

GAHC040021342025

2026:GAU-AP:48



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

Case No. : BA/168/2025

Smti Yale Busal
Wife of Shri Bijay Busal, resident of P Sector, Itanagar, PO and PS Itanagar, Papum
Pare District, Arunachal Pradesh.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Sibon Engti, Tsering Lhamu, Talin Dukam Rigia

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER

ORDER

21/01/2026

The present application has been filed under Section 423 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 praying for grant of bail to the alleged/accused person Shri. Bijay Busal who has been arrested on 21.10.2025 in connection with Itanagar PS Case No. 156/2025 under Section 21(b)/ 27(A)/ 29 NDPS Act, and he has been under Judicial Custody for the past 92 (Ninety

two) days.

2. Heard learned counsel for the petitioner, Mr. S. Engti as well as Mr. T. Ete, learned Additional Public Prosecutor for the State respondent.

3. The main ground taken by the petitioner in the present case is that there has been a violation of Section 52 A of the Narcotic Drugs and Psychotropic Substances Act, 1985 in as much as the sampling was done at the police station and not before any Magistrate. It is also stated that during the sampling at the police station it was stated that the gross weight of the seized contraband was 5.15 grams. However when the Chief Judicial Magistrate passed the sampling order vide order dated 24.10.2025, it was stated that the weight of the seized heroin was 5 grams. It is therefore, stated by the learned counsel for the petitioner there is discrepancy in the weight also, and therefore, if the weight is 5 grams as indicated in the order dated 24.10.2025 it would be of small quantity and would be covered by Section 21 (a) of the NDPS Act and not 21 (b) and consequently would be a bailable offence.

4. Learned counsel further submits that he has also moved another bail application before the Special Judge, (NDPS), Yupia. By order dated 12.11.2025, his bail application was rejected and in the rejection order it was again stated that the weight of the seized heroin was 5.15 grams. The accused person had also raised the same question of procedural lapses before the learned court below which was rejected on the ground that the procedural lapses shall be considered during the trial and not at the stage of bail.

5. Another ground taken by the petitioner is that the accused is having chest

problems and has difficulties in breathing and also that the aged mother of the accused is seriously ill and has nobody to look after her as the accused is languishing in judicial custody for the last 92 days. Learned counsel also states that the investigation is now at an advance stage as 92 days have already lapsed after his arrest and therefore, his custody may not be required any longer and therefore, prays that he may be released on bail.

6. Heard learned Additional Public Prosecutor, Mr. T. Ete for the State respondent who has objected to the bail application on the ground that the petitioner has also being charged under Section 27 A of the NDPS Act, which is punishable with rigorous imprisonment for a terms which shall not be less than 10 (ten) years but which may extend to 20 (twenty) years and therefore the provisions of Section 37 of the NDPS Act are relevant in the present case and therefore as there is a prima facie case against the accused person, he may not be released on bail at this stage as the prescribed time line for investigation is 180 (One hundred eighty) days and not 90 (Ninety) days in the case of the accused person.

7. Learned Additional Public Prosecutor has also drawn the attention of this Court to the judgment of ***Narcotics Control Bureau Versus Kashif*** reported in ***2024 SCC Online SC 3848*** at paragraph 39 wherein the Hon'ble Apex Court has held that any lapse or delay in compliance of Section 52 A of the NDPS, Act would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would it vitiate the trial on that ground alone. The Apex court further went on to state that any procedural irregularity or illegality found to have been committed during the course of investigation would not by itself made the entire evidence collected during the course of

investigation inadmissible. This court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused and that any lapse or delay of the compliance of Section 52 A by itself would neither vitiate the trial nor would entitle the accused to be release on bail.

8. Learned Additional Public Prosecutor has also submitted that the medical certificates enclosed by the petitioner does not show that the accused person is suffering from a serious illness, which would require his treatment outside of custody and that the same has to be authorized by a medical board only and therefore the ground of illness cannot be considered by this Court at this stage.

9. The court has considered the submission of the parties and has perused the records. It is observed that the accused person has been charged with offences under Section 21 (b)/ 27 A/ 29 NDPS, Act. As stated by the learned Additional Public Prosecutor, Section 27 A of the NDPS, Act entails a punishment of imprisonment up to 20 years and not less than 10 years and shall also be liable to fine which shall not be less than 1,00,000/- (One Lakh) but may extend to 2,00,000/- (Two Lakh) rupees. In view of the same, Section 37 of the NDPS Act is attracted wherein this Court upon examination of the records finds that there is no reasonable ground to believe that the accused person is not guilty of the offence as charged against him. It is also seen that the period of investigation has not yet been completed as the accused has been in custody only for 92 days. As laid down in the case of ***Narcotics Control Bureau Versus Kashif*** (Supra), the procedural lapses as alleged by the petitioner cannot be a ground to release the accused person on bail and the same issue can be raised during the trial, if so advised.

Due to the reasons as stated above, this application is dismissed.

JUDGE

Comparing Assistant