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2026:GAU-AS:9439

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

Case No. : Bail Appln./748/2026

MD FEROZ ALIAS MD FEROZ KHAN
S/O MD. ABDUL ZABAR
R/O KEIRAO MAKTING MAYAL LEIKAEI, P.S. IRILBUNG, DIST. IMPHAL EAST, MANIPUR

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MOTIUR RAHMAN, R J OJAH,I AMIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 14.10.2026

Heard Mr. M. Rahman, learned counsel, appearing for the accused-applicant. Also heard Mr. M.P. Goswami, learned Addl. P.P., representing the State respondent.

2. This is an application filed under Section 483 of the BNSS, 2023, praying for grant of bail to the accused-applicant in connection with Dillai P.S. Case No.

65/2025, registered under Sections 21(c)/25/29 of NDPS Act, 1985, read with Sections 61(2)/123 of BNS, 2023.

3. The gist of the case is that on 05.12.2025, one WSI Munmi Chutia, lodged an FIR before the Officer In-charge Dillai police station, stating that on the same day, about 12:05 PM, while conducting a routine Naka checking duty on NH-29 at Lahorijan, Karbi Anglong, a Maruti Suzuki Swift bearing Registration No. AS-01BA-8774, coming from Khatkati side towards Dillai, was signaled to stop during checking. It is alleged that during inspection, it was suspected that the vehicle contained narcotic contraband substances concealed inside the vehicle. Accordingly, the vehicle was thoroughly searched, and upon search, one long transparent polythene packet containing multicolored powdery substances, suspected to be morphine, weighing a total of 1.530 kg, was recovered, which was concealed inside the spare tyre tube of the same vehicle.

4. On receipt of the FIR, police registered Dillai P.S. Case No. 65/2025, under the aforesaid Sections.

5. The learned counsel for the accused-applicant submits that the accused-applicant has not been arrested in terms of the mandates of the rulings of the Hon'ble Supreme Court, as well as in violation of Article 22 of the Constitution of India. He submits that while arresting the accused-applicant, the arrest memo under Section 36 of the BNSS has not been signed by any of the witnesses. He further submits that the Section 48 notice which was issued, was, in fact, issued to one of the stock witnesses rather than any of his family members or nominated persons. He submits that in view of the settled law, the arrest being in violation of Section 36 as well as Section 48 of the BNSS, which goes to the root of the matter and his detention becomes illegal, the accused-applicant should be granted bail on this ground alone.

6. The learned counsel for the accused-applicant further submits that there is a mismatch in the FIR, as in the format of the FIR, the facts of the case as have been narrated are of a different case and not pertaining to the instant case. Whereas, the written form of FIR dated 05.12.2025 is actually pertaining to the present case. In view of the aforesaid submissions, he submits that since there is violation of Section 36 as well as Section 48 of BNSS in the instant case, the further detention of the accused-applicant cannot be sustained.

7. The learned Addl. PP, on the other hand, submits that huge quantity of morphine has been recovered from the accused-applicant, and therefore, the technical defects in arresting the accused-applicant should not be the grounds for allowing the prayer of the accused-applicant for bail.

8. The TCR in the instant case has been received in the same is perused by this Court.

9. This court has seen that the Section 36 notice has been given to the accused-applicant without containing any signature of any witness in the aforesaid. It is also seen that Section 48 notice has been given to one Aminul Hoque, who seems to be a stock witness, and it has been pleaded specifically that he is not the person nominated by the accused-applicant. There is no record to find that he has been nominated by the accused-applicant to receive the notice under Section 48 of the BNSS. It is also seen that the signature of the accused-applicant has not been obtained in the Section 48 notice. All these infirmities in arresting the accused-applicant go to the root of the matter and his detention becomes illegal. The Hon'ble Supreme Court in many of the cases has held that the arrest in violation of Section 36 and Section 48 and the infirmities as seen in the instant case will travel to the root of the matter, which will make the arrest in the instant case illegal. Therefore, since the arrest itself becomes illegal, the rigors of Section 37 of the

NDPS Act shall not be applicable in the instant case.

10. Taking into account the aforesaid facts, this court is of the opinion that the arrest of the accused-applicant cannot be sustained due to violation of Section 36 and 48 of the BNSS, and the accused-applicant has a right to be enlarged on bail. Accordingly, it is directed that the accused-applicant shall be released forthwith from jail on furnishing of bail bond of Rs. 50,000/- (Fifty Thousand only) with two sureties of like nature to the satisfaction of the District and Sessions Judge, Karbi Anglong, Diphu, subject to the following conditions: -

(i) That the accused-applicant shall cooperate with the investigation and appear before the trial court as and when required;

(ii) That the accused-applicant shall not directly or indirectly, induce, threaten or influence any witness, or tamper with the evidence of the case;

(iii) That the accused-applicant shall furnish copies of his Aadhaar card, PAN card, Driving License, and passport, if any, to the District and Sessions Judge, Karbi Anglong, Diphu.

11. In terms of the aforesaid directions, the instant bail application is disposed of.

JUDGE

Miriam Degu
(SPA)