GAHC030006802026

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

Case No. : Bail Appln./92/2026

Smt. Zothanpuii
D/o N.K. Lala, R/o House No.A-34/I, Ramhlun Venglai, Near Ramhlun Indoor Stadium,Pin-796012

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. S. Vanlalhriata

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

BEFORE

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI
ORDER

15.10.2026

Heard Mr. S. Vanlalhriata, learned counsel for the petitioner. Also heard Ms. Vanneihsiami, learned Addl. PP for the State.

2. The instant applicaion is filed under Section 83 of BNSS, 2023 to enlarge the petitioner on bail.

3. The brief facts of the case is that pursuant to the report received by the Excise & Narcotics Department in the Anti-Narcotic Squad on 05.10.2025 at about 11:00 pm to the effect that the instant petitioner, a resident of Ramhlun Venglai, near Ramhlun Indoor Stadium was suspected to possess illicit drugs (codeine) inside her residence, ASI Lalhlunchhungi with 3 (three) others proceeded to the reported location and upon search of the residence of the instant petitioner and the adjoining godown owned by her in the presence of civilian witnesses, 5 kgs (50 phials of codeine based syrup CBCS) and 5.7 kgs (59 phials of CBCS) labelled as COF-RAM kept inside a cardboard box wrapped in a transparent polythene in the godown of the petitioner adjacent to her residence was recovered and the total quantity of the recovered items was 10.9 kgs (109 phials) of codeine based cough syrup (reddish liquid). Thereafter, the petitioner was arrested was 06.10.2025 from her residence at 12:10 am.

4. Investigation of the case was conducted and upon completion, prima facie case for the offense punishable under Section 21(c) of the ND&PS Act, 1985 was found, well established against the petitioner and thereafter, complaint under Section 201(1)(a) BNSS, 2023 was submitted to the Special Court, ND&PS Act.

5. Mr. S. Vanlalhriata, learned counsel for the petitioner has prayed for enlarging the petitioner on bail:-

1.) firstly, on the ground that the provision of Section 47 of BNSS was not fully complied with and that the petitioner was not informed of the detailed grounds of arrest as well as the section/provision for which she was arrested.

2.) secondly, challenge is also made to the notice given under Section 48 of BNSS which was furnished to the daughter of the petitioner namely Lalremruati, for the reason that the grounds of arrest was not informed and the intimation simply stated that the petitioner was kept in Excise & Narcotics custody.

6. It is the further submission of the learned counsel that the petitioner is innocent and that she has no criminal antecedent and very unlikely to commit the same offense. It is also submitted by the learned counsel that the petitioner is a native of Mizoram and permanent residence of Aizawl and so there is no danger of absconding. The learned counsel has also submitted that the petitioner had earlier approached the learned Special Court for grant of bail but the same was rejected. The learned counsel has placed reliance in the case of:-

1) ***Vihaan Kumar Vs. State of Haryana reported in 2025 INSC 162 by highlighting the conclusion arrived by the Hon'ble Supreme Court at para 21 of its Judgment.***

2) ***The order dated 21.08.2025 passed by the Division Bench of this Court in Crl.A No. 234/2025, to assert the point on the appreciation of precedence.***

3) ***The order dated 20.04.2026 of the Coordinate Bench of this Court in Bail Appln. No. 15/2026 wherein bail was granted***

for violation of Section 47 & 48 BNSS, 2023.

7. On the other hand, Ms. Vanneihsiami, learned Addl. PP opposed the bail application by submitting that the materials available on record which include the notice under Section 47 & 48 BNSS would clearly indicate that there was substantial compliance of the aforesaid provision and the content of the 2(two) intimations clearly indicate that the purpose of the said provisions were complied with.

8. The learned Addl. PP in support of her submission has relied on the decision of the Hon'ble Supreme Court in the case of ***State of Meghalaya Vs. Sonam Raghuvanshi*** reported in ***2026 SCC Online SC 1392*** wherein the Hon'ble Supreme Court has observed that there is fundamental difference between non-service of the grounds of arrest and non-furnishing of adequate reasons thereunder. While the first category might vitiate the arrest in the second category, one has to see the prejudice caused to the accused. The learned Addl. PP has submitted that the petitioner has not made any submission regarding prejudice caused to her even if there was irregularity in the service of notice and intimation under Section 47 & 48 BNSS. The learned Addl. PP has further submitted that in the instant case, prima facie case is found against the petitioner for the offense punishable under Section 21(c) ND&PS Act and as

such, the petitioner has to satisfy the twin conditions under Section 37 of ND&PS Act, but in the case at hand, the petitioner have not made any submissions regarding the embargo under Section 37 of ND&PS Act, so as to enlarge her on bail.

In this regard, the learned counsel has placed reliance in the case of ***State of Punjab Vs. Balraj Singh in SLP (Crl) 896/2026.***

9. The learned Addl. PP therefore submitted that no reasonable ground has been made out to enlarge the accused on bail.

10. In the case at hand, a perusal of the record shows that upon receipt of information on the night of 05.10.2025 at about 11:00 pm, the search team after recording the grounds of belief under Section 42 ND&PS Act, conducted search of the residence of the petitioner and upon search, recovery of contraband items as indicated above was made from the godown belonging to the petitioner which is adjacent to her house and she was arrested on 12:10 am of 06.10.2025 on the spot thereby, meaning from her residence/godown near her residence.

11. The grievance of the petitioner is the irregularity in compliance of Section 47 & 48 BNSS. As regards the ground of arrest which was given to the accused under Section 47 BNSS, it is seen that the same contained the place of arrest which is Ramhlun Venglai as well as the date and time of arrest and it also

indicates that on receipt of information from reliable source regarding violation of law, a search was conducted in her house wherein codeine based syrup of 10.9 kgs were recovered. It was also informed that since the offense is a non-bailable offense, she may engage a counsel of her choice. On the body of the notice/grounds of arrest, the arresting officer and the petitioner subscribed their respective signatures. The notice under Section 47 of BNSS was given in Mizo language. It was given to the petitioner on 16.10.2025 at 12:10 am at Ramhlun Venglai. In the case of ***Vihaan Kumar (Supra)*** The Hon'ble Supreme Court has held that *the information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved.*

Keeping in mind the aforesaid decision of the Hon'ble Apex Court in the aforementioned case which has also affirmed in the subsequent cases, a perusal of the notice given under Section 47 BNSS to the petitioner had provided sufficient information to have knowledge of the basic facts constituting the grounds of arrest and it was effectively communicated in the language spoken by the petitioner as such, the notice under Section 47 BNSS appears to be

proper and complete in serving the purpose intended by the said provision.

12. Coming to the provision of Section 48 BNSS the record shows that the same was given to Lalremruati, daughter of the petitioner on 06.10.2025 at 12:10 am and the intimation indicates that the arrested person was in Excise & Narcotics custody.

13. In this regard, the learned counsel for the petitioner has raised an objection on the ground that the facts of the arrest was not mentioned and it was only indicated that the arrestee was in Excise & Narcotics custody. It is also the case of the petitioner that even though the intimation was allegedly given to the daughter of the petitioner, she was residing in another locality and thus, they dispute that the intimation was actually given to her on 06.10.2025 at 12:10 am.

14. The provision of Section 48 is reproduce herein below:-

> ***Obligation of person making arrest to inform about the arrest, etc., to relative or friend.-****(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district.*
>
> *(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.*

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

15. In the case at hand, the arrest intimation under Section 48 of BNSS does not contain any offense which necessitated the arrest of the petitioner. The arrest intimation is given in a readymade format which contains the name of the accused with details of her address, date, time and place and a statement to the effect that she was in Excise & Narcotics custody 'till date'.

16. From the aforesaid provision, it is clear that information regarding arrest and place where the arrested person is being held is to be given his relatives/friends or such persons as may be disclosed or mentioned by the arrested person. In the present case, though the arrest intimation was given to the daughter of the petitioner, from the address of the recipient which is reflected in the body of the arrest intimation under Section 48 of BNSS, it can be seen that she is a resident of Salem Veng, Aizawl which is a locality different from the locality where her mother/petitioner reside and where the search and seizure was conducted on the midnight of 05.10.2025. The record does not mention anything about the presence of the aforementioned daughter of the

petitioner at the time of search and seizure. Therefore, only from the fact that intimation was given to the daughter of the petitioner, it cannot be concluded that she was present at the time of search, seizure and arrest of her mother/petitioner.

17. Even a cursory reading of the arrest intimation under Section 48 of BNSS which was supplied to the daughter of the petitioner would show the absence of the offense for which the arrest was made and the reasons for the arrest was also not mentioned.

18. As observed by the Coordinate Bench of this Court in the case of ***Lalchhuanliana (Supra)*** the basic requirement under Section 48 of BNSS would be to inform not only of the arrest but also as to why the arrest has been made, so that the family/relatives or friends can take necessary steps to secure bail of the arrestee/petitioner. In the instant case, from the arrest intimation given to the daughter of the petitioner, it cannot be said that the same meets the requirements of Section 48 of BNSS as there is no disclosure of the offense and the reason/grounds for arrest of the petitioner.

19. It is a settled position of law that violation of Article 22(1) of the Constitution as the liberty of the person is involved and such violation would vitiate the arrest itself.

20. The learned Addl. PP has placed reliance of ***Sonam Raghuvanshi***

wherein the Hon'ble Apex Court has differentiated between non-service of grounds of arrest and non-furnishing of adequate reasons there under. In the said case, the grounds of arrest which was given to the accused/petitioner indicate the offense as one punishable under Section 403(1) BNS instead of Section 103(1) of the BNS which according to the Hon'ble Supreme Court was an apparent typographical error and it would fall in the second category of non-furnishing of adequate reasons of arrest, for which the arrest itself would not be vitiated unless prejudice is caused to the accused.

21. In the case at hand, a bare perusal of the arrest intimation under Section 48 BNSS it is clear that the offense itself was not mentioned not to speak of the grounds of arrest. In the given facts of the case, the irregularity cannot be regard as a typographical mistake.

22. In the case of ***State of Punjab Vs. Balraj Singh*** it was observed by the Hon'ble Apex Court that the twin conditions of Section 37 of ND&PS would also to be satisfy for grant of bail.

23. In the case at hand, since there are clear precedence to the effect those violation of Section 48 of BNSS would amount to violation of Article 22(1) of the Constitution thereby vitiating the arrest itself, the aforesaid mandate when pitted against the statutory embargo under Section 37 of ND&PS Act, the violation of the Fundamental Right under Article 22(1) of the Constitution would

have to prevail.

24. In view of the above discussions, this Court is of the view that the petitioner is liable to be granted bail for non-compliance of Section 48 of BNSS.

25. Accordingly, the accused/petitioner namely **Smt. Zothanpuii,** is granted bail with a bond of Rs. 2,00,000/- (Rupees Two Lakhs) only with a 1 (one) surety of the like amount to the satisfaction of the learned Trial Court with the following conditions:-

1.) She shall attend the Court regularly.

2.) She shall not tamper with evidence or influence the witnesses.

3.) She shall not commit similar offense or any other offense while on bail.

4.) She shall not leave the territorial jurisdiction of the learned Trial Court without prior permission of the learned Trial Court.

It is needless to mention that violation of any of the bail conditions will entail cancellation of bail.

26. With the above, the Bail Application is disposed of.

JUDGE

Comparing Assistant