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

Case No. : Bail Appln./2144/2026

ARMAN HOSSAIN AND ANR
S/O ABDAR HOSSAIN, R/O JARIDHARLA, PO GITALDAHA, PS DINHATA,
DIST COOCH BEHAR, WEST BENGAL, PIN 736175

2: ARIF ALI
S/O AZIM ALI
R/O RAGHUNANDAN
PO BALAKANDI
PS DINHATA
DIST COOCH BEHAR
WEST BENGAL
PIN 73617

VERSUS

UNION OF INDIA
REPRESENTED BY THE NARCOTICS CONTROL BUREAU, GUWAHATI
ZONAL UNIT, GUWAHATI.

Advocate for the Petitioner : MR. N N B CHOUDHURY, MS. K DEY

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

Date : 09.10.2026

Heard Mr. N.N.B Choudhury, learned counsel for the petitioners. Also

heard Mr. R.K.D Choudhury, learned Standing counsel, NCB /the Prosecuting Agency.

2. This application filed under section 483 of the Bharatiya Nagarik Suraskha Sanhita, 2023, the accused petitioners namely, *Arman Hossain* and *Arif Ali*, have prayed for bail in connection with NCB GZU Crime No. 08/2025 under Section 8(c) of NDPS Act, r/w Section 22(c)/29 of NDPS Act, 1985.

3. The case arose out of an FIR dated 12.07.2025. The gist of the allegation is that, based on an information, search was conducted in one platforms of Guwahati Railway Station and the present petitioners were allegedly found involved in trafficking of Methamphetamine tablets, as a passenger in Kanchanjunga Express.

4. This is a subsequent bail application, as two earlier bail applications were rejected on 21.11.2025 and 26.02.2026, passed in Bail Application No. 2957/2025 and Bail Application No. 4143/2025.

5. In the earlier bail applications, the aspect of notices under Sections 47/48 of the BNSS was considered, and the notices were held to be in order.

6. In the last bail application, the petitioner's side had taken a plea of non-production of the accused petitioners before the remand Magistrate within 24 hours, but after perusing the materials, the said contention was also negatived.

7. The first previous bail application was considered at the stage of

investigation and, therefore, the Case Diary was perused. However, the next subsequent application was considered after completion of investigation and filing of the charge-sheet, and accordingly, the scanned TCR was perused.

8. In both the previous bail applications, one of the pleas of the petitioner's side was that the petitioner is being prosecuted solely on the statement of the co-accused. However, upon perusing the relevant materials of the Case Diary and the scanned TCR, this Court, in the previous order dated 26.02.2026, held that apart from the statement of the co-accused, there were other materials as well, and thus, the said contention was also negatived.

9. The relevant paragraph-19, 20 & 21 of the aforesaid order dated 26.02.2026 may be reproduced herein below:

> "*19. With regard to the aspect of arrest solely on the basis of statement of co-accused, I go back to the narration in the charge-sheet with regard to the petitioners. With regard to petitioner Arman Hossain, it is stated in the chargesheet that his statement recorded under Section 67 NDPS, which was voluntary in nature, implications have emerged about involvement in trafficking of the seized contraband. It is stated that his mobile number has been located and verified to be in his name and from the CDR analysis, he was found to be in numerous contact with the co-accused Tahir Hussain Laskar, who was found carrying the contraband. He was in touch with the said co-accused on two mobile phones of his. The petitioner Arman Hossain was also stated to be in telephonic contact with other co-accused of this case, including petitioner No. 2 Arif Ali. It is stated that financial transactions of significant amount were found in the bank*

account of petitioner Arman Hossain and Arif Ali and also Arman Hossain with another Raju Hussain. It is stated that after investigation, it has been found that Petitioner Armaan Hossain acted as conduits for movement of funds and logistics, receiving and utilizing the money for execution of the trafficking, thereby attracting liability under Section 27A and 29 of the NDPS Act.

20. With regard to petitioner Arif Ali, the narration in the charge-sheet is on similar lines. Thus, it has been stated that in his voluntary statement under 67 NDPS Act, his involvement in trafficking of the contraband has emerged, his mobile phone has been verified to be in his number and CDR analysis indicated numerous contact with co-accused of the case, including Arman Hossain, Raju Hussain. It is stated that he was found to be in contact with Arman Hossain 1078 times. Financial transactions of significant nature were also found between him and Arman Hossain and also with Raju Hussain. A similar narration has also been made with regard to petitioner Arif Ali about his being conduit for execution of trafficking of illegal drugs.

21. Thus, upon perusing the aforesaid materials, it cannot be said that sole materials against the petitioner upon completion of investigation are the statements of co-accused. The investigation has found other incriminating materials as well, with regard to the petitioners."

10. The applicability of the rigours of Section 37 of the NDPS Act was also seen on the basis of the available materials, and it was held that the test of Section 37 of the Act cannot be said to have passed in favour of the petitioner.

11. Mr. Choudhury, learned counsel for the petitioners submits that a co-accused had been granted bail. In this regard, he has relied on the decision

of the Hon'ble Supreme Court in *Anjan Nath* v. *State of Assam* and another decision being *Kamaljit Singh v. State of Punjab and Another*, reported in *(2005) 7 SCC 226*. However, it is submitted by the prosecution that the said co-accused was released on default bail. In this third bail application, this Court is adjudicating the bail on merits, and therefore, the said decisions on the aspect of parity would not come to the aid of the petitioner.

12. The petitioner side has also relied upon two orders of the Hon'ble Supreme Court in *Shariful Islam alias Sarif v. State of West Bengal* and *Nitish Adhikary alias Bapan v. State of West Bengal*, where the petitioners were released on bail after being in custody for approximately 1.5 years. The said decisions also, in my view, would not assist the petitioner as in this case, the Court is adjudicating the bail for offences under the NDPS Act pertaining to commercial quantity, where the rigours of section-37 of the NDPS Act would be applicable and wherein, in the previous bail application, it has already been held that the said rigours are applicable on the basis of the material.

13. In the case of *Jahiya Khan vs. Union of India*, passed in B.A No. 2341/2026, a Co-ordinate Bench of this Court stated in paragraph-14 that the Court in principle agrees with the legal proposition that prolonged incarnation can override the embargo of section-37 of the NDPS Act, entitling the person to bail. However, it is also stated that whether bail is to be granted in a particular case applying the said proposition would depend upon the facts and circumstance of the case.

14. In this regard, a reference may be made to the landmark decision of the Hon'ble Supreme Court in the case of *Union of India v. K.A. Nazeeb*, reported in *(2021) 3 SCC 713,* wherein the Hon'ble Supreme Court has explained as to how statutory restrictions of bail incorporated in penal provisions such as under Section 37 of the NPDS Act are be harmonized with the principles underlying Article 21 of the Constitution of India - whereby the prolonged incarceration could entitle the accused to bail, despite the applicability of such statutory provisions. The relevant paragraph-17 of the said judgment may be reproduced herein below:

> "*17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.*"

15. Thus, based on this principle, it is to be determined as to what is the trigger point at which a case of prolonged incarceration will attract the principle of Article 21 of the Constitution of India to make it prevail over the statutory restrictions in penal laws such as NDPS Act or UAPA etc. However, so far, the Hon'ble Supreme Court has not laid down any approximate period

as to when the "trigger point" could be reached. Therefore, as of now, the Court would have to apply the principle enunciated in para-17 of *K.A Nazeeb (supra*) based on the facts and circumstance of each case. It may be mentioned herein that the issue on those lines have been referred to a larger Bench of the Hon'ble Apex Court.

16. In this case, as already mentioned above, the Court has earlier arrived at a finding that the test of section 37 of the NDPS Act is not passed in favour of the defence/petitioner. The relevant date of the order dated is 26.02.2026. A few months, less than a year, have elapsed since the said order and therefore, this Court is unable to say that the trigger point mentioned above, whereby section 37 would be overridden by Article 21 has already been reached, though, it had not been reached only a few month back on 26.02.2026. Therefore, in my considered opinion, it is not possible to grant bail to the accused at this stage on the grounds of length of detention, in view of the applicability of section 37 of the NDPS Act, which has already been adjudicated against the petitioner in the previous bail application on 26.02.2026.

17. Another contention of the petitioner is that the sampling rules stipulated by the NDPS Rules were violated at the time of seizure and sampling, and therefore, on that ground also, the petitioner should be granted bail. However, in this regard, a reference may be made to *Bharat Aambale Vs. The State of Chhattisgarh,* reported in *2025 INSC 78,* a leading judgment of the Hon'ble Supreme Court concerning the aspect of sampling and inventory under the NDPS Act. The relevant para-50 of the said

judgment may be reproduced herein below:

> "*50. We summarize our final conclusion as under:-*
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> *(I)……*
>
> *(II)……..*
>
> *(III)……*
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> *(IV)……...*
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> *(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.*
>
> *(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.*
>
> *(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution however no hard and fast rule can be laid down as to when such inference may be drawn, and would all depend on the peculiar facts and circumstances of each case.*
>
> *(VIII)……*
>
> *……."*

18. Thus, in *Bharat Aambale (Supra*), it has been held that the trial would not be vitiated merely for some procedural infirmities in the sampling, etc. The said principle would apply even to a lesser degree when the matter pertains to bail.

19. Upon perusing the materials pertaining to sampling etc. and keeping in mind the principles enunciated in *Bharat Aambale (supra)*, I am of the considered view that there is no procedural infirmity of the kind that would strongly persuade the Court to positively consider the case for bail. In any case, it is doubtful whether procedural infirmities, if any, in the sampling would prevail over the statutory restrictions under Section 37 of the NDPS Act, especially in view of the principle laid down in *Bharat Aambale (Supra)*, that such infirmities would not necessarily vitiate a trial.

20. Accordingly, in the given facts and circumstances, this court does not find sufficient new grounds in this subsequent bail petition, which accordingly stands **dismissed**.

JUDGE

Comparing Assistant