



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

B.A. No.133 of 2026

Sri Sanjit Das,
S/O- Lt. Dinesh Das, Resident of Hurijala, Ichacharra, P.S-
Kakraban, Dist. Gomati Tripura, PIN-799105

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

On behalf of :

Sri Partha Das
S/O- Sri Sanjit Das, resident of Hurijala, Ichacharra, P.S-
Kakraban, Dist. Gomati Tripura, PIN-799105

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

- V e r s u s -

The State of Tripura,
represented by the Secretary, Home Department, Government
of Tripura, Agartala

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

For the Petitioner (s)	:	Mr. J. Bhattacharjee, Adv.				
For the Respondent(s)	:	Mr. R. Datta, P.P.				
Date of hearing	:	30.07.2026				
Date of delivery of order	:	31.07.2026				
Whether fit for reporting	:	<table><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>✓</td></tr></table>	YES	NO		✓
YES	NO					
	✓					

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

ORDER

The prayer for bail has been filed on behalf of the accused, Sri Partha Das, in connection with Special NDPS case No.21 of 2026, pending in the Court of the learned Special Judge (NDPS), Court No.2, Khowai Tripura.

[2] On the basis of a secret information, the informant, S.I. Rajakmoni Jamatia, tried to detain a vehicle bearing registration No.TR-01-A-0852 at 41 Mile Naka point and the vehicle with speed disobeyed the

signal. Ultimately, police found said vehicle at Champlai abandoned condition on the road side and the driver and his associates, according to the police, fled away keeping the vehicle in such abandoned condition. On search, they ultimately recovered 219 kg. of ganja from the said vehicle. Four numbers of number plates of two different registration numbers were also recovered from the said vehicle along with two numbers of printed photocopy inscribed with the words 'PRESS' and one number printed photocopy inscribed with the words 'ON DUTY TELECOM' therefrom.

[3] The police investigated the case and finally, laid the charge-sheet under Sections 21(b)/22(a)/25/29 of the NDPS Act and Sections 177/192 of the MV Act against the registered owner of the said vehicle, namely, Sri Partha Das i.e. the present petitioner.

[4] During investigation, it was found by the investigating officer that the displayed number plate bearing registration No.TR-01-A-0852 of the alleged vehicle did not match with its chassis number and ultimately, it was detected that the original registration of said vehicle was TR-02-N-0393. According to the police, despite serving of notice upon the accused petitioner on several occasions, he did not appear to assist in the investigation and in this way, the present accused was giving protection to some other unknown accused persons.

[5] Learned Special Judge, Court No.2, on receipt of the docket, passed an order on 18.05.2026 to issue summons upon the accused, Sri Partha Das, fixing the date of his appearance on 04.07.2026. On that day, the accused appeared before the Court and also submitted an application for bail. In the bail application, it was also added that in another case

bearing no. Mungiakami P.S. Case 13 of 2025, renumbered as Special (NDPS) 19 of 2026, the police authority summoned him on several occasions and he also appeared physically but they did not arrest him and finally, he was shown as absconder in the said case. Learned Special Judge has rejected his prayer in connection with the present case. Since then, he is in custody.

[6] Mr. J. Bhattacharjee, learned counsel appearing for the accused petitioner relying on a decision of Hon'ble Supreme Court in the case of **Tarsem Lal vs. Directorate of Enforcement, Jalandhar Zonal Office, Criminal Appeal No.2608 of 2024**, decided on 16.05.2024 submits that after the summons was issued by the learned Special Judge, the accused appeared in the Court giving due honour to the said summons and therefore, as per law laid down in **Tarsem Lal (supra)** he is entitled to get bail and he cannot be remanded to the judicial custody. Learned counsel also submits that there is no incriminating material against the accused person to attract barring provision of section 37 of NDPS Act, and driver of the alleged vehicle was also not arrested by the police. He further submits that no notice issued by the police, was ever received by the accused in connection with this case. He also relies on another decision of the Coordinate Bench of this Court in the case of **Dhruba Manik Jamatia vs. State of Tripura, A.B. No.61 of 2018**, decided on 20.08.2019, wherein the learned Bench was pleased to grant pre-arrest in favour of the accused petitioner of said case with the observation that on scrutinising the police report, no tangible materials were found available which could link participation of the said applicant in the alleged offence.

[7] Mr. R. Datta, learned P.P. while producing the case diary has opposed the bail prayer submitting that the ratio of **Tarsem Lal** (supra) is applicable only in case of a complaint case and the same cannot be applied in the case in hand.

[8] Before dealing with the issue of non-application of rigor of section 37 of the NDPS Act as raised from the side of the petitioner, the law as laid down in **Tarsem Lal** (supra) by the Hon'ble Apex Court is required to be studied first. In the said case, the appellants were accused in complaint [*emphasis laid*] filed under Section 44(1) (b) of Prevention of Money Laundering Act, **2002** [for short, PMLA]. They were denied with the benefit of anticipatory bail by the order of the High Court which was impugned before the Hon'ble Supreme Court. During investigation, they were not arrested by the Directorate of Enforcement till the Special Court took cognizance under PMLA offences, punishable under Section 4 of the Act. The cognizance was taken on the basis of the complaint filed under Section 44(1) (b) of the PMLA. The appellants did not appear before the Special Court after summons were served upon them and therefore, the Special Court issued warrant for procuring their presence. Thereafter, they applied for anticipatory bail which was turned down by both the Special Courts as well as by the High Courts.

[9] In that contexts, the Hon'ble Supreme Court observed that complaint under Section 44(1) (b) of the PMLA will be governed by Sections 200 to 204 of the Cr.P.C. and at the first instance as a rule, the Court must issue summons on the complaint. If the accused was not arrested till filing of the complaint but has not cooperated with the investigation by defying the

summons issued under Section 50 of PMLA, the Special Court may issue bailable warrant at the first instance while issuing the process. But even in such a case, it is not mandatory to issue a warrant while issuing process; instead issuance of a summons would suffice. Finally, examining other related provisions of Code of Criminal Procedure and prescribed form of summons under section Section 61 of the Code, the Hon'ble Supreme Court laid down the followings:

23. Now, we summarise our conclusions as under:

a) Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;

b) If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;

c) After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC;

d) In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;

e) If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant;

f) A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

g) In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it.

While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

h) When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;

i) After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and

j) If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.

[10] However, the Hon'ble Supreme Court in paragraph No.24 further giving a clarificatory note observes that while giving such decision, the Court was dealing with a fact situation where the accused shown in the complaint [emphasis laid] under Section 44(1) (b) of the PMLA was not arrested by the ED by the exercise of power under Section 19 of the PMLA till the complaint was filed.

[11] The present case in hand, is not a complaint case, rather the police submitted the charge-sheet under Section 193 of the BNSS. As per provision of Section 2(h) of BNSS, such police report cannot be treated as a complaint. On the other hand, Hon'ble Supreme Court in Para-15 of **Tarsem**

Lal (supra) observes that if an accused appears pursuant to a summons issued on the complaint, he is not in custody and therefore, there is no question of granting bail. Moreover, even if the accused who appears before the Court does not offer to submit bonds under Section 88 of the Cr.P.C, the Court can always direct him to do so. A bond furnished according to Section 88 is an undertaking to appear before the Court on the date fixed and the question of filing bail bonds arises only when the Court grants bail. Said observation was made taking into note of in the provision of Section 88 of the Code of Criminal Procedure which envisages that when any person for whose appearance or arrest, the officer presiding in such Court is empowered to issue a summon or warrant, is present in such Court, such officer may requires such person to execute a bond, with or without surety for his appearance in such Court, or any other Court to which the case may be transferred for trial. However, while carrying forward the said provision in BNSS, 2023, in corresponding Section 91, some changes have been made by the legislature by incorporating the words 'bond or bail bond'. At present, the provision reads that when any person for whose appearance or arrest, the officer presiding in any Court is empowered to issue summons or warrant, is present in such Court, such officer may requires such persons to execute **a bond or bail bond** [*emphasis laid*] for his appearance in such a Court or any Court to which the case may be transferred for trial.

[12] According to **Tarsem Lal** (supra) as noted above, the question of filing of a bail bond will arise only when the Court grants bail to the accused. In other words, if bail is not granted, the question of filing bail bond under Section 91 of the BNSS will not arise.

[13] In **Satender Kumar Antil vs. Central Bureau of Investigation and another**, Special Leave to Appeal (Crl.) No.5191 of 2021, decided on 07.10.2021, laid down the guidelines regarding the matter of granting bail. In said guidelines, the criminal offences were divided into 4[four] categories, which are as follows:

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.

[14] Requisite conditions for considering the bail application laid down therein are (i) not arrested during investigation and (ii) cooperated throughout in the investigation including appearing before the officer whenever called.

[15] In respect of Category-A offences, as per said guidelines, when after filing of the charge-sheet/complaint taking of cognizance ordinarily summons at the 1st instance/including permitting appearance through lawyer should be insisted. If such accused does not appear despite summons, then bailable warrant for physical appearance may be issued and on failure to appear despite issuance of bailable warrant, non-bailable warrant is to be issued. It is also envisaged therein that bail applications [*emphasis laid*] of such accused person on appearance may be decided when the accused being taken in custody or by granting interim bail till the bail application is decided.

[16] So far the Categories-B and D above are concerned, it is observed that on appearance of the accused in the Court pursuant to the process of the Court, bail application is to be decided on merits [*emphasis laid*].

[17] So far the Category-C is concerned, it is also stipulated that similar procedure is required to be followed as laid down for Categories-B & D with an additional condition of compliance of provisions of bail under NDPS S.37, 45 of PMLA, 212(6) of Companies Act and 43(d)(5) of UAPA, POCSO etc. It is also clarified therein that Category-A deals with both police cases and complaint cases and the direction was given to the trial Court as well as the High Court to keep in mind the aforesaid guidelines while considering the bail applications.

[18] In view of the above position of law as enunciated by the Hon'ble Apex Court, whenever the accused person appears before the Court after filing of the charge-sheet, bail application of such accused is required to be decided as per above said guidelines and in the case related to NDPS Act where Section 37 is applicable, said rigors are also required to be satisfied. The relevant portion of the said decision of **Satender Kumar Antil** (supra) is also reproduced hereunder:

“ 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.”

[19] Now, so far the present case in hand is concerned, firstly, it is not a complaint case and secondly, the case is concerning commercial quantity of contraband items for which rigor of Section 37 of the NDPS Act is applicable. In such a situation, the submission of Mr. Bhattacharjee, learned counsel, that just because of summons was issued, the accused is automatically entitled to get bail, cannot be accepted. Now, so far as the second point of argument of Mr. Bhattacharjee that there is no incriminating material against the present accused person to attract the barring provision

of section 37, is concerned, there is no material available at this stage that the alleged vehicle was not under control and supervision or possession of the accused petitioner when it was allegedly detained by the police with contraband items. The case is concerning commercial quantity of Ganja. As per the chargesheet, even several false number plates were found inside the alleged vehicle and the number plate as was affixed to the said vehicle also displayed wrong registration number. Some other papers for displaying “PRESS” and “ON DUTY TELECOM” were also found in the said vehicle and therefore, prima-facie, it appears that the said vehicle was mainly engaged for such drug trafficking showing false display of number plates etc. and no materials in contrary is also available to infer that the owner of the vehicle had no knowledge of the same. Moreover, from the earlier bail application filed before the Ld. Special Judge, as indicated earlier, it appears that another case was also registered against the present accused petitioner concerning offences under NDPS Act bearing No. Special (NDPS) 19 of 2026. Therefore, rigor of section 37 of the Act is not mitigated in this case.

[20] Considering all these aspects, this Court is not inclined to grant bail to the accused petitioner. Accordingly, the bail prayer is rejected.

Reconsign the Trial Court records with a copy of this order.

Return the C.D. to learned P.P. with a copy of this order.

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

JUDGE