



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

B.A. No.116 of 2026

Md. Hossain,
son of Nur Miah, resident of Kamalnagar,
P.S. Sonamura, District- Sepahijala, PIN-799131

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

On behalf of accused:

- Samin Miah,**
son of Manjil Miah
- Jahir Miah**
son of Nuru Miah
both are residents of Kamalnagar, Krishnadola, P.S.
Sonamura, District- Sepahijala, Tripura, PIN-799131

- V e r s u s -

The State of Tripura
Represented by the Secretary, Home
Department, Government of Tripura

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

For the Petitioner (s) : Mr. J. Bhattacharjee, Advocate

For the Respondent(s) : Mr. R. Datta, P.P.

Date of hearing & delivery of order : **25.06.2026**

Whether fit for reporting :

| YES | NO |
|-----|----|
| ✓ | |

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

ORDER

This application is filed praying for bail of the accused persons, namely, Samin Miah and Jahir Miah under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, (in short, BNSS) 2023 in connection with Sonamura P.S. case No.78 of 2025 registered under Sections 20(b) (ii) (C)/29 of the NDPS Act, 1985, renumbered as Special (NDPS) 23 of 2026

pending in the Court of the learned Special Judge, Sepahijala District, Sonamura.

[2] After investigation, the police submitted the charge-sheet in this case under Sections 20(b) (ii) (C)/29 of the NDPS Act, 1985 against the accused persons, namely Md. Mostafa, Samir Khan, Samin Miah and Jahir Miah and one CCL [name withheld]. Amongst the said accused persons, Md. Mostafa, Samir Khan and the said CCL were arrested during investigation. In the charge-sheet the present accused persons, Samin Miah and Jahir Miah are shown as absconder.

[3] Mr. J. Bhattacharjee, learned counsel appearing for the accused petitioners submits that after the charge-sheet submitted on 12.03.2026, cognizance was taken by the court of the offence mentioned above and on the same date, on the basis of submission of learned Special P.P., Sonamura non-bailable warrants of arrest were issued against both the accused petitioners. Thereafter, they filed a petition for recalling those warrants which were also allowed by the learned Special Judge and summons were issued to them. Accordingly, they appeared/surrendered before the learned Special Judge and thereafter, the learned Special Judge sent them to jail on 12.06.2026 and since then they are custody.

[4] Mr. Bhattacharjee, learned counsel has raised a issue that when summon is issued by the Court and in response thereto, the accused persons appears/surrenders in the Court, it is obligatory for the court to grant him bail and he cannot be sent to judicial custody. In this regard, he relies on a decision of the Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation & Anr.**, [Special Leave

to Appeal (Crl.) No.(s).5191/2021 dated 07.10.2021]. In addition to said submission, Mr. Bhattacharjee, learned counsel also contends that in the charge-sheet itself, no materials has been surfaced against both accused petitioners to prima-facie attract any provision of NDPS Act. It is also submitted by him that both the accused petitioners were not the FIR named and nothing was recovered from them and even during investigation also, no attempt was made by the investigating officer to arrest them. Therefore, learned counsel pray for bail for both the accused petitioners.

[5] Mr. R. Datta, learned P.P., on the other hand, appearing for the State has opposed the bail prayer as according to him, the case is concerning commercial quantity of contraband items and unless the twin conditions as enumerated in section 37 of the Act are satisfied, bail cannot be granted. However, on asking by the Court regarding the incriminating materials available against the petitioners, he replies that during investigation no witness has stated anything against the above said two accused persons except that during police interrogation FIR named accused persons disclosed the name of their other 2[two] associates who were involved with them in the alleged offence.

[6] This Court has considered the submissions of both sides.

[7] The first issue as raised by Mr. Bhattacharjee, learned counsel, i.e. when the accused person appears in the court in response to a summon issued to him, he cannot be sent to judicial custody, is being discussed first. So far the offences under the NDPS Act is concerned, the matter of deciding the bail application in such cases has already been decided by the Hon'ble Supreme Court in the case of **Satender Kumar Antil (supra)**, as relied on

by Mr. Bhattacharjee. The relevant paragraphs of said decision is extracted hereunder:

“Categories/Types of Offences

- A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.
- B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.
- C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.
- D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

- 1) Not arrested during investigation.
- 2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an accused along with the chargesheet

(Siddharth Vs. State of UP, 2021 SCC online SC 615)

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

- a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.
- b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.
- c) NBW on failure to failure to appear despite issuance of Bailable Warrant.
- d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.
- e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS S.37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc.”

Needless to say that the category A deals with both police cases and complaint cases.

The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

The suggestions of learned ASG which we have adopted have categorized a separate set of offences as “economic Offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra vs. CBI, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

- a) seriousness of the charge and
- b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.

We appreciate the assistance given by the learned counsels and the positive approach adopted by the learned ASG.”

[8] In the above decision, for the purpose of considering the bail prayers, all the offences both under general and special laws are divided into 4[four] categories. The offences punishable under the NDPS Act fall under Category-C. According to said decision, bail applications for Category-C offences should be treated like both Category-B and Category-D, with additional conditions of compliance of the provision of under Section 37 of the Act. Therefore, even if a summon is issued a the Court, while

dealing with the bail application of a surrendered or appeared accused, the Court has to keep into mind the said provision of Section 37 of the NDPS Act and therefore, unless the twin conditions as enumerated therein are satisfied, bail cannot be granted.

[9] As indicated above, Hon'ble Supreme Court has further put the caveat that in respect of above said 4[four] categories of cases that court will also take into consideration the aspects where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed. The issue as raised by Mr. Bhattacharjee, learned counsel is answered accordingly.

[10] Now in respect of the present case in hand, while looking into the aspect of rigour of Section 37 of the NDPS Act, the Court takes note of the submissions of both sides as indicated earlier. The fact as informed by learned P.P. that except the statement of the co-accused made during police interrogation, there is no other incriminating materials against the present accused persons, according to this court, prima-facie satisfies the one of the conditions as enumerated in Section 37 of the NDPS Act. Nothing is also placed before the Court that the present petitioners were earlier involved in similar nature of offences under the Act.

[11] In this respect, Mr. Bhattacharjee, learned counsel relies on a decision of the Hon'ble Supreme Court in **Kashmira Singh vs. State of Madhya Pradesh, (1952) 1 SCC 275**, where it has been held as under:

“ ‘the provision goes no further than this-where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in section 30 may be thrown into the scale as an additional reason for believing that evidence.’

Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

Then, as regards its use in the corroboration of accomplices and approvers. A co. accused who confesses is naturally an accomplice and the danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out.”

[12] Further, Hon'ble Supreme Court in the case of **P. Krishna Mohan Reddy vs. the State of Andhra Pradesh, Special Leave Petition (Criminal) No.7532 of 2025 dated 16.05.2025 (paragraph no.53)** has observed that the police statement of an accused in the form of a confession is per se inadmissible and no reliance whatsoever can be placed statements either at the stage of bail or during trial.

[13] On careful consideration of the submissions made by the learned counsel appearing for the parties, it appears thus that the twin conditions of Section 37 of the NDPS Act are satisfied in the case and the investigation is also concluded and the charge-sheet is already laid before the learned Special Judge.

[14] Considering all these aspects, the bail prayers of the accused persons, namely Samin Miah and Jahir Miah are allowed. They may go on bail on furnishing a bond of Rs.1,00,000/- [Rupees one lakh] only each along with one surety of the like amount to the satisfaction of the learned Special Judge, Sepahijala District, Sonamura on conditions that:

- (i) they will not, directly or indirectly, try to make any contact with any person or witnesses of the case who are acquainted with the fact of case, so as to dissuade him or them from divulging the truth before the court;
- (ii) they will furnish their mobile phone numbers to both the investigating officer and the Court and they shall not change their SIM cards and shall not hand over the same to any other person, till the trial is complete and they will keep such SIM card in functional mode;
- (iii) they will not leave the State of Tripura without prior permission of the learned Special Judge, Sepahijala District, Sonamura and in case of going outside the State, they will in advance inform the Special Judge, Sepahijala District, Sonamura about their place of visit and place of stay with complete details;
- (iv) they will regularly attend the Court to face the trial;
- (v) they will not involve themselves in any sort of illegal activities which are prohibited under NDPS Act; and
- (vi) violation of any of the above said condition(s) by them, will be a good ground for cancellation of their bail.

With such observation and directions, this bail application is disposed of.

Reconsign the records of the learned trial Court.

Return the C.D. forthwith.

Send a copy of this order to the learned Special Judge, Sepahijala District, Sonamura immediately.

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

JUDGE