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GAHC030005122026

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

**Case No. : Bail Appln./64/2026**

Sh. Lalhmingsanga
S/o Vanlalbiaka(L) R/o-H/No.300, Edenthar, Aizawl-796001, P.S.-VaivakawnP.A.-ZokhawtharVengsang, Champhai District, Mizoram

VERSUS

Union of India
R/b the Secretary, Ministry of Finance, Department of Revenue, GOI, North Block, New Delhi-110001,Through the ZonalDirector, Narcotics Control Bureau, Agartala Zonal Unit, Agartala, Tripura

**Advocate for the Petitioner** : Mr. Imran Uddin Chowdhury

**Advocate for the Respondent** : Mr C Zoramchhana (Ld. Special PP)

## :::BEFORE:::
## HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

**Date on which judgment is reserved : 27.08.2026**

**Date of pronouncement of judgment : 03.09.2026**

**Whether the pronouncement is of the**
**Operative part of the judgment : NA**

**Whether the full judgment has been**
**Pronounced :**

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**Judgment & Order (CAV)**

Heard Mr. Imran Uddin Chowdhury, learned counsel representing NCB. Also heard Mr. C. Zoramchhana, learned Special Public Prosecutor for the State.

**2.** This is an application filed under ND&PS Case No. 166/2025 arising out of NCB Crime No. 1/2025 under Sections 8(c), 22(c), 25, 27A & 29 of the ND&PS Act.

**3.** The brief facts of the case are that on 06.03.2025 at about 2115 hrs. Excise and Narcotics, Mizoram had seized 48.061 Kg of crystal Methamphetamine from a Mahindra Scorpio bearing registration No. AS 16E 0044 at Khatla near Tennis Court, Aizawl, Mizoram from the conscious possession of accused Joseph Hmangaihzual and Muglamtuanga and three other accused persons namely, Ms. Zaitinthluaii and Sing Hun Lian and Lalengzaua were arrested in the follow up operation in connection with the seizure. A case has been registered by Excise and Narcotics, Mizoram vide Ex. N- Case No. 40/25 u/s 22(c) of the ND&PS Act, 1985. Subsequently the case was taken over by the NCB on 13.03.2025. According to the prosecution, during course of investigation on the basis of statements of co-accused persons as well as documents like bank statements, call records etc., the involvement of the

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petitioner was revealed and accordingly, he was arrested after serving him notice under Section 67 of the ND&PS Act on 09.04.2026.

**4.** The petitioner was produced before the learned Judicial Magistrate First Class, Aizawl, on 11.04.2026, and by an order passed on the said date, he was remanded to 72 hours of NCB custody, and subsequently was remanded to judicial custody, where he continues to remain till date. The learned counsel for the petitioner assails the arrest chiefly on three grounds:

i) The arrest memo under Section 36 of the BNSS does not bear the signature of any witness, whether a family member or a respected person of the locality where the arrest was effected.

ii) In the notice under Section 47 of the BNSS served upon the arrestee, the only purported ground of arrest shown therein is the "conscious involvement" of the petitioner in the alleged offence, with no mention of any facts demonstrating such alleged conscious involvement.

iii) There was no effective communication of the grounds of arrest to the family members, friend, or nominated person of the petitioner. What is claimed by the Investigating Officer (IO) is that a telephonic intimation of arrest was made to the wife of the petitioner, which constitutes wholly insufficient

compliance with the mandate of Section 48 of the BNSS, as explained in ***Vihaan Kumar Vs State of Haryana*** reported in ***(2025) 5 SCC 799***.

**5.** Furthermore, it is pointed out that the prosecution's purported written notice under Section 48 of the BNSS dated 10.04.2026 was actually submitted for dispatch at the Post Office on 24.04.2026, 14 days after the date of arrest and long after the petitioner had already been remanded, firstly to NCB custody and thereafter to judicial custody, which is in direct violation of the settled law in this regard as explained in the case of ***Mihir Rajesh Shah Vs State of Maharashtra & Anr.,*** reported in ***(2026) 1 SCC 500.***

**6.** In view of the above, it is argued that there has been a gross violation of not only statutory provisions, but also of the constitutional provisions of Articles 21 & 22, entitling the petitioner to be released on bail.

**7.** The learned counsel representing the NCB submits that there has been substantial compliance with the aforesaid statutory and constitutional provisions, and strenuously urges that the petitioner and his family members were well aware of the grounds of arrest. It is submitted that details were mentioned in the arrest memo prepared at the time of the petitioner's arrest, signed by the petitioner, and that the notice under Section 47 also indicates the recovery of contraband from the Mahindra Scorpio vehicle registered in the petitioner's

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name, alongside the relevant statutory penal offences under the ND&PS Act. Furthermore, the wife of the petitioner was intimated over telephone.

**8.** Regarding the grounds of arrest, the NCB maintains there has been substantial compliance with Section 48 of the BNSS. A written objection has also been submitted by the NCB.

**9.** The learned counsel has referred to the decision of the Hon'ble Apex Court in the case of ***State of Meghalaya Vs Sonam Raghuvanshi*** reported in ***(2026) SCC OnLine SC 1392***, to contend that there is a fundamental difference between non-service of grounds of arrest and non-furnishing of adequate reasons thereunder, and that the present case falls in the second category, which, according to ***Sonam Raghuvanshi (Supra)*** does not render the arrest illegal. Reliance has also been placed on ***State of Karnataka Vs Sri. Darshan***, reported in ***(2025) SCC OnLine SC 1702***, wherein it was held:

*"20.1.4. In Vihaan Kumar v. State of Haryana, it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in Kasireddy Upender Reddy v. State of Andhra Pradesh, it was observed that when arrest is made pursuant to a warrant, reading out the warrant amounts to sufficient compliance. Both these post-Pankaj Bansal decisions clarify that written, individualized grounds are not an inflexible requirement in all circumstances.*

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*20.1.5. While Section 50 Cr.P.C. is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend."*

**10.** Reliance has further been placed on a decision of the Delhi High Court in ***Karan Singh v. State of NCT of Delhi*** reported in (***2026) SCC OnLine DEL 282,*** *which held:*

*"19. There is one more aspect of the case. The grievance about the alleged procedural lapse has been raised very belatedly i.e. after more than one year and nine months of the arrest and there is no whisper of any prejudice being caused to the petitioner, who was represented by counsel from day one. Supreme Court in State of Karnataka v. Sri. Darshan, 2025 SCC OnLine SC 1702 has held that while compliance of Section 50 Cr.P.C. is mandatory, the consistent judicial approach has been to adopt a 'prejudice-oriented test' when examining alleged procedural lapses and, further held that mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice by denial of a fair opportunity to the accused to defend themselves."*

**11.** Replying to the aforesaid arguments, learned counsel for the petitioner reiterates his earlier stand and submits that the petitioner denies receipt of any telephone call by his family members. Even assuming for the sake of argument that such a telephone call was made to the petitioner's wife, it related solely to

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the intimation of arrest and not the grounds of arrest, which are two entirely different concepts. It is further submitted that the petitioner has been demonstrably prejudiced by the non-furnishing of the grounds of arrest in a meaningful manner to him or his family members, preventing him from adequately opposing the prosecution's remand prayer for police and judicial custody.

**12.** I have given anxious consideration to the rival submissions.

**13.** Addressing the question of the absence of a signature on the memorandum of arrest under Section 36 of the BNSS, it is an admitted fact and evident from the record that no signature of either a family member or a respectable person of the locality where the arrest was made appears on the memorandum, violating the mandatory requirement of Section 36 of the BNSS. Although the prosecution submitted that family members resided elsewhere and obtaining their signatures was impractical, no explanation was offered as to why the signature of a respectable local person could not be obtained.

**14.** Concerning the second aspect of communication of the grounds of arrest under Section 47 of the BNSS, a bare reading of the notice reveals that the petitioner was merely informed of his "conscious involvement in the alleged offence" involving the recovery of methamphetamine from a Mahindra Scorpio

vehicle. The notice omits stating that the petitioner was the registered owner of the vehicle (despite mentioning its registration number) and fails to indicate whether his alleged "conscious involvement" was in the capacity of a financier, supplier, or otherwise. In short, there is no indication of how the petitioner was allegedly involved.

**15.** While the NCB's written objection states that sufficient material existed in the form of bank statements showing huge financial transactions and call detail records indicating frequent communication, there is no explanation as to why none of this was reflected, even in substance, in the notice under Section 47 of the BNSS. Consequently, far from furnishing adequate grounds of arrest, not even the substance of the grounds was communicated, amounting to total non-compliance with Section 47 of the BNSS.

**16.** Regarding the non-furnishing of grounds of arrest to the family members under Section 48 of the BNSS, it is an admitted fact that no written notice stating the grounds of arrest was issued prior to the remand order dated 11.04.2026. Although the purported notice is dated 10.04.2026, the postal consignment report indicates it was issued only on 24.04.2026, long after the petitioner's remand, which is more or less admitted by the NCB in its written objection claiming it was merely an "additional measure." A perusal of the

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notice dated 10.04.2026 reveals not a single ground of arrest. Furthermore, paragraph 10 of the NCB's affidavit-in-opposition explicitly states:

*"10. Thereafter, the intimation of arrest was communicated to the wife of the arrestee over mobile phone and following after the mobile phone intimation was also given in writing through speed post and to the concern police station. Hence, there is no violation of the provisions of BNSS and accused was produced before the learned Court after following all the provisions of law."*

**17.** Thus, by the NCB's own admission, only intimation of arrest and not the grounds of arrest was communicated to the wife over the mobile phone, demonstrating a gross violation of Section 48 of the BNSS as explained in ***Vihaan Kumar (supra).***

**18.** In ***Kasireddy Upender Reddy Vs State of Andhra Pradesh & Ors.,*** reported in ***(2025) SCC OnLine SC 1228***, the Hon'ble Apex Court held that for Clause (1) of Article 22, full details of the offence are not necessary, but information must be sufficient for the accused to understand why they were arrested, akin to charges framed for trial. The notices under Sections 47 and 48 of the BNSS in the present case conform to none of these requirements.

**19.** As for the question of demonstrable prejudice adverted to in ***Sri Darshan (Supra)***, a perusal of the remand order dated 11.04.2026 passed upon the accused's production before the Magistrate reveals that the accused had no

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legal representation whatsoever, whether via private counsel or a Legal Aid Counsel. This Court notes with anguish that the learned Magistrate before whom the accused was produced did not deem it fit to ascertain whether the accused was represented by counsel or to appoint a Legal Aid Counsel.

**20.** Demonstrable prejudice has indeed been caused to the petitioner by the failure to furnish grounds of arrest either to him or his family members, as he was unable to effectively oppose the prosecution's prayer for police remand.

**21.** The decisions in Sonam ***Raghuvanshi (supra)*** and Karan ***Singh (supra)***, cited by the NCB concerning the non-furnishing of adequate reasons along with grounds of arrest, are of no assistance to the prosecution in light of the findings above.

**22.** Accordingly, this Court is constrained to hold that there has been total non-compliance with Section 36 and Sections 47 and 48 of the BNSS, resulting in violations of the Fundamental Rights of the petitioner under Articles 21 and 22 of the Constitution of India, rendering the arrest illegal and entitling the petitioner to bail.

**23**. The petitioner is allowed to go on bail on furnishing a bail bond of Rs. 2,00,000/- (Rupees Two Lakh only) with two sureties of the like amount (one of

whom must be a government servant residing within the State of Mizoram) to the satisfaction of the Trial Court, subject to the following conditions:

i. The petitioner shall cooperate in the trial of ND&PS Case No. 166/2025 pending in the Trial Court;

ii. The petitioner shall appear before the Trial Court as and when required;

iii. The petitioner shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case to dissuade them from disclosing such facts before the Trial Court;

iv. The petitioner shall provide his contact details, including photocopies of his [Aadhaar Redacted] or Driving License or PAN card, mobile number, and other contact details to the Trial Court;

v. The petitioner shall not leave the jurisdiction of the Trial Court without prior permission, and upon being granted leave, shall submit his leave address and contact details to the Trial Court; and

vi. The petitioner shall not commit any offence while on bail.

**24.** As held in ***Sonam Raghuvanshi (supra),*** non-compliance with the service of grounds of arrest and consequent enlargement on bail does not act as a fetter preventing the re-arrest of an accused for the purpose of investigation. Since the petitioner has been granted bail due to violations of Sections 36, 47, and 48 of the BNSS, it remains open to the NCB, in the event that the investigation against the petitioner is incomplete, to re-arrest him after

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complying with the requisite statutory requirements.

**JUDGE**

**Comparing Assistant**