

**HIGH COURT OF TRIPURA
AGARTALA
AB No.69 of 2025**

Mahboob Alam,
S/O- Sri Ahmed Hossain,
R/O- East Lowairpoa,
P.S.- Bazaricherra,
Dist.- Karimganj, Lowairpoa, Assam.

---Accused-Petitioner/Applicant

-Vs-

The State of Tripura

---Respondent

For Applicant(s)	:	Mr. Pijush Kanti Biswas, Sr. Adv. Mr. Suman Tripura, Adv. Mr. Samung Debbarma, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

25/09/2025

This pre-arrest bail application under Section 482 of BNSS, 2023 is filed for granting pre-arrest bail to the accused-petitioner namely, Mahboob Alam in connection with Panisagar P.S. Case No.74 of 2024 renumbered as Spl. NDPS 19 of 2025 under Sections 22(C)/25/29 of NDPS Act.

Heard Learned Senior Counsel, Mr. P. K. Biswas assisted by Learned Counsel, Mr. S. Tripura and Learned Counsel, Mr. S. Debbarma appearing on behalf of the accused-petitioner and also heard Learned P.P., Mr. Raju Datta appearing on behalf of the State-respondent.

Today Learned P.P. has produced the CD and also by this time we have received the record from the Learned Trial Court.

Taking part in the hearing, Learned Senior Counsel for the applicant first of all drawn the attention of this Court referring one judgment of the Hon'ble Supreme Court of India and submitted that in view of the judgment there is scope for entertaining of pre-arrest bail in a case of this nature and furthermore, at the time of issuing warrant of arrest no such procedure was observed by the Learned Trial Court. Simply in absence of evidence on record warrant of arrest issued against him. It was further submitted that considering the materials on record and the present facts and circumstance of the case this application may be allowed and accused-petitioner may be released on pre-arrest bail.

It was further submitted by Learned Senior Counsel that Hon'ble the Supreme Court of India in the CrI. A. No.4564 of 2024 in Para Nos.5 and 8 observed as under:-

"5. Learned counsel appearing for the State and the learned senior counsel appearing for the informant placing reliance upon the judgment of this Court in State of Madhya Pradesh Vs. Pradeep Sharma, reported in (2014) 2 SCC 171, submitted that the appellant apart from non-cooperation has been declared as a proclaimed offender in terms of Section 82 of Cr.P.C. there are incriminating materials to implicate the appellant. In such view of the matter, the custodial interrogation is required.

8. Coming to the consideration of anticipatory bail, in the event of the declaration under Section 82 of the Cr.P.C., it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail."

Referring the same, Learned Senior Counsel has submitted that in view of the observation of the Hon'ble Supreme Court there is scope to grant bail to the accused.

Learned Senior Counsel also referred another citation of the Hon'ble Apex Court in *Narcotics Control Bureau vs. Mohit Aggarwal* reported in **(2022) 18 SCC 374**, wherein in para Nos.15, 16, 17, 19 and 20 Hon'ble the Apex Court observed as under:

"15. We may clarify that at the stage of examining an application for bail in the context of Section 37 of the Act, the court is not required to record a finding that the accused person is not guilty. The court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a three-Judge Bench of this Court in Tofan Singh [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246] , wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside.

17. However, this was not the only material that the appellant NCB had relied on to oppose the bail application filed by the respondent. The appellant NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the appellant NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with each other.

19. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody 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.

20. As a result of the aforesaid discussion, the present appeals are allowed and the impugned order releasing the respondent on post-arrest bail, is quashed and set aside. The bail bonds of the respondent are cancelled and he is directed to be taken into custody forthwith."

Referring the same Learned Senior Counsel submitted that in view of the present facts and circumstances of this case bail may be granted to the accused recalling the W/A.

On the other hand, Learned P.P. appearing on behalf of the State-respondent strongly objected the submission made by Learned Senior Counsel and first of all drawn the attention of the Court that at the time of detention of the vehicle the accused absconded and later on from the Court so many process was issued but he did not turn up. Finally, the Court was under compulsion to issue warrant of arrest against him.

Learned P.P. referring the contents of the CD also submitted that he is the main accused of this case. So, at this stage there is no scope to consider the pre-arrest bail application and rather urged before the Court to direct the accused to surrender before the Learned Trial Court since warrant of arrest is still pending against him. In support of his contention Learned P.P. relied upon one citation of the Hon'ble Supreme Court of India in ***Srikant Upadhyay and Others Vs. State of Bihar and Another*** reported in **(2024) 12 SCC 382** wherein in Para No.30, Hon'ble the Apex Court observed as under:-

"30. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the court depending on the facts and circumstances of each case. While called upon to exercise the said power, the court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the court shall not pass an interim protection pending consideration of such application as the section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously defying orders and keeps absconding is not entitled to such grant."

Referring the same, Learned P.P. has submitted that in view of the said observation of the Hon'ble Supreme Court, there is no scope to grant pre-arrest bail at this stage.

Learned P.P. also referred another order of the Hon'ble Supreme Court in connection with Special Leave to Appeal (Crl.) No(s).12621/2024 dated 19.09.2024 wherein in Para No.4, Hon'ble the Apex Court observed as under:-

"4.The Grant of anticipatory bail in cases involving Narcotic Drugs and Psychotropic Substances (NDPS) is a very serious issue. We, therefore, direct the State to consider as to whether it proposes to file an application for the cancellation of bail granted to the other co-accused."

Referring the same submitted that in view of the observation of the Hon'ble Supreme Court there is no scope to consider pre-arrest bail in a case under NDPS Act and finally urged for rejection of the pre-arrest bail application.

I have heard both the sides at length and perused the record of the CD. In the FIR it is clear that at the time of detention and checking of the vehicle the present accused person absconded from the PO. Later on contraband items were recovered and seized by I/O from the vehicle and the case was registered.

It is also on record that from the Learned Trial Court warrant was issued against him and inspite of warrant of arrest he did not surrender before the Court for which the case is dragging.

I have also gone through the citations referred by Learned Senior Counsel appearing on behalf of the accused. The judgment of Hon'ble Supreme Court reported in **(2022) 18 SCC 374** stands against the present accused-petitioner. Rather from the said judgment, it appears that in a case of this nature strict compliance of Section 37 of NDPS Act would be followed. But here in the case

at hand, the accused-petitioner could not show any material to draw negative inference regarding application of Section 37 of the NDPS Act in his favour.

So, considering all this present pre-arrest bail application stands rejected being devoid of merit.

The accused is asked to surrender before the Learned Trial Court to face trial.

This present pre-arrest bail application accordingly stands disposed of.

Return back the CD to I/O through Learned P.P. along with a copy of this order.

Also a copy of this order be communicated to the Court of Learned Special Judge, North Tripura, Dharmanagar.

JUDGE



Amrita

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