

GAHC010289582025



2026:GAU-AS:2769

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

**Case No. : Bail Appln./25/2026**

SEBUL HUSSEIN LASKAR  
S/O- FOYJUR RAHMAN LASKAR  
R/O- VILL- AAPIN PART-I,P.O. TUTARBAND, P.S. KATLICHERA, DIST.  
HAILAKANDI, ASSAM, PIN-788161

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PP, ASSAM

**Advocate for the Petitioner** : MR. O LASKAR, MS A GOGOI,MR. U N CHATTRY

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**  
**HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

**JUDGMENT & ORDER**

**Date of hearing** : **21.02.2026**

**Date of Judgment:** **24.02.2026**

Heard O. Laskar, learned counsel appearing for the accused applicant and Mr. K. K. Parasar, learned Additional Public Prosecutor for the State.

**2.** This is an application under Section 483 of the BNSS, 2023 for granting

bail to the accused applicant namely, ***Sebul Hussain Laskar***, who was arrested on 09.06.2025, in connection with NDPS Case No. 78/2025, arising out of Silchar P.S. Case No. 603/2025 corresponding to G.R. Case No. 1044/2025, under Sections 22(c)/25/29 of the NDPS Act, 1985 pending in the Court of learned District and Sessions Judge (Special Judge), Cachar, Silchar.

**3.** The gist of the prosecution's case, as reflected from the FIR dated 10.06.2025 lodged by S.I. Debabrat Das of Silchar Police Station, is that on 09-06-2025 at about 6:05 AM, an information was received regarding alleged transportation of contraband substances from Mizoram into Cachar. Acting upon such information, the police team established a checkpoint at Sonabarighat Bypass and at around 7:20 AM, intercepted a Bolero vehicle bearing Reg. No. MZ01 S0190 and a truck bearing Reg. No. AS-23-BC-8179 loaded with gas cylinders. It is alleged that during search of the truck, a modified gas cylinder was found containing five packets of suspected Yaba tablets weighing approximately 6.009 kgs, amounting to about 50,000 tablets. It was further alleged that upon interrogation, the accused persons disclosed that out of 304 cylinders transported, four of which have been modified to hide narcotics. It was also alleged that the accused persons confessed that three modified cylinders had already been delivered to one Afzal Raj Barbhuiya in Saratpally and two to Taramoni Laskar at Modhurbond. Acting on such disclosure, the police allegedly recovered Rs. 8,90,000/- in cash from Afzal Raj Barbhuiya and two more modified cylinders from the residence of Taramoni Laskar containing approximately 100,000 suspected Yaba tablets weighing about 12.906 kgs. In total, about 150,000 tablets weighing approximately 18.915 kg were allegedly seized along with cash and two vehicles, and five persons including the present accused applicant were arrested.

**4.** On receipt of the said complaint, the police registered the Silchar P.S. Case No. 603/2025 under Sections 22(c)/25/29 of the NDPS Act. The Accused applicant and other accused persons were arrested on 09.06.2025 and produced before the learned Court learned District and Sessions Judge (Special Judge), Cachar, Silchar on 10.06.2025 and since then they have been in judicial custody. After completion of investigation, the Officer-in-Charge, Silchar Police Station submitted Charge Sheet, dated 28-08-2025, under Section 193 of the BNSS against the Accused Applicant and four other accused persons, whereupon cognizance was taken in NDPS Case No. 78/2025 by the learned Special Judge, NDPS Act, Cachar, Silchar.

**5.** Mr. O. Laskar, learned counsel for the Accused Applicant, submits that no contraband was recovered from the conscious possession of the Accused Applicant or from the Bolero vehicle driven by him at the time of interception. He contends that the alleged contraband was recovered from the truck driven by co-accused Saidur Hussain Barbhuiya and from the residence of Taramoni Laskar and there is no material to connect the Accused Applicant with such recovery. He further submits that the only alleged material against the Accused Applicant is the confessional statement recorded under Section 180 of the BNSS, which is inadmissible in evidence under Section 23 of the BNS, 2023.

**6.** Learned counsel for the Accused Applicant further submits that the Accused Applicant was merely present at the place of interception and had no knowledge of the alleged transportation of contraband. He further submits that the Accused Applicant has no criminal antecedents and has been in custody since 09.06.2025 for a considerable period and the trial is still at the stage of consideration of charge with no likelihood of early conclusion. He also submits that the learned Special Court rejected bail application filed by the Accused

Applicant on 30.08.2025 by mechanically invoking Section 37 of the NDPS Act without considering the absence of recovery from the Accused Applicant and without properly appreciating the distinction between the present case and the case relied upon i.e. ***Rashid Hoque vs. Union of India in Bail Application No. 1153/2025***. Accordingly, it is prayed that the accused applicant be released on regular bail.

**7.** Mr. Laskar, the learned counsel for the Accused Applicant, further submits that while arresting the accused applicant, the police did not comply with the mandatory provisions of Sections 36 and 48 of the BNSS, 2023. He contends that during the arrest, neither the signature of any witnesses nor any family member of the Accused Applicant were taken on the Arrest Memo and no notice under Section 48 of BNSS, 2023 was sent to the family members of the Accused Applicant. Therefore, he submits that there is an apparent violation of the statutory provisions of Sections 36 and 48 of the BNSS, 2023. He further argues that since the personal liberty of the accused applicant has been curtailed and there has been a violation of rights under Article 22(1) of the Constitution of India, the Accused Applicant should be allowed to go on bail, as his arrest is an illegal one. Additionally, he points out that in the notice under Section 48 of the BNSS, 2023 issued to the Accused Applicant, there is no indication of when the notice was actually served to the family members.

**8.** On the other hand, the learned Additional Public Prosecutor appearing for the State submits that the instant case involves recovery of commercial quantity of narcotics contraband, i.e., YABA Tables, from the possession of the accused applicant, therefore, the rigours of section 37 of the NDPS Act shall be applicable in the instant case. He submits that only because a procedural lapse has occurred while arresting the accused applicant by not attesting the Arrest

Memo by one witness, shall not give right to the accused applicant to be enlarged on bail. To support his contention that section 37 shall be squarely applicable in the instant case, the learned Additional Public Prosecutor has referred to the case of Hero ***Sarkar-vs-Union of India through the Intelligence Officer Narcotics Control Bureau Kolkata Zonal Unit [CRM (NDPS) 445/2024]***, decided by the High Court at Calcutta on 28.03.2025, wherein, the Hon'ble Calcutta High Court held that even when an arrest is made without complying the requirements of section 41B Cr.P.C. (Section 36 BNSS) still, bail cannot be granted in an NDPS case without satisfying the two conditions mentioned in that Section.

**9.** This Court has perused the Trial Court Record, which has been produced before this Court and has considered the submissions made by the learned counsel appearing for the respective parties.

**10.** The fundamental rights are paramount under the Constitution of India. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Personal liberty, thus, is a sacred and cherished right under the Constitution. Article 22 of the Constitution of India further strengthens the protection of personal liberty of a person by providing that the person arrested must be informed of the grounds of his arrest at the earliest and should not be detained without informing him of such grounds.

**11.** It is not in dispute that in the case of NDPS Act also, the provisions of arrest of a person as laid down in the BNSS, 2023 have to be complied with.

**12.** In this connection, Section 36 and Section 62 of the BNSS being relevant are quoted herein below:-

**“36. Procedure of arrest and duties of officer making arrest-** Every police officer while making an arrest shall-

(a) Bear and accurate, visible and clear identification of his name which will facilitate easy identification;

(b) Prepare a Memorandum of Arrest which shall be-

(i) Attested by at least one witness, who is a member of the family of the arrested person or a respectable member of the locality where the arrest is made;

(ii) Counter signed by the person arrested; and

(c) Informed the person arrested, unless the Memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest.

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**62. Arrest to be made strictly accordingly to Sanhita-** no arrest shall be made except in accordance with the provisions of this Sanhita or any other law for a time being in force providing for arrest.”

**13.** A conjoint reading of the aforesaid two Sections makes it clear that a Memorandum of Arrest is a written document that serves as confirmation that the individual in question was arrested. In addition to meeting the essential requirements, it must provide particulars that are specific. A minimum of one witness is required to vouch for its authenticity. For the best possible outcome, this witness ought to be a member of the accused person’s family and in the event that a family member is unavailable, a respectable individual of the locality in which the arrest is made may be called upon to testify as witness. In the second step, of course, the arrested person is required to counter sign the Arrest Memo himself.

**14.** What is discernable from the aforesaid two sections is that there is mandate provided by the aforesaid section of 36 that the Arrest Memo has to be signed by a witness; either he is a member of the family of the arrested person or a respectable member where the arrest is made. Section 62 provides that no arrest shall be made except in accordance with the provisions of BNSS or any other law for the time being in force providing for arrest. Therefore, any arrest that has to be made is mandatorily has to comply with the provisions and procedure of arrest while making such arrest. Non compliance of such provisions will be in violation of the mandatory provisions which will in turn make such arrest illegal. Once an arrest becomes illegal, the arrested person shall have an unfettered right to be set at liberty i.e. to be released on bail.

**15.** Though Section 37 of the NDPS Act provides for certain conditions to be fulfilled before granting bail of an arrested person in case of seizure of commercial quantity, the same will be applicable only when the arrest is itself not illegal. However, if any arrest is made in violation of the mandatory provisions as laid down in the BNSS, 2023, then the same goes to the root of the matter and the initial arrest itself becomes illegal.

**16.** In the instant case in hand, it is seen that the Arrest Memo does not contain any signature or attestation of any person, neither of a member of the family of the arrested person or of any respectable member of the locality wherein the arrest was made. This clearly violates the mandates of Section 36 read with Section 62 of the BNSS, 2023. Additionally, no material could be found as to whom the notice under section 48 BNSS was served. No name of the addressee could be found in the Notice under Section 48 BNSS.

**17.** In view of the aforesaid, this Court is of the considered opinion that the rigours of Section 37 of the NDPS Act shall not be applicable in a case wherein

the initial arrest itself is rendered illegal due to violation of Section 36 of the BNSS, 2023.

**18.** In view of the ratios laid down by the Hon'ble Apex Court in catena of cases as well as the procedural mandates laid down under Section 36 of the BNSS, 2023, this Court is of the considered opinion that there is a violation of Section 36 of the BNSS, 2023 in the instant case while arresting the Accused Applicant whereby curtailing his fundamental rights guaranteed under Article 21 and 22 of the Constitution of India.

**19.** The case law that has been cited by the learned Additional Public Prosecutor is not found applicable in the instant case in hand.

**20.** In view of the aforesaid discussions and findings, this Court directs that the Accused Applicant to be released forthwith on bail on furnishing of bail bond of Rs.1,00,000/ with two sureties of like nature to the satisfaction of the learned District and Sessions Judge (Special Judge), Cachar, Silchar subject to the following conditions:-

(i) that the Accused Applicant shall appear before the Trial Court as and when required;

(ii) that the Accused Applicant shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court;

(iii) that the Accused Applicant shall provide his contact details including photocopies of their Aadhar Card, Driving License, PAN card as well as, mobile numbers, and other contact details before the Sessions/Special Judge, Cachar, Silchar;

(iv) that the Accused Applicant shall not leave the jurisdiction of the learned District and Sessions Judge (Special Judge), Cachar, Silchar without prior permission of the said Court and when such leave is granted by the said Court, the Accused Applicant shall submit his addresses and contact details during such leave before the said Court; and

(v) that the Accused Applicant shall not commit any offence while on bail.

**21.** In view of the aforesaid directions, this bail application stands disposed of, as allowed.

**JUDGE**

**Comparing Assistant**