GAHC030007252026

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

Case No. : Bail Appln./104/2026

Sh. Vanlallianzauva
S/o Lalruata, Haifeng, Falam District, Myanmar, Present Add. Zokhawthar, Champhai District

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai

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

BEFORE
HONOURABLE MRS. JUSTICE HELEN DAWNGLIANI
ORDER

14.10.2026

Heard Ms. Lalngaihsaki Fanai, learned counsel for the applicant. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State.

2. This application is filed under Section 483 of BNSS read with Section 37 of ND&PS Act, for grant of bail to the accused/applicant in connection with Excise

Case No. N-169/2026 under Section 21(c) of the ND&PS Act, 1985.

3. The brief facts of the case is that Excise personnel received information that one Vanlallianzauva, driver of vehicle bearing registration No. MZ-01-AB-9551, was suspected to transport heroin in his vehicle from Champhai to Aizawl. The information was recorded in writing and a team was formed to intercept the vehicle. At a convenient spot between Tuikhurhlu and Zero Point, they spotted one Tata Intra V17 bearing registration No. MZ-01-AB-9551 and halted the vehicle. The vehicle was empty, and after questioning the suspect driver namely Vanlallianzauva, they came to know that he was carrying two (2) packets of heroin to be delivered to two different persons, namely, K.C. Lalrintluanga and Lalhmangaihzuali at Aizawl, which was sent to him by one Mawii of Champhai and Mapuia of Khawmawi, Myanmar. Under supervision, the said Vanlallianzauva arranged to meet the receiver at Aizawl, Thuampui and he also arranged to meet the other receiver, which he saved as Zuali ,Aizawl near her residence at Bawngkawn Brigade near Futsal Ground.

4. The first receiver, K.C. Lalrintluanga was apprehended when he arrived to pick up the heroin and the other receiver namely, Lalhmangaihzuali arrived at the same spot and she was apprehended. Since it was already late in the night, the search team proceeded to the Excise and Narcotics Commissionerate at Khatla and thorough search of the vehicle was conducted and upon search of the vehicle, a

recovery of 350 grams of suspected heroin kept in 30 soap cases was made. The said contraband items alongwith Rs. 20,000/- as transportation of heroin, Tata Intra V-17 (bearing registration No. MZ-01-AB-9551) with a registration certificate, three (3) mobile phones were seized and (1) Vanlallianzauva (2) K.C. Lalrintluanga and (3) Lalhmangaihzuali were arrested.

5. Ms. Lalngaihsaki Fanai, learned counsel for the applicant had challenged the arrest of the accused Vanlallianzauva mainly on two (3) grounds. Firstly, violation of mandatory provision of Section 42 of ND&PS Act, 1985. On this ground, it is submitted that whereas, the provision requires the grounds of belief under the said Section is to be recorded prior to conducting the search, in the case at hand, the documents containing the grounds of belief was prepared only at 11:20 PM on 16.06.2026 which was after the alleged search, seizure and arrest. As such, the search and seizure are vitiated by non-compliance with the mandatory provision under Section 42 of the ND&PS Act. In support of her submission, the learned counsel has placed on record the decision of the Hon'ble Supreme Court in the case of **Sarija Banu Vs. State through Inspector of Police** reported in **(2004) 12 SCC 266** wherein, the Hon’ble Apex Court observed that compliance with Section 42 is mandatory and that it is a relevant fact which should engage the attention of the Court while considering the bail application. Secondly, the learned counsel has argued that there was violation of Section 47 and Section 48 of the

BNSS, which amounts to violation of Article 22(1) of the Constitution.

6. It is submitted by the learned counsel that the grounds of arrest in writing was not furnished to the accused as well as to the relative at the time of his arrest as per the mandate of the Apex Court. It was further submitted that the applicant was arrested at about 6 pm at Tuikhurhlu and thereafter, he was continuously under the control and custody of the excise personnel and he was not at liberty to leave but formally arrested only at 11:15 pm and thus, there was intervening period of more than 5 hours, which the accused remained under the control of the excise personnel.

7. The constitutional requirement under Article 22 (1) is that the grounds of arrest shall be communicated to the arrested person as soon as may be. Therefore, the learned counsel submitted that the unexplained delay assumes significance.

8. The learned counsel also submitted that the arrest intimation which was given to the relative of the accused under Section 48 of the ND&PS Act was not proper. The learned counsel also placed reliance in the decision of this Court in respect of the co-accused, who was granted bail for violation of Section 42 ND&PS Act vide order dated 13.8.2026 in Bail Application No. 72 of 2026.

9. On the other hand, Mrs. Mary L. Khiangte, learned Addl. P.P opposed the application by submitting that the instant applicant has been charged under

Section 21(c) of the ND&PS Act, which involves commercial quantity, and therefore, unless the embargo under Section 37 of the ND&PS Act is satisfied, the applicant cannot be released on bail. The learned Addl. P.P also submitted that there is substantial compliance of the provisions of Section 47 and 48 of the ND&PS Act and that a perusal of the intimation given to the accused and his relative under the aforesaid provisions would indicate that they are self-contained and includes all relevant details regarding the arrest of the instant applicant. The learned Addl. P.P with regard to the allegation of non-compliance of Section 42 of the ND&PS Act, the record would indicate substantial compliance of the same and that late compliance cannot be equated with non-compliance of Section 42 of the ND&PS Act. In the instant case, there apparently was delay in recording the grounds of belief under Section 42 but the same was nonetheless reported and report was given to the superior authority within 72 hours as mandated under Section 42 of the ND&PS Act.

10. From a perusal of the materials available on record with regard to compliance of Section 47 of the ND&PS Act, it is seen that the same was communicated to the accused on 16.06.2026 at midnight, and the intimation contains description of the seized items, the reason of the ground of arrest which is to the effect that he was driving a vehicle wherein he had concealed contraband item which he was to deliver to a seller. He was also further informed that he was at liberty to engage a

counsel, and that upon conviction, the sentence of imprisonment could be more than ten (10) years. The signature of the applicant appeared on the body of the ground of arrest under Section 47 of the ND&PS Act. As regards the intimation under Section 48 of the ND&PS Act, the same was given to one Lalhlimthangi D/o Vanlalhmangaiha and the intimation contained the full particulars of the recipient including the phone number. The intimation contained information regarding the arrest, details of contraband items seized as well as the seizure of cash and mobile phone as well as the vehicle number. The information also contained the place of detention of the accused with further information that he would be produced before a Magistrate. It was further stated in the intimation that the arrest was necessitated because he was driving a vehicle which was carrying contraband items and that he was transporting the same to deliver it to a prospective buyer. It was also informed that they may engage a counsel if they desire and that in the event of conviction, the punishment can be up to ten (10) years of imprisonment.

11. The intimation under Section 48 of the ND&PS Act was given on 17.6.2026 at 11:00 AM and the intimation under Section 47 of the BNSS was given on the midnight of 16.6.2026. Considering the contents of the intimation under Section 47 and 48 of the BNSS and the time on which the same was given, this Court is prima facie satisfied that the mandate of the provisions have been complied with. As regards the allegation of non-compliance of Section 42 of the ND&PS Act, it

mandates that the grounds of belief under the aforesaid Section has to be recorded before making search and the requirement to send a copy of the grounds of belief within a period of 72 hours is necessary.

12. The record which is produced shows that the information was recorded in writing to the effect that on 16.06.2026 at about 3:00 PM, information was received regarding a vehicle bearing registration No. MZ-01 AB 9551, driven by Zauva, which is transporting some heroin for delivery to Aizawl and that they will try to locate the vehicle and apprehend the person involved. The said inquiry report is dated 16.06.2026 and it was reported by the Inspector of Excise and Narcotics, Anti-Narcotics Squad, Aizawl. The report of seizure and arrest addressed to the Officer-in-Charge, Anti-Narcotics Squad, Excise and Narcotics Department was prepared by the same Inspector on 17.06.2026, wherein it is clearly mentioned that the grounds of belief to conduct search of the suspected vehicle outside the Excise Commissionerate at Khatla was recorded. It is also seen from the report that on 16.06.2026 at around 3:00 PM, when information about transportation of contraband items was received, the Excise personnel proceeded to intercept the vehicle and stationed themselves at a convenient place between Tuikhurhlu and Zero Point. At around 6:00 PM, they intercepted the vehicle in question. A reading of the record further revealed that search of the vehicle was not conducted there and around that time, the driver of the vehicle constantly received phone calls and

on the basis of such phone calls, they apprehended the co-accused Lalhmangaihzuali and K. C. Lalrintluanga, to whom the contraband was supposed to be delivered. It was only thereafter that the vehicle was taken to the Excise Narcotics Commissionerate to conduct search of the vehicle and upon search, two packets weighing 350 grams of suspected heroin was recovered. Therefore, it is also revealed from the record that even though the first information was received at 3:00 PM, the actual search of the vehicle detained could be done only by midnight.

13. In the case of **Sarija Banu** (Supra), which was relied on by the learned counsel for the applicant, the Hon'ble Supreme Court no doubt observed that compliance of Section 42 is mandatory and that such consideration is a relevant fact even at the time of consideration of bail application. I am given to understand by the aforesaid decision of the Hon'ble Supreme Court, violation or irregularity in compliance of Section 42 would vitiate the arrest itself so as to draw a corollary with the mandatory compliance of Section 47 and 48 of the BNSS, which in no uncertain terms would result in violation of Article 22(1) of the Constitution.

14. The contraband items involved in the instant case is a commercial quantity for which a case under Section 21(c) is registered against the accused person. In view of the decision of the Supreme Court in **Balraj Singh** (surpa), it is required of the applicant to satisfy the Court on the embargo placed by the provision of

Section 37 of the ND&PS Act. In the case at hand, no submission is made regarding the merit of the case, and this Court at this stage is unable to draw any presumption or conclusion to the effect that the materials placed before it is insufficient to convict the accused.

15. In the instant case, even if there was belated compliance of Section 42 of the ND&PS Act, the applicant has not made out any prejudice caused due to such delay. It is also noteworthy that in the peculiar facts and circumstances of the case, from a perusal of the case record, the relevant record and the materials placed before this Court, the compliance of Section 47 and 48 of the BNSS and the provision of Section 42 of the ND&PS Act can be inferred. The Hon'ble Apex Court in **State of Punjab Vs. Balraj Singh @ Billa** reported in **2026 INSC 618** while affirming the observation of the said Court in the case of the **State of Meghalaya v. Lalrintluanga Sailo** reported in **2024 SCC OnLine SC 1751** and **Union of India v. Ajay Kumar Singh** reported in **2023 SCC OnLine SC 346**, have held that in cases involving commercial quantity of narcotics, the mandatory requirement of Section 37 NDPS Act ought to be considered. In such a scenario, considerations and reference to the twin conditions enumerated under Section 37 of NDPS Act is mandatory. The Hon'ble Supreme Court, upon appreciation of the facts in the said case, set aside the judgment of the High Court wherein, bail was granted as not being sustainable in the eye of law, since the same was done

without consideration of the twin conditions of Section 37 NDPS Act.

16. In view thereof, the bail application is dismissed.

JUDGE

Comparing Assistant