

GAHC010271662025



2026:GAU-AS:11941

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

Case No. : Bail Appln./3964/2025

HEMANTA BORDOLOI
S/O LATE HARI PRASAD BORDOLOI, R/O H/NO 108, TARAJAN KAKOTI
GAON, P.S.- JORHAT, DIST.- JORHAT, ASSAM, 785001

VERSUS

THE UNION OF INDIA
REPRESENTED THROUGH THE STANDING COUNSEL, CUSTOMS
DEPARTMENT

Advocate for the Petitioner : MR S BORTHAKUR, DEVABRATA SAIKIA, MR. D CHUTIA

Advocate for the Respondent : SC, CUSTOMS,

BEFORE
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 14.08.2026

Date of pronouncement of judgment : 21.08.2026

Whether the pronouncement is of the : NA.
operative part of the judgment ?

Whether the full judgment has been
pronounced? : Yes

J U D G M E N T & O R D E R (C A V)

Heard Mr. D. Saikia, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, Customs.

2. This application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for allowing the release of the applicant on bail in connection with Customs Case No. 01/CL/NDPS/LGBIA/GHY/2025-2026 dated 22.09.2025.

3. A complaint petition was filed by Sri Mippun Kangkan Pegu, Inspector LGBIA unit, Guwahati Customs Division, Guwahati in the Chief Judicial Magistrate Court, Guwahati dated 22.09.2025 inter alia alleging that when the customs officials held the routine checking of the passengers luggage's of Vientiane (Laos) to Guwahati AirAsia Flight No. FD 124 (Don Mueang to Guwahati) on 22.09.2025. During the screening of luggage of incoming international passengers, a suspicious item was detected in the baggage scanner at the Apron area of LGBI Airport. The suspected bag was kept aside until its owner came forward to claim it. After some time, one passenger, Shri Hemanta Bordoloi, came to claim the said bag. Upon initial enquiry, he admitted that the baggage in question was his and that he had two checked-in luggage items, namely: a) one olive-green colored trolley bag, b) one hard case dark

grey coloured trolley bag, and c) one black colored handbag. When questioned about the contents of the suspected hard case dark grey trolley bag, the passenger stated that it contained only his personal belongings. However, on suspicion that the said trolley bag contained contraband items, the Customs officers issued a spot summons to Shri Hemanta Bordoloi under the provisions of the NDPS Act, 1985, for carrying out further enquiry regarding the said bag. With the consent of the passenger, the Customs officers first opened the Olive-green colored trolley bag and removed all its contents. During the inspection, no suspicious or prohibited items were found in this bag. However, a Certificate of Clearance issued by International Finance Corporation in the name of Shri Hemanta Bordoloi was recovered from the said trolley. Subsequently, the officers proceeded to examine the dark grey coloured hard case trolley bag. After removing all visible items from this bag, it was observed that the bag still felt unusually heavy, raising further suspicion. The passenger was then questioned as to whether any illegal or prohibited item was concealed within the trolley bag. He denied having any knowledge of such contents. Following this, and in the continued presence of the Panchas, the Customs officers began dismantling the trolley bag using appropriate tools. Upon dismantling, they discovered two plastic-taped packages concealed inside the structure of the bag, one package at the top part of the structure and the second package at the bottom part of

the structure, the details of which are as follows:

(a) One blue plastic package, wrapped with carbon paper and sealed with yellow tape, containing a white powdered substance, suspected to be an NDPS substance.

(b) One pouch made of carbon paper, sealed with brown tape, also containing a white powdered substance, similarly suspected to be an NDPS substance.

4. The total weight of the suspected heroin was found to be 2540 grams, which is in the category of commercial quantity.

5. Learned counsel for the petitioner submits that the arrest of the petitioner was carried out in the late hours of 22.09.2025, but he was produced before the learned court only on 24.09.2025, which clearly violates the procedure contemplated, amounting to an unlawful detention beyond the permissible period of 24 hours. Such violation strikes at the root of the legality of the arrest and subsequent remand.

6. It is also the stated case of the petitioner that the mandatory notice and safeguards under Section 47 & 48 BNSS, 2023 were not properly served or followed while effecting the arrest of the petitioner. The procedural lapses vitiate the entire process of arrest and seizure.

7. Mr. S.C. Keyal, learned Standing Counsel representing the Customs Department submitted that the investigating agency is required to comply with the provisions of Section 42 of the NDPS Act, as held by the Hon'ble Apex Court in *State of Punjab v. Balbir Singh, 1994 Legal Eagle (SC) 287* and *Karnail Singh v. State of Haryana, 2009 Legal Eagle (SC) 1114*.

8. Referring to the aforesaid Section 42 of the NDPS Act, and more particularly, Sub Section (1)(d) thereof, it is submitted that the authorized officer is firstly required to detain and search and then only if he thinks it proper, he is to arrest the person whom he has reason to believe to have committed any offence punishable under the NDPS Act. It is further submitted that it is only after the search that the authorized officer can form an opinion as to the propriety of arrest of the concerned person, and thereafter, upon forming such an opinion, when the said person is formally arrested, it is the time of the said formal arrest that is to be regarded as the starting point for the purpose of determining whether the person was produced before the Magistrate within 24 hours as mandated under Article 22 of the Constitution and Section 58 of the BNSS.

9. In that view of the matter, the petitioner having been produced well within the period of 24 hours as stipulated in the aforesaid provisions, no illegality can

be said to vitiate the arrest on the petitioner. In support of his aforesaid submissions, learned counsel has referred to a decision of the Bombay High Court in ***Ram Kotumal Issrani v. Directorate of Enforcement and Ors., 2024 Legal Eagle (BOM HC) 5876***. It is contended, with reference to the aforesaid decision, that under similar circumstances, the arrest was not held to be illegal, and the Supreme Court also declined to interfere with the said order upon a challenge made to it by the petitioner therein. At this stage, the relevant statutory provisions may be noticed.

10. Section 58 of the BNSS provides as follows:-

“58. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.”

11. Article 22(2) of the Constitution of India also provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

12. Section 483 of the BNSS, 2023 provides as follows:-

“483. Special powers of High Court or Court of Session regarding bail.—(1) A High Court or Court of Session may direct,-
(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 480, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;”

13. Section 42 of the NDPS Act, 1985 provides as follows:-

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is

kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a)

(b)

(c)

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

1 [Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2)"

14. From the above provisions, what can be noticed is that Section 483 of the BNSS confers power upon the High Court or Court of Session to direct the release of the person on bail who is "in custody". Section 58 BNSS prohibits the police officer from detaining "in custody" a person for a period in excess of 24 hours exclusive of the journey time from the place of arrest to the

Magistrate's Court. The question therefore is what is the stage or point of time from which the arrestee can be said to be in custody as contemplated under the aforesaid provision.

15. In the brief note submitted on behalf of the Customs, it is stated that the accused was detained in the Guwahati International Airport at around 1:30 a.m. on 23.09.2025 and was formally arrested on 23.09.2025 at around 4:30 p.m. under the provisions of Section 42 of the NDPS Act. Coming to Subsection (1) (d), from a plain reading thereof, it confers power on the authorized officer to "detain" and search and if he thinks proper, arrest the said person, provided he has reason to believe that the person has committed any offence punishable under the NDPS Act.

16. In the case of ***Directorate of Enforcement Vs. Subhash Sharma (2025) SCC OnLine SC 240***, relied upon by the petitioner side, the arrest of the petitioner accused was held to be vitiated as he was detained at the IGI Airport Delhi on 05.03.2022 at 11.00 A.M., though formally arrested on 06.03.2022 at 1.15 A.M. and he was produced before the Court on 06.03.2022 at 3.00 P.M. Calculating the period of 24 (twenty four) hours from 11.00 A.M. on 05.03.2022, the production was held to be beyond 24 (twenty four) hours and therefore, the arrest and further detention vitiated. The relevant para nos. 6, 8

and 9 are reproduced here and below:-

“6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order (Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

8. Once a Court, while dealing with a bail application, finds that the

fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

9. Therefore, when arrest is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA.”

17. Similarly, in the earlier case of ***State of Haryana and Ors. Vs. Dinesh Kumar (2008) 3 SCC 222***, the Court dealt with a similar issue and in paragraph-23, approved the principle laid down in a yet earlier decision of ***Niranjan Singh Vs Prabhakar Rajaram Kharote, (1980) 2 SCC 559***. The relevant para-7 of ***Niranjan Singh (Supra)*** may be reproduced here and below:-

“7. When is a person in custody, within the meaning of S. 439 Cr. P. C.? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the Courts jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the

court or is in the physical hold of an officer with coercive power is in custody for the purpose of S. 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibbling and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubiotics are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.”

18. In the case of ***Subhash Sharma*** (Supra), though the Hon’ble Apex Court, in my view, did not lay down in so many words the principle that the time frame of 24 hours under Article 22 of the Constitution has to be calculated from the time of detention, even if formal arrest is later - however, in effect, such a principle was applied to the facts of that case in holding the arrest to be vitiated.

19. In ***Niranjan Singh*** (Supra), the Hon’ble Apex Court has explained that ultimately the meaning of the term ‘custody’ is that the law has taken control of the person and that interpreting the term custody in any other manner would be what the Hon’ble Apex Court held as – “unfair evasions of the straightforwardness of the law.”

20. It is contended on behalf of the customs that if a person is merely required to remain at the spot during the enforcement of Section 42 or 43 of the NDPS Act and is free to leave once the search is over, the same does not constitute arrest. I am unable to accept the aforesaid submission, inasmuch as, Subsection (1)(d) of Section 42 of the NDPS Act specifically empowers the authorized officer to first detain and then conduct search and thereafter, to formally arrest the person if the authorized officer thinks it proper. Therefore, once a person is formally arrested pursuant to the aforesaid provision of Section 42 of the NDPS Act, it is a continuation of the initial detention under the same provision and during this entire period, the arrestee/person could hardly have been free to leave had he so wished. In other words, the person concerned was effectively in custody from the moment of his detention and no other interpretation is possible in view of the meaning of the term custody as explained by the Hon'ble Apex Court in **Niranjan Singh** (Supra) and as applied and followed in **Dinesh Kumar** (Supra) and **Subhash Sharma** (Supra).

21. The decision of the Bombay High Court in **Ram Kotumal Issrani** (Supra) apart from being distinguishable on facts, inasmuch as, the accused therein appeared before the I.O. in response to a summoning, cannot aid the respondent in view of the above decisions of the Apex Court.

22. There is no dispute to the fact that the petitioner was detained at least no later than 1:30 am on 23.09.2025 and the period of 24 hours expired at 1:30 am on 24.09.2025. But, the petitioner was produced much later i.e., at least after 10:30 am on 24.09.2025 before the Chief Judicial Magistrate, Kamrup (M) even accounting for a travel time of about one hour from LGBI airport to the Court of the Chief Judicial Magistrate, Kamrup (M) at Guwahati.

23. In terms of the principles of law discussed above, in the instant case, the production being interpreted to be beyond the period of 24 (twenty four) hours of arrest, would have the effect of vitiating the arrest and making further detention untenable, entitling the petitioner to bail.

24. Accordingly, in the facts and circumstances and in view of the above discussion, this bail petition stands allowed and the accused person is allowed to go on bail of **Rs.1,00,000/-** lakh with two sureties of the like amount, one of whom has to be from the State of Assam - to the satisfaction of the **learned Chief Judicial Magistrate, Kamrup(M)**. The following conditions are imposed:-

- (i) The accused person shall not abscond and he shall be available for the remaining trial;

(ii) He shall not hamper or tamper with the evidence;

(iii) He shall not commit any illegal activities or offences, including any offences under the NDPS Act,

(iv) He shall not in any manner intimidate, harass or try to influence any witnesses.

25. The bail petition stands allowed and disposed of.

JUDGE

Comparing Assistant