



GAHC010226692025

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

Case No. : Bail Appln./3301/2025

NAWAZ SHRIF AND ANR
S/O- KABIR, R/O- LILONG TAMYA SUMONG, P.S- LILONG, DISTRICT-
THOUBAL, MANIPUR.

2: MUSSTT WAHIDA
W/O- RAJAUDDIN
R/O- LILONG TUREL AHANBI
P.S- LILONG
DISTRICT- THOUBAL
MANIPUR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P, ASSAM.

Advocate for the Petitioner : MS. A. MEDHI,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

ORDER

05.02.2026

Heard Ms. A. Medhi, learned counsel for the petitioner. Also heard Mr. B.



Sarma, learned Addl. Public Prosecutor for the State.

2. This is an application under Section 483 of BNSS, 2023 praying for granting bail to the petitioners in connection with Dillai PS Case No. 44/2025 under Sections 21(c)/25/29 of NDPS Act r/w Sections 61(2)/123 of BNS, 2023.

3. The brief facts of the case is that on 18.08.2025, the complainant WSI(P) Munmi Chutia has lodged an FIR before the Dillai Police Station to the effect that on 17.08.2025 while conducting special naka checking duty on NH-29 at Dillai Tiniali at about 6:50 PM stopped one Chevrolet Sparx car bearing registration No. AS-01-AP-0549 which was coming from Dimapur side and heading towards Manja side and while interacting with the driver their facial expressions was suspicious and immediately detained the vehicle along with driver and occupant and informed the matter to SSP Karbi Anglong and SDPO Bokajan and after few minutes SDPO Bokajan arrived and provided authorization to the complainant WSI(P) Munmi Chutia and after that the driver and occupant was searched and two mobile phones and ID proof was found from the possession of the driver and when the vehicle was searched thoroughly recovered two packets wrapped with yellow colour duct tape containing muddy colour powdery substances suspected to be Morphine. Subjected to the field test done by the E/O it gave positive result for Morphine which has been weighted with a good quality weighing machine and found to be 961.04 grams. Seized the recovered Morphine in presence of independent witnesses, and packed, sealed the Morphine by wrapping with white cloth and putting wax seal upon it, as well as apprehended the driver namely, Nawaz Shrif and the occupant namely, Wahida.



On receipt of the FIR, a case being Dillai P.S Case No. 44/2025 under Sections 21(c)/25/29 of NDPS Act r/w Sections 61(2) /123 of BNS' 2023 was registered.

4. It is the contention of learned counsel for the petitioner that the provisions of Section 36 BNSS has been violated, in as much as, the arrest memo does not bear any signature of the petitioner No. 2 and only her thumb impression is available and nothing is mentioned as to whether it is the right thumb impression (RTI) or left thumb impression (LTI) or as to who has taken the aforesaid signature. However, a perusal of the case records received from the learned Court below would indicate that the signature of the petitioner No. 2/arrestee though not there, her thumb impression is available and it has been mentioned as RTI i.e. right thumb impression and her name is also mentioned and immediately below that is the signature of the I/O.

5. Therefore, the aforesaid submission is not tenable. As far as the petitioner No. 1 is concerned, his signature is very much present. Furthermore, it is submitted that the signatures of two witnesses though available in the arrest memo, there is no mention of their address and therefore, the requirement of Section 36(3) BNSS, which requires the signatures of the family members or respectable persons of the locality to be present in the arrest memo is not satisfied.

6. On the other hand, learned Additional Public Prosecutor submits that there is no requirement under Section 36 BNSS to mention the addresses of the said persons of the locality and that is a matter that has to be decided in the

trial, as to whether the said persons were reputed persons of the locality.

7. In the considered opinion of this Court prima facie, since the signatures of the two witnesses are present unless the contrary is shown, the Court would prima facie proceed on the assumption that the same is in conformity with the requirements laid down under Section 36 BNSS.

8. It is next contended that there has been clear violation of the mandate of Section 48 BNSS which requires intimation of the grounds of arrest in writing to the family members/friend/nominated person of the arrestee, in as much as, the said notice has been sent by WT message, but there is no proof of service.

9. On perusal of the record, it is seen that a WT message has been sent by the O.C, Dillai PS, Karbi Anglong to the O.C, Lilong PS, Thoubal, Manipur which contains the grounds of arrest along with a request to serve the same to the family/guardian of the arrested persons i.e. the present petitioners. The said WT message is dated 18.08.2025 i.e. the date of the arrest of the petitioner.

10. The Hon'ble Supreme Court in ***Vihaan Kumar Vs. State of Haryana & Anr.***, reported in ***2025 LiveLaw (SC) 169*** has held that the grounds of arrest are required to be communicated in writing to the relatives/friends/nominated persons of the accused and failure to do so 'may' render the arrest illegal.

11. At this stage, what is extremely important to notice is that the addresses of the relatives of the accused persons show that they are residents of Manipur. Judicial notice of the fact has to be taken that at the time of occurrence i.e.



18.08.2025, Manipur was still a highly disturbed area with sporadic incidents of ethnic violence and it could not have been very easy to serve such notices to the said persons within such a short time and also to obtain proof of service. The decision in ***Vihaan Kumar (supra)*** cannot be read as permitting of no exception regardless of the circumstances. The use of the term 'may' would prima facie support this view. Therefore, strict compliance with the provisions of Section 48 BNSS cannot be insisted upon in certain exceptional circumstances as the present one.

12. It is the further submission of the learned counsel for the petitioner that the petitioner No. 2 is suffering from various ailments and certain medical documents have also been annexed to the instant petition.

13. On perusal of the material on record, it appears that the petitioner No. 2 along with the petitioner No. 1 were caught red handed while transporting the contraband, which is of commercial quantity and therefore, the rigor of Section 37 of the NDPS would apply with full force in the present case. In other words, the Court is not in a position to come to a view that there are reasonable grounds to believe that the accused persons are not guilty of the alleged offence. However, the jail authorities are directed to provide proper medical treatment to the petitioner No. 2, including by way of taking her to the hospital, as and when required.

14. For the aforesaid reasons, the prayer for bail stands rejected at this stage.



15. The Bail Application stands dismissed accordingly.

JUDGE

Comparing Assistant