



GAHC010254482025



Page No.# 1/8

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

Case No. : Bail Appln./3736/2025

MD KARI ALIAS MD JIYAUDDIN
S/O MAJLUM,
R/O WARD NO 12, MEHDA SHAHPUR, BEGUSARAI, PS SERIA BARIARPUR,
DISTRICT MEHDASAHPUR, BIHAR

VERSUS

THE UNION OF INDIA
TO BE REPRESENTED BY THE LEARNED STANDING COUNSEL,
NARCOTICS CONTROL BUREAU

Advocate for the Petitioner : Mr. S. Nawaz

Advocate for the respondent : Mr. S.C. Keyal, SC, NCB

BEFORE

HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date of Hearing : 09.01.2026

Date of Judgment : 22.01.2026



JUDGEMENT & ORDER (CAV)

1. Heard Mr. S. NawAz, learned counsel for the petitioner and also heard Mr. S.C. Keyal, learned Standing Counsel, NCB.
2. This is an application under Section 483 BNSS, whereby the accused-petitioner, namely, **Md. Kari @ Md. Jiyauddin** who was arrested on 16.06.2020 in connection with **NDPS PS Case No. 108/2020** under Section 8(c)/20(b)(C)(ii)/29 of NDPS Act, 1985 is seeking bail.
3. That on 15.06.2020, at around 04.00 P.M., an Intelligence Office of the Narcotics Control Bureau (NCB) allegedly received confidential information from a reliable source regarding the transportation of Ganja (Cannabis) by three individuals, including the accused petitioner, namely, Md. Kari @ Md. Jiyauddin, Ghuntun Ray, and Ravindra Ray, in a truck bearing Registration No. CG 08 L-3066, expected to arrive near Priti Bhoj Dhaba, NH-37, Baihata Chariali, around 07:00 A.M. on 16.06.2020. At approximately 07:15 A.M., the said truck arrived and was intercepted, and upon preliminary questioning, the occupants identified themselves as the aforementioned individuals, with Ravindra Ray being the driver. A search of the vehicle revealed a concealed cavity behind the driver's seat, sealed with screws, from which 36 packets wrapped in brown cello tape were recovered. Upon opening, the packets allegedly contained dried flowering and fruiting tops suspected to be ganja, and representative samples drawn from each packet tested positive for cannabis using a Drug Detection Kit. The total weight of the seized contraband was recorded as 484.3 kilograms.
4. That the NCB issued notices under Section 67 of the NDPS Act, 1985, to all the accused persons, including the accused petitioner, Md. Kari, as well as the



independent witnesses, on 16.06.2020, and recorded their statements regarding the incident.

5. That on 16.06.2020, subsequently, the accused petitioner and the co-accused were arrested by the NCB team, for allegedly committing an offense under Section 8(c) read with Sections 20(b)(il)(c) and 29 of the NDPS Act. A memorandum of arrest was served upon the accused petitioner, Md. Kari @ Jiyauddin.

6. The NCB filed the Final Complaint in the present case under Sections 8(c), 20(b)(ii)(c), and 29 of the NDPS Act, implicating all the arrested individuals, including the accused petitioner. Additionally, three accused, namely Sukur, Narayan, and Kali Ray, were shown as absconders in the complaint. NDPS Case No. 108/2020 was thereafter registered. Meanwhile, the absconding accused, Sukur @ Aminur Islam, was also arrested and taken into custody.

7. The accused petitioner, had preferred a bail application before this Court, being B.A. No. 456/2021, but vide order dated 05.04.2021, his bail prayer was rejected.

8. During the pendency of the proceedings in NDPS Case No. 108/2020, the accused petitioner was taken from Guwahati Central Jail to Patna Central Jail on a production warrant for the purpose of completing procedural formalities in connection with Special Case (NDPS) No. 7/2019 before the Special (NDPS) Court No. 1, Patna.

9. Subsequently the present case i.e. NDPS Case No. 108/2020 was split up separating the proceedings concerning the present accused petitioner from the others. Subsequently, charges were framed against the other accused persons and after a trial the said accused persons were acquitted by the learned Special



Judge, NDPS, Kamrup(M).

10. Subsequently, the present petitioner was acquitted in Special Case (NDPS) No. 07/2019 on 09.06.2025 i.e. the case where he was under trial at Patna and was therefore returned from Patna Central Jail and the split up case against the present petitioner was at the stage of consideration of charge at the time of filing of the instant bail application.

11. In the meantime, one co-accused Aminur Islam @ Sukur Ali was released by the High Court on bail by order dated 29.04.2025.

12. Mr. Nawaz, learned counsel for the petitioner submitted, on factual grounds that the petitioner is innocent as he had no knowledge regarding the presence of the said contraband in the vehicle. He also urged that the constitutional rights and procedural requirements relating to the accused petitioner have been violated due to non furnishing of the ground of arrest in writing at the time of his apprehension and have also disregarded the statutory safeguards as contained in Section 50 & 50A of the Cr.P.C. It is further submitted that although the notice under Section 67 of the NDPS Act was served upon the accused petitioner prior to his arrest, the same is not a valid alternative to the notice under Section 50 Cr.P.C. as it is missing any reference to the facts of the case qua the commission of the alleged offences.

13. It is also evident from the records that the notice under 50A to the family members/relatives of the accused was only issued to the concerned police station but there is no proof of service, submitted learned counsel.

14. In this regard the learned counsel has relied upon the decisions of the Apex Court in the case of ***Pankaj Bansal v. Union of India*** reported in ***(2024) 7 SCC 576***, ***Prabir Purkayastha V. State (NCT of Delhi)*** reported



in **(2024) 8 SCC 254, Vihaan Kumar v. State of Haryana and Anr** reported in **2025 SCC OnLine SC 269, Ahmed Mansoor and Ors. v. State (Criminal Appeal No. 4505/2025)** and **Mihir Maharashtra (Criminal Appeal No. 2195 of 2025)**.

15. It has also been urged that the petitioner deserves to be released on bail due to his prolonged incarceration of more than five years four months and twenty five days at the time of submitting the bail application and since the trial is yet to commence, there is no possibility of an early end to his detention upon disposal of the case at an early date.

16. In addition to the above, what the learned counsel for the petitioner has forcefully contended is that all the other co-accused having been acquitted in the same case by the learned trial Court, it is therefore reasonable to believe that the present petitioner is also not guilty of the alleged offence and therefore the conditions imposed by Section 37 of the NDPS Act stand satisfied in the present case.

17. Per Contra, learned Standing Counsel, NCB submitted that in an earlier bail application filed by the petitioner before the learned Special Judge, similar contentions were raised regarding non service of notice but, the same were rejected by the learned Special Judge while dismissing the application for bail. It is further submitted that the trial is yet to be begin and at this stage if the petitioner is released on bail there is a every chance of him absconding and it is further submitted that the judgement and order by which the co-accused were acquitted concerns only the said co-accused persons and the same was to pronounced after considering the evidence against them and in the absence of the evidence being recorded against the present petitioner, he cannot claim



parity with the co-accused who have been acquitted by the learned trial Court.

18. I have given my due consideration to the rival submissions.

19. A perusal of the judgement and order dated 05.01.2026 in NDPS Case No. 108/2020 passed by the learned Additional Sessions Judge, No.2, Kamrup (M)/Special Judge, NDPS would reflect that the said Court has come to the following findings:-

“76. In the present case, considering the lapses in the maintenance of the chain of custody as admitted by the prosecution's own witnesses, this Court is satisfied that the possibility of tampering cannot be ruled out. The prosecution has failed to establish an unbroken and secure chain of custody. The unsecured transit of 70 minutes from the place of interception to the NCB office, the non-verification of articles by the Godown-in-charge, the unauthorised access to the godown by the seizing officer, and the intermixing of documents from different cases, when considered cumulatively, create a serious doubt about the integrity of the case property.”

20. Thereafter, at para 86 the learned trial Court has observed as follows:-

“86. in the absence of a clear and unambiguous finding in the FSL report that the seized substance consisted of flowering or fruiting tops of the cannabis plant, as required under the definition of "ganja" in the NDPS Act, this Court is not satisfied that the prosecution has proved that the seized substance was "ganja" as defined under the NDPS Act.”

21. It would appear that the aforesaid findings recorded by the learned trial Court are also applicable to the present petitioner since as per allegation, he



was found along with two other co-accused persons Rabindra Ray and Gautam Ray in the truck wherefrom the contraband was allegedly seized and therefore, there can be no two views that the present petitioner stands on same footing as the other two co-accused named above and who have been acquitted on the basis of the aforesaid findings by the learned trial Court. Till such finding is disturbed in appeal, the Court considering the bail application must proceed on the basis that the said findings are valid ones, as in a bail application, this Court cannot go into the correctness or otherwise of such findings. In that view of the matter, as a logical corollary, it would be prudent for the Court to hold that there are reasonable grounds to believe that the petitioner is not guilty of the alleged offence and therefore, the first condition stipulated under Section 37 NDPS Act stands satisfied.

22. As far as the second condition regarding the likelihood of the petitioner indulging in similar offences if granted bail, it is noticed that there was another case against the petitioner in Bihar in which he faced the trial and thereafter, he was acquitted. Hence it cannot be held that the petitioner has criminal antecedents, having been acquitted by a Court of law. There is no other material to come to a finding that the petitioner would be involved in or commit offences of a similar nature if granted the privilege of bail.

23. In view of the aforesaid findings it is not necessary, for the purpose of disposing of this bail application, to go into the merits of the other contention raised by learned counsel for the petitioner.

24. In view of the above discussion, the prayer for bail is allowed.

25. It is provided that the petitioner, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** with two local sureties of like amount



to the satisfaction of learned trial Court in connection with the aforesaid case.

26. It is further provided that the petitioner shall regularly participate in the trial if one commences and shall not try to influence or intimate the witness in any manner.

27. The bail application stands **disposed** of.

28. Return the case diary.

JUDGE

Comparing Assistant