

GAHC010097572026



2026:GAU-AS:9958

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

Case No. : Bail Appln./1300/2026

SRI SANJAY DOHANI
SON OF SHRI NAND KUMAR DOHANI, RESIDENT OF FLAT NO. SF09, GOL
BAZAR ROAD, BEHIND SUVIDHA HOTEL, VILLAGE BILASPUR, PO
BILASPUR, POLICE STATION CITY KOTWALI, DISTRICT BILASPUR, STATE
CHHATTISGARH, PIN-495001

VERSUS

UNION OF INDIA
TO BE REPRESENTED BY THE INTELLIGENCE OFFICER, DIRECTORATE OF
REVENUE INTELLIGENCE, GUWAHATI ZONAL UNIT, CHRISTIAN BASTI,
G.S. ROAD, GUWAHATI-781005, ASSAM

Advocate for the Petitioner : MR. D K BAIDYA, P MAZUMDAR, MR. M SARMA

Advocate for the Respondent : SC, DRI,

BEFORE
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

ORDER

21.07.2026

Heard Mr. D.K. Baidya, learned counsel for the petitioner. Also heard Mr. S.C. Kayal, learned Senior Counsel for DRI.

2. This is an application filed under Section 483 of the BNSS, 2023 praying for the grant of bail to the accused/petitioner, Sanjay Dohani arrested on 13.04.2026 in connection with DRI Case No. 01/CL/ND&PS?CANNIBIS/DRI/GZU/2026-27 for contravention of the provision of Section 8(c) of the ND&PS Act, 1985 and Punishable under Sections 20(b)(ii)(B), 23(b) & 29 of the ND&PS Act, 1985 pending before the Hon'ble Special Judge, ND&PS, Kamrup(M).
3. The case of the prosecution, as disclosed in the initial complaint/FIR filed before the learned Chief Judicial Magistrate, Kamrup (Metro) Guwahati, is that on 12.04.2026 the officers of the Directorate of Revenue Intelligence, Guwahati Zonal Unit, allegedly received specific intelligence to the effect that one passenger namely Sri Sanjay Dohani, arriving from Bangkok, Thailand, by Air Asia Flight No. FD-124 at Lokpriya Gopinath Bordoloi International Airport, Guwahati, would be carrying hydroponic weed/cannabis concealed in his baggage for the purpose of illegal transportation into India. Acting upon such information, the DRI officials along with independent witnesses intercepted the petitioner after his arrival at the airport and thereafter escorted him along with his baggage to the office premises of the DRI, Guwahati for detailed examination.
4. It is further alleged in the complaint that upon examination of one navy blue coloured backpack and one black coloured trolley suitcase allegedly carried by the petitioner, certain concealed packets containing greenish lumpy substance suspected to be hydroponic weed/cannabis were recovered from inside food packets and from concealed cavities allegedly created within the trolley suitcase. The prosecution has further alleged that the recovered substance, upon weighment, was found to be 2.060 kilograms and upon field testing through Narcotic Drugs Detection Kit, the same tested positive for cannabis/hydroponic weed. Thereafter, the respondent authority seized the aforesaid suspected contraband along with baggage articles, mobile phones, travel documents and other personal effects under the provisions of the NDPS Act and subsequently arrested the petitioner in connection with DRI

Case No. 01/CL/NDPS/CANNABIS/DRI/GZU/2026-27 dated 13.04.2026 under Sections 20(b)(ii)(B), 23(b) and 29 of the NDPS Act, 1985.

5. Following the arrest of the petitioner in connection with the aforesaid DRI Case No. 01/CL/NDPS/CANNABIS/DRI/GZU/2026-27 dated 13.04.2026, the petitioner was produced before the learned Chief Judicial Magistrate, Kamrup (Metro) Guwahati on 14.04.2026 along with the forwarding report, seizure records and remand prayer submitted by the Investigating Officer/respondent authority seeking custodial detention of the petitioner for the purpose of investigation of the case. Upon consideration of the materials so placed, the learned Court was pleased to remand the petitioner to judicial custody till 27.04.2026. The learned Court further directed the respondent authority to produce the accused petitioner physically before the learned Elaka Magistrate on 17.04.2026 for the purpose of drawal/sampling of the alleged seized narcotic substance in accordance with law. Since then, the petitioner has been languishing in custody in connection with the instant case.

6. Mr. Baidya, learned counsel for the petitioner has based his arguments on three grounds. Firstly, it is contended that the petitioner was produced before the Magistrate beyond 24 hours of his arrest, which is violative of Article 22 of the Constitution of India and in view of infringement of his constitutional as well as statutory rights, the petitioner is entitled to bail. The second ground is that the notice under Section 48 of the BNSS said to have been issued to the relative of the accused is not in order, inasmuch as there is nothing to show that the same was served upon the family members/friends/nominated person of the petitioner, thereby violating the directions of the Hon'ble Apex Court in the case of *Vihaan Kumar Vs State of Haryana* reported in *(2025) LiveLaw SC 169*. Thirdly, it is submitted that the recovered quantity of Ganja is stated to be 2.60 kgs and therefore, the said amount comes within the category of intermediate quantity and that too barely 60 grams above the ceiling for small quantity. Therefore, having regard to the period of detention of more than 90 days, the

petitioner may be considered for release on bail on that ground alone.

6. The DRI has submitted its detailed objection and has produced the case records. Mr. S.C. Kayal, learned Senior Counsel representing DRI submitted that after the petitioner had landed in Guwahati, he voluntarily accompanied the DRI Officers to the DRI office at Guwahati and it was only after the petitioner was questioned and he admitted to being in possession of the contraband and after due search and seizure operation was carried out, that the DRI decided to place the petitioner under arrest, which was done at 5 PM on 13.04.2026 and accordingly, he was produced on 14.04.2026 before the learned CJM, Kamrup Metro on 14.04.2026 within 24 hours of his arrest. Hence, there can be said to be no violation of either the constitutional or statutory provisions in this regard. The submissions of learned Senior Counsel for the DRI with regard to the other contentions of the petitioner will be dealt with later, if necessary.

7. The DRI in its final complaint has at para 8 thereof, referred to by learned Senior Counsel for DRI has stated as follows:

“8. Your Honour, once the DRI officers were satisfied that the passenger was carrying only one hand baggage (one navy-blue coloured 'Safari' backpack) and one checked-in black coloured trolley suitcase, and in view of the specific intelligence, spot summons Notice dated 12.04.2026 under the NDPS Act, 1985 was issued to Shri Sanjay Dohani. On being requested, Shri Sanjay Dohani handed over his two mobile phones to the DRI officers. Then the DRI officers requested him to accompany them to the DRI Office at Mainaak Towers, Christian Basti, G.S. Road, Guwahati-781005 for detailed examination of the two pieces of baggage/suitcases. The intercepted passenger agreed and accompanied the DRI officers in a departmental vehicle. The independent witnesses were also requested to accompany the officers along with the intercepted passenger and his baggage, to which they agreed. At around 02:00 hours on 13.04.2026, the officers reached the DRI office along with the witnesses, Shri Sanjay Dohani and his baggage.

At that time, in the presence of independent witnesses Shri Sanjay Dohani requested the DRI officers to permit him to take some rest, stating that he had undertaken a long international journey and had been travelling continuously since the late-night hours. Considering his request, and in the interest of fairness and humane treatment, the DRI officers acceded to the same and allowed him to rest along with his baggage for the night at the DRI office. The witnesses were also requested to remain present at the DRI office to witness the entire process of recovery and seizure. They agreed to do so and stayed at the DRI office for the night.”

8. It is further stated in the Final Complaint that it was on 13.04.2026 at 11:30 hours at the DRI office that the search procedure commenced in course of which personal search as well as search of the baggage of the petitioner was conducted and the recovery of the contraband was made and the entire seizure proceedings were concluded peacefully at around 14:30 hours on 13.04.2026 without any damage or disturbance. The seizure proceedings concluded peacefully at around 14:30 hours on 13.04.2026, without any damage or disturbance.

9. Further at around 15:00 hours in the presence of independent witnesses, the statement of the petitioner was recorded wherein he voluntarily admitted his conscious and willful possession and transportation of the contraband recovered from him and thereafter, it was at around 1700 hours on 13.04.2026 that he was placed under arrest.

10. The elaborate explanation of the DRI as outlined above have been advanced with a view to show that there was no delay on the part of the investigating agency in producing the petitioner before the Magistrate and that he was produced within the prescribed period of 24 hours. The moot question, however, is whether the petitioner can be said to have been in custody or under arrest, only from 17:00 hours on 13.04.2026 or whether he is to be regarded to have been in custody from the time when he was intercepted by the DRI at the airport in Guwahati on the basis of prior information. This question

has been answered long back by the Hon'ble Apex Court in the case of ***Niranjan Singh & Anr Vs Prabhakar Rajaram Kharote & Ors*** reported in ***(1980) 2 SCC 559***, wherein it was held as follows:

“7. When is a person in custody, within the meaning of Section 439 CrPC? 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 court's 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 Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings 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 dubieties 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.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.”

11. Further, the Hon'ble Apex Court in the case of ***Directorate of Enforcement Vs Subhash Sharma*** reported in ***AIR OnLine 2025 SC 355*** was observed as follows:-

“.....5. The submission of the learned counsel appearing for the appellant is that pursuant to the Look Out Circular (For short, 'the LOC') issued against the respondent, he was detained at IGI Airport from 11.00 hours, on 5th March, 2022. But he was shown as arrested at 01.15 hours on 6th March, 2022 by the appellant Enforcement

Directorate and was produced before the Court of the learned Magistrate within 24 hours from 1.15 hours on 6th March, 2022.

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."

12. Although, it has been claimed in the Final Complaint that the petitioner had voluntarily accompanied the DRI officials from the airport to the DRI office at Guwahati, to a pointed query from the Court as to whether the petitioner was free to leave the company of the DRI officials after his interception at the airport, the answer from learned Senior Counsel for DRI was expectedly less than unequivocal. The Court therefore cannot presume anything other than the fact that the petitioner was

not free to do so.

13. Admittedly, the petitioner was intercepted at the exit gate of Lokpriya Gopinath Bordoloi International Airport, Guwahati on 12.04.2026 at around 23:45 hours. After serving spot summons and from that moment onwards, the petitioner was under the effective custody of the DRI and therefore, allowing one hour for travel time, the petitioner ought to have been produced before the Magistrate at 00:45 hours i.e., 12:45 am on 14.04.2026. But admittedly, the petitioner was produced much later during the daytime on 14.04.2025 before the learned CJM, Kamrup (Metro) and therefore, there is a clear violation of Article 22(2) of the Constitution of India, causing consequent violation of his fundamental right to liberty guaranteed under Article 21.

14. In view of the above, the petitioner is entitled to bail on the first ground alone and therefore, there is no necessity of taking up the remaining contentions advanced by learned counsel for the petitioner and responded to by learned Senior Counsel for DRI.

15. Accordingly, it is directed that the petitioner shall be released on bail of Rs. 2,00,000/- with two sureties of like amount to the satisfaction of the Arresting Authority in connection with the aforesaid case.

16. Having regard to the circumstances, this Court is of the view that strict conditions of releasing the petitioner on bail are required to be imposed to ensure his participation in the investigation and also to ensure that he appears before the Learned Trial Court as and when and if the petitioner is put up for trial. This court therefore directs that the petitioner be released on bail on furnishing a bond of Rs 1,00,000/- (rupees one lakh only) with two suitable sureties of the like amount, at least one of who shall be a government servant serving either with the Government of Assam or with the Central Government and at least one who should have immovable property, to the satisfaction of the Learned Special Judge, NDPS, Kamrup(M) under the following conditions:

i) The petitioner shall not leave the territorial jurisdiction of investigating officer and/or the Learned Special Judge, NDPS, Kamrup(M) without prior written permission;

ii) The petitioner shall not hamper and tamper with the evidence of the case;

iii) The petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

iv) The petitioner shall surrender his passport, if any (if not already surrendered) before the Learned Special Judge, NDPS, Kamrup(M).

v) The petitioner shall not try to contact any of the witnesses by any mode including telephone, social media etc.

vi) The petitioner shall furnish the present residential address with proof to the Learned Special Judge, NDPS, Kamrup(M) and shall not change the said residence without prior permission of the Learned Special Judge, NDPS, Kamrup(M). Learned Special Judge, NDPS, Kamrup(M) shall be at liberty to have the same verified in such manner as may be deemed fit.

vii) The petitioner shall appear before the investigating authority and/or Learned Special Judge, NDPS, Kamrup(M) as and when required to do so

viii) Learned Special Judge, NDPS, Kamrup(M) shall be at liberty to impose such other condition or conditions as may be deemed necessary to ensure the participation of the petitioner in the investigation.

ix) The petitioner shall not engage in any illegal activity of similar nature in the future.

x) The investigating authority shall be at liberty to bring any violation of the conditions imposed to the notice of the competent court and request for a recall/cancellation of bail.

JUDGE

Comparing Assistant