GAHC010099532026

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

Case No. : Bail Appln./1337/2026

SIRAJUL ISLAM
S/O LATE ANSAR ALI R/O- BURJUK MANIKPUR P.S- KRISHNAI, DIST GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A AHMED, MR A AHMED,U U KHAN,MISS. P M AHMED,MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

JUDGMENT

Date : 17-09-2026

Heard Mr. A. Ahmed, learned counsel for the petitioner and Mr. K.K. Parasar, learned Addl. Public Prosecutor, Assam, for the State respondent.

2. This is an application under Section 483 of BNSS, 2023 praying for regular bail to the petitioner namely **Sirajul Islam,** who was arrested on 21.01.2026 in connection with **Special (NDPS) Case No. 21/ 2026 (Arising out of Agia**

P.S. Case No. 10/2026) registered under Sections 61(2)/ 123 of the BNS, 2023, read with Sections 22(C)/ 27A/29 of the NDPS Act, pending in the Court of the learned Special Judge, No. 2, Goalpara.

3. As per the allegations made in the FIR, the vehicle of the petitioner was stopped during naka checking and during search a polythene packet containing Yaba tablets i.e. methamphetamine was recovered and the total weight was found to be 1015 grams which amounts to commercial quantity. On the same day i.e. on 21.01.2026 the petitioner was arrested and produced before the learned CJM Goalpara and since then he has been in police remand and thereafter in the judicial custody. The case has already been charge sheeted.

4. The learned counsel for the petitioner submits that the notices issued under Section 47 and 48 BNSS, 2023 are not in consonance with the law as neither of the two notices contained any grounds of arrest.

5. A perusal of the aforesaid notices lends credence to the submissions of learned counsel for the petitioner in as much as what has been stated in the said notices nowhere indicate regarding any seizure of any contraband from the possession of the petitioner and what has been stated under the heading of "grounds of arrest" are actually the reasons for the arrest which are clearly different from the grounds of arrest as is the settled law.

6. The aforesaid facts could not be disputed by the prosecution As held by the Hon'ble Apex Court in **Directorate of Enforcement versus Subhash Sharma**, reported in **2025 INSC 141** once a court dealing with a bail application finds that the fundamental rights of the accused under Article 21 and 22 of the Constitution have been violated, while or after arresting the accused, it is the duty of the court to release the accused on bail, as such, arrest stands

vitiated.

7. It is also the settled law that when the violation of the fundamental rights of the petitioner are prima facie shown to have taken place, the bar of Section 37 of the NDPS Act cannot be resorted to for denying bail to the petitioner.

8. Having regard to the above, the prayer for bail is allowed. The petitioner named abvoe shall be released on bail on furnishing a bail bond of Rs. 1,00, 000/- (Rupees one lakh only) with 2 (two) sureties of like amount with two sureties, out of which one must be a regular government servant to the satisfaction of the concerned learned Special Judge, Goalpara.

9. In view of the law laid down in **Mihir Rajesh Shah- versus- State of Maharastra** reported in **2025 INSC 1288**, it would be open for the authorities to move the learned Trial Court for custody of the petitioner, if required, in terms of the law laid down in **Mihir Rajesh Shah** (Supra).

10. It is further provided that the petitioner shall regularly appear at the trial and shall not try to hamper the trial or influence the witnesses in any manner.

11. Petition stands allowed accordingly.

12. Send back the case diary.

JUDGE

Comparing Assistant