

GAHC030006472025



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

Case No. : Crl.Pet./31/2025

Sh. S. Khaigoumang Mate and Anr.
S/o Tilkhohao Mate
R/o Tegnoupal, Manipur 2: Sh. HL Shonkhongam Mat

VERSUS

Directorate of Revenue Intelligence
Aizawl Regional Unit
Aizawl, Mizoram

Advocate for the Petitioner : Mr. S. Vanlalhriata

Advocate for the Respondent : Mr. Johny L Tochhawng (Special PP)

BEFORE
HONORABLE MRS. JUSTICE SHAMIMA JAHAN
ORDER

07.10.2025

Heard Mr. S. Vanlalhriata, learned counsel for the petitioners. Also heard Mr. Johny L. Tochhawng, learned Special Public Prosecutor for the respondent.

2. This is an application filed under Section 528 read with Section 483 (1)(b) of the BNSS for modification of the bail conditions, i.e., condition Nos. 1 & 2 imposed by the learned Special Court, ND&PS Act, 1985 while allowing the bail

application of the petitioners vide Bail Application No. 158/2025 on 16.07.2025 in Criminal Trial ND&PS Case No. 26/2025.

3. By the said order, the petitioners were granted bail on the following conditions:-

- (1) The accused/petitioners shall execute a bail bond of Rs. 3,00,000/- (rupees three lakhs) with two sureties.
- (2) One surety shall be a permanent resident of Aizawl living in his/her owned house while one surety shall be a permanent Government Servant not below the rank of LDC duly one of the family members of the accused.
- (3) Sureties of the accused shall furnish photocopy of her/his Aadhaar Card/EPIC and Family Ration Card.
- (4) The accused shall attend the Court on each given date and shall not commit any offence while on bail, failing which without just cause shall entail cancellation of bail bond.
- (5) Accused/petitioners shall also provide their mobile number and one mobile number of responsible members of their family to the Court.

4. The learned counsel for the petitioners submitted that the first condition, i.e., condition No. 1 by which the accused persons were directed to execute a bail bond of Rs. 3,00,000/- (rupees three lakhs) was too harsh and that he has also submitted that the second condition by which the petitioners were directed to avail sureties, one being the permanent resident of Aizawl living in his/her owned house and the other being a permanent Government Servant not below the rank of LDC and that too, he has to be the family members of the accused was also stated to be harsh condition.

5. The learned counsel for the petitioners submits that because of the said two conditions, although the petitioners were granted bail yet they could not avail their liberty because of the said two conditions. He further submits that the petitioners unable to comply with the said conditions have been inside the jail, although their bail was granted on 16.07.2025.

6. The learned counsel for the petitioners has submitted the judgment passed by the Hon'ble Supreme Court in ***Girish Gandhi Vs. State of Uttar Pradesh and Others***, by which the Hon'ble Supreme Court has observed that giving bail with harsh condition is like giving no bail and as such, has prayed that the said bail conditions may be modified for the ends of justice, so that the petitioners can avail their bail granted to them.

7. Mr. Johny L. Tochhawng, learned Special Public Prosecutor for the respondent however submits that the petitioners have been detained in judicial custody after they were apprehended with alleged possession of 3696 grams of suspected heroin. He further submits that the petitioners are the driver and the co-driver from where the drugs were seized.

8. He further submitted that the bail condition by which the petitioners were directed to execute bail bond of Rs. 3,00,000/- (rupees three lakhs) is not harsh and that the sureties one being a permanent resident of Aizawl with his owned house not a rented house and one being a permanent Government Servant were also not stated to be harsh. However, he fairly submits that the rank of LDC which is stated in one of the condition that the Government Servant has to be above the said rank can be modified for the ends of justice.

9. I have heard the learned counsels for the parties and have gone through the records.

10. It is no res-integra that to grant bail and thereafter, to impose excessive and onerous condition is to take away with the left hand what is given with the right. Giving conditions in a bail order depends on facts and circumstances of the case.

11. In the instant case, it is noticed that the petitioners are the drivers, one being caught driving the vehicle and the other being a co-driver cannot be considered to be person who would be able to furnish Rs. 3,00,000/- (rupees three lakhs) as bail bond. Further, it is also not made clear in condition No. 1 by the learned Special Court, ND&PS Act, 1985, Aizawl Judicial District, Aizawl Mizoram as to whether that Rs. 3,00,000/- (rupees three lakhs) would be in respect of each of the petitioners. By considering and by interpreting that condition that Rs. 3,00,000/- (rupees three lakhs) would be in respect of each of the petitioners, it could be noticed that the same would be excessive in case of the petitioners. As such, this Court deems it fit that the said condition may be modified to the extent that the accused/petitioners shall execute a bail bond of Rs. 1,00,000/- (rupees one lakh) each.

12. The further condition of which the petitioners had prayed for modification is in respect of the sureties. The surety is a person who takes responsibility for another's obligation and the surety as held by the Hon'ble Supreme Court time and again that the same should be a either a close relative or a long time friend.

13. In the present case, however, the petitioners have expressed that they are experiencing a genuine difficulty in finding the said sureties as directed by the learned Special Court, ND&PS Act, 1985, i.e., one being a permanent resident of Aizawl living in his/her owned house and one being a permanent Government Servant not below the rank of LDC and that too, he has to be a family member of the accused. Sureties are essential to ensure the presence of the accused

released on bail. However, at the same time, when the Court is faced with the situation where the accused enlarged on bail is unable to find sureties as ordered in the bail order, there is need to balance the requirement for furnishing the sureties with his or her Fundamental Rights under Article 21 of the Constitution of India.

14. In *Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.*, reported in **(2022) 10 SCC 51**, the Hon'ble Apex Court held that imposing a condition which is impossible of compliance would be defeating the very object of release. Further in *Girish Gandhi Vs. State of Uttar Pradesh and Others*, reported in **(2024) 10 SCC 674**, the Hon'ble Supreme Court had held that excessive bail is no bail.

15. In view of the same, this Court finds it fit that the second condition may be modified to the extent that one surety would be any Government Servant working in the State of Mizoram and the other surety may be a local resident of the said State. Accordingly, the first condition is also modified to the extent that the petitioners to execute a bail bond of Rs. 1,00,000/- (rupees one lakh) each with two sureties as stated above. Condition Nos. 3, 4 & 5 will remain as it is in the said order dated 16.07.2025.

16. With the above direction, the instant petition stands disposed of.

JUDGE

Comparing Assistant