



**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Bail Appln. No. 5 of 2024

Seiminthang Mate aged about 35 years, S/o Thongkhopao Mate of Sibong Khudengthabi, Tegnoupal District, Manipur-795131

... Petitioner/Accused

- Versus -

The Officer-in-Charge of Tegnoupal Police Station, Manipur-795131

... Respondent

**B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the petitioner : Mr. Osbert Khaling, Adv.
For the respondent : Mr. Y. Ashang, P.P. & Mrs. R.K. Emily, Dy. GA
Date of reserved : 15.05.2026
Date of Judgement : **10.09.2026**

**JUDGEMENT & ORDER
(CAV)**

[1] Heard Mr. Osbert Khaling, learned counsel for the petitioner/accused and Mr. Y. Ashang, learned PP assisted by Mrs. R.K. Emily, learned Dy. GA on behalf of the State respondent.

[2] The present bail application has been filed by the petitioner/accused under Section 439 of Code of Criminal Procedure read with Section 37 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 praying for releasing the petitioner/accused on bail in connection with FIR Case No. 49(12) 2022 TPL-PS under Sections 21(c)/29 & 60 (3) ND & PS Act, 1985 and the prayer of the petitioner is reproduced below:



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- (i) To issue notice to the respondent,*
- (ii) To grant regular bail u/s 439 of the Cr.P.C. to the petitioner/accused namely Mr. Seiminthang Mate in connection with FIR No. 49(12) 2022 TPL-PS U/s 21(c)/29 & 60 (3) ND & PS Act, 1985 and*
- (iii) Pass any order/direction which the Hon'ble Court deems fit and proper in the facts and circumstances of the case as to meet the end of justice.*

Brief facts of the present case are as follows:

[3] On 16.12.2022, the 20th Assam Rifles, Tengnoupal while in normal course of checking found illegal contrabands drugs (49 packets of Brown Sugar weighing about 2.163 kg including packing materials) hidden inside the seat of a Mahindra Bolero bearing registration no. MN 01AG 9896 (white colour) being driven by Mr. Mamang along with two passengers namely Mr. Seiminthang Mate (petitioner herein) and Mr. Pandian of Ward No. 4, Premnagar, Moreh, Manipur. While checking, the driver/owner of the said vehicle went to the toilet and fled into the nearby dense jungle. Thereafter, seizure memo and arrest memo were made for the two passengers and later handed over to the Officer-in-Charge of Tengnoupal PS. On the same day, the Tengnoupal PS registered an FIR No. 49(12) 2022 TPL-PS U/s 21(c)/29 & 60 (3) ND & PS Act. On 17.12.2026, the petitioner and other accused namely Pandian were sent to Police Custody for 6(six) days till 22.12.2022 by the Court of Ld. Chief Judicial Magistrate, Chandel. On expiry of Police remand the accused persons were produced before learned Judge Special Court (ND & PS), Manipur at Lamphel for remanding them into Judicial custody for a period of 15(fifteen) days w.e.f. 22.12.2022 to 05.01.2023. However, Ld. Judge Special Court (ND & PS), Manipur had remanded them into judicial custody for a period of 8(eight) days till 29.12.2022 and also order them to submit the progress report of the investigation on 29.12.2026 and the same is submitted by the I.O of the case. Thereafter, chargesheet has been submitted against the accused persons before the Ld. Special Judge (ND&PS), Manipur and a Special Trial has been registered by the Ld. Special Judge as Special Trial No.



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34 of 2023 and the stage of the case is at charge hearing. Moreover, the petitioner filed a bail application u/s 439 Cr.P.C. before the Ld. Special Judge (ND&PS), Manipur which was registered as Cril. Misc. (B) Case No. 277 of 2023 and the same was rejected on 28.12.2023 mainly on the ground that with the recovery of narcotic substances of commercial quantity from the vehicle in which the two arrested persons was travelling, there are sufficient materials for proceeding against the accused persons. Hence, the petitioner filed the present bail application before this Court.

[4] Mr. Osbert, learned counsel for the petitioner/accused No.1 submits that the petitioner is only a passenger in the bolero vehicle driven and owned by one Mamang and he was travelling to Imphal on that fateful day by taking lift from Mamang. Since the driver escaped from the spot, the petitioner and other passenger were arrested by the personnel of Assam Rifles in order to make up their negligence in failure to arrest main accused Mamang. It is pointed out that there is no material to presume conscious possession of narcotic substance of commercial quantity against the petitioner and as such statutory presumption of culpable mental state under Section 35 of NDPS Act, will not operate against the petitioner. Learned counsel draws the attention of this Court to the fact that there is no material to link the petitioner as owner of the seized vehicle nor was he the owner of the contraband; and in absence of any credible materials, the statutory presumption is not automatic. Violation of mandatory provisions of Sections 50 and 57 of the Act is also alleged by the petitioner. Rigors of Section 37 of the Act will not be applicable, as there is no material to link the seizure of contrabands from the petitioner.

[5] Mr. Osbert, learned counsel further continues that the petitioner was first arrested on 16.12.2022 and he has been in custody for more than three and half years and there is slow progress in the trial and it is not likely to complete the trial in near future. It is highlighted, learned Spl Judge (NDPS), Chandel is also in charge of Family Court, Manipur at Lamphelpat, Imphal (which is more than 60 km apart). It is pointed out that the petitioner has no past involvement in any criminal case except the present case and hence, the twin



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test is in his favour. Reliance is placed on a decision of this Court in the case of **Ngangom Somorendro Singh v. Officer-in-Charge, Moreh Police Station**, [order dated 19.12.2022 in Bail Application No. 17 of 2022], where in absence of any material of previous involvement of narcotic case, an accused who was in custody for four months was leased on bail. Learned counsel also refers another decision of this Court in the case of **Harshala Desai v. Narcotics Control Bureau, Imphal** [Order dated 12.08.2025 in Bail Application No. 14 of 2025], in which the accused in custody for more than two years was released on bail on ground of slow trial and long incarceration; as co-accused in the same FIR was released on bail by Hon'ble Supreme Court. He has further cited a recent decision of Hon'ble Supreme Court in the case of **Rajadurai v. State of Tamil Nadu: MANU/SCOR/29613/2026**, where an accused in custody (*recovery of 22.950 kgs of ganja*) for more than one year was released on bail due to non-examination of any witness after framing of charge. It is urged that the petitioner is in custody for more than three and half years and there is hardly any progress in the trial. It is prayed that the petitioner may be released on bail during the pendency of the trial, as he is first time offender that too without any incrimination materials; and the petitioner would be bound by any conditions as imposed by this Court.

[6] Per contra, Mr. Y. Ashang, learned PP submits that in a seizure of commercial quantity, the bail application has to pass the strict rigors of twin test as mandated by Section 37 of NDPS Act, i.e., (i) the accused is not likely to be guilty of the offence, and (ii) he will not commit such offence while on bail. Since the seizure was made from the vehicles in which the accused were travelling, the statutory presumption of conscious possession under Section 35 of the Act will operate against the petitioner. The question of whether the petitioner was a passenger simpliciter or an accused is to be decided in trial and not in a bail application hearing. It is pointed out that FSL report gave a positive finding for heroin. Long incarceration is not the sole consideration for releasing bail in commercial quantity case. It is urged that in a chance recovery of narcotic substances by Assam Rifles without any prior information and that too from a vehicle, the provisions of Section 50 of the Act will not be applicable. Learned PP



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refers to the decision of Hon'ble Supreme Court in the case of **Union of India vs. Vigin K. Varghese** reported in **2025 INSC 1316** at **para 18**, where it was held that any offences involving commercial quantity of narcotics drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure. In that case, High Court without appreciating the fact that the petitioner, arrested in connection with commercial quantity of narcotics substance on earlier occasion, does not satisfy the twin tests of statutory satisfaction as laid down by Section 37(1)(b) of ND&PS Act. It is prayed that the bail application be rejected.

[7] This Court has considered the materials on record and the decisions cited at bar. The admitted facts are: (i) since his arrest on 16.12.2022, the petitioner is in custody for more than three and half years; (ii) the trial is at a slow pace; (iii) the petitioner is a first time offender and has no previous involvement in similar cases; (iv) apart from the fact that he was travelling in the vehicles from which commercial quantity narcotic substance was seized, any other material is not annexed with the charge sheet; and (v) no material is on record to link or suspect the petitioner as owner of the seized vehicles.

[8] With regards to the submission of Mr. Osbert, learned counsel for the petitioner to the point that long incarceration is a ground for releasing on bail involving commercial quantity as per decisions cited supra, it may be clarified that there are instances of few decisions of Hon'ble Supreme Court which emphasize on personal liberty as enshrined under Article 21 of the Constitution of India. However, the issue is settled (at least for the time being, awaiting adjudication by a larger bench) in the latest decision of Hon'ble Supreme Court in the case of **State of Punjab vs. Balraj Singh @ Billa** reported in **2026 SCC Online SC 1058** and it was held in 'para 17' that when it comes to the case involving commercial quantity of narcotics, the mandatory requirement of Section 37 of ND&PS Act ought to be considered and reference to the twin conditions enumerated under Section 37 of the Act is mandatory.



[9] In a very recent judgment passed by this Court in the case of **Shri Lunkhogan Kipgen v. Officer-in-Charge, NAB PS, Imphal: 2026: MNHC: 195** [judgment dated 08.09.2026 in Bail Application No. 33 of 2023], it has been observed and held as below relying on a catena of decisions:

[14] *It is settled proposition of law that in a bail under ND&PS Act involving commercial quantity, the Court has first to satisfy the twin tests laid down by Section 37(1)(b). In fact, before the twin test is applied; the prosecution has to be given an opportunity of being heard for objecting the bail application involving commercial quantity. After that the twin test will apply; firstly, the Court should have a reasonable ground of believing that the accused is not guilty of such offence; and secondly, he is not likely to commit offence while on bail. The latest judgment of **Balraj Singh @ Billa (supra)**, it has been specifically held in 'para 17' that the rigor of Section 37 of ND&PS Act has to be satisfied while considering the application in bail for an offence involving commercial quantity. Long incarceration alone is not a ground to be released on bail and rule of long incarceration as laid down in the judgments cited above, i.e., **Dheeraj Kumar Shukla (supra)** & **Rabi Prakash (supra)** has to be considered in tune with the principle laid down in **Balraj Singh @ Billa (supra)** case. To put it differently, it means that while considering bail application on ground of long incarceration in custody without initiating the trial or in a trial with no substantive progress, still the rigor of Section 37 of ND&PS Act has to be satisfied, in view of the principle laid down in **Balraj Singh @ Billa (supra)**. Since the question of interplay of rigor of bail in special statute and long incarceration along with the principle of speedy trial laid down in Article 21 of the Constitution, is pending before larger bench of Hon'ble Supreme Court, and in view of the decision of **Sundeep Kumar Bafna (supra)**; the principle of law, stands as on date, has to be followed by High Court and Trial Court. Mere pendency of the question before the larger bench of Hon'ble Supreme Court will not empower the High Court or Trial Court to have a different view apart from the settled position of law propounded in **Balraj Singh @ Billa (supra)**, as the law stands as on date. The same is in view of the principle of Article 141 of the Constitution that all other Courts in India are bound by law declared by Hon'ble Supreme Court.*

[15] *In other words, while examining the bail application in a special statute such as ND&PS, the twin tests laid down in Section 37 of the ND&PS Act has to be followed while considering bail application on the ground of long incarceration without any trial or in a trial with no substantive progress. In the present case, this principle has to be applied.*



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[10] From the above cited decision, it is clear that at least for the State of Manipur, the law is clear (as per **Balraj Singh @ Billa**), the twin test under Section 37 of NDPS Act has to be satisfied in a bail application involving commercial quantity of narcotic substances, irrespective of the fact of long incarceration. Present case has to be examined in this legal prism.

[11] In the case in hand, the petitioner is in custody since his arrest on 16.12.2022 for more than three and half years. The trial is at a slow pace. As per charge sheet, the petitioner does not have previous involvement in similar offence. Apart from the fact that he was a passenger in the vehicle from which commercial quantity contraband was seized, there is no credible materials in the chargesheet against him. The ownership of the seized vehicle is not attributed to him by the prosecution. The whole case is proceeding solely on the basis of statutory presumption under Section 35 of NDPS Act, which a rebuttable presumption.

[12] Considering the settled proposition of law and admitted facts on record, this Court is of the view that the present case satisfies the twin test under Section 37 of NDPS Act; it is undisputed that the petitioner is in custody for more than three and half years without much progress in trial; and the same can be treated as long incarceration in custody. In the circumstances, the petitioner is released on bail on submission of personal bond of Rs.1,00,000/- [Rupees one lakh] with a surety [gazetted officer] of like amount to the satisfaction of learned Special Judge (NDPS), Chandel on the following conditions:

- (i) He shall appear before the Court on every date fixed by the Court or as directed by the Court from time to time.
- (ii) He shall not try to influence any persons acquainted with the facts of the present case.
- (iii) He shall not temper with any materials/evidence of the case.
- (iv) He shall not leave the State of Manipur without the leave of the Special Judge, (ND&PS), Chandel, Manipur.
- (v) The passport, if any, of the petitioner shall be surrendered before the Special Judge, (ND&PS), Chandel, Manipur.



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(vi) On violation of any of the aforesaid conditions, the State respondent is free to approach this Court for cancellation of the bail.

[13] With these observations, Bail Appln. No. 5 of 2024 is allowed and disposed of.

[14] Before concluding, it may be clarified that this Court does not express any opinion on the merit of the case including the complexity of the petitioner in connection with the present FIR and nothing stated and observed herein, shall prejudice the Trial Court in the ongoing trial. Any observations and findings made herein is confined for disposal of the bail application and the same shall not construe as expression of the opinion by this Court on the merit of the case. Trial Court is free to form its own opinion as per law in the factual circumstances.

[15] Registry is directed to send a copy of this order to the learned Special Judge, (ND&PS), Chandel, Manipur for information.

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JUDGE