

Special Case no. 07 of 2025
Reg. No. 07 of 2025
Present: Sri Madan Mohan Mishra
JO CODE WB00727

Order no. 12 dated 29.10.2025

All three accused persons on bail Pema Tshering Lepcha @ Manish Lepcha, Dipu Thapa and Pempa Bhutia are present.

Learned Public Prosecutor Sri Raju Chhetri is present along with the case diary.

The case record is taken up for consideration of charge along with the application u/s 250 BNSS filed on 04.09.2025 by accused no. 2 Dipu Thapa and accused no. 3 Pempa Bhutia.

Heard learned Public Prosecutor as well as learned advocate representing accused no. 2 Dipu Thapa and accused no. 3 Pempa Bhutia who have filed application u/s 250 BNSS praying for discharging them from the case and learned advocate representing accused no. 1 Pema Tshering Lepcha.

Learned Prosecutor submitted that 78 pieces of Blue capsules PYXWIN SPAS weighing 30.3 grams containing contraband drug Tarmadol at entry number 238ZH of the notification specifying small quantity and commercial quantity appended with NDPS Act has been discovered from the glove box of the scooty drove by accused no. 1 Pema Tshering Lepcha in course of a Naka checking on NH-10 near 14th Mile under PS Jorebunglow on 29.04.2025 at about 15.30 hours. Accused no. 1 Pema Tsheing Lepcha during his examination u/s 180 BNSS stated that accused no. 2 Dipu Thapa has given him about Rs. 2000/- and the scooty for purchasing the contraband drug from Siliguri junction and carrying it to his house for his consumption and selling. The statement of other witnesses recorded u/s 180 BNSS supports the allegation of the illicit relation in between accused no. 1 Pema Tshering Lepcha and accused no. 2 Dipu Thapa. Thus, a prima facie case is made out for offence punishable u/s 22(b) of NDPS Act against accused no. 1 Pema Tshering Lepcha and for offence punishable u/s 27(A)/29 of NDPS Act against accused no. 2 Dipu Thapa. The statement of witnesses recorded u/s 180 BNSS finds reference that there is friendship amongst accused no. 2 Dipu Thapa and accused no. 3 Pempa Bhutia and accused no. 2 used to stay in the hotel New Sikkim Hotel at

Sevoke Bazar owned by accused no. 3. Pempa Bhutia. Thus, a prima facie offence punishable u/s 25/29 of NDPS Act is made out against accused no. 3 Pempa Bhutia.

Learned advocate representing accused no. 2 Dipu Thapa and 3. Pempa Bhutia submitted that the genesis of the case is the seizure of 78 pieces of Blue capsules PYXWIN SPAS containing contraband drug Tarmadol in course of a Naka checking from the glove box of the scooty drove by accused no. 1 Pema Tshering Lepcha. The quantity of the seized 78 pieces of Blue capsules PYXWIN SPAS containing contraband drug Tarmadol comes under the purview of small quantity in terms of the schedule appended with NDPS Act and the forwarding note under which accused no. 1 Pema Tshering Lepcha has been forwarded to the Court on his arrest finds reference that the seized drug of negligible quantity were meant for consumption by accused no. 1 Pema Tshering Lepcha. No document to ascertain the ownership of the seized scooty allegedly owned by Lakpa Wangdi Dukpa the father-in-law of accused Dipu Thapa and the hotel allegedly owned by accused no. 3 Pempa Bhutia has been collected by the Investigating Agency. No incriminating materials have been collected by investigating agency for further proceeding against accused no. 2 Dipu Thapa and accused no. 3 Pempa Bhutia for commission of any offence punishable under the provisions of NDPS Act. Learned advocate referring to the judgment of Hon'ble Apex Court in the case of Onkar Nath Mishra & Others VS State (NCT of Delhi) decided on 14.12.2007 submitted that it is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taking at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. Learned advocate also referred to the judgment of Hon'ble Apex Court in the case of

Tofan Singh VS State of Tamilnadu decided on 29.10.2020 and in the case of Firdoskhan Khurshidkhan Versus The State of Gujarat decided on 30.04.2024 and submitted that the statement made by accused no. 1 Pema Tshering Lepcha before police officer is not admissible in evidence. Learned advocate concluded his submission by submitting that taking note of the seizure of meagre quantity of the drug of 78 pieces of Blue capsules PYXWIN SPAS containing contraband drug Tarmadol of less than 4 grams from the possession of accused no. 1, the allegation of financing, harbouring, abetting by accused no. 2 and 3 the commission of offence of possession of contraband drug by accused no. 1 is highly improbable in course of natural course of human conduct. Accused persons being media spokesperson of a political party in Darjeeling Hill IGJF formerly known as Hamro party have been falsely named in the charge-sheet without any incriminating material being collected against them.

Having considered the submissions raised by learned Public Prosecutor and learned advocate representing accused no. 2 Dipu Thapa and accused no. 3 Pempa Bhutia in the light of the materials on the case record and in the case diary it is found that the genesis of the present case is the seizure of 78 pieces of Blue capsules PYXWIN SPAS weighing 30.3 grams containing contraband drug Tarmadol of less than 4 grams from the glove box of Scooty drove by accused no. 1 Pema Tshering Lepcha in course of a naka checking. The FIR itself lodged by a police officer finds reference of the value of the seized drugs as Rs. 88.50 p per stripe and total value of the 10 stripes of the seized drugs stands as Rs. 880.50 p. Accused no. 1 Pema Tshering Lepcha made statement before the police that he purchased the seized drugs, whose value stands at Rs. 880.50 p, being financed by accused no. 2 Dipu Thapa and the scooty drove by him at the time of seizure was owned by Lakpa Wangdi Dukpa, the father-in-law of accused no. 2 Dipu Thapa but no other material has been collected by the Investigating Agency to substantiate the allegation against accused no. 2 Dipu Thapa barring the statement made by accused no. 1 before police who allegedly financed purchase of drug valued only at Rs. 880.50 p by accused no. 1 Pema Tshering Lepcha. The allegation against accused no. 3 Pempa Bhutia is that he used to harbour accused no. 2 Dipu Thapa in his New Sikkim hotel at Sevoke Bazar but no incriminating material is appearing against the accused to substantiate the allegation. To say no incriminating material is appearing

against accused no. 2 Dipu Thapa and accused no. 3 Pempa Bhutia for further proceeding against them for commission of offence of financing, harbouring and abetting the commission offence of possession of 78 pieces of Blue capsules Pyxwin Spas weighing 30.3 grams containing contraband drug Tarmadol less than 4 grams valued at Rs. 880.50 p by accused no. 1 Pema Tshering Lepcha.

In view of my aforesaid findings and observation I am of the opinion that there is no sufficient ground for further proceeding against accused no. 2 Dipu Thapa and accused no. 3 Pempa Bhutia for commission of any offence punishable under any law and accused persons deserve to be discharged u/s 250 of BNSS.

Considering the submissions raised by learned Public prosecutor and learned advocate representing accused no. 1 Pema Tsheing Lepcha and considering the record of the case and documents submitted therewith a prima facie offence punishable u/s 22(b) of NDPS Act for possession of 78 pieces of Blue capsules Pyxwin Spas weighing 30.3 gram containing contraband drug Tarmadol of less than 4 gram is made out against accused no. 1 Pema Tshering Lepcha.

Let the case be fixed for framing of charge against accused no. 1 Pema Tshering Lepcha on 23.12.2025.

It is ordered

that accused No. 2 Dipu Thapa and accused No. 3 Pempa Bhutia are discharged u/s 250 BNSS.

Accused No. 2 Dipu Thapa and accused no. 3 Pempa Bhutia are permitted to remain on same bail-bond furnished by them for six months from the date of this order as provided under section 481 BNSS.

To 23.12.2025 for framing of charge against accused No. 1 Pema Tshering Lepcha.

Accused on bail as before.

Dictated & corrected by me

Sd/-
Judge,
Special court
under the NDPS Act
Darjeeling

Sd/-
Judge
Special court
under the NDPS Act
Darjeeling