



TRHC010006192026

2026:THC:547

HIGH COURT OF TRIPURA

AGARTALA

B.A. No.72 of 2026

Smt. Ratna Das,

W/o Sri Sujit Das, resident of Nayadil, Meghli Bandh, P.S. Sidhai, West Tripura, Pin-799212.

.....**Petitioner(s);**

On behalf of:

Sri Sujit Das,

S/o Late Jatindra Das, resident of Nayadil, Meghli Bandh, P.S. Sidhai, West Tripura, Pin-799212.

.....**Accused person(s).**

- Versus -

Union of India,

Represented by: Sri Rahul Sharma, Inspector, Divisional Preventive Force, Customs Division, Agartala, under Ministry of Finance, Department of Revenue, Government of India.

.....**Respondent(s);**

Along with

B.A. No.74 of 2026

Sri Sanjit Das,

S/o Late Amulya Das, resident of Vill- Ghaniarbill, Tuichindrai, P.S. Teliamura, Khowai, Tripura, Pin-799205.

.....**Petitioner(s);**

On behalf of:

Sri Suman Das,

S/o Sri Sanjit Das, resident of Vill- Ghaniarbill, Tuichindrai, P.S. Teliamura, Khowai, Tripura, Pin-799205.

.....**Accused person(s).**

- Versus -

Union of India,

Represented by: Sri Rahul Sharma, Inspector, Divisional Preventive Force, Customs Division, Agartala, under Ministry of Finance, Department of Revenue, Government of India.

.....**Respondent(s);**

Along with

B.A. No.75 of 2026

Sri Dipak Sarkar,

S/o Late Jatindra Das, resident of Vill-South Pulinpur, Karailong, P.S. Teliamura, Khowai Tripura, Pin-799205.

.....**Petitioner(s);**

On behalf of:

Sri Rupak Sarkar,

S/o Late Jatindra Das, resident of Vill-South Pulinpur, Karailong, P.S. Teliamura, Khowai Tripura, Pin-799205.

.....**Accused person(s).**

- V e r s u s -

Union of India,

Represented by: Sri Rahul Sharma, Inspector, Divisional Preventive Force, Customs Division, Agartala, under Ministry of Finance, Department of Revenue, Government of India.

.....Respondent(s);

Along with

B.A. No.76 of 2026

Smt. Sima Debnath Das,

W/o Sri Raju Das, resident of Ward No.27, Aralia, P.S. East Agartala, West Tripura, Pin-799004.

.....Petitioner(s);

On behalf of:

Sri Raju Das,

S/o Late Ranjit Das, resident of Ward no.27, Aralia, P.S. East Agartala, West Tripura, Pin-799004.

.....Accused person(s).

- V e r s u s -

Union of India,

Represented by: Sri Rahul Sharma, Inspector, Divisional Preventive Force, Customs Division, Agartala, under Ministry of Finance, Department of Revenue, Government of India.

.....Respondent(s);

For the Petitioner(s) : Mr. D. Biswas, Advocate,
Mr. A. Kar, Advocate.

For the Respondent(s) : Mr. B. Roy, Advocate.

Date of hearing : **23.04.2026.**

Date of delivery of
Judgment & Order : **29.04.2026.**

Whether fit for reporting :

YES	NO
	√

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The instant bail applications are filed on behalf of the accused persons namely Sri Sujit Das, Sri Suman Das, Sri Rupak Sarkar, and Sri Raju Das who are in custody from 30.09.2025 in connection with case no. 04/CL/NDPS/DPF/AGT/2025-26, dated 29.09.2025 under Sections 21(C)/22(C)/23(C)/25/25A/28 and 29 of the NDPS Act.

[2] The complaint was filed by one Rahul Sharma, Inspector, Divisional Preventive Force (DPF), Customs Division, Agartala, on behalf of the Union of India against the above said four accused persons, alleging that on the basis of a secret information, he constituted a team and set an ambush on 29.09.2025 at around 08:00 hours at a place 6 km away from Khowai Chowmuhani towards Agartala and at around 09:05 hours, the suspected vehicle bearing no.TR061767 arrived there. Thereafter, he followed the said truck with his team and at around 13:00 hours, another person arriving on a motorcycle met with the occupants of the said truck at Shanitala Noabadi area. There were three occupants in the said truck including the driver. These persons handed over one white muddy coloured plastic sack taking out from the truck. At that time, all of them were detained and total 11.03 kg of methamphetamine tablets (yaba) were recovered therefrom and after re-checking of the vehicle as per verbatim of those four persons, two trolley bags were further recovered which were deeply hidden behind sacks containing ginger inside the cargo bed of the truck. Upon opening each of the trolley bags, the officer further recovered brown packets and upon opening brown packets, blue and black plastic sachets containing small pink tablets with a pungent smell believed to be yaba, were found. Then he completed all the related seizure procedure and arrested them. Since then they are in custody.

[3] Mr. D. Biswas, learned counsel for the petitioners, submits that while arresting the four petitioners in the case, the provisions of Section 36 of BNSS were not scrupulously followed by the arresting officer. Neither the arrest memo was attested by any family member of the accused or a respectable person from the locality where the arrest was

made, nor the accused persons were informed by the arresting officer of their right to have a relative or a friend or any other person named by them to be informed of their arrest.

[4] Learned counsel, Mr. Biswas, further submits that the seizure in the instant case was made on 29.09.2025, whereas statements of seizure witnesses were recorded on 20.12.2025 which creates further doubts. Learned counsel also refers to the provisions of Section 51 of NDPS Act to show that in the case of searches, seizures and arrests, the provisions of Cr.P.C. or BNSS, 2023, as the case may be, are applicable so far the same are not contradictory to any provision of NDPS Act.

[5] Learned counsel, Mr. Biswas, relies on a decision of Hon'ble the Supreme Court in case of **Romila Thapar and others versus Union of India and others [(2018) 10 SCC 753]**. The relevant paragraphs of the said decision referred by the learned counsel are extracted hereunder:

"77. One of the circumstances which must certainly bear upon the fairness and impartiality of the process which has been followed by the investigating agency is in regard to the importation of two panch witnesses from Pune, when the arrests were carried out. Section 41-B of the Code of Criminal Procedure emphasises the importance of an independent witness while making an arrest. Section 41-B of the Code provides as follows:

"41-B. Procedure of arrest and duties of officer making arrest. – Every police officer while making an arrest shall –

- (a) bear an 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 person arrested or a respectable member of the locality where the arrest is made,
 - ii. countersigned by the person arrested; and
- (c) inform 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 named by him to be informed of his arrest."
(emphasis supplied)

The two panch witnesses in the present case are employees of the Pune Municipal Corporation. It is not disputed before this Court that they travelled as part of the police team which made the arrest.

78. It was in *D.K. Basu v. State of W.B.* (1997) 1 SCC 416: 1997 SCC (Cri) 92, that this Court laid down requirements to be followed in all cases of arrest, which included the following: (SCC pp. 435-36, para 35)

"35. (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest"

This Court observed that the requirements it had enunciated emanated from Articles 21 and 22(1) of the Constitution and "need to be strictly followed" failing which action for contempt of court would be initiated."

[6] Learned counsel, Mr. Biswas also relies on a decision of Single Bench of Gauhati High Court in case of **Amirul Islam Alias Nengra Police and another versus the State of Assam [Bail Appln./3650/2025]** decided on 20.01.2026 wherein the learned Bench observed that the violation of mandatory provision of Section 36 of BNSS, 2023 would override the embargo of Section 37 of the NDPS Act, 1985. It was also observed by the said learned Court that Section 36 and Section 62 of BNSS, 2023 are only statutory exposition of constitutional norm provided under Article 21 of the Constitution of India, and hence, same could not be overridden merely because of the presence of a non-obstante clause in Section 37 of the NDPS Act, 1985.

In said judgment the Gauhati High Court also disagreed with the observations made by Division Bench of High Court of Kolkata in case of **Hero Sarkar versus Union of India (CRM) (NDPS 445/2025)** wherein it

was observed by the Court that as Section 37 of the NDPS Act, 1985 was not in issue before the Apex Court when the judgment of " **D. K. Basu Vs. State of Bengal**" was delivered and as Section 37 of the NDPS Act, 1985 starts with a non-obstante clause giving overriding effect to the provisions of said section over other provisions of the Code of Criminal Procedure, 1973, even if an arrest is made without complying with the provisions of Section 41B of the Code of Criminal Procedure, 1973, it would not per se override the embargo of Section 37 of the NDPS Act, 1985.

[7] Learned counsel, Mr. Biswas further relies on a decision of Calcutta High Court in case of **Ansar Ali versus State of West Bengal [CRM No.5708 of 2018]** decided on 10.08.2018 wherein the Hon'ble High Court observed as under:

"9. Having considered the materials on record particularly the seizure list, labels, memo of arrest in the instant case, we find gross inconsistencies and/or contradictions in the said documents. Although it is claimed that the seizure was witnessed by independent witnesses, namely, Masidul Rahaman, Jayanta Sarkar and Nabin and their signatures purportedly appear on the seizure memo and labels on the seized articles, it is significant to note that no signature of a relation or a respectable member of the locality is affixed to the arrest memo of the petitioner.

10. In fact, in the arrest memo under the column titled "Relation or respectable member of the locality" it is recorded "no one turned up" It is inexplicable when the aforesaid local people agreed to witness the search and recovery of narcotic substance from the petitioner, why they declined to sign on the arrest memo. Signature on the arrest memo of a relation or

respectable member of the locality is a requirement which stems from the mandate of the Apex Court in the case of **D. K. Basu v. State of West Bengal (AIR 1997 SC 610)**. It is not an empty formality and the presence of such signature gives a stamp of authenticity to the lawful apprehension of the accused at the place and time as stated therein. Absence of signature in the arrest memo of a respectable member of the locality particularly when it is alleged that apprehension and recovery from the petitioner was at a public place in presence of independent witnesses gives rise to reasonable grounds that the arrest of the petitioner may not have occurred in the manner as alleged by the prosecution leading credence to the petitioner's plea of prior arrest and wrongful detention.”

It is further observed by the Hon'ble High Court that the statements of the so-called search witnesses were not recorded on the day of seizure or soon thereafter and only after one and half months of the incident their statements were recorded. On the other hand, statements of certain witnesses were recorded on the date of seizure whose signatures were noticeably absent in the seizure memo, arrest memo or labels prepared contemporaneously at the time of search and seizure. Considering all these aspects it was held by the High Court that petitioner was able to rebut the statutory restrictions for grant of bail under Section 37 of the NDPS Act.

[8] Learned counsel, Mr. Biswas, also relies on another decision of Calcutta High Court in case of **Chandra Bahadur Tamang @ Chandara B Tamang versus the State of West Bengal [CRM (NDPS) No.435 of 2023]** decided on 27.07.2023 wherein for violation of provisions of Section 41B of Cr.P.C., the bail was granted. The accused person in

that case relied on the judgment of Hon'ble Supreme Court in case of **D.K. Basu versus State of West Bengal in Writ Petition [(CRL) No.592 of 1987] [(1997) 1SCC 416]**. The High Court also observed that the arrest memo was not signed by either a member of the family of the accused petitioner or by a respectable member of the locality where the arrest was made and column 10 was absolutely kept blank and no explanation was advanced from the side of prosecution for non-compliance of Section 41B of the Code of Criminal Procedure.

[9] Learned counsel, Mr. Biswas, lastly relies on a decision of Hon'ble the Supreme Court in case of **Vijay Singh versus Union of India [Special Leave Petition (Criminal) Dairy No(s). 43071/2024]** wherein Hon'ble the Supreme Court observes that Article 21 of the Constitution of India over-rides Section 37 of the Act and if there is an undue delay on the part of the persecution in concluding the trial and that too for no fault on the part of the accused, then accused cannot be kept in jail for indefinite period of time.

[10] On the same point, learned counsel, further relies on another decision of Hon'ble the Supreme Court in case of **Directorate of Enforcement versus Subhash Sharma [(2025) 1SCR 1409]** wherein the Hon'ble Supreme Court observed that once a Court, while dealing with a bail application, found that the fundamental rights of the accused under Article 21 and 22 of the Constitution of India had been violated while arresting the accused or after arresting him, it was the duty of the Court dealing with the bail application to release the accused on bail. The reason was that the arrest in such cases stands vitiated.

According to learned counsel, in said case, there was a violation of Clause 2 of Article 22 of the Constitution of India, as the arrestee was not produced before the nearest Magistrate within the stipulated time of 24 hours which infringed the fundamental rights under Clause 2 of Article 22 of the Constitution of India.

[11] Mr. B. Roy, learned counsel for the respondent, however, fairly admits that the signature of the near relative of the arrested accused persons or any respectable person from the locality was not obtained in the arrest memo, and prima facie, there was a violation of Section 36 of BNSS by the arresting officer.

[12] Learned counsel, however, submits that even if there is violation of provisions of Section 36 of BNSS in the arrest memo, the accused persons are still not entitled to get bail, as the embargo of Section 37 of NDPS Act is there against them. In this regard, he relies on a decision of Hon'ble the Supreme Court in case of **Narcotics Control Bureau versus Mohit Aggarwal [Criminal Appeal Nos. 1001-1002 of 2022 arising out of Special Leave to Appeal (CRL.) No.6128-29 of 2021]** decided on 19.07.2022 wherein Hon'ble the Supreme Court observed as under:

“14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed

such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.”

[13] Learned counsel, Mr. B. Roy, also submits that Section 37 of the NDPS Act starts with non-obstante clause stating that notwithstanding contained anything in Cr.P.C. 1973, bail cannot be granted to the accused persons unless the twin conditions as embodied in the said provisions are satisfied.

[14] This Court has appreciated the submissions of both sides. Very recently, in the case of **State of Punjab versus Sukhwinder Singh @Gora [Criminal Appeal arising out of SLP (Crl.) No.5020 of 2026]** decided on 24.04.2026, Hon'ble the Apex Court at paragraph no.9, has categorically held that in the matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial. The provision casts upon the Court a duty to record, before enlarging an accused on bail, its satisfaction on two cumulative conditions, first, that there exist reasonable grounds for believing that the accused is not guilty of the offence charged; and second, that he is not likely to commit any offence while on bail and such provisions of Section 37 is mandatory and not merely directory, and that an order granting bail without such recorded satisfaction stands vitiated and cannot be sustained. It is also further observed that the right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious Constitutional right. However, such right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. The Constitutional right

under Article 21 and the special provision of law under Section 37, NDPS Act are to be read harmoniously and not placed in opposition to each other. Ultimately, the bail granted to the respondent was cancelled.

[15] In the case diary, there are prima facie materials corroborating the statements of witnesses regarding the recovery and seizure of huge quantity of contraband items from the accused persons. The Forensic authority, after examining those items, also submitted a report confirming the presence of methamphetamine and caffeine in those tablets. Therefore, the rigors of Section 37 of the NDPS Act are satisfied in this case.

[16] Thus, in view of above recent decision of Hon'ble Supreme Court in case of **Sukhwinder Singh (supra)** and also considering the materials placed on record, the instant bail applications are rejected.

Re-consign the case diary to the respondent-Union of India with copy of this order.

Return the LC record.

Also, communicate a copy of this order to learned Special Judge, West Tripura, Agartala.

JUDGE