rejection of the

bail application.

11. Upon hearing the learned counsels and upon perusal of the record, what is noticeable is that the place where the accused was detained by CADS is simply mentioned as "Zemabawk Kawn Veng", similarly the seizure memo which was prepared under Section 106 BNSS also referred to the place of seizure as "Zemabawk Kawng Veng-II." Admittedly, 'Zemabawk Kawn Veng or Zemabawk Kawn Veng-II' refers to the name of a locality. Within the locality, there would be public place as well as building or enclosed place. No mention is made of any building or enclosed place. Nonetheless, from the materials on record, it is clear that the suspicion upon the accused was for physical possession of contraband item and not the contraband being kept/hidden in a house or in a bag. The manner in which the place of detention or the place of seizure is described is certainly insufficient. However, with the other attending materials and facts in hand whether it is considered as an enclosed place under Section 42 or public place under Section 43 of the ND&PS Act, the rigors of Section 50 of the ND&PS Act would have to be complied in both the cases.

12. Section 50(1) of the ND&PS Act provides that when a person authorized under Section 42 is about to search any person under the provision of Sections 41/42/43, he shall if such person requires, take such person without

unnecessary delay to the nearest gazetted officer of the department mentioned under Section 42 or to the nearest Magistrate.

13. From the facts available on record in the instant case, it is seen that the accused was detained by the CADS, Central YMA, at Zemabawk Kawn Veng on suspicion of possessing heroin. Under Section 40 of the BNSS, any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and shall, without unnecessary delay, but not later than six hours from such arrest, make over or cause to be made over any person so arrested to a police officer. Admittedly, in the case at hand, the accused was detained by the members of the CADS, which is a wing of the Central YMA on duty, on suspicion of possessing contraband drugs. The materials on record further indicate that upon receipt of the information, the excise personnel proceeded to the spot and, without conducting a personal body search, the accused voluntarily took out the contraband item from his wearing apparel. The materials available on record do not contain any document or mention indicating that a search of the person of the accused was conducted as contemplated under Section 50 of the ND&PS Act which would mandate giving of option to the accused before search was conducted. In view of the materials on record, it therefore cannot be concluded that a personal search of the accused was conducted which would attract

Section 50 of the ND&PS Act.

14. Coming to the argument regarding the alleged violation of Sections 47 and 48 of the BNSS, the record reveal that the intimation under Section 48 contained the relevant details regarding the arrest, the offence committed by the accused, the recovery of the contraband item from the possession of the accused, and the probable punishment. The family was further informed of the right to engage counsel and that, from 27.09.2026, the accused would be kept in excise custody at Khatla, Aizawl. The intimation under Section 48 of the BNSS also bears the signature of a relative of the accused. Furthermore, the grounds of arrest furnished to the accused under Section 47 contained all relevant particulars regarding the arrest, clearly specifying that the arrest was necessitated because he was believed to be the owner of the contraband substance (heroin). Thus, both the grounds of arrest under Section 47 and the intimation under Section 48 adequately set out the recovery of the contraband, the applicable penal provisions, and the place of custody.

15. In view of the submissions made by the learned counsels as well as the materials available on record, this Court does not find any irregularity or illegality having been committed under Sections 47 and 48 of the BNSS. Further, the provisions of Section 50 of the ND&PS Act were not attracted as no personal

or body search of the accused was conducted. Even though there appears to be an irregularity with regard to compliance with Section 42 of the ND&PS Act, in the considered view of this Court, the same alone would not warrant the grant of bail at this stage, and the effect of such non-compliance is a matter to be considered during the course of trial.

16. With the above observations, the bail application stands rejected.

JUDGE

Comparing Assistant