GAHC030008102026

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

Case No. : Bail Appln./122/2026

Sh. C. Lalhriatpuia
S/o C. Vanlalruata(L)R/o Chhinga Veng, Aizawl, H/No. C-5/10 Pin No-796001

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. S. Vanlalhriata

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

B E F O R E

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

ORDER

23.11.2026

Heard Mr. S. Vanlalhriata, learned counsel for the appellant. Also heard Mrs. Vanneihsiami, learned Additional Public Prosecutor for the State.

2. This application is filed under Section 483 of the BNSS for the grant of bail to the accused/appellant, who has been arrested in connection with Excise Case

No. N-150/2026 under Section 21(b) of the ND&PS Act, relating to the seizure of 25 grams of heroin kept in 2 (two) soap cases at Dawrpui, Aizawl, and another 25 grams of heroin from the residence of the accused/appellant.

3. The learned counsel for the accused/appellant has submitted that the accused has been in custody since 23.05.2026, and as the complaint sheet has already been filed, there is no chance of tampering with the investigation. He also submitted that the accused/appellant had earlier approached the learned Trial Court on two occasions for the grant of bail, both of which were rejected.

4. The learned counsel has principally raised the issue of non-compliance with Section 50 of the ND&PS Act while conducting the personal search of the accused/appellant. He submitted that it was mandatory upon the officer to offer an opportunity to the accused/appellant to exercise the option of being searched either before a Magistrate or a Gazetted Officer prior to conducting the personal search. However, in the instant case, no such option was given to the accused, nor was any Gazetted Officer or Magistrate present at the time of seizure, which is in clear violation of Section 50 of the ND&PS Act. According to the learned counsel, this ground alone is sufficient to enlarge the accused on bail, and in support of this contention, he has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Arif Khan @ Agha Khan v. State***

of Uttarakhand, reported in ***(2018) Supreme (SC)427***.

5. The other contention of the learned counsel for the appellant is that the accused/appellant is the sole breadwinner of his family, with his wife and two minor children totally dependent on him, and that his prolonged incarceration behind bars has caused severe hardship to the family. The learned counsel also submitted that the accused/appellant has no criminal antecedents, was serving as a Constable in the Mizoram Police Department to the best of his ability, has deep roots in the State and being a government employee, poses no risk of absconding if he is granted bail. It is further submitted that the accused/appellant is willing to abide by any conditions that may be imposed in the event he is enlarged on bail, and considering his antecedents, humanitarian considerations ought to be extended in the facts of the instant case. In this regard, the learned counsel has placed reliance on the order passed by a Co-ordinate Bench of this Court dated 07.09.2026 in **Bail Appln. No. 85/2026 (*T. Paulamthanga v. State of Mizoram*)**.

6. On the other hand, Mrs. Vanneihsiami, learned Additional Public Prosecutor, has strongly opposed the application by submitting that the accused, being a police personnel, is expected to be law-abiding, and his implication in an offence under the ND&PS Act casts serious doubt on his integrity. The learned

Additional Public Prosecutor further submitted that the lone testimony of one seizure witness, relied upon by the learned counsel for the appellant during the course of arguments to contend that no prior option was given to the accused to be searched before a Magistrate or a Gazetted Officer, is insufficient to draw a final conclusion, as any conclusion must be drawn from the evidence in its entirety, which is still being recorded before the learned Trial Court.

7. The learned Additional Public Prosecutor has also submitted that the materials on record suggest that no personal search attracting Section 50 of the ND&PS Act was conducted at all, inasmuch as, according to the complaint filed under Section 210 of the BNSS, the accused voluntarily produced two soap cases containing heroin from his wearing jacket in the presence of civilian witnesses. The learned Additional Public Prosecutor, therefore, submitted that it would be prudent to draw a conclusion only after the entire evidence is adduced.The learned Additional Public Prosecutor has further drawn the attention of this Court to the proceedings before the learned Trial Court on 16.09.2026, wherein it was submitted that departmental proceedings are pending against the accused and that he is also involved in the illegal trafficking of areca nuts in connection with another police station case, over and above the present case. Considering the submissions advanced before the learned Trial

Court and the fact that the accused is a serving Constable in the State Police Department, the learned Additional Public Prosecutor submitted that it would not be proper to grant him bail, as there is a reasonable apprehension of his tampering with evidence or influencing witnesses if enlarged on bail.

8. Heard the learned counsel for the parties and perused the record.

9. As per the record, when the excise team reached the spot, the suspected person, i.e., the appellant, confessed that he had kept heroin in his jacket. The officers then arranged for civilian witnesses and asked the appellant to exercise his option to be searched before a Gazetted Officer or a Judicial Magistrate First Class for conducting a body search. However, the appellant voluntarily took out two soap cases containing heroin from the jacket he was wearing in the presence of civilian witnesses. Accordingly, as per the record, no body search of the appellant was conducted as contemplated under Section 50 of the ND&PS Act, since the accused voluntarily took out the contraband items from his physical possession without a body search being conducted.

10. I have also perused the statements of witnesses recorded during the course of investigation, as well as the deposition of R. Lalzuiliana, one of the seizure witnesses recorded before the learned Trial Court. It appears that out of the 9 (nine) witnesses listed in the charge sheet, only 1 (one) witness has been

examined so far. The learned Trial Court, while considering the submissions of the learned counsel for the appellant regarding the alleged violation of Section 50 of the ND&PS Act, concluded that the issue must be determined on the basis of the evidence adduced during the course of the trial.

11. The learned counsel has placed reliance on the case of ***Arif Khan @ Agha Khan (supra)***. In that case, when the accused was given the option to be searched before a Magistrate or a Gazetted Officer, the accused replied that he had faith in the raiding party and consented to be searched by them. Accordingly, the raiding party, after obtaining his consent in writing, conducted a body search of the accused. The accused was convicted by the learned Trial Court, which was affirmed by the High Court in appeal, but the Hon'ble Supreme Court overturned the same on the grounds that: i) The appellant was not produced before any Magistrate or Gazetted Officer:- ii) For the said reason, search was not conducted in presence of Magistrate of Gazetted Officer: iii) None of the members of the raiding party who recovered the contraband was Gazetted Officer, and they were not empowered to conduct a search under Section 50 of the ND&PS Act, except in the presence of either a Magistrate or Gazetted Officer: iv) In order to conduct search and recovery of contraband articles from the body of the suspect, the search and recovery have to be in

conformity with Section 50 of the ND&PS Act.

12. In the case at hand, from the record, it is seen that no body search was conducted at all by the search team, and it was the accused who voluntarily took out the contraband items from his physical possession before a search could be conducted. According to the view of this Court, the facts are different from the decision rendered by the Hon'ble Apex Court as highlighted above.

13. Upon hearing the learned counsel for the parties and perusing the materials on record as well as the stage of the trial, this Court finds force in the reasoning of the learned Trial Court that the question of compliance or non-compliance with Section 50 of the ND&PS Act can best be decided only after the recording of evidence is complete.

14. In view thereof, I find no reasonable ground to interfere with the conclusion reached by the learned Trial Court regarding the alleged non-compliance with Section 50 of the ND&PS Act.As regards humanitarian considerations, this Court is of the view that the appellant, being a police personnel, is expected to exercise greater diligence and is duty-bound to prevent others from committing offences, especially the very offence in connection with which he has been arrested and detained in custody. At this stage, considering the fact that the appellant is a police personnel, as well as

the nature of the offence for which he is being tried, this Court finds no reasonable ground to show leniency on humanitarian considerations in the given facts and circumstances of the case.

15. For the above reasons, the bail application stands rejected and is disposed of accordingly.

JUDGE

Comparing Assistant