



**HIGH COURT OF TRIPURA
AGARTALA
Crl. Pet. No.24 of 2026**

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

.... Petitioner

Versus

Md. Jangsar Ali @ Jamsher Ali,
S/o- Late Aasamat Ali resident of Dataran,
Mayapuri, P.S.- R. K. Pur,
District- Gomati Tripura.

.....Respondent

For Petitioner(s)	:	Mr. Raju Datta, P.P.
For Respondent(s)	:	Mr. Janardhan Bhattacharjee, Adv. Mr. Sajib Ghosh, Adv.
Date of Hearing	:	23.07.2026
Date of delivery of Judgment and Order	:	29.07.2026
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This petition has been filed under Section 528 of BNSS corresponding to Section 482 of Cr.P.C for setting aside/quashing the order dated 28.05.2025 passed by Learned Special Judge, Khowai Tripura District, Khowai in connection with Case No. Special (NDPS) 21 of 2025 arising out of Khowai PS Case No.62 of 2024.

02. Heard Learned P.P., Mr. R. Datta appearing on behalf of the petitioner and Learned Counsel, Mr. J. Bhattacharjee along with Learned Counsel, S. Ghosh appearing on behalf of the respondent.

03. Taking part in the hearing, Learned Counsel drawn the attention of the Court that in this case the statutory period

of detention of the respondent-accused was expired on 28.05.2025 and on that day the I/O submitted charge-sheet against the accused Rajani Debbarma and the absconder accused Panchadiv Debbarma and also prayed for custodial trial of the accused Md. Jangsar Ali. But on that day, the Learned Trial Court without accepting the charge-sheet returned back the same to I/O on the ground that the I/O never prayed before the Court for issuing W/A against the absconding accused nor the I/O did not comply with the provision of Section 84 and 85 of BNSS in order to declare accused Panchadiv Debbarma alias Kishore Debbarma as a proclaimed offender. Thus, the Learned Trial Court on the ground that charge-sheet has not been submitted granted bail to the present respondent-accused. So, Learned P.P. appearing for the State urged for setting aside the order as the same suffers from infirmities.

04. Learned P.P. also relied upon one citation of the Hon'ble Apex Court in ***Sidharth Vs. State of Uttar Pradesh and Another*** reported in **(2022) 1 SCC 676**, wherein in para Nos.6, 7, 8 and 9, Hon'ble the Apex Court observed as under:-

6. In a subsequent judgment the Division Bench of the Delhi High Court in *High Court of Delhi v. State* [*High Court of Delhi v. State*, 2018 SCC OnLine Del 12306 : (2018) 254 DLT 641] relied on these observations in *High Court of Delhi* [*High Court of Delhi v. CBI*, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629] and observed that it is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed.

7. The Delhi High Court is not alone in having adopted this view and other High Courts apparently have also followed suit on the proposition that

criminal courts cannot refuse to accept a charge-sheet simply because the accused has not been arrested and produced before the court.

8. In *Deendayal Kishanchand v. State of Gujarat* [Deendayal Kishanchand v. State of Gujarat, 1982 SCC OnLine Guj 172 : 1983 Cri LJ 1583] , the High Court observed as under : (SCC OnLine Guj paras 2 & 8)

"2. ... It was the case of the prosecution that two accused i.e. present Petitioners 4 and 5, who are ladies, were not available to be produced before the court along with the charge-sheet, even though earlier they were released on bail. Therefore, as the court refused to accept the charge-sheet unless all the accused are produced, the charge-sheet could not be submitted, and ultimately also, by a specific letter, it seems from the record, the charge-sheet was submitted without Accused 4 and 5. This is very clear from the evidence on record.

8. I must say at this stage that the refusal by criminal courts either through the learned Magistrate or through their office staff to accept the charge-sheet without production of the accused persons is not justified by any provision of law. Therefore, it should be impressed upon all the courts that they should accept the charge-sheet whenever it is produced by the police with any endorsement to be made on the charge-sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge-sheet. But when the police submits the charge-sheet, it is the duty of the court to accept it especially in view of the provisions of Section 468 of the Code which creates a limitation of taking cognizance of offence. Likewise, police authorities also should impress on all police officers that if charge-sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and get suitable orders so that such difficulties would not arise henceforth."

9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an

obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet."

05. Referring the same, Learned P.P. drawn the attention of the Court that in view of the observation made by the Hon'ble Supreme Court of India, there was no scope on the part of the Learned Trial Court to refuse acceptance of charge-sheet and urged for setting aside the order passed by Learned Trial Court in respect of granting bail to the respondent-accused.

06. On the other hand, Learned defense Counsel, Mr. J. Bhattacharjee appearing on behalf of the respondent-accused submitted that there was no material against the respondent-accused and during investigation the I/O could not collect any material against him and he has been falsely implicated in this case. Learned Counsel further submitted that during investigation the respondent-accused sought bail before this Court that was rejected twice but the I/O could not collect any materials against him in course of investigation and also submitted that the Learned Trial Court rightly granted bail to the respondent-accused by the said order and urged for dismissal of the petition filed by the prosecution.

07. Heard both the sides at length and perused the impugned order passed by Learned Special Judge, Khowai Tripura District, Khowai.

08. It was surprising to see how the Learned Trial Court came to the observation that since the I/O did not pray for warrant and proclamation against the absconding accused so Learned Trial Court refused to accept the charge-sheet submitted by I/O. This part of observation of the Learned Trial Court appears to be wholly illegal, unreasonable and unjustified. Rather it appears to this Court that due to misconception of law the Learned Trial Court has wrongly granted bail to the respondent-accused in this case. In a criminal prosecution on the basis of an FIR a case is registered as cognizable case. If an FIR is registered on the basis of a cognizable offence then investigation completes on filing of charge-sheet. In a case under NDPS Act, a case may be registered based on FIR which ends up in filing of charge-sheet or in case of direct complaint by the Revenue Intelligence Officer, they may directly file a case to the competent Court for holding trial of the accused.

09. There is no provision in the erstwhile Cr.P.C. or BNSS or the connected rule that during investigation the I/O shall cause arrest of the accused or there is no scope on the part of I/O to submit charge-sheet against an accused without showing him arrested in the said case. It is the prerogative of the I/O to cause arrest of any person in course of investigation,

if the I/O considers that for the sake of investigation arrest is required he will take step for causing arrest of the accused or in case of absconsion he may file a petition to the Court for issuing warrant of arrest against the accused which may be followed by subsequent days.

10. Here in this case from the record of the Learned Trial Court prima facie it appears that the I/O during investigation did not file any prayer before the Learned Trial for issuing warrant of arrest nor submitted any prayer for issuing proclamation and attachment against the said accused and for that ground the Learned Trial Court refused to accept the charge-sheet and at the same time Learned Trial Court granted bail to this present respondent-accused.

11. The case was registered under Section 20(b)(ii)(c)/25/29 of NDPS Act. So, naturally in deciding the matter of bail Court shall be guided by the provision of Section 37 of NDPS Act where there is statutory bar to grant bail to an accused subject to prohibition as mentioned in the said section. If for any reason it could appear to the Learned Special Judge that no step was taken in that case the Court itself could issue warrant of arrest against the accused or the Court could seek any further report from I/O. But without doing so the Learned Special Judge refused to accept the charge-sheet and this observation of the Learned Court in my considered opinion was totally illegal and not supported by any legal footing.

12. Thus, it appears that by the said order, the Learned Special Judge committed error in refusing to accept charge-sheet and also committed another error to grant bail to the respondent-accused on the ground that no charge-sheet was submitted but factually the statutory period expired on that day i.e. on 28.05.2025. Thus, granted bail to the present respondent-accused which in the considered opinion was totally unjustified and illegal.

13. The submission of Learned Counsel for the respondent-accused cannot be accepted at this stage. However, if the accused thinks that he is totally innocent then he can submit application before the Court for quashing of the proceeding drawn up against him. But after hearing both the sides and also after going through the observation made by the Hon'ble Supreme Court in the aforementioned case, it appears that the order dated 28.05.2025 passed by Learned Special Judge, Khowai Tripura District, Khowai suffers from infirmities and the same needs to be interfered with and accordingly the said order dated 28.05.2025 to the extent of granting bail to the present respondent-accused interfered with and set aside.

Since, the said charge-sheet has been returned back to the I/O and it is not known to this Court as to whether by this time the I/O has submitted charge-sheet or not. However, the rest part of the order is not interfered with to avoid any legal confession. The bail bond of the accused stands

cancelled. The accused is to surrender before the Learned Trial Court on or before 10.08.2026.

14. In the result, the petition filed by the prosecution is hereby allowed.

The order dated 28.05.2025 delivered by Learned Special Judge, Khowai Tripura District, Khowai is interfered with to the extent that the bail granted to the respondent-accused stands quashed and set aside.

The respondent-accused is to surrender before the Learned Trial Court on or before 10.08.2026.

The Learned Trial Court after receipt of the case record shall proceed in accordance with law.

It is always open for the respondent-accused to challenge the proceeding, if he is so advised.

Send down the record to the Learned Trial Court along with a copy of this Judgment and order.

With this observation, this present criminal petition stands disposed of.

Pending application/s, if any, also stands disposed of.

JUDGE