2026:THC:1469

HIGH COURT OF TRIPURA
AGARTALA

CRL. PETITION NO.46 OF 2026

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

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

V E R S U S

Sanjit Saha @ Sanju,
S/o Late Harekrishna Saha, resident of Taranagar,
Near Mohanpur Market, P.O. Mohanpur, P.S. Sidhai,
District-West Tripura.

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

For the Petitioner(s) : Mr. Raju Datta, P.P.

For the Respondent(s) : Mr. S. Kar Bhowmik, Sr. Counsel,
Mr. E.L. Darlong, Advocate,
Mr. S. H. Roy, Advocate.
Mr. S. Ghosh, Advocate.

BAIL APPLICATION NO.199 OF 2026

Smt. Payel Saha
W/o Sri Sanjit Saha, resident of village-Tarangar (near Mohanpur Market),
P.O. Mohanpur, P.S. Sidhai, Dist. West Tripura, PIN 799211.

….Applicant/Petitioner

ON BEHALF OF

Sanjit Saha @ Sanju,
S/o Late Harekrishna Saha, resident of Taranagar,
Near Mohanpur Market, P.O. Mohanpur, P.S. Sidhai,
District-West Tripura, PIN 799211.

..... **Accused person.**

V E R S U S

The State of Tripura,

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

For the Applicant/petitioner(s) : Mr. S. Kar Bhowmik, Sr. Counsel,
Mr. E.L. Darlong, Advocate,
Mr. S. H. Roy, Advocate.
Mr. S. Ghosh, Advocate.

For the Respondent(s) : Mr. Raju Datta, P.P.

Date of hearing : 14.10.2026

Date of delivery of order : 06.11.2026

Whether fit for reporting :

Yes	No
✓	

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

O R D E R

In BA no. 199 of 2026, the petitioner has sought for bail of accused Sanjit Saha, in connection with Sidhai P.S. Case No.67/2025 [renumbered as Special (NDPS) 91 of 2026], registered under Sections 22(C)/25/29 of the NDPS Act and Section 25(1B)(a) of the Arms Act. The accused was arrested by the police on 15.10.2025 and since then he is in custody. On completion of investigation, the investigating officer has laid the Charge-sheet under the above said provisions of law.

2. The allegations against the accused are that on the basis of secret information, on 15.10.2025 at night, around 01:15 hours, the informant, S.I. Sunish Chakma accompanied by O.C. of the Sidhai Police Station and other police personnel raided the house of the accused where the SDPO also joined them and on search, they recovered 10 nos. of blue colour plastic pouch containing 210 grams of 'Yaba' tablets and one factory made pistol with empty magazine and total 16 nos. of bullets from a corner of the roof of the dwelling hut of the accused Sanjit Saha.

3. The investigating officer while submitting the charge-sheet against the accused Sanjit Saha prayed for custody trial of the accused i.e. trial of the case by keeping him in judicial custody, on the grounds that it was a sensational case involving commercial quantity of 'Yaba' tablets and arms and ammunitions were also seized from the accused and more over, the house of the accused person is in close proximity to Indo-Bangladesh border and one Bangladeshi SIM card was also collected from the house. Therefore, there is every possibility of his absconding to Bangladesh if he is released on bail. According to the investigating officer, his custody trial is also necessary to stop the illegal sale of drugs and narcotics items to the

young generation and also to prevent any serious breach of peace in the locality and also to prevent any political clashes in the locality.

4. Learned Special Judge rejected the said prayer of custody trial of the accused on 07.05.2026.

5. Challenging the said order, the State-petitioner filed the above criminal petition no. 46 of 2028.

6. Both the criminal petition and the bail application are heard together and are disposed of by this common judgment and order.

CRIMINAL PETITION NO.46 OF 2026

7. Before entering into the merit of the bail application, submitted on behalf of the accused person, the issue involved in Criminal Petition No.46 of 2026 whereby the prayer for custodial trial of the prosecution was rejected by the learned Special Judge, is taken up for discussions and decision.

8. Learned Special Judge rejected the said petition, *inter alia*, with observation mainly on the ground that Section 232 BNSS is not applicable in a case of Special Court as there is no committal procedure in the matter of taking cognizance by learned Special Judge. Another ground as observed by learned Special Judge is that power to remand an accused to custody flows from Section 346 of BNSS [corresponding to Section 309 CrPC] which prohibits remand of accused to custody for a term exceeding 15 days at a time and more so, the prosecution has failed to show any provision for allowing such prayer of custody trial foreclosing the right of accused to grant of bail in perpetuity.

9. Learned P.P. submits that under Section 209(b) of the Code of Criminal Procedure [for short, CrPC] as is carried forward in Section 232 of BNSS, the Magistrate is authorized to remand the accused till conclusion of the trial and therefore, Magistrate has all the authority to order for custody trial of the accused. He also submits that under Section 36(C) of the NDPS Act, save as otherwise provided, the provisions of CrPC including the

provisions as to bail and bonds are applicable in a proceeding before the Special Court and for that purpose, the Special Court shall be deemed to be a Court of Sessions and therefore, Section 209 [232 BNSS] is squarely applicable in the instant case.

10. Learned P.P. relies on a decision of this Court in the case of ***Dhiman Debbarma vs. the State of Tripura, BA 08 of 2026***, decided on 05.02.2026, wherein, similarly a petition for custody trial of the accused was submitted and the learned Magistrate kept the said prayer pending on the ground that it was a sessions triable case and was remanding the accused person in custody when there was no certainty of the date or period when the commitment will be done. But, the accused person on the other hand was languishing in jail. In that context, this Court directed the Magistrate to decide the petition first keeping in mind that the accused was custody and his liberty was being curtailed every day and to dispose of the said petition independently and expeditiously.

10.1 Learned P.P. further relies on another decision of this Court in the case of Smt. ***Archana Das Sarkar vs. State of Tripura, BA No.12 of 2026***, decided on 19.01.2026, where the learned Special Judge was found similarly remanding the accused person without disposing the prayer of custody trial and on the ground that petition for his custody trial was pending, the bail prayer of the accused person was rejected. In view of the said situation, this Court passed a general direction that as and when any such petition is filed by the I.O., the prosecutor has to mention the same before the Court and it would be the duty of the Court to dispose of the said petition with a reasoned order after hearing both sides, and pendency of such petition cannot be a justifiable ground to remand the accused person date after date. A general direction was also issued that if any such petition is filed by the I.O., the concerned Court will dispose of the same preferably within 7 days without unreasonable delay.

10.2 Learned P.P. also relies on the decision of this Court in the case of ***Tania Sultana vs. State of Tripura, BA No.155 of 2026,*** decided on 26.08.2026, wherein, the learned Special Judge, Sepahijala District rejected the bail prayer of custody trial on the ground that there was no provision in

BNSS, 2023 in this regard without making any reference to Section 232 of BNSS. In that context, it was observed by this Court that concept of custody trial was imbedded under Section 232 BNSS and therefore, without reference to said provision and without holding any discussion therein, such observation of the Special Judge was not proper. Learned Special Judge ought to have dealt with the issue more exhaustively while making such observation.

11. Learned senior counsel, Mr. Samrat Kar Bhowmik while opposing the submission of learned P.P. has initially made a comparative study and placed before the court the relevant provisions of the Code of Criminal Procedure,1973 as well as the position of law prior to the Code of 1973, and submits that to cut short the prolonged inquiry, the Law Commission in its 41st report criticized the recording of oral evidence of witnesses by the Magistrate before committing the case to the Court of Sessions Judge and streamlined the committal procedure in Section 209 Cr.P.C.

12. Referring to a decision of the Hon'ble Supreme Court in the case of ***State of UP vs. Lakshmi Brahman, (1983) 2 SCC 372***, he submits that the scope of Magistrate's power under Section 209 is purely ministerial in nature and therefore, under Section 209(b) CrPC, the right of the accused person to seek bail cannot be curtailed during the pendency of the case. According to him, the remand of accused curtails his life and liberty as guaranteed under Art.21 of the Constitution and therefore, Section 209(b) CrPC or Section 232 BNSS, as the case may be, clearly stipulates that such power of the Magistrate to remand the accused person is always subject to the provision of the Code/Sanhita relating to bail. In alternative, Ld. Sr. Counsel also argues that statutory provision cannot override the fundamental right of a person enshrined under Article 21 of the Constitution of India and therefore, prosecution has no right to shut down the scope of an accused person permanently to seek bail during the whole period of the trial.

13. Mr. Kar Bhowmik also relies on the decisions of Hon'ble Supreme Court in the case of ***Sanjay Chandra vs. CBI, 2012 (1) SCC 40***; ***Satender Kumar Antil vs. CBI & Anr. (2022) 10 SCC 51*** and ***Jalaluddin***

Khan vs. Union of India, 2024 (10) SCC 574 to buttress his submission that bail is the rule and jail is the exception and detention cannot be punitive.

14. He further relies on a decision of this Court in the case of ***Haripada Bhattacharjee vs. State of Tripura & Anr***., ***BA 51 of 2026*** wherein also the said established principle of law that bail is the rule and jail is the exception, was reiterated.

15. Learned senior counsel has further brought to the notice of another decision of a Co-ordinate Bench of this Court in the case of ***State of Tripura vs. Sahajahan Islam, Criminal Petition No.17 of 2026***, decided on 16.07.2026 wherein it is observed that under Section 209(b) CrPC, Magistrate at the time of commitment of the case has got the authority to remand the accused to custody during and until conclusion of the trial. But in another paragraph, it is also observed that in sub Clause (b) of Section 209 power is also vested to the Magistrate to remand the accused to custody during and until the conclusion (?) i.e. the commitment. There appears to be some typographical mistake in the said part of observation.

16. In the said case, prayer of custody trial was rejected by the Chief Judicial Magistrate observing that under Section 209 CrPC, the Magistrate has the power to keep the accused in custody only till commitment is made. On that context, learned Bench observes that prayer for custody trial was rejected by the Magistrate on the above said ground and simultaneously bail prayer of the accused person was also rejected on the ground that the case was exclusively triable by the Court of Sessions. In such a situation, the Magistrate could forward the prayer of I.O. for custody trial to the Court of Special Judge for disposal. Learned Bench also in this regard refers to Section 232 clause (b) of BNSS and proviso thereto which envisages that any application filed before the Magistrate by the accused or by the victim or any person authorized by such person in a case triable by the Court of Sessions shall be forwarded to the Court of Sessions with the committal of the case. According to Ld. P.P. as well as Ld. Sr. Counsel, Mr. Kar Bhowmik, the prayer made by the investigating officer cannot be treated as the prayer made on behalf of the victim or of the accused person.

Anyway, as there is no such issue involved in the instant case, so this matter does not require any discussion.

17. Learned senior counsel, Mr. Kar Bhowmik also in this contexts has brought to the notice of the Court of the decisions of Hon'ble Supreme Court in ***State of UP vs. Lakshmi Brahman & Anr.,*** (supra) and the decision of Kerala High Court in case of ***Greeshma alias Sreekutty vs. the Deputy Superintendent of Police & Ors., CRL MC No.4359 of 2023,*** wherein the Kerala High Court while dealing with such petition for custody trial observed that the prosecutor was not able to point out any provision of the Code which enables the Court to entertain an application for custody trial, and therefore when there was no such provision to entertain an application for custody trial prayer, there was no justification on the part of the learned Sessions Judge in entertaining the same.

18. He has also placed reliance on another decision of the Division Bench of Allahabad High Court in the case of ***Abdul Zabbar vs. Superintendent of District Jail Meerut & Anr., 1984 Cr. L.J. 847*** wherein referring to the provision of Section 209, clause (b) the followings were observed:

> **"12. Learned counsel for the petitioners next contended that after the case of an accused person has been committed to the Court of Session, the trial before the Sessions Court starts only after it has framed a charge against the accused, that is after the stage under Section 228(1)(b) of the Code is reached and not prior to it. According to him after the case of an accused is committed to the Court of Session but before the stage of framing of charge under Section 228(1)(b) is reached, it is only an inquiry which is pending before the Sessions Court. Under Section 209(b), Cr. P.C. the Magistrate is merely empowered to authorise detention of an accused person in custody during and until conclusion of the Sessions Trial. The section does not empower the Magistrate to pass an, order authorising detention of an accused for the period' during which after the case is committed to Sessions, an inquiry becomes pending before the Sessions Court. Learned counsel further submits that in case it is considered necessary that during such inquiry the accused should be kept in custody the prosecution has necessarily to obtain appropriate orders remanding the accused to jail custody from the Sessions Judge under Section 309(2), Cr. P. C. Since in this case such a procedure has not been followed, petitioners' detention during the period 1-9-1983 and 22-10-1983, was invalid and such invalid de ention could not be validated by subsequent remand orders.**

> **13. We are unable to accept the submission made by learned Counsel for the petitioners. Section 209, Cr. P. C. empowers the Magistrate to while committing the case of the accused to Court of Session, pass an order remanding him to custody during and until the conclusion of the sessions trial. The section does not countenance any hiatus between the making of the remand order and its becoming effective. It clearly postulates that the order remanding the accused to custody for the period during and until the conclusion of the trial, becomes effective as soon as such order is made. In our opinion having regard to the purpose of Section 209 of the Code the expression 'trial', for the duration of which the committing court has been authorised to remand an accused to custody is not to be understood in the limited sense urged by the learned Counsel. It has to be understood in a wider sense, viz., that the trial before the Sessions Court becomes pending as soon as the case is committed to it. This is also borne out from the provision contained in Chapter XVIII of the Code, headed as "Trial before a Court of Session" and laying down the procedure to be followed subsequent to commitment of a case to Sessions. The heading of the Chapter indicates that stage of the case envisaged by Sections 225 to 227 of the Code i.e. the stage which is reached prior to framing of the charge under Section 228(b) of the Code, is also to be regarded as a stage in the trial itself. Accordingly, there would be no illegality in the Chief Judicial Magistrate authorising petitioners' detention for the period beginning with Ist of September, 1983 and till the time the sessions trial pending before the Sessions Court is eventually concluded.**
>
> **14. We are of opinion that the detention of the petitioners for the period during which the sessions trial is, pending before the Court of Session has been authorised by the, Chief Judicial Magistrate in accordance with the provisions contained in Section 209(b), Cr. P. C. Merely because the Sessions Judge fixes various dates for production of the accused before him and thereafter sends back the accused to jail custody it does not mean that the authorisation made by the Chief Judicial Magistrate for keeping the petitioners in custody during and until the conclusion of the sessions trial has come to an end. Even if there be some irregularity in the procedure adopted by the Sessions Judge in summoning the petitioners from jail and in sending them back there, it will have no effect upon the authority derived by the Superintendent, District Jail, from an order passed by the Chief Judicial Magistrate under Section 209(b) of the Code, to keep the petitioners in his custody during and until the conclusion of the trial. We are thus not satisfied that the petitioners' present detention in district jail, Meerut is not in accordance with the procedure established by law."**

19. Mr. Kar Bhowmik further relies on another decision of Hon'ble Supreme Court in the case of ***Siddharth v. State of Uttar Pradesh & Anr., (2022) 1 SCC 676***, wherein at paragraph no.5, it is observed that the word 'custody' appeared in Section 170 CrPC does not contemplate either police

or judicial custody but it merely connotes the presentation of accused by the investigating officer before the Court while filing the charge-sheet.

20. Referring to above said decision, learned senior counsel Mr.Kar Bhowik argues that when a commitment is made by the Magistrate, custody of the accused is forwarded to the Sessions Judge and thereafter the regular remand orders are passed by the Sessions Judge under Section 309 CrPC [Section 346 BNSS].

21. Ld. P.P. on the issue also refers to one decision of Kerala High Court in the case of ***Vishnu vs. State of Kerala, 2025, CRL. MC No. 6925 of 2025*** wherein the High Court relied on the decision of Hon'ble Supreme Court in the case of ***Satender Kumar Antil*** [(supra), paragraph no. 47], in respect of Clause (b) of Section 209. Hon'ble Supreme Court in said paragraph observed that – Clauses (a) and (b) of Section 209 of the Code gave ample power to the Magistrate to remand a person to the custody during or until the conclusion of the trial. Since the power is to be exercised by the Magistrate on a case to case basis, it is his wisdom in either remanding an accused or granting bail. The entire paragraph no.47 of ***Satender Kumar Antil*** (supra) is also extracted here-under:

> *"47. Section 209 of the Code pertains to commitment of a case to a Court of Sessions by the Magistrate when the offence is triable exclusively by the said court. Sub-sections (a) and (b) of Section 209 of the Code give ample power to the Magistrate to remand a person into custody during or until the conclusion of the trial. Since the power is to be exercised by the Magistrate on a case-to-case basis, it is his wisdom in either remanding an accused or granting bail. Even here, it is judicial discretion which the Magistrate has to exercise. As we have already dealt with the definition of bail, which in simple parlance means a release subject to the restrictions and conditions, a Magistrate can take a call even without an application for bail if he is inclined to do so. In such a case he can seek a bond or surety, and thus can take recourse to Section 88. However, if he is to remand the case for the reasons to be recorded, then the said person has to be heard. Here again, we make it clear that there is no need for a separate application and Magistrate is required to afford an opportunity and to pass a speaking order on bail."*

22. On consideration of the submissions of both sides, it appears that the contention of the prosecution referring to Section 232 clause (b) of BNSS [209 Clause (b) of CrPC] is that when under above said provision the Magistrate has the authority to remand the accused person till conclusion of the trial, certainly the Magistrate can pass an order for keeping the accused person in custody till conclusion of the trial. On the contrary, according to the learned senior counsel, Mr. Kar Bhowmik, authorizing a Magistrate to pass a remand order cannot curtail the right of an accused person to seek bail as personal liberty is sacrosanct under Article 21 of the Constitution. The issue emerges for decision in this case is whether the Magistrate has the authority to remand the accused person till conclusion of trial while committing the case to the Sessions Court and whether resorting to said provision, the Magistrate can foreclose the right of the accused person to seek bail till conclusion of the trial by way of allowing the petition for custody trial.

23. The Section 232 BNSS reads as under:

> *"**232. Commitment of case to Court of Session when offence is triable exclusively by it.--**When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—*
>
> *(a) commit, after complying with the provisions of Section 230 or Section 231 the case to the Court of Session, and subject to the provisions of this Sanhita relating to bail, remand the accused to custody until such commitment has been made;*
>
> *(b) subject to the provisions of this Sanhita relating to bail, remand the accused to custody during, and until the conclusion of, the trial;*
>
> *(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;*
>
> *(d) notify the Public Prosecutor of the commitment of the case to the Court of Session:*
>
> *Provided that the proceedings under this section shall be completed within a period of ninety days from the date of taking cognizance, and such period may be extended by the*

Magistrate for a period not exceeding one hundred and eighty days for the reasons to be recorded in writing:

Provided further that any application filed before the Magistrate by the accused or the victim or any person authorised by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case."

24. On plain reading of the said provision, it appears that Magistrate is authorized to remand an accused under Clause (a) till commitment of the case to the Court of Sessions Judge, whereas under Clause (b) he is authorized to remand the accused person till conclusion of the trial. Therefore, the statute itself authorizes the Magistrate to remand the accused till conclusion of the trial even if the case is triable by the Court of Sessions. But in Tripura and also in many other States, as informed, after the commitment is made, the custody of the accused person is forwarded to the Court of Sessions and thereafter during pendency of the proceeding before the Sessions Court, the periodical remand order is passed by the Ld. Sessions Judge under Section 346 BNSS [earlier provisions of Section 309 CrPC] and there remains a very little scope for production of the accused before the Magistrate Court again for extending such remand order till conclusion of the trial unless for certain exigencies the accused is again produced before the Court of Magistrate. Therefore, the provision of Section 232 BNSS [corresponding provision Section 209 CrPC] and Section 346 BNSS [corresponding provision Section 309 CrPC] are required to be discussed together.

25. Long ago in the case of ***Sanjay Gandhi vs. Union of India & Ors. AIR 1978 SC 514*** Hon'ble Supreme Court held that while committing the case to the Sessions Court under new Code, Magistrate has no power to discharge an accused, nor he has power to take oral evidence save where a specific provision like Section 306 enjoins. Therefore, what appears is that the Magistrate has limited power or authority to deal with the cases which are exclusively triable by the Court of Sessions.

26. Thereafter, while dealing with the erstwhile provision of Section 209 and 309 CrPC, a Division Bench of the Allahabad High Court in the case

of ***Rajendra Gossain vs. Superintendent, District Jail, Banda & Anr., 1981 CRI.L.J. 802*** [Paragraph 13] observes that as per the provision of Section 209 in a case where accused appears or is brought before a Magistrate and the Magistrate feels that the offence is exclusively triable by the Court of Sessions, he has to, unless the accused has been directed to be released on bail, remand him to custody during and until conclusion of the trial, and he has no option in this matter. In such circumstances, where a Magistrate commits an accused to the Court of Session and directs his being remanded to custody during and until conclusion of the trial, the warrant remanding him to jail custody, without specifying the period for which the accused is to be kept in custody, has necessarily to be read as an authority for detaining the accused during and until conclusion of the Sessions trial.

27. Further, at paragraph no.18, the followings are observed:

> *"18. ……. Section 309, Cr.P.C. is a general provision contained in the Code enabling all courts taking cognizance of an offence or commencing the trial if they find it necessary or advisable to postpone the commencement or adjourn any inquiry or trial, remand an accused who is already in custody. Section 209, Cr.P.C. however, is a special provision which enables a Magistrate to while committing an accused to Sessions, authorise his detention during and until conclusion of the trial. It is true that generally speaking under Section 309, Cr.P.C. the court taking cognizance of an offence or trying an accused finds it necessary or advisable to adjourn or postpone the commencement of an inquiry or trial, is enabled to remand an accused who is already in custody till the date on which the case is to be taken up next and the detention of the accused beyond the period mentioned in the custody warrant has to be reauthorized after expiry of that date. But, Section 209, Cr. P.C. enables the Magistrate committing an accused to Sessions to pass an order in respect of the proceedings that are to take place before a court other than himself and also for the period during and until conclusion of the trial irrespective of the dates on which the accused is to be produced before the court trying the accused. Inasmuch as Section 209, Cr.P.C. is a special provision dealing with special type of cases it will continue to govern the cases coming under it notwithstanding that such cases may in terms be dealt with under Section 309, Cr.P.C. as well. In cases falling under Section 209, Cr. P.C. it is the Magistrate committing the accused to sessions who has been empowered to validly authorise the Superintendent, of the District Jail, to keep him in his custody during and until conclusion of the sessions trial, even though it is the Sessions*

> *Court, which may be seized of the case. In such cases the authority to detain the accused flows not from an order made by the Sessions Judge before whom the proceedings are to take place but from the order made by the Magistrate under Section 209 of the Cr. P.C. In our opinion nothing contained in Section 309 of the Cr.P.C. derogates from the authority conferred by Section 209 of the Cr. P.C. on the court which commits an accused to Sessions to direct his being detained during and until conclusion of the Sessions trial. Once the detention of an accused during and until conclusion of the trial has been duly authorized it would not be necessary for the Sessions Judge to, every time he adjourns or postpones the trial, confer on any one such authority for detention of the accused."*

28. Thereafter, in the year 1983, Hon'ble Supreme Court in the case of the ***Lakshmi Brahman*** (supra) held that compliance of Section 207 CrPC is required to be done by a Magistrate in a judicial manner and committal proceeding before the Magistrate would be an inquiry under Section 209 CrPC and therefore, Magistrate is authorized to remand the accused under Section 309 CrPC to custody.

29. Subsequent thereto, the Full Bench of Allahabad High Court in the case of ***Sundarlal vs. State, 1983 Cri.L.J. 736*** held that Section 209 of the Code empowers the committing Magistrate to remand the accused to custody during and until the conclusion of the trial subject to the provisions relating to bail. The period, therefore, of the judicial custody of the accused is not indefinite nor can it be said arbitrary as the custody is for the period starting with the commencement of the Sessions trial and lasts till its conclusion. This period has been made subject to the condition that the applicant may be admitted to bail provided the applicant satisfies the Court that he is entitled to be bailed out. It is also further observed that this section vests the Magistrate with a power to authorise the detention of an accused in jail custody during and until the conclusion of the trial while committing him to stand his trial before the Sessions Court. In such a case, even though all further proceedings are to take place before the Court of Session and no proceedings are to take place before the Magistrate, the detention of the accused in jail custody can be authorised by the Magistrate who commits the accused to the sessions. In said case, the Magistrate passed the order directing that the accused should be kept in judicial custody in the District Jail during and until the conclusion of the trial and such order authorizing the

accused's detention was held perfectly to be in accordance with the provisions contained in Section 209 of CrPC.

30. The Allahabad High Court (Division Bench) thereafter rendered the decision of ***Abdul Zabbar (supra),*** as referred by Mr. Kar Bhowmik and as discussed earlier. Said Ld. Bench during the same period in ***Pushpendra Singh v. Superintendent, District Jail, Nainital & Ors., 1984 CRI.L.J. 838*** further observes that Section 209(b) of the Code commands the Magistrate to remand the accused to custody during and until the conclusion of the trial subject to the provisions of the Code relating to bail and leaves no option with the Magistrate. It is also held that the provision contained in Section 209(b) of the Code is mandatory and shall be followed by a Magistrate while committing the case to the Court of Sessions. The Court further observes that it is a special provision not only empowering the Magistrate to remand the accused to custody during and until the conclusion of the trial but commanding him to do so.

31. A single Bench of Allahabad High Court subsequently in ***Rajesh Mishra v. State of U.P., 1994 SCC OnLine All 1085*** holds that the amended provision of Section 209, Cr.P.C. will remain in force only till the provisions of Section 309(1) of the Cr.P.C. are applicable and continued. But once the provisions of sub-Section (2) of Section 309, Cr.P.C. begins to apply on adjournment or postponement of the trial then a fresh remand is required if the accused is in custody. It is also observed that the provisions of Section 209 will apply only till the stage of committal and thereafter when the trial begins the provisions of Section 309, Cr.P.C. will apply. Ld. Bench while deciding so, took note of several decisions of Hon'ble Apex Court and different High Courts but as it appears the decisions of ***Abdul Zabbar*** (supra) and ***Pushpendra Singh*** (supra) were not placed before the Ld. Bench.

32. In ***Bholenath J Dhamankar & Anr. vs. State of Maharashtra, 1995, CRI.L.J. 1029,*** the Single Bench of Bombay High Court relying on a Division Bench decision also similarly observes that Section 209(b) empowers the Committing Magistrate to remand the accused to the Court

during and until conclusion of the trial subject to the provisions of the Code relating to bail.

33. The Allahabad High Court again in a Single Bench in ***Radheshyam vs. State of UP, 1995 CRI.L.J. 556,*** held that once the Magistrate grants a remand of the accused during and until the conclusion of trial, it is not necessary for the Sessions Judge to pass fresh order of remand under Section 309(2) of CrPC. Said learned Bench relies on the decision of Division Bench in ***Pushpendra Singh*** (supra).

34. However, thereafter Hon'ble Supreme Court in the case of ***Rajkishore Prasad vs. State of Bihar and Anr., (1996) 4 SCC 495*** [also referred by learned senior counsel, Mr. Kar Bhowmik] distinguished the earlier decision in case of ***Laxmi Brahman*** (supra) and held that during committal proceeding, the role of the Magistrate is only to see that the package sent to the Court of Session is in order, so that it can proceed straightway with the trial and that nothing is lacking in content, as per requirement of Section 207 and Section 208 of the Code and for that reasons such proceedings do not fall squarely within the ambit of 'inquiry' as defined in Section 2(g) of the Code of Criminal Procedure.

35. Therefore, the applicability of Section 346 of BNSS corresponding to Section 309 CrPC in the committal proceeding before the Magistrate is required to be determined keeping in mind the decision of ***Rajkishore Prasad (supra).***

36. In ***Nathurasu & Ors. vs. State, 1998 CRI.L.J. 1762*** as relied on by learned senior counsel Mr. Kar Bhowmik, the Madras High Court observes that while committing the case under Section 209 CrPC, Magistrate shall not normally cancel the bail or anticipatory bail of the accused person.

37. The Single Bengh of Bombay High Court thereafter in the case of ***Kishan Ramlu Dudhwad vs. State of Maharashtra & Anr., 1998 SCC OnLine BOM 384,*** observes that the Magistrate has to remand the accused to the custody under Section 209 CrPC from the time the order of

commitment is passed and this remand remains in force until the conclusion of the trial. Once there is an order of remand by the Magistrate under Section 209 CrPC, a fresh order under Section 309(2) will not be necessary but if any such order is passed by a Sessions Judge, it cannot be said that it is without jurisdiction. The Bench further observes that the provision under Section 209 CrPC are special provisions whereas the provision under Section 309 CrPC are general provisions and the provisions are to be used by the concerned Court as and when occasion arises and therefore, after taking of cognizance if the Magistrate has committed the case to the Court of Sessions, then the Sessions Judge also gets power to remand the accused to custody on giving adjournment either before framing of the charge or after framing of the charge.

38. Later on, in ***Uday Mohanlal Acharya vs. State of Maharashtra, (2001) 5 SCC 453,*** a three-judge Bench of the Hon'ble Supreme Court held as under:

> *"5……Thus, under clause (b) of Section 209 the committing Magistrate has the power to remand the accused to custody during and until the conclusion of the trial, subject to the provisions relating to bail. When the committing Magistrate passes an order of commitment and the accused, at the stage is found to be on bail, the committing Magistrate has the power to cancel the bail and commit him to custody, if he considers it necessary to do so. But such a cancellation would be in accordance with sub-section (5) of Section 437 of the Code and there must be proper grounds for cancellation and not that the Magistrate would cancel the bail ipso facto on a challan being filed and the accused being produced for the purpose of passing an order of committal. Any order a Magistrate passes under Section 209(b) to remand an accused to custody would also obviously be subject to the provisions of the Code relating to bail. In a case where the committing Magistrate while passing an order of committal remands the accused to custody in exercise of power under Section 209(b), the power of the learned Sessions Judge under sub-section(2) of Section 309 is not whittled down in any manner at any time after commencement of trial, but ordinarily if the committing Magistrate has already passed an order remanding the accused to custody while passing an order of commitment no further order is required to be passed by the Sessions Judge in exercise of power under sub-section (2) of Section 309……..."*

39. The Single Bench of Bombay High Court thereafter in the case of ***Saquib Abdul Hamid Nachan & Ors v. State of Maharashtra, 2006 CRI.L.J. 2196*** observes that the Special Court, while holding the inquiry, acts as a Magistrate and obviously Section 309 would enable the Magistrate/Special Court to remand the accused to the custody till the inquiry to be made is complete. The Bombay High Court also put reliance on the decision of Hon'ble Supreme Court in Lakshmi Brahman (supra).

40. Subsequently, the Division Bench of Patna High Court in the case of ***Sunita Devi vs. State of Bihar & Ors., 2017 ALL MR (Criminal Journal) 450*** had occasion to examine the issue whether remand of an accused by a Magistrate to judicial custody after submission of charge-sheet but before taking of cognizance of offence in a sessions case is legally permissible under the Criminal Procedure Code and while answering the same, it is held that in view of the decision of Hon'ble Supreme Court in the case of ***Rajkishore Prasad*** (supra), the Magistrate is not authorized to remand under Section 309(2) of the Code but the power of remand conferred to a Magistrate under Section 209(a) and (b) is not subject to other provisions of remand i.e. Section 167 or 309 of the Code, rather the power is independent in nature and is only available to a Magistrate under commitment procedure.

41. Very recently in ***Kallu Nat alias Mayank Kumar Nagar vs. State of U.P. & Anr., 2025 8 SCR 611***, the Apex Court has exhaustively discussed the provision of Sections 297,208 and 209 of the Code and held that in terms of Clause (b) of Section 209, the Magistrate must remand the accused to custody for the duration of trial subject to provisions relating to bail under the Code. At paragraph 55, it is further observed that Section 209(b) stipulates that for the purpose of committal of the case to the Court of Session, the Magistrate, has to remand the accused to custody, subject to the provisions of bail, "during and until the conclusion of, the trial" and this itself indicated that when the accused is being remanded by the Magistrate, it is done for the purpose of undergoing trial, which pre-supposes that, the Magistrate is satisfied that there is enough material for the purpose of sending such accused to trial.

42. As referred by learned P.P., the Kerala High Court also in ***Vishnu (supra)*** as discussed earlier, while examining the issues whether the second proviso to Section 232 of BNSS prohibits the Magistrate to deal with the bail application of the accused and whether the same is required to be forwarded by him to the Sessions Court, held that the second proviso to Section 232 does not prohibit consideration of bail application by the committal Court and such proviso should be construed as a qualification and not a contradiction of the main provision. Similar question was again raised before the Kerala High Court in ***Gokul Sudarsanan vs. State of Kerala CRL.MC No. 6677 of 2025*** decided on 13.10.2025 as to whether second proviso to Section 232 of BNSS prohibits the committal Court from considering interlocutory applications filed before it regarding permission of the Magistrate for renewal of passport of the accused and while deciding so, it is also held by the High Court that bearing in mind the fundamental principle that Courts cannot be denuded of the powers to pass orders, unless specifically prohibited by statute, it will be clear that second proviso to Section 232 BNSS does not interdict the committal Courts from considering the applications filed by the accused or victim, while the matter is pending before it, but only makes it mandatory for the Magistrate to forward all pending applications to the Court of Sessions with the committal of the case. Therefore, the applications to be forwarded along with the committal are those applications which are pending as on the date of commitment and the committal Court is not prevented from deciding the applications while the proceeding is pending before it.

43. Therefore, the consistent view of Kerala High Court appears to be that second proviso to Section 232 BNSS as introduced in BNSS does not prohibit the Magistrate from entertaining and deciding the interlocutory applications filed before it during committal procedure but, it is obligatory for the Magistrate to forward those applications to the Sessions Judge if the same are not decided by the Magistrate before commitment is made.

44. Very recently, the Division Bench of Gujarat High Court in the case of ***Vinodbhai Tilakdhari Tiwari vs. State of Gujarat & Ors.*** in ***R/Special Criminal Application (Habeas Corpus) No.15962 of 2025***, decided on 16.01.2026, held that while committing a case to the Court of

Sessions, Magistrate is authorized under the provision of BNSS either to remand the accused till such commitment is made or to remand him during and until the conclusion of the trial and if the Magistrate takes the decision to remand the accused to custody till the conclusion of the trial, it is obvious that accused is in the custody of law till conclusion of the trial and such custody would necessarily be without reference to any timeline.

44.1 While discussing the application of proviso of subsection (2) to Section 346 BNSS regarding maximum period of remand for 15 days at a stretch, it is held by the High Court that if a person is already in custody after investigation is complete, his custody is not limited by any time line and it would be till conclusion of the trial and therefore, in view of provision of Section 346(2), the person in custody is to be remanded in custody and no time limit for the remand as stated. However, as per the proviso to said provision regarding maximum period of remand to be 15 days would come into operation only when the Court while adjourning or postponing the trial, is remanding the accused taking him into custody for the first time and he was not in custody earlier. It is only in such a situation that the remand can only be for a period of 15 days. But if a person is already in custody, no such time limit is prescribed for remanding him under section 346, BNSS. It is also further elaborated therein that it may be possible that the accused may have been on bail until then and yet he could be making attempts to protract the trial by ensuring that the witnesses do not turn up etc. and it is for this reason that power has been conferred upon the Sessions Court to reamd the accused to custody with the obvious intention of facilitating an expeditious conduct of the trial and to remove any impediments that is being caused for the conduct of the trial. Further, it is observed that the courts may not have the power to cancel the bail as provided in Section 478 of BNSS because there has been no violation of the conditions imposed while granting bail. Section 346(2), according to the Ld. Bench, basically clears that ambiguity and makes it clear that while postponing or adjourning the trial the Sessions Court does have the power to remand an accused to custody who is causing impediments in the trial.

45. However, in this regard, the decisions of Hon’ble Supreme Court in ***Raghubir Singh vs. State of Bihar, (1986) 4 SCC 481*** and in

Mithabhai Pashabhai Patel & Ors. vs. State of Gujarat, (2009) 6 SCC 33 appear to be very relevant. it is categorically held by the Hon'ble Supreme Court in ***Raghubir Singh*** (supra) that Section 309(2) generally enables the Court to remand the accused if in custody and it does not empower to Court to remand the accused if he is on bail. It also does not enable the Court to cancel bail as it were and that can only be done under Section 437(5) and Section 439 (2) of CrPC. In ***Mithabhai*** (supra), the decision of ***Raghubir Singh*** (supra) was referred and it was observed that when the accused were granted bail and they were not in custody of the Court, they could not be taken into custody in ordinary course unless their bail was cancelled. Therefore, in view of above said two decisions, Sessions Judge cannot automatically take an accused person into custody and remand him in jail without cancellation of his bail.

46. However, in view of above said catena of decisions and authoritative pronouncements of Hon'ble Supreme Court and other High Courts, there is no room of any doubt that under Section 209 CrPC, corresponding to Section 232 BNSS, the Magistrate is authorized to remand the accused person during committal proceeding before it, either for a period till commitment is made or for a period during, and till conclusion of trial in the Sessions Court and such provision being independent provision, Magistrate is empowered to exercise the same without resorting to any other provision of remand. Even, as per the decision of Hon'ble Supreme Court in ***Kallu Nat*** (supra), it is incumbent upon the Magistrate to remand the accused to custody till conclusion of the trial in the Sessions Court, subject to the provision relating to bail under the Code or BNSS. Such remand given by the Magistrate will not be illegal for non-mentioning of any specific date of expiry of remand period in the remand warrant. As it is held by the Full Bench of Allahabad High Court in ***Sundarlal*** (supra), the mention of the words "till conclusion of the trial of Sessions case" itself creates the certainty of the period of remand.

47. Now, when the Magistrate himself is authorized to remand an accused person till conclusion of the Sessions trial, the prosecution may insist to the Magistrate for keeping the accused in custody till conclusion of trial for certain reasons by exercising such power of remand. At least, there

is no barring provision either in the Code or in BNSS prohibiting the prosecution from pursuing for the same. But in view of Clause (b) of Section 209 Cr.P.C. as well as Section 232 of BNSS, even if the Magistrate remands an accused for the whole period of the trial, that order will always be subject to the law relating to bail. Even if such remand order for the whole period of sessions trial is passed by the Magistrate, the accused will always have his right to seek bail before the Magistrate or before the Sessions Court and his bail application should be considered independently. The right of the accused to approach the Court seeking bail therefore, cannot be shut down by any such a remand order. Nor it can be interpreted that just because the Magistrate has remanded the accused till conclusion of the trial, it has been divested with the power to consider the prayer of the bail later on. Even the accused person is not prohibited from filing successive bail applications seeking bail before a Court, but while considering such bail applications the Court or the Magistrate is required to examine whether fresh ground has been made out to take a different view from the one taken earlier by rejecting the prayer of the bail [Ref: ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528***].

48. Even though the Magistrate passes a remand order covering the whole period of sessions trial, still there may be occasions to consider the prayer of the bail of the accused under Section 479 of BNSS or for prolonged incarceration in custody under Article 21 of the Constitution. Therefore, such power can never be curtailed by filing any such petition for custody trial.

49. Considering thus, the right of an accused to seek bail or accrual of his right to get bail cannot be defeated by passing an order by the Magistrate under said provision of section 232 BNSS, directing that accused shall be kept in custody during the whole period of the trial by forfeiture of his right to bail. This being the position of law, the petition for custody trial of the accused filed by the prosecution can at best be treated as a written objection of the prosecution against the application(s) filed by the accused seeking bail, and while considering such bail application(s), the Court or the Magistrate shall take into consideration the grounds agitated by the prosecution in such petition if the same is pressed by the Ld. Prosecutor

during hearing. Therefore, learned Special Judge in the impugned order has rightly observed that the right of the accused person to seek bail cannot be foreclosed by allowing the prayer of the prosecution for custody trial. As a result, there is no valid ground to interfere with the order of the Ld. Special Judge while rejecting the prayer of the prosecution for custody trial.

BAIL APPLICATION NO.199 OF 2026

50. In support of the bail application, learned senior counsel, Mr. S. Kar Bhowmik submits that out of political enmity the accused has been implicated falsely in this case and in the arrest memo the signatures of any of his family members or any respectable person was not taken in compliance with the provisions of Section 36 and Section 48 of BNSS.

51. It is also argued from the side of the petitioner that in the pre-search memo or in the seizure list, signatures of independent witnesses were not taken. More so, pre-search memo was prepared in respect of only three police officers, namely, S.I. Uttam Chandra Das, Inspector Dhrabajoy Reang and S.I. Sunish Chakma whereas several police officials of at least 20 in numbers entered into the house of the accused at the time of search vitiating the sanctity of the search and they themselves put the alleged contraband items in the roof of the house of the accused person to falsely implicate him.

52. In this regard, learned senior counsel, Mr. Kar Bhowmik relies on a decision of Orissa High Court in the case of ***Rabindranath Prusty vs. State of Orissa, 1984 SCC OnLine Ori 218***. It was a case relating to an appeal against conviction under Prevention of Corruption Act and on appreciation of the evidences, the High Court at paragraph no.20 observes that – regarding search one of the formalities that has to be observed in searching a person in that the searching officer and others assisting him should give their personal search to the accused before searching the person of the accused [reference was made to a decision of Hon'ble Supreme Court in the case of ***State of Bihar vs. Kapil Singh, AIR 1969 SC 53***]. In the said case, the High Court noticed different other anomalies in the evidence and finally the High Court acquitted the accused person.

53. It is also submitted that according to the FIR, the police official asked independent witnesses at the time of search but they denied to attend the search. In this context, learned senior counsel, Mr. Kar Bhowmik refers to the provision of Section 103 (4) of BNSS which envisages that the officer or any other person who is about to make the search shall call upon two or more independent and respectable inhabitants of the locality who are willing to be the witnesses of the search, to attend as a witness and may issue an order in writing to them or any of them so to do and sub-Section (8) provides that when any such person without reasonable cause refuses or neglects to attend and witness the search, when called upon to do so by an order in writing, shall be deemed to have committed an offence under Section 222 of BNS, 2023.

54. Referring to said provision it is strenuously argued by Mr. Kar Bhowmik that in the instant case neither any notice was issued to any respectable person of the locality nor their refusal was recorded by the police officer and no step was also taken for proceeding against them and even, it is also not reflected in the charge sheet as to whom they actually asked for to be the search witnesses. It is also argued that in the seizure list it is shown that a Bangladeshi SIM card was recovered from the accused but the same was a subsequent incorporation written in a different ink, and that there has been two months' delay in sending the seized articles for forensic examination and the arms for its examination by the Arms Expert. In this regard he also relies on a decision of Hon'ble Supreme Court in the case of ***Wajid Ali alias Tinku vs. State of Rajasthan, 2026 SCC OnLine SC 283***. In this case, the accused was more than two years and 10 months in custody and the sample was sent to forensic science laboratory after 21 days for examination, for which there was no appropriate explanation, and therefore, considering both the aspects the bail was granted to the accused by Hon'ble Supreme Court in a case involving charge under NDPS Act.

55. Learned senior counsel, Mr. Kar Bhowmik also has produced one SSD allegedly containing some CCTV footages of the house of the accused person to show that the SDPO along with a big group of police personnel arrived at the house of the accused in the wee hours of night, covered one of the CCTV cameras with a sack and a person with a bag was

walking on the right side of the house and one police hinted to keep the bag on the roof of that house. One police person with olive colour dress showed his thump up indicating something was successfully accomplished and thereafter a police official climbed on the roof by a wooden ladder and finally came down with a white colour bag wherefrom the contraband items were recovered. However, Mr. Kar Bhowmik declines to supply a copy of the video footage to the learned Public Prosecutor submitting that if in advance the same is furnished to the prosecution there will be serious prejudice to the defence of the accused person as the accused will be relying on said CCTV footages during trial and meanwhile the prosecution will get the scope to incorporate some facts with manipulation in the CD to offer certain explanation there against. Such CCTV footages are relied upon with an endeavour to demonstrate that the police authority themselves kept the said bag on the roof of the house to falsely implicate the accused person.

56. When the video footages were displayed in the Court, learned P.P. on that point submits that as the copy of the video footages have not been furnished to him, he has not got any scope to take proper instructions from the I.O. in this regard and he even cannot say whether the said footages are of the house of the accused person or not, and more so, the authenticity of the said footages are also subject to necessary examination and therefore, it is unsafe to rely said footage at this stage.

57. He in this regard, also relies on a decision of a Constitution Bench of Hon'ble Supreme Court in the case of ***Chandrabhan Sudam Sanap vs. State of Maharashtra, (2025) 7 SCC 401*** wherein at paragraph no.57, it is held that there is no manner of doubt that certificate under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic records to support his contention that no such certificate was submitted by the petitioner in this case.

58. Learned senior counsel, Mr. Kar Bhowmik also relies on some medical papers to show that the accused is diabetic patient and one leg of the accused was likely to be amputated earlier and for that reason, once the learned Special Judge granted him interim bail.

59. Finally, learned senior counsel, Mr. Kar Bhowmik further refers the following decisions:

i. ***Ghanshyam Singh alias Bharat Singh, 2026 SCC OnLine Raj 1776***; In this case, it is observed that sample of contraband item was forwarded to the SFSL approximately after one month and 18 days which was in contravention of standing order No. 1-1988 and there was also non-compliance of provision of NDPS Rules, 2022 and absence of certification of Magistrate in the sample. Considering these aspects, bail was granted to the accused by the High Court.

ii. ***Mukunad Lal Dhakad vs. State of Rajasthan, 2026 SCC OnLine Raj 3063***. In said case there was delay of sending the sample for almost two months and the same bench of Rajasthan High Court similarly observes that it was violation of standing order no.1-1988 and the trial of the case was supposed to take long time to conclude and finally bail was granted to the accused.

iii. ***State vs. Rajkumar, 2013 SCC OnLine Del 3390.*** This was an appeal against acquittal. In said case, the FIR lodged by a senior police officer was investigated by a junior police officer and there were also other infirmities noticed by the High Court in the evidence including un-explained delay of 16 days in sending the recovered weapons to the FSL but simultaneously, the Court also observes that the settled law is that delay in sending the case property to the FSL is not fatal to the prosecution case *per se,* but in that very case, the prosecution was not able to explain the reason for such delay which cast shadow on the bonafide of investigation.

iv. In ***Prahlad Kumar vs. State of NCT of Delhi, 2026 SCC OnLine Del 3411.*** In this case, there were also several infirmities like difference of weight of the seized item as mentioned in the seizure memo and in the certificate of the

sample drawn before the Magistrate and more so, there were mixture of stems/stalks and dried leaves of ganja together and ultimately the High Court observes that the actual weight of the ganja recovered was less than commercial quantity and finally bail was granted to the accused.

v. In ***Rabindranath Prusty (supra)*** as discussed earlier, it was also a case relating to appeal against conviction under Prevention of Corruption Act wherein, for some reasons, the case became doubtful as discussed in paragraph no.16 of the said judgment. It was also further noticed that the reason for search was not informed to the accused and no independent witness had witnessed the search, and there was also no evidence that the raiding party got their personal search before the accused was searched. Considering all these aspects, the High Court held that the search was illegal and conviction was vitiated.

vi. ***Mohd. Muslim @ Hussain v. State (NCT of Delhi), (2023) 18 SCC 166*** – In this case, it is observed at paragraph 12 that the statutory provision finding place in Section 37 of the NDPS Act prescribing the conditions, has to be satisfied before a person accused of an offence under the Act can be released. It is also further observed that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases. But if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. Therefore, after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of Article 21.

vii. ***Jaskaran Jeet Singh Deol v. State of Punjab, 2026 SCC OnLine SC 1939***. In this case- at paragraph 37 it is

> observed that gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen except in accordance with the procedure established by the Constitution and the laws. When a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, it is the duty of the court to ensure that such procedure is rigorously observed, however, strange this might sound to some years.

60. In reply to the submissions of Ld. Sr. Counsel, Mr. Kar Bhowmik, learned P.P. referring to the case diary submits that the seized items were handed over and kept in AD Nagar NDPS godown on 17.10.2025 and the same was produced before the Magistrate on 01.11.2025 for certification of Magistrate but the same was not done on that day and then said procedure was completed on 14.11.2025 and it was sent to the SFSL which was received by them on 15.11.2025. Learned P.P., in this regard also refers to a letter of O.C., Sidhai P.S. to the SDJM, Mohanpur stating that the I.O. was on medical leave from 31.10.2025 and therefore, request was made to fix the date of drawing of sample on 10.11.2025. It also appears that on 14.11.2025 itself the police officer/IO took over the seized contraband items back to him from NDPS godown.

61. Learned P.P. also further relies on a decision of Hon'ble Supreme Court in the case of ***Narcotics Control Bureau vs. Kashif, (2024) 11 SCC 372*** wherein it is observed at paragraph no.42 that the provision under sub- Section (2) of Section 52A of NDPS Act is not mandatory and its non-compliance is not fatal to the prosecution. In the same decision reference was made to another decision in the case of ***Khet Singh vs. Union of India, (2002) 4 SCC 380,*** wherein, it is observed that law is very clear that even <u>if there is any sort of procedural illegality in conducting the search and seizure, the evidences collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice has been caused to the accused</u>. If the search and seizure is in complete defiance of the law and procedure and there is any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search and seizure,

then it could be said that the evidence is not liable to be admissible in evidence.

62. Learned P.P. also again relies on the following decisions:

i. ***Rizwan Khan vs. State of Chattisgarh, (2020) 9 SCC 627***, wherein it is held that the testimony of official witnesses cannot be rejected on the ground of non-corroboration by independent witnesses.

ii. ***The State of Meghalaya vs. Lalrintluanga Sailo & Anr., (2024) 15 SCC 36*** - At paragraph no.14, it is held that the twin conditions under Section 37 of NDPS Act was not satisfied in the said case and therefore, only sole ground that accused was a HIV patient could not be a reason to enlarge on bail.

iii. **State of Punjab v. Sukhwinder Singh @ Gora**, **(2026) 7 SCC 513** – In this case, at paragraph no. 11, it is held that the right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious constitutional right, but in the matter governed by a special enactment by NDPS Act, particularly where recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. However, very recently, another Hon'ble Bench of the Apex Court in case of ***Sri Sujit Das & ors. v. Union of India, [Criminal Appeal No….. of 2026 arising out of SLP (Cri) Nos. 12451-12453 of 2026 decided on 5.11.2026]*** has given a reserving note in respect of said decision.

iv. ***Narcotics Control Bureau vs. Mohit Aggarwal, (2022) 18 SCC, 374*** - At paragraph 18, it is held that non-recovery of any item from the possession of the accused is not material to infer that he is not guilty of the offence.

63. In consideration of the rival submissions and the decisions of different cases as referred above by them, it appears from the record, more

particularly from the statements of witnesses, namely, Inspector Drabajoy Reang, S.I., Uttam Das, S.I. Sunish Chakma, Inspector Ajit Kanti Chakma, constable Budhijit Sharma, constable Manideep Paul, constable Banamali Debbarma, woman constable Shanti Das that total 2000 nos. of 'yaba' tablets of weight 210 grams, one factory made pistol, one empty magazine with 16 nos. of bullets were recovered from a carry bag which was kept in the roof of the house of the house of the accused. He was then arrested and the ground of arrest containing above said facts was communicated to the accused in writing and in Bengali language which was also signed by him. At that time he did not raise any objection stating that those assertions were false and as per the ***Rizwan Khan*** (supra) the statements of police officer cannot be rejected outright, and even as per the decision of Hon'ble Supreme Court in ***Kashif (supra)*** and of Delhi High Court in ***Rajkumar*** (supra) [as referred by Mr. S. Kar Bhowmik, learned senior counsel] the delay in sending the sample to the SFSL also cannot be held to be fatal to the prosecution case. Moreover, the prosecution has offered some explanation for such delay in the present case. Even as per the decision in ***Khet Singh (supra)***, any sort of procedural illegality in conducting the search and seizure, cannot make the same inadmissible unless serious prejudice has been caused to the accused person. The matter of prejudice is to be examined in the facts of the present case, during trial.

64. So far, the CCTV footages are concerned, all the footages are not very much clear and do not cover the entire incident. Moreover, the prosecution has not got sufficient scope to examine the same. Above all, making any observation based on such footages at this stage will result in conducting a mini trial about correctness or authenticity of recovery and seizure. In ***Prashant Dagjirao Patil vs. Vaibhav alias Sonu Arun Pawar and anr., Criminal Appeal Nos. 55-56 of 2021 decided on 19.1.2021***, while hearing the bail application, Bombay High Court directed the Investigating Officer to examine the CCTV footage and submit report to the Court. There was plea from the side of accused persons that for two years they were in custody and CCTV footage would prove that they were not present at the time of incident. On challenge being made against said direction of High Court, three Judge Bench of Hon'ble Supreme Court observes that it was not proper for the High Court to pass such a direction as

same would have a direct bearing upon the trial. In case of ***Anil Kumar Yadav vs. State (NCT of Delhi) & ors., (2018) 12 SCC 129***, the Sessions Judge though repeatedly observed that the court ought not to go into the merits of the matter while deciding bail application, but, according to Hon'ble Supreme Court, actually said court appeared to have gone into merits of the matter, in particular the CCTV footage to hold that the particular accused could not have been present at the place of occurrence or participated in the incident. It is, in that context, the Apex Court further observes that the Sessions Court has not taken the relevant materials but granted bail to the accused on the ground of discrepancies in the statements of witnesses, CCTV footage and the period of incarceration which are not relevant considerations for grant of bail by the Sessions Court in the facts and stage of the case.

65. In the present case also, any observation made on the basis of CCTV footages will have direct bearing during trial and therefore, in view of above said decisions, the examination of contents of such footages is kept open during trial subject to its' admissibility.

66. There is also no ground to disbelieve the official seizure witnesses at this stage. Though it is stated that out of political enmity, the accused has been falsely implicated in this case but except the bald assertion of investigating officer that one of the grounds for keeping the accused in custody is to prevent any political clashes in the locality, is not sufficient enough to infer that he has been falsely implicated due to political rivalry.

67. Therefore, rigors of Section 37 of NDPS Act are not mitigated in this case, when prima facie, there are statements of witnesses about the recovery of commercial quantity of contraband items from the house of the accused. Though, it was argued by the learned senior counsel that the last item of the seizure list dated 15.10.2025 was later on incorporated by a different ink but prima facie the use of different ink is not found in the seizure list except that the size of the letters written against that item were a bit smaller than the size of the letters of other items of the seizure list. At best it can be inferred there from that after preparation of the seizure list said item

might have been incorporated but whether the signatures of the witnesses were taken before such incorporation or afterwards, is not clear. Therefore, these facts are required to be verified during trial.

68. Considering all these aspects, the bail prayer on behalf of the accused person cannot be considered favourably.

69. In view of the above discussions, both the instant Criminal Petition No. 46 of 2026 and the Bail Application No.199 of 2026 are rejected.

70. As it appears, there are 31 witnesses cited in the seizure list and the case is waiting for framing of charge. For about one year the accused is in custody and therefore, learned Special Judge is directed to expedite the trial.

71. With such observations and decisions, both the cases are disposed of.

72. Return the trial Court record along with a copy of this order.

73. Also return the CD to learned P.P along with a copy of order.

JUDGE

सत्यमेव जयते

SANJAY GHOSH
Sanjay
Digitally signed by SANJAY GHOSH
Date: 2026.11.07 10:43:07 +05'30'