

**HIGH COURT OF TRIPURA
A G A R T A L A**

B.A. No.137 of 2025

Anawora Begam,

W/O Manu Miah, resident of Nabadwipchandranagar, Durgapur, P.O.
Durgapur, P.S. Sonamura, District Sepahijala Tripura.

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

For and on behalf of accused person

Papi Akter,

W/O Suman Miah, resident of Nabadwipchandranagar, Durgapur, P.O.
Durgapur, P.S. Sonamura, District Sepahijala Tripura

..... **Accused Person(s)**

- V e r s u s -

The State of Tripura

Represented by the Secretary to the Government of Tripura, Home
Department, Agartala.

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

For the Petitioner(s) : Mr. Kundan Pandey, Advocate.

For the Respondent(s) : Mr. Rajib Saha, Addl. P.P.

Date of hearing : **2nd February, 2026.**

Date of delivery of
Judgment & Order : **16th March, 2026.**

Whether fit for reporting :

YES	NO
√	

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

This bail application is filed praying for release of accused Papi Akter on regular bail in connection with Sonamura PS case No.97 of 2025 registered under Sections 20 (b)(ii)(B)/25/29 of the NDPS Act.

[2] Prosecution case as canvassed through the FIR submitted by SI Shubhankar Debbarma of Sonamura police station that on 24.11.2025 at around 1900 hours (7.00 pm), he received an information from a reliable source that the present accused, Papi Akter and her husband, Suman Miah stored huge quantity of ganja in their house, by bringing the same by a vehicle

bearing No.TR-07-0413 (Maruti Eeco car) which was also available in their house at that time but said contraband item was to be shifted shortly requiring urgent action from the side of police. It was also alleged that both the husband and wife were jointly running the business of illicit drug trafficking.

[3] Accordingly, SI Shubhankar Debbarma along with SI Rakesh Debnath, constable Kamal Hossain, constable Swargamohan Debbarma and woman constable Sangita Das along with Inspector Tapas Das, OC Sonamura police station thereafter proceeded towards that house and reached there at around 2000 hours (8.00 pm). On search conducted in the house, they recovered total 5.985 kg of ganja from their room and the husband of the present accused seeing the police vehicle fled away. They seized said Maruti Eeco vehicle. They also detained Papi Akter and returned to police station taking her with them along with the seized item. On the following day, she was formally shown arrested at around 1005 hours (10.05 am).

[4] Police after registration of the case conducted investigation and finally, laid charge-sheet against said Papi Akter and her husband Suman Miah under Sections 20 (b)(ii)(B)/25/29 of the NDPS Act showing Suman Miah as absconder.

[5] Mr. Kundan Pandey, learned counsel for the petitioner mainly gave stress on his argument referring to Section 46(4) of Cr.P.C. corresponding to Section 43(5) of BNSS that the arrest was completely illegal for violation of said provision inasmuch as it is mandate of the law that no woman shall be arrested after sunset and before sunrise unless exceptional circumstances exist and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Magistrate of the first class within whose local jurisdiction the offence is committed or her arrest is to be made. Referring to sub-section (1) of Section 43, BNSS, Mr. Pandey, learned counsel also submits that a woman is required to be arrested only by a lady police officer. Mr. Pandey, learned counsel further contends that artificial date and time of arrest were shown in the arrest memo by the arresting officer to save himself from the allegation of violation of Section 43(5) of BNSS and actually when she was taken into custody by the arresting police officer in the night which should be treated as

time of arrest. Learned counsel also submits that the petitioner has two minor children who are presently aged about four years and eight years who were living alone in the house in absence of their mother and therefore, bail may be granted to the accused person on any condition.

[6] Mr. Pandey, learned counsel in support of his contentions relies on the following decisions:

(i) **Directorate of Enforcement vs. Subhash Sharma, 2025 SCC OnLine SC 240** wherein an LOC was issued by the Directorate of Enforcement to the Bureau of Immigration and said Bureau of Immigration detained the accused of said case at IGI Airport on 4th March, 2022 and thereafter, physical custody of the accused was handed over by Bureau of Immigration at 11.00 hours on 5th March, 2022 to the Directorate of Enforcement but his arrest was shown at 1.15 hours on 6th March, 2022. Hon'ble Supreme Court observed that the accused was not produced before the nearest Magistrate within 24 hours from 11:00 am on 5th March, 2022 and therefore, held that arrest of the accused was illegal as a result of violation of Article 22(2) of the Constitution. In said case, time of detention was not computed from 01.15 hours of 6th March, 2022 which was shown in the arrest memo as time of arrest.

(ii) **Biswajit Mandal vs. Inspector, Narcotic Control Bureau, 2025 SCC OnLine Ker 6017-** In this case, the Kerala High Court observed that as per provision of Section 43 of BNSS, an arrest is made by actually touching or confining the body of the person to be arrested, unless there is submission to the custody by word or action and the failure, refusal or omission to record an arrest or continuation of an interrogation for prolonged periods without recording arrest, shall not preclude those periods of curtailed liberty as constituting arrest.

(iii) **Dr. Sangeeta Dutta vs. State of Assam, rep. by the Special PP, Assam and another, 2025 SCC OnLine Gau 4847-** In this case, allegation of the accused was that she was actually arrested at 1:00 am in the night of 06.05.2023 but her formal arrest was shown at 11:00 am on the following day and such arrest was effected without obtaining prior permission of any Judicial

Magistrate. Further grievance was also that ground of arrest was not communicated to her or to her near relatives as required under Sections 50 and 50A of Cr.P.C. Gauhati High Court in this case on consideration of the materials placed in said case held that Section 50 of Cr.P.C. was not complied with by the arresting authority and therefore, violation of fundamental rights guaranteed under Articles 21 and 22(1) gives a strong cause or reason to the accused applicant to be enlarged on bail. The High Court also observed in this case that Section 50A, Cr.P.C. was also violated. It was also further held that no permission from Judicial Magistrate First Class was obtained before effecting the arrest. The time of arrest in said case was also treated to be 1:00 am on 06.05.2023. On that score, the High Court further held that the arrest became illegal for violation of provision of Section 46(4) of Cr.P.C. and that violation of such statutory provision gave the accused applicant to argue for bail as the same had violated fundamental right of life and liberty guaranteed under Articles 21 and 22(1) of the Constitution of India.

(iv) ***Suvra Deb vs. State of Tripura Rep. by the Secretary to the Department of Home, Govt. of Tripura and others, 2015 SCC OnLine Tri 1055***- In this case, the petitioner, a female was arrested after sunset and before sunrise in violation of Section 46 of Cr.P.C. As the said provision was violated by arresting police officer, the petitioner filed a private complaint against her under Section 166 of the Indian Penal Code. The Magistrate observed that the complaint cannot be proceeded without sanction of the State Government in terms of Section 197 of Cr.P.C. and therefore, the petitioner approached the State Government for grant of such sanction and on refusal to grant the sanction she approached the High Court. The Division Bench of this Court finally held that there was no error in the order refusing to grant the sanction. The High Court further observed that one of the reasons which had weighed to the Court while passing the aforesaid order was that the official might not have been aware about the mandate of Section 46 sub-section (4) but meanwhile the section was many years old and that case had also brought the legal provisions to the notice of most people concerned and therefore, the Registrar General was directed to send the copy of the judgment to the Director General of Police who should ensure that it was circulated amongst all the police officials to ensure that mandate of Section 46 is followed in letter and spirit while making the arrest and in future, if such violation comes to the

notice of the Court, then the Court might presume that there was knowledge of this provision and the same was deliberately violated.

(v) ***Bharati S. Khandhar vs. Maruti Govind Jadhav and others, 2012 SCC OnLine Bom 1901*** – Here in this case, the petitioner was arrested after sunset and before sunrise and the Division Bench of Bombay High Court observed that such arrest was in flagrant violation of relevant provisions and, in particular, provisions of sub-section (4) of Section 46 of the Code and, therefore, an appropriate action against the concerned police officials deserved to be initiated. It was also held that the petitioner was entitled for compensation but in that case such compensation was not granted as while issuing the rule, the Court confined the reliefs to the extent of a particular prayer leaving the prayer for compensation apart. But, Commissioner of Police, Mumbai was simultaneously directed to hold an enquiry against the concerned police officers.

(vi) ***Kavita Manikar of Mumbai vs. Central Bureau of Investigation BS & FC, through its Standing Counsel of Bombay and Another, 2018 SCC OnLine Bom 1095*** wherein allegation against the CBI was for arresting the petitioner during night hours without complying the provision of Section 46(4) of Cr.PC. In said case, relying on the earlier decision of ***Bharati S. Khandhar (Supra)***, the Division Bench of Bombay High Court observes that the Code of Criminal Procedure which outlined the manner and to the extent to which a person can be denuded of his liberty and hence it needed a strict compliance. Any deviation from the prescribed procedure in the matter of arrest can therefore, be not countenanced and is liable to be declared as illegal.

(vii) ***Payal Hariom Verma vs. the State of Maharashtra and another, Writ Petition (st) No.23969 of 2024 decided on 09.01.2025*** - In this case also allegation was of arrest of a woman accused during night time. Initially in respect of one FIR, she was arrested and ultimately, the Judicial Magistrate First Class released her on bail after few days of her arrest. Another FIR with similar allegations was also lodged against her by another person and when after complying all the formalities she came out from the jail on 10.09.2024 in the evening, immediately she was again taken into custody

by the police after sunset. Ultimately, considering the fact of the said case and relying on the earlier decision of Bombay High Court in **Kavita Manikikar (Supra)**, the Division Bench held that said arrest of the petitioner was illegal.

(viii) **Niranjan Singh and another vs. Prabhakar Rajaram Kharote and others, (1980) 2 SCC 559-** In this case, it is held by the Hon'ble Supreme Court that a person who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439, Cr.P.C.

[7] Mr. Rajib Saha, learned Addl. P.P. argues that the raid was conducted in the night when the husband of the present accused fled away and she was apprehended with the contraband item. If the accused would not be detained during that time, she would flee away and the investigation would be seriously affected. Therefore, in such a constrained situation, the police officer had to bring her in the police station under detention. Learned Addl. P.P. also submits that the compliance of Section 46(4) Cr.P.C. is not mandatory in nature and therefore, violation of the same will not render the arrest illegal entitling the accused to be released on bail only on that ground. Learned Addl. P.P. also relies on a decision of Division Bench of Madras High Court in case of **Deepa vs. S. Vijayalakshmi and others, 2025 SCC OnLine Mad 934**, wherein one of the points for consideration was whether compliance of Section 46(4) of Cr.P.C. [corresponding to Section 43(5) of BNSS] is mandatory. The Madras High Court examined and analysed the matter in details from different view points and ultimately, held that Section 46(4) of Cr.P.C. is directory and not mandatory. All the relevant paragraphs containing such analysis and discussions are reproduced hereunder:

“12. Section 46(4) of Cr.P.C was considered by quite a few High Courts. We came across quite a few decisions wherein arrests made in breach of the procedure set out in Section 46(4) of Cr.P.C were declared illegal. Even compensation was awarded in some cases ((2021 2 HCC (Bom) 720 (*Aleksander Kurganov v. State of Maharashtra*, 2018 SCC Online Bom 1095 (*Kavitha Manikikar of Mumbai v. Central Bureau of Investigation*), 2016 SCC OnLine Gau 783 (*Tanuja Roy v. State of Assam*). Even though we are conscious that Section 46(4) of Cr.P.C is a beneficial provision incorporated to ensure the safety of women, we are unable to hold that it is mandatory.

13. Section 46(4) of Cr.P.C was inserted by Act 25 of 2005 with effect from 23.06.2006. The 135th report of the Law Commission

of India on Women in Custody (1989) recommended that ordinarily no women shall be arrested after sunset and before sunrise and in exceptional cases calling for arrest during these hours, prior permission of the immediate, superior officer shall be obtained or if the case was of extreme urgency, then after arrest report with reasons shall be made to the immediate superior officer and to the Magistrate. The 154th report of the Law Commission of India suggested incorporation of the following provision in Section 46 of Cr.P.C:

“Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the police officer shall, by making a written report, obtain the prior permission of the immediate Superior Officer for effecting such arrest, or if the case is one of extreme urgency and such prior permission cannot be obtained before making such arrest, he shall, after making the arrest, forthwith report the matter in writing to his immediate superior officer explaining the urgency and the reasons for not taking prior permission as aforesaid and also shall make a report to the Magistrate within whose local jurisdiction the arrest had been made.”

In Section 46(4) of Cr.P.C / 43(5) of BNSS, 2023 the expression “Shall” is found. It is well established that an enactment in form mandatory might in substance be directory and that the use of the word “shall” does not conclude the matter (*Hari Vishnu Kamath v. Ahmad Ishaque* ((1954) 2 SCC 881 : AIR 1955 SC 233)). The construction of a statutory provision as directory or mandatory must depend on the legislative intent and context in which it was made and not upon the language in which the intent is clothed. The meaning and intention of the legislature are to be ascertained by having regard to its nature, design and the consequences which would follow from construing it in one way or the other (vide *State of Mysore v. V.K. Kangan* ((1976) 2 SCC 895 : AIR 1975 SC 2190)). Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory (2005) 4 SCC 480 (*Kailash v. Nankhu*).

14. The Hon'ble Supreme Court in *Sharif-ud-din v. Abdul Gani Lone* ((1980) 1 SCC 403) held as follows:

“9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word “shall” while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision

causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.”

The Constitution Bench of the Hon'ble Supreme Court in *Dattatraya Moreshwar v. The State of Bombay*, (1952) 1 SCC 372 : AIR 1952 SC 181) held that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty, and the case is such that, to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of Courts to hold such provisions to be directory.

15. Section 46(4) of Cr.P.C has not spelt out the consequence of non-compliance with the requirement set out therein. If the provision was intended to be mandatory, the legislature would definitely have provided for the consequences of non-compliance. It cannot be denied that when a Police officer effects arrest pursuant to the power conferred on him by Cr.P.C, he is carrying out a public duty. The matter is not between the official effecting arrest and the arrestee. There is a third party involved, namely, victim/defacto complainant. The victim cannot be allowed to suffer for the neglect of duty by the Police officer.

16. There are certain practical aspects to be borne in mind. Let us conceive of this situation: a woman commits murder after sunset and before sunrise; the information reaches the local Police Station; the accused is about to escape; in such a situation, should the officer concerned prepare a written report, send it to the local Magistrate, wait for His Honour's permission and upon receipt thereof, proceed to arrest the accused? We have no doubt in our minds that the horse would have bolted by then. Mechanical adherence to procedures can injure public interest at times. That is why, when the Nagpur Bench of the High Court of Bombay directed the State Government to issue instructions to all police officials that no female persons shall be detained or arrested without the presence of the lady constable and in no case after sunset and before sunrise, the Hon'ble Supreme Court in *State of Maharashtra v. Christian Community Welfare Council of India* (2003) 8 SCC 546 observed that while they agreed with the object behind the direction, a strict compliance with the said direction in a given circumstance would cause practical

difficulties to the investigating agency and even might give room for evading the process of law by unscrupulous accused.

17. The statutory provision envisages that the woman police officer should make a written report and obtain the prior permission of the Magistrate before making arrest. One can very easily imagine situations when the investigating officer is left with very little time to respond. Suppose a heinous offence takes place at midnight. The jurisdictional Magistrate may not be available or accessible. Digital solutions may not also work. The Magistrate may be fast asleep. The written report sent by mail would be lying in his inbox. The accused will not be waiting for the Police officer to obtain permission from the Magistrate.

18. It was observed in *D. Venkatasubramaniam v. M.K. Mohan Krishnamachari* reported in (2009) 10 SCC 488 that it is the statutory obligation and duty of the Police to investigate into the crime and the Courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. In *Abhinandan Jha v. Dinesh Mishra* AIR 1968 117 it was observed that the manner and method of conducting investigation are left entirely to the police and the Magistrate has no power to interfere with the same. The Privy Council in *Nazir Ahamed case*, (1943-44) 71 IA 273 observed that the judiciary should not interfere with the police in matters which are within their province. The functions of the judiciary and the police are complementary and not overlapping. Investigation includes the discovery and arrest of the suspected offender. We are therefore of the view that it would not be in the interest of maintaining law and order if a Police officer is expected to write to the local Magistrate and effect arrest only after obtaining his/her prior permission. Such a stringent condition would disable Police officers from effectively discharging their public duties.

19. Though we have held that Section 46(4) of Cr.P.C/43(5) of BNSS is directory and not mandatory, the provision cannot be rendered otiose by the Police. There is a laudable reason for incorporating such a provision. It is meant to serve as a note of caution to the officers effecting arrest of women. While failure to adhere to the statutory requirement may not lead to the arrest being declared illegal, the officer concerned may have to offer explanation for inability to comply with the procedure."

Mr. Saha, learned Addl. P.P., therefore, prays for rejection of the bail application.

[8] Apart from the decisions as cited by the parties, two other decisions of Delhi High Court and Rajasthan High Court on this point also require mention.

[9] Delhi High Court in the case of *Rakesh Chand vs. State of NCT of Delhi*, 2015 SCC OnLine Del 14193 on that point observes that normally, arrest of a woman is not to be effected after sunset and before sunrise except under exceptional circumstances. Even in those exceptional circumstances, if

a woman is required to be arrested between sunset and sunrise, a written permission is required to be obtained from the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made. According to Delhi High Court, though there is a statutory requirement of obtaining written permission from a Judicial Magistrate in case a woman is to be arrested during night time but it cannot be said that under no circumstance can such requirement be waived. The exigencies of such situation had to be taken into account.

[10] Rajasthan High Court in case of **Smt. Sadhna Upmanyu vs. Station House Officer ACB and others, 2016 SCC OnLine Raj 6502** also observed the followings:

“8.

Although, sub-section (4) of Section 46 Cr.P.C. provides that no woman shall be arrested after sun set and before sun rise except in exceptional circumstances and where the police officer effecting arrest after sun set and before sun rise claims existence of some exceptional circumstances, he must obtain the prior permission of the Judicial Magistrate or Special Court within whose local jurisdiction the offence has been committed or the arrest is to be made but it cannot be said that under no circumstances can such requirement be waived. The exigencies of the situation have to be taken into account before it is held that arrest of the woman has been made in contravention of this provision. In a case it may happen that offence itself is committed after sun set and before sun rise and after undertaking some preliminary investigation involvement of a woman is found in the offence and her immediate arrest is required to be made and practically it is not possible to obtain the prior permission of the concerned Magistrate, in my opinion in such a situation the arrest of the woman accused cannot be said to be in contravention of the requirement of this provision and it does not amount violation of fundamental right conferred upon such woman under Article 21 of the Constitution of India. It is well settled legal position that personal liberty of a person can be curbed by procedure established by law and Code of Criminal Procedure is one of such procedural law.”

[11] Before said provision of Section 46(4) of Cr.P.C. was introduced in Code of Criminal Procedure vide Act No.25 of 2005 w.e.f. 23.06.2006, the Division Bench of Bombay High Court in a case between **Christian Community Welfare Council of India and another vs. Government of Maharashtra and another, 1995 CRI.L.J. 4223** issued certain directions to

the State Government for compliance and one of the said direction was that the State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sun-set and before sun-rise. When the said matter was challenged before the Hon'ble Supreme Court in case of ***State of Maharashtra vs. Christian Community Welfare Council of India and another, (2003) 8 SCC 546***, the Hon'ble Supreme Court held as under:

"9. Herein we notice that the mandate issued by the High Court prevents the police from arresting a lady without the presence of a lady constable. The said direction also prohibits the arrest of a lady after sunset and before sunrise under any circumstances. While we do agree with the object behind the direction issued by the High Court in sub-para (vii) of the operative part of its judgment, we think a strict compliance with the said direction, in a given circumstance, would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the police from police misdeeds, it may not be always possible and practical to have the presence of a lady constable when the necessity for such arrest arises, therefore, we think this direction issued requires some modification without disturbing the object behind the same. We think the object will be served if a direction is issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present but in the circumstances where the arresting officers are reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation, such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable. We also direct that with the above modification in regard to the direction issued by the High Court in sub-para (vii) of this appeal, this appeal is disposed of."

[12] Taking note of all the above said decisions, it appears that there are divergent views of the High Courts in this regard and Madras High Court, Delhi High Court and Rajasthan High Court are of the view that in every case, strict compliance of Section 46(4) of Cr.P.C. may not be feasible. Hon'ble Supreme Court in above said decision of ***State of Maharashtra vs. Christian Community Welfare Council of India and another (Supra)***, has also taken the note of the fact that on every occasion it may not be practicable for strict

compliance of the direction of the Bombay High Court regarding arrest of female as indicated above and same may even give a scope to the unscrupulous accused person for evading the process of law. No doubt, Section 46(4) of Cr.P.C. [corresponding to Section 43(5) of BNSS] has been introduced by the law makers with the solemn object to protect the women from undue police harassment and to give a safeguard to their dignity, but, there may be some cases or situations where adherence to strict compliance to said provision may not be appropriate and practicable for the interest of the investigation. Therefore, the contention of Mr. Pandey, learned counsel that for non-compliance of Section 46(4) of Cr.P.C. [corresponding to Section 43 (5) of BNSS], the accused person will accrue an indefeasible right to be released on bail on that ground in every case, cannot be accepted.

[13] In the present case, it is mentioned in the FIR that on 24.11.2025 at 1900 hours (7.00 pm), a secret information was received by SI Shubhankar Debbarma that the present accused and her husband were engaged in illegal business of drug trafficking and ganja was brought to their house by a vehicle. They were available in their house and such contraband items were likely to be shifted shortly. According to said FIR, at around 1930 hours (07.30 pm), they formed a team lead by Inspector Tapas Das, OC of Sonamura police station and proceeded for said Matinagar area and at 2000 hours (8.00 pm), they arrived at Matinagar area in the house of the accused persons which is situated at a distance of 12 km from Sonamura police station.

[14] There is no explanation whether after receipt of such secret information they made any correspondence with the concerned area Magistrate or with the Chief Judicial Magistrate, Sepahijala, Sonamura for obtaining any permission for arrest of accused Papi Akter when already they had the information with them that the said accused with her husband were present in the house with those contraband ganja. Furthermore, when at around 2000 hours (8.00 pm) or immediately thereafter they detained said Papi Akter but her arrest has been shown on the following day i.e. 25.11.2025 at around 1005 hours which indicates that for the whole night she was kept detained in the police station without any arrest. No explanation is found in the record as to why her arrest was shown on the following day in the morning when in the previous night she was detained by the police. This Court is not

forming any opinion regarding deliberate violation of Section 46(4) of Cr.P.C. by the arresting police officer as he is not a party in the proceeding and he has not been given a scope to be heard. However, the matter is required to be enquired.

[15] It is also true that the case is concerning intermediate quantity of ganja and for a considerable period, the accused-petitioner was in custody. Investigation is also complete and charge-sheet is already laid by the investigation officer. There is also no prayer for custody trial of the accused-petitioner.

[16] Considering all these aspects, bail prayer of the petitioner is allowed. Petitioner Papi Akter may go on bail on submission of a fresh bail bond of Rs.1,00,000/- with one surety of like amount to the satisfaction of learned Special Judge, Sonamura with conditions that-

- (i) the surety must be a permanent resident of Tripura;
- (ii) the accused-petitioner will not leave the State of Tripura without prior permission of the learned Special Judge and such permission can be accorded only on any special ground of urgent nature;
- (iii) she will not try to terrorize or influence any witness of the case, and;
- (iv) she will regularly appear before the Court to face the trial;
- (v) she will give her attendance once in a week in the Court of learned Special Judge, Sonamura till the trial is complete unless same is relaxed or dispensed with by learned Special Judge.

The Director General of Police will get the allegation of violation of Section 43(5) of BNSS enquired through a police officer not below the rank of Superintendent of Police and in case of deliberate violation of the same without justifiable cause; necessary departmental action will be taken against the erring official.

With such observation and direction, the bail application is disposed of.

Copy of this order be communicated to the Director General of Police.

Return the case diary to learned Addl. P.P.

Communicate a copy of this order immediately to learned Trial Court.

Pending application(s), if any, shall also stand disposed of.



JUDGE

सत्यमेव जयते