**REPORTABLE**

# IN THE HIGH COURT OF MANIPUR
## AT IMPHAL

## Bail Appln. No. 33 of 2023 with
### MC (Bail Appln.) No. 10 of 2025

Shri Lunkhogin Kipgen, aged about 33 years, son of (L) Henjangam Kipgen, resident of Tuibong Zion Veng, P.O & P.S – Churachandpur, District- Churachandpur, Manipur, 795128.

***... Petitioner/Accused***

***- Versus -***

The Officer-in-Charge, Narcotics & Affairs of Border (NAB) Police Station, P.O & P.S- Imphal, Manipur, 795001.

***... Respondent***

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

For the petitioner : Mr. Serto T Kom, Adv., Mr. Karung H Kom, Adv. & Ms. Debora, Adv.

For the respondent : Mr. Y. Ashang, PP & Mr. Phungyo Zingkhei, Dy.GA

Date of reserved : 31.08.2026

Date of Judgement : **08.09.2026**

## JUDGEMENT & ORDER
## (CAV)

**[1]** Heard Mr. Serto T Kom, learned counsel along with Mr. Karung H Kom, learned counsel and Ms. Debora, learned counsel on behalf of the petitioner/accused and Mr. Y. Ashang, learned PP assisted by Mr. Phungyo Zingkhei, learned Dy. GA on behalf of the State respondent.

**[2]** The petitioner approaches this Court by way of present application under Section 439 of Code of Criminal Procedure, 1973 (in short, Cr.P.C.) read with Section 167(2) of Cr. P.C. and Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, ND&PS Act) for releasing him on regular bail in connection with FIR No. 04(02) 2023 NAB-PS, under Section 21(c)/60(3)/25 of ND&PS Act.

**[3]** The question involved in the present bail application is:

> ***"Whether the twin test as envisaged in Section 37 of ND&PS Act, 1985 is mandatorily to be satisfied while considering a bail application predicated mainly on the ground of delay in trial and long incarceration or not?".***

**[4]** The petitioner was arrested on 27.02.2023 by a team of Narcotics & Affairs of Border (NAB) Police Station, Manipur while conducting frisking and checking by way of patrolling in the area of Kangvai Bazaar, Bishnupur along NH-2 on allegation of transporting banned contraband item (heroin). The above-mentioned FIR was registered against the petitioner on the allegation of possession of 487 grams of heroin power no. 4, including the weight of the transparent small polythene packets. Since his arrest, he is in custody.

**[5]** It is stated that the petitioner is a daily labourer, who earns his livelihood by taking up odd jobs to support himself and his family members consisting of 3(three) minor children and a wife. He is the only bread winner in the family consisting of 5(five) members. It is further stated that the petitioner has no criminal antecedent and no lawsuit (both civil and criminal) is pending before any court except for the present FIR case. It is further stated that the accused got acquainted with one Shri Kapthang Mate, while he was doing the work of cutting wood as a daily

wage earner. On 27.02.2023, when the petitioner was heading towards Kangvai Bazaar, Bishnupur on his motorbike (Pulsar) for some personal reason, he met Shri Kapthang Mate, who requested him to deliver a small bag to one Shri. Thangboi Baite at Kangvai Bazaar, Bishnupur and without any suspicion and second thought, he took the bag. At around 4:00 pm of 27.02.2023, the petitioner was stopped by a team of NAB PS near Kangvai Bazaar, Bishnupur along NH-2 and frisking was conducted on his body and found a bag sent by Shri Kapthang Mate which contained soap cases suspected to be banned contraband items (heroin). Thereafter, the petitioner was taken to Phougakchao Ikhai Police Station for further investigation and subsequently, FIR No. 04(02) 2023 NAB-PS, U/s 21(c)/60(3)/25 of ND&PS Act was registered against him and he was taken into custody. After the statutory period for detention expired, the Special Public Prosecutor (in short, Spl. PP) filed an application under Section 36-A (4) of ND&PS Act being Cril. Misc. Case No. 37 of 2023 praying for further extension of detention period and for completion of investigation. The petitioner also filed an application being Cril. Misc. (B) case No. 79 of 2023 under Section 167(2) Cr.P.C. with a prayer to enlarge him on default bail. Both the applications were considered by the learned Special Judge, ND&PS, Bishnupur and by common order dated 23.10.2023, learned Special Court dismissed both the applications on the ground that since charge-sheet had already been submitted before the Court on 25.08.2023; and Court took the cognizance on 06.10.2023, having found reasonable grounds for proceeding under Section 21(c)/60(3)/25 of ND&PS Act. Accordingly, both the applications- (i) filed by the prosecution for extension of time and further detention of the petitioner, and (ii) by the accused to enlarge him on default bail, were dismissed. Thereafter, the petitioner approaches this Court for releasing him on bail in connection with FIR No. 04(02) 2023 NAB-PS.

**[6]** Mr. Serto T Kom, learned counsel for the petitioner has predicated his submission mainly on the ground of delay in trial and the same being violative of right to life as enshrined in Article 21 of the Constitution. He submits that an accused in a criminal case is entitled to speedy trial. In the present case, the petitioner was arrested on 27.02.2023; charge-sheet was submitted before the Court on 25.08.2023; cognizance was taken on 06.10.2023; till date, charge has not been framed for one reason or other; and trial is yet to be started. Learned counsel further emphasizes that the next date for charge hearing is fixed on 09.09.2026. It is submitted that for the last three & half years of his arrest, the petitioner is languishing in custody without any trial and nothing has moved since submission of charge-sheet on 25.08.2023; and taking of cognizance by the Court on 06.10.2023. Even after almost 3 years of taking cognizance, the trial is yet to be started; and charge is yet to be framed; and it is not certain as to when the charge will finally be framed.

**[7]** Mr. Serto T Kom, learned counsel for the petitioner refers to the decision of Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation** reported in **(2002) 10 SCC 51** where, the Hon'ble Supreme Court laid down the principle of releasing on bail during pendency of enquiry, investigation and trial. In that case, Hon'ble Supreme Court made 4(four) categories of case as- (A) deals with the normal offence, (B) with serious offence, (C) falls under Special Act & (D) deals with the economic offence. The offence under ND&PS Act was held to be fallen under the special Act and it was categorically held that the principle evolved in Section 436A of Cr.P.C. would be applied to Special Acts, in absence of any specific prohibition. It is further held that the rigor as provided under Section 37 of the ND&PS Act will not come in way in such case, where liberty of a person is affected. It was observed that more the rigor, the quicker the adjudication ought to be and in such types of

cases under category (C), i.e., Special Acts like ND&PS, it was observed that there would be very lesser number of witnesses in such cases; and hence, there will not be any justification for prolonged trial. It was further observed that there is a need to comply with the direction to expedite the process and also a stricter compliance of Section 309 of the Cr.P.C. Learned counsel for the petitioner has drawn the attention of this Court to the provision of Section 436A Cr.P.C. which provides that when a person is in custody for an offence under any law (no being offence which that has been specify as one of the punishment with death) has undergone detention for a period extending upto one half of the maximum period of imprisonment specified for that offence, he shall be released by the Court on PR bond with or without surety. Section 309 of Cr.P.C. stipulates that the trial has to be continued on day-to-day basis till all witnesses in attendance have been examined, unless court finds an adjournment is necessary, for reason to be recorded. Learned counsel has however clarified that in the case in hand, the accused under Section 21(c) of the ND&PS Act has not undergone half the maximum sentence of 20 years as provided but the principle of speedy justice as mandated in Article 21 of the Constitution can be applied, as the petitioner is in custody for more than 3 years without framing of charge and trial is yet to be started.

**[8]** Mr. Serto T Kom, learned counsel for the petitioner refers to the another judgment of Hon'ble Supreme Court in **Rabi Prakash vs. State of Odisha** reported in **2023 SCC Online SC 1109** at **para 4** which held that even in the case of commercial quantity of narcotics, prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the ND&PS Act. The person, who was involved in an offence of commercial quantity of 247 kgs. of Ganja was released on bail

after 3 and half years in custody. He also refers to another decision of **Dheeraj Kumar Shukla vs. State of Uttar Pradesh** reported in **2023 SCC Online SC 918**, where a person, who was involved with recovery of 92 kgs. of Ganja and in custody for 2 & half years was released on bail on the ground that trial is yet to commence, even though the charges have been framed. Learned counsel for the petitioner submits that the present case in hand is better placed than the fact in **Dheeraj Kumar Shukla (supra)**; in the present case, the charge has not been framed for the last 3 years. Learned counsel for the petitioner has also relied on another 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. Mr. Serto T Kom, learned counsel for the petitioner has pointed out that long incarceration is the reason of the Court for releasing an accused on bail in view of the interplay of the Article 21 of the Constitution and twin tests under Section 37 of the ND&PS Act. In that case, the bail granted by the High Court was rejected on the ground that the respondent has undergone only 1 year and 7 months and if found guilty, has to undergo a maximum punishment of 20 years and holding that 1 year and 7 months is not a long incarceration considering the maximum period of 20 years; and his previous criminal antecedents of involving in narcotic offences. It was observed in 'para 22' that the question concerning approach of constitutional Courts in bail matters under special statues, the question of right to life enshrined by Article 21, and prolonged incarceration and statutory restrictions intersect, is pending before larger bench; however, it was held that while considering bail on plea of long incarceration, the twin test of Section 37 of ND&PS Act is also to be satisfied for the time being. Learned counsel for the petitioner

also refers to a decision of Hon'ble Supreme Court in the case of **Rajadurai vs. The State of Tamil Nadu in SLP to Appeal (Crl.) No. 4729 of 2026 order dated 05.05.2026** where, in the case of ND&PS of intermediate quantity, a person who is in custody for more than 1 years was released on bail on the ground that only one witness has been examined.

**[9]** Mr. Serto T Kom, learned counsel for the petitioner refers to the decision of Hon'ble Supreme Court in the case of **Sundeep Kumar Bafna vs. State of Maharashtra** reported in **(2014) 16 SCC 623** to the proposition that bench of equal strength or lesser strength has to follow the decision of coordinate or larger bench.

**[10]** In conclusion, Mr. Serto T Kom, learned counsel for the petitioner submits that the petitioner is also suffering from serious ailment of internal bleeding due to piles and he has been earlier admitted in Regional Institute of Medical Sciences (RIMS), Imphal on the direction of this Court and further follow up treatment is required. If released on bail, his family will be able to take proper medical care of him and he is not getting adequate medical facilities in jail and last treatment was on the intervention of this Court in three orders dated 20.06.2026, 18.07.2026 & 01.08.2026. It is submitted that releasing the petitioner on bail will be in the interest of his deteriorating health condition. Learned counsel for the petitioner further submits that the petitioner is not involved in any other offences except the present case and he is implicated in the present case and is in custody without framing of charge for the last 3 years. He is entitled to be released on bail as per long incarceration and delay in trial. It is pointed out that the trial is not started, as charge has not been framed and witnesses are to be examined. Even if the petitioner has not undergone half the maximum punishment provided under Section 21(c) of the ND&PS Act (i.e. maximum punishment is 20 years), he will be entitled

to be released on bail due to long incarceration relying on the principle stated in the cases of **Balraj Singh @ Billa (supra), Dheeraj Kumar Shukla (supra), Rabi Prakash (supra) & Rajadurai (supra)** simply on the ground that he has no criminal antecedents and the second test of Section 37 of ND&PS Act that he will likely to commit the same offence if released on bail, does not satisfy and prayed that petitioner may be released on bail.

**[11]** Per contra, Mr. Y. Ashang, learned PP submits that the petitioner is involved in an offence under ND&PS Act involving commercial quantity. His complexity has been established by the prosecution in the course of investigation and on the statement of many individual witnesses and having found sufficient materials, charge-sheet has already been submitted and forensic report is also positive to the test of heroin. Considering the menace of drug abuse in Manipur, this Court has to consider other aspects, apart from long incarceration in custody. When there is an interplay of personal liberty, security and interest of the society, the former has to yield to the latter, as the security and welfare of the society is paramount. It is also stated that the petitioner is member of gang of syndicate, who habitually deal in the narcotic substances.

**[12]** Mr. Y. Ashang, learned PP has referred to the same judgment of **Balraj Singh @ Billa (supra)** as cited by Mr. Serto T Kom, learned counsel for the petitioner. In that judgement, it was specifically held that the period of 1 year and 7 months cannot be considered to be a long incarceration considering the 20 years prescribed for the maximum punishment under Section 21(c) of the ND&PS Act and it was stated that High Court committed error in exercising the discretion under Article 21 of the Constitution. Further, learned PP relies on 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**, 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 was held that since the petitioner was earlier involved in a narcotic offence of commercial quantity apart from the particular case, it was held that there was apprehension of committing the same offence if released on bail. On that basis, the bail was cancelled. As per learned PP, one of the reasons for non-framing of charge is due to the law and order situation in the State of Manipur and since petitioner belongs to a particular community, there is difficulty of producing before the Trial Court. There was frequent bandh and hartal which disturbed the proceeding of the Court and to produce the accused before the Trial Court; and the serious health condition of the petitioner made it inconvenient for the jail authority to produce the accused before the Court.

**[13]** This Court has considered the rival submissions made at the bar and case laws cited by the learned counsel for the parties.

**[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.

**[16]** The admitted facts in the present case are that:

(i) The petitioner was arrested on 27.02.2023.

(ii) On the same date of arrest, an FIR No. 04(02) 2023 NAB-PS, under Sections 21(c)/60(3)/25 of ND&PS Act was registered against him for recovery of 487 grams of Heroin power no. 4 by the NAB PS.

(iii) Admittedly, the quantity of the contraband arrested is commercial.

(iv) Charge-sheet was submitted before the Special Court ND&PS, Bishnupur on 25.08.2023.

(v) Cognizance was taken by the Trial Court on 06.10.2023.

(vi) Till date, charge has not been framed for almost 3 years after submission of charge-sheet.

(vii) The next date for charge hearing is fixed on 09.09.2026 as per the print out of the status report of the Trial Court submitted during the course of hearing.

(viii) The reason cited by the prosecution for non-framing of charge is law & order problem in the State of Manipur and difficulties of producing the accused due to such law and order problem and his serious health condition.

(ix) The petitioner has serious health condition of internal bleeding due to hemorrhoids which requires follow up treatment and was treated on the specific direction of this Court in RIMS, Imphal and subsequently, discharged with a direction for follow up.

(x) It is the case of the petitioner that the medical facility in jail is not sufficient for his follow up treatment and he has to be referred to high-end hospital for his treatment from time to time and the same is only possible with the intervention of this Court.

(xi) The petitioner is first time offender under ND&PS Act or any other panel provision, as per the record available, before this Court.

**[17]** From the above narration of admitted facts, it is cleared that the petitioner is in custody for the past 3 and half years, since his arrest on 27.02.2023. Charge-sheet was submitted on 25.08.2023 and cognizance was taken on 06.10.2023; however, charge is yet to be framed. On perusal of the order sheets from the Trial Court website, it is seen the charge hearings were adjourned due to law and order problem of the State or non-production of the accused. It is a case where trial is yet to be started and not a case of slow trial. The prosecution also does not deny the averment of the petitioner/accused that he is first time offender and he is not involved in any other criminal case except for the present FIR. Nothing is stated in the affidavit-in-objection filed by the State respondent about the arrest of the other persons, such as, Shri Kapthang Mate and Shri Thangboi Baite. The affidavit of the State reveals that Shri Kapthang Mate is the main drug supplier and he requested the petitioner/accused to carry and handover the contraband drug on that day. Since the charge-sheet is not on the record of this Court and nothing is stated by the prosecution in the affidavit of the State respondent, this Court is not sure whether, these two persons namely, Shri Kapthang Mate and Shri Thangboi Baite are also made an accused in the charge-sheet submitted by the prosecution.

**[18]** This Court first considered the rigor of the twin tests of Section 37 of the ND&PS Act- (i) the petitioner is not likely to be guilty of such offence, and (ii) he is not likely to commit any offences while on bail. There is no material on record to show that the petitioner is a habitual offender and as per the prosecution case, he has been requested by one Shri Kapthang Mate to carry the packet and he was arrested with the same

which turns out to be heroin power of commercial quantity. The materials on record do not disclose that the petitioner has a preconceived culpable mental state and hence, there is no sufficient materials, at this stage, for the Court to presume the culpable state of mind of the accused as mandated by Section 35 of the ND&PS Act. In absence of sufficient materials for forming an opinion for presumption of culpable mind as provided under Section 35 of the Act, it will not be proper to adopt automatic presumption. It is settled principle of law that for making a statutory presumption of mens rea in a special statute, there should be sufficient materials as envisaged in the provision before the Court to presume culpable mind of mens rea.

**[19]** In the case of **Noor Aga v. State of Punjab: (2008) 16 SCC 417**, Hon'ble Supreme Court observed that before resorting to statutory presumption under Section 35 of ND&PD Act, the prosecution has to first satisfy the circumstances mentioned in the provisions fully and only then the presumption will operate against the accused and burden of proving innocence shifts on him. Relevant paras are reproduced below:

> *"**58.** Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the*

*accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.*

***59.*** *With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt."*

**[20]** In the case of **Gorakh Nath Prasad v. State of Bihar: (2018) 2 SCC 305**, Hon'ble Supreme Court held that only after prosecution establishes the requirement of prima facie case, only then the reverse burden will shift on the accused. Para 5 is reproduced for ready reference as below:

*"**5.** The NDPS Act provides for a reverse burden of proof upon the accused, contrary to the normal rule of criminal jurisprudence for presumption of innocence unless proved guilty. This shall not dispense with the requirement of the prosecution to having first establish a prima facie case, only whereafter the burden will shift to the accused. The mere registration of a case under the Act will not ipso facto shift the burden on to the accused from the very inception. Compliance with statutory requirements and procedures shall have to be strict and the scrutiny stringent. If there is*

*any iota of doubt the benefit shall have to be given to the accused."*

**[21]** In the circumstances, the first test of Section 37 of the ND&PS Act is not established to its full extent; and regarding the second test, since this is the first offence of the petitioner under any panel law including ND&PS, it will not be fair on the part of this Court to presume that the petitioner is likely to commit any offences while on bail in connection with the present case, that too, in absence of any substantive and cogent material facts. In other words, the present case can withstand the rigor of twin test as mandated by Section 37 of the ND&PS Act.

**[22]** Regarding the question of delay in trial, this Court is of the view that from the sequences of admitted facts, the petitioner is in custody for more than 3 and half years and without framing of charge for the last almost 3 years after taking cognizance on 06.10.2023. The reasons cited by the prosecution for not enabling to frame charge is the prevailing situation in the State of Manipur and the serious health condition of the petitioner.

**[23]** This Court is aware of the fact that in the early part of 2023, when the violence erupted in May, 2023, there was curfew and disturbance for some period; however, it may be pointed out that the working and function of the Court is not substantially affected except for initial few days as the High Court and District Courts have a robust of Video Conferencing (VC) facilities and High Court of Manipur has framed VC Rules for conducting trial through the VC platform. Rule 3(i) of "*High Court of Manipur (Video Conferencing for Courts) Rules, 2020"* enables the courts to use, at all stages of judicial proceedings, video conferencing facility. Further, Rule 4 of "*The District Courts of Manipur (Use of Electronic Communication and Audio-Video Electronic Means) Rules, 2025"*, specially

sub rule 4.3 empowers production of the accused in custody before the court through video conferencing, except for first appearance; and sub rule 4.4 allows the charge framing proceedings through video conferencing. Nothing is on record that VC facility in the Special Court, Bishnupur (*which is in fact, the Court of District & Sessions Judge, Bishnupur*) was not operational during this period. This Court does not see any reason why the charge hearing was not conducted through VC mode in terms of the applicable rules framed by the High Court. In the circumstances, this Court does not find any substances in the submissions of the learned PP that due to law & order problem and the health condition of the petitioner, he could not be produced before the Court; and hence, charge could not be framed till date. It is admitted fact that the accused/petitioner is in custody as an under-trial prisoner for a period more than three and half years; and the actual trial is yet to be commenced. It is a fact that the trial will commence upon framing of charge.

**[24]** This Court is of the view that the principle of **Satender Kumar Antil (supra)** will not be strictly applicable to the facts of the present case to the effect that the provision of Section 436A of Cr.P.C. (now, Section 479 of BNSS, 2023) of an under trial prisoner who has undergone half the maximum punishment prescribed for the offence, does not satisfy; as the petitioner is in custody for the period of three & half years and maximum punishment under Section 21(c) of the ND&PS Act is 20 years imprisonment. However, the principle in **Balraj Singh @ Billa (supra)** case which mandates the satisfaction of the twin test of Section 37 while considering the bail application of an accused under long incarceration, will be applicable read with the principle established **in Dheeraj Kumar Shukla (supra)** case and **Rabi Prakash (supra)** case. The petitioner being first offender, this Court is of the view that it will not

be proper to presume that he would be guilty of the offence and he will commit similar offence while on bail. Long incarceration for more than 3 and half years without any trial would amount to '*preventive detention in disguise*'. In the circumstances, this Court is of the view that the petitioner is entitled to be released on bail considering his past antecedents, long incarceration and health condition which requires frequent follow up treatment in higher hospital and the same will be hampered while in custody, as the medical facilities provided in the jail is not sufficient to deal with his conditions.

**[25]** In view of the observations made above and principles of law in this regard of '*long incarceration vis-à-vis twin test under Section 37 of ND&PS Act, 1985*' as discussed supra, the petitioner is released on bail on furnishing a PR bond of Rs.1,00,000/- (Rupees one lakh) only with one surety (gazetted officer) of like amount to the satisfaction of the learned Special Judge, ND&PS, Bishnupur subject to 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 either physically or through VC (appearance through VC is permitted considering the community to which the petitioner belongs to and place of trial).

(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, Bishnupur.

(v) The passport, if any, of the petitioner shall be surrendered before the Special Judge, ND&PS, Bishnupur.

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

**[26]** With these observations, Bail Appln. No. 33 of 2023 is allowed and disposed of. MC (Bail Appln.) No. 10 of 2025 is also disposed of, accordingly.

**[27]** Before parting, 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 while considering the charge against the accused and in the subsequent trial, if any. 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.

**[28]** Registry is directed to send a copy of this order to the learned Special Judge, ND&PS, Bishnupur for information.

**JUDGE**

***FR/NFR***

*Thoiba*

Oinam Thoiba Meitei

Digitally signed by Oinam Thoiba Meitei
Date: 2026.09.08 16:11:50 +05'30'