

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

B.A. No.53 of 2026

Shri Shambhu Paswan

son of Nageshwar Paswan, resident of 9,
Chakraka Tola Lagar, Timapur English
Lagar, Gorgi, Lagar, Khagaria, Bihar, PIN-
851216

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

On behalf of:

Sri Rahul Chaudhary

son of Sri Ram Chalitra Choudhary,
resident of Gulzarbagh Mirchiyatola, P.S.
Alamganj, Patna, Bihar, PIN-800007

..... **Accused person(s)**

- V e r s u s -

The State of Tripura

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

For the petitioner	:	Mr. S. Lodh, Adv.				
For the respondent	:	Mr. R. Datta, P.P.				
Date of hearing	:	24.03.2026				
Date of delivery of judgment and order	:	02.04.2026				
Whether fit for reporting	:	<table border="1"><thead><tr><th>Yes</th><th>No</th></tr></thead><tbody><tr><td></td><td>✓</td></tr></tbody></table>	Yes	No		✓
Yes	No					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

This application praying for bail of the accused, Sri Rahul Choudhary, is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, (in short, BNSS) 2023 in connection with Amtali P.S. Case No.2025 AMT 020 dated 27.02.2025 subsequently renumbered as Special (NDPS) 100 of 2025 pending in the learned court of the Special Judge, Court No.2, West Tripura, Agartala where charge-sheet is laid under Sections 21(c)/25/29 of NDPS Act, 1985.

[2] Heard Mr. S. Lodh, learned counsel appearing for the accused petitioner. Also heard Mr. R. Datta, learned Public Prosecutor, appearing for respondent-State.

[3] The prosecution case is that on 27.02.2025, when the informant, a Sub-Inspector of Police, while performing duty at bypass road near Agartala Railway track area with other police personnel, noticed that 6[six] persons were standing together besides the bypass road, and 3[three] of them were having backpack with them. Seeing the police, they tried to flee away but 4[four] of them were detained. On asking, those detained persons disclosed that they were having Eskuf syrups with them in two numbers of backpack and out of them, 3[three] were minors in age. On getting information, Inspector, Sri Himadri Sarkar, O/C of Amtali P.S. along with other police staff arrived there. Thereafter, the informant along with other staff under the leadership of said Inspector, Himadri Sarkar conducted search on the person of the said detained persons and also the backpack, after obtaining their consent under Section 50 of the NDPS Act, to cause search in presence of a Gazetted officer i.e. in presence of Inspector, Himadri Sarkar who was present at the spot and on search, from the backpack, total 50 nos. of Eskuf syrups were recovered from the accused persons and further, 35 nos. of Eskuf syrups were also recovered from backpack of another co-accused.

[4] Mr. S. Lodh, learned counsel appearing for the accused petitioner submits that Section 50 of the NDPS Act was not complied with in its true spirit rendering the search and seizure as well as the recovery illegal. Learned counsel submits that securing presence of Inspector,

Himadri Sarkar, who is a Gazetted Officer, cannot be treated to be compliance of Section 50 of the Act as he was the member of the search party. Referring to the evidence of PW-2, learned counsel submits that he was one of the witnesses, who signed in the notice, regarding compliance of Section 50 of the Act but he has not stated anything about compliance of such provision by the searching officer before the search was conducted. Moreover, in the said notice, it was kept blank whether the accused required or did not require that his personal search to be conducted in presence of the nearest Gazetted Officer or Magistrate. For better understanding, the relevant portion of the notice, where the signature of the accused was taken containing his statement, is extracted hereunder:

"I have been informed and have understood the Notice of Personal Search under section 50 of the NDPS Act, 1985. I require/do not require that my personal search may be conducted in presence of the nearest Gazetted Officer or Magistrate."

[5] Learned counsel also submits that for violation of Section 50 of the Act, the search and recovery have become vitiated and therefore, rigour of Section 37 will not be applicable.

[6] Mr. Lodh, learned counsel in support of his contention, relies on a decision in the case of **Doniyar Vildanov vs. State of U.P., 2026 SCC OnLine SC 132**, wherein at paragraph No.9, it was observed by the Hon'ble Supreme Court that the sequence of events as spoken of by PW1 to PW3 clearly indicated that immediately on interception, the bag of the accused was searched and the contraband was detected. The consent letter was signed after said detection of contraband item was made. The recovery of Mahazar did not indicate a bag in which the contraband item was said to be smuggled. There were also inconsistencies in the evidence

of three important witnesses viz. PW-1 to PW-3. In such a situation, it was held that the mandatory stipulation for search and seizure as per the NDPS Act was not carried out in its letter and spirit and the appellant was acquitted.

[7] Learned counsel also relies on a decision of Division Bench of this Court in the case of **Mithu Kumar and Another vs. State of Tripura, 2023 SCC OnLine Tri 302**, wherein the prosecution case was that one Inspector of Police along with staff found two persons with two trolley bags trying to enter into the Agartala Railway station through the main gate in suspicious manner. Thereafter, they were detained and after compliance of furnishing notice under Section 50 of the Act, search was made in their body as well as in the luggage and total 33 Kg. of ganja was recovered from their trolley bags. In the said case also, notice was issued under Section 50 of the Act but the police authority did not give the requisite tick mark in the said statement portion of the accused contained in the notice in the following line:

‘I require/do not require that my personal search may be conducted...’

[8] In that context, the Division Bench held that it was manifestly absent that the accused had exercised the right of choosing whether they required to be searched by a Gazetted Officer or Magistrate. Therefore, Section 50 of the Act was not substantially complied with which vitiated the conviction. In the said case, the Division Bench also make a reference of a decision of the Hon’ble Supreme Court in the case of **State of Rajasthan vs. Parmanand, (2014) 5 SCC 345** and the relevant paragraph Nos.15 and 19 of the **Parmanand** (supra) as were extracted by the Division Bench read as under:

“15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand’s bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.

19. We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW-10 SI Qureshi is vitiated.”

[9] Learned counsel, Mr. Lodh, while relying this judgment, gave stress on his submission that even if the contraband items are recovered from the bags and not from the accused person, still Section 50 of the Act will be applicable when the police authority chooses to search both the body as well as the bags of the accused and in the instant case, the same is also found from the testimony of PW-2 to have been done.

[10] Learned counsel also relies on another decision of the Hon’ble Supreme Court in the case of **the State of Himachal Pradesh vs. Surat Singh, Criminal Appeal No.96 of 2018**, decided on 16.03.2026, wherein the accused was found coming carrying red-gray coloured bag pack and on suspicion, the police detained him and consent was taken from him in

terms of the provision of Section 50 of the Act and police also gave personal search memo. From the bag pack, 11.50 kg charas was recovered. In that contexts, the Hon'ble Supreme Court affirmed the decision of the High Court acquitting the accused. High Court observed that despite his personal search was carried out, the police had given option to the accused either to be personally searched before the Magistrate or the Gazetted Police Officer and another option was also given to him whether he wanted to be searched by the Investigating Officer in presence of witnesses, which according to the High Court, was violation of Section 50 of the Act and as there was no third option as enumerated in Section 50 of the Act to be searched before the police officer. Hon'ble Supreme Court observed that High Court was justified in placing reliance on **Parmanand** (supra).

[11] Lastly, learned counsel, Mr. Lodh, also to support his submission, that the matter of non-compliance of Section 50 of the Act can be taken note of while deciding the bail application, relies on a decision of Rajasthan High Court in the case of **Ganpat Singh vs. State of Rajasthan through PP, S.B. Criminal Misc. 2nd Bail Application No.9913 of 2024**, decided on 06.09.2024, wherein learned Single Bench observed that the seizure officer issued a notice in that case under Section 50 of the Act but failed to obtain an option from the accused regarding the manner of search which prima-facie invalidated the search. According to the said decision, the procedural non-compliance raised doubts about the legality of the search since statutory rights of the accused were violated and in essence, the procedural lapse undermined the legitimacy of the evidence i.e. the contraband seized, making the case for bail stronger due to likelihood of acquittal or a weakened prosecution. The High Court also

took note of the fact that the accused was in custody for around 11 months and therefore, without going into the merits of the matter, it was further observed that the rigour of Section 37 of the NDPS Act was dully satisfied and therefore, the bail was granted. In said case, there was also defect notice by the High Court regarding compliance of Section 52-A of NDPS Act by the police authority.

[12] Mr. R. Datta, learned PP appearing for the State relies on some judgments which are described hereunder, to buttress his contention that the matter of scrutiny for violation of Section 50 of the Act cannot be made during the bail hearing, rather it is a matter to be examined at trial. Learned P.P also submits that when the contraband items were recovered from the backpack, provision of Section 50 of the Act had no applicability. Both the learned counsel, Mr. Lodh and learned P.P rely on a decision of the Hon'ble Supreme Court (Constitution Bench) in the case of **Vijaysinh Chandubha Jadeja vs State of Gujarat, (2011) 1 SCC 609**. Mr. Lodh, learned counsel relies on paragraph No.29 of the said decision, whereas Mr. Datta, learned PP, relies on the paragraph No.31 of the same. The paragraph Nos.29, 30 and 31 of the said decision are also reproduced hereunder:

29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

30. As observed in Presidential Poll, In re, (1974) 2 SCC 33 :

“13..... it is the duty of the courts to get at the real intention of the legislature by carefully attending [to] the whole scope of the provision to be construed. ‘The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole.’ ”

31. We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez vs. State of Goa, (2000) 1 SCC 707 and Prabha Shankar Dubey vs. State of M.P., (2004) 2 SCC 56 is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in State of Punjab vs. Baldev Singh, (1999) 6 SCC 172. Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

[13] Learned P.P. relies on another recent decision of the Hon'ble Supreme Court in the case of **Narcotics Control Bureau vs. Mohit Aggarwal, (2022) 18 SCC 374**, wherein at paragraph No.19, it was observed that the length of the period of custody of the accused or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

[14] Learned P.P also relies on another decision of the Hon'ble Supreme Court in the case of **State of Kerala vs. Prabhu, 2024 SCC OnLine SC 5300**, wherein at paragraph No.7, it was observed that the exposition of law on the question regarding the requirement of compliance with Section 50 of the NDPS Act is no more res integra and if the recovery was not from the person and rather from a bag carried by the accused, the procedure formalities prescribed under Section 50 of the NDPS Act was not required to be complied with.

[15] Learned P.P. also relies on a decision of the Hon'ble Supreme Court in the case of **Narcotics Control Bureau vs. Kashif, (2024) 11**

SCC 372, wherein at paragraph No.50.5, it was observed that any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused. It was also observed in that context of that case that any lapse or delay in compliance with Section 52-A by itself would neither vitiate the trial nor would entitle the accused to be released on bail.

[16] In **State of Tripura, represented by Ld. Public Prosecutor vs. Mahabul Alam and others, 2023 SCC OnLine Tri 777** as further referred by learned PP, at paragraph No.17, it was observed by a Coordinate Bench of this Court that the courts while considering the application for bail must strictly adhere to the two conditions embodied in Section 37 of the NDPS Act, and must record its reason of satisfaction that there are substantial probable causes for believing that the accused is not guilty of committing such offence and there is no likelihood of repetition of committing such offence by the accused while on bail. It was further observed that the procedural violations, if any, shall be taken into consideration during the course of trial, and not at the stage of consideration of bail application. In said case, allegation was of violation Section 42 of the NDPS Act by the police.

[17] Learned P.P, in support of his submission that alleged violation of Section 50 of the Act can only be raised during trial, also relies on another decision of the Hon'ble Supreme Court in the case of **Union of India, through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, (2021) 10 SCC 100**, wherein at paragraph No.33, it was observed

that the question of compliance and non-compliance of Section 42 of the NDPS Act should be raised in the course of trial. It was also observed that in said case the contention as raised regarding non-compliance of Section 42 of the NDPS Act was prima-facie misplaced.

[18] Lastly, learned P.P relies on a decision of the Allahabad High Court in the case of **Neelam Devi vs. State of U.P, Criminal Misc. Bail Application No.29318 of 2022**, decided on 05.01.2023. In that case at paragraph No.20, the Allahabad High Court observed that it cannot be precisely ascertained that whether compliance of Section 50 of the NDPS Act has been substantially made or not, it can only be ascertained during trial.

[19] The Allahabad High Court in this respect, relies on the observation of Hon'ble Supreme Court in the case of **Vijaysinh Chandubha Jadeja** (supra) as quoted earlier.

[20] This Court has considered the rival submissions of the parties and has also gone through relevant materials placed in the record.

[21] The Constitution Bench In the case of **State of Punjab vs. Baldev Singh, (1999) 6 SCC 172**, at paragraph No.25 observed that to be searched before a Gazetted Officer or a Magistrate, if the suspect so requires, is an extremely valuable right which the legislature has given to the concerned person having regard to the grave consequences that may entail the possession of illicit articles under the NDPS Act. It was also observed therein that it is further not necessary to give the information to the person to be searched about his right in writing. It is sufficient if such information is communicated to the concerned person orally and as far as possible in the presence of some independent and respectable persons

witnessing the arrest and search and the prosecution must, however, at the trial, establish that the empowered officer had conveyed the information to the concerned person of his right of being searched in the presence of the Magistrate or a Gazetted Officer, at the time of the intended search. The courts have to be satisfied at the trial of the case about due compliance with the requirements provided in Section 50 of the Act.

[22] Therefore, in view of the decision of **Baldev Singh** (supra) and **Vijaysinh Chandubha Jadeja** (supra), the prosecution should get scope during trial to establish whether searching officer had complied with the provision of Section 50 of the NDPS Act. As per the decision of **Md. Nawaz Khan** (supra), the compliance or non-compliance of Section 52 of the NDPS Act should be raised in the course of trial. The Coordinate Bench of this Court in **Mahabul Alam** (supra) also observed that the procedural violation, if any, shall be taken into consideration during the course of trial and not at the stage of consideration of bail application.

[23] Now, in the case in hand, On perusal of the notice, issued under Section 50 of the NDPS Act by the searching officer to the present accused person, it appears that he was informed about his legal right to be searched in presence of the nearest Gazetted Officer or the Magistrate but the reply of the accused was not noted down in the bottom of the said notice giving tick mark in the relevant place, rather his signature was taken therein. 2[two] persons, namely Pappu Shome and Constable, Litan Sarkar put their signatures in the said notice as the witnesses and Md. Mamun Ullah Kazi, SI of police also signed the same as searching officer. Said Litan Sarkar has been examined in this case as PW-2 but he has not stated anything regarding communication of the accused about his such

legal right. However, the witness, namely, Pappu Shome has not yet been examined and he in his statement recorded under Section of the Cr.P.C. he stated that the O/C of the police station after obtaining written permission from the accused person, search was conducted. Said searching officer, Md. Maman Ullah Kazi is also yet to be examined, who had searched the bag of the accused.

[24] Therefore, it is not a proper stage to examine whether compliance of Section 50 of the NDPS Act was necessary or not, in the given facts of the present case and whether the said provision was complied with by the searching officer or not. Charge has been framed in this case against the accused by the learned Special Judge under Section 20(c) of the NDPS Act having found prima-facie materials against him in respect of commercial quantity of Eskuf syrup.

[25] Considering all these aspects, this Court is not inclined to grant bail to the accused person at this stage and accordingly, the bail application is rejected.

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

Reconsign the records of the learned trial Court along with a copy of this order immediately.

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

JUDGE