

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.21 of 2026**

Smt. Ritu Parna Sen,
D/O: Sri Manash Sen,
W/O: Sri Abhijit Nama,
R/O: Siddhi Ashram, Agartala,
P.S.: Amtali, P.O.: Amtali,
West Tripura

.... Applicant

On behalf of

Sri Abhijit Nama,
S/O: Sri Ajit Nama,
R/O: Siddhi Ashram, Agartala,
P.S.: Amtali, P.O.: Amtali,
West Tripura.

.... Accused Person

Versus

The State of Tripura

Represented by the Principal Secretary to the
Government of Tripura.

.....Respondent.

For Petitioner(s)	:	Mr. Debajit Biswas, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing	:	24.02.2026
Date of delivery of Judgment and Order	:	26.02.2026
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This bail application under Section 439 of Cr.P.C. read with Section 37 of NDPS Act is filed on behalf of the accused-in-custody namely Sri Abhijit Nama for releasing him on bail in connection with Agartala GRPS Case No.2021 GRP 008 registered under Sections 21(C)/29 of NDPS Act, 1985 corresponding to Special (NDPS)-97 of 2024 .

2. Heard Learned Counsel, Mr. Debajit Biswas appearing on behalf of the applicant and also heard Learned P.P., Mr. Raju Datta appearing on behalf of the State-respondent.

3. At the time of hearing, Learned Counsel appearing for the accused-in-custody drawn the attention of the Court that this present accused is lodging in jail for more than 2 (two) months and till today the trial of this case could not be completed and as such Learned Counsel urged for releasing the accused on bail in any condition.

4. In support of his contention Learned Counsel for the applicant referred few citations of the Hon'ble Supreme Court of India wherein on the ground of delay bail was granted to the accused. In support of his contention reliance was placed in **Special Leave to Appeal (Crl.) No.4648/2024** wherein Hon'ble the Supreme Court by the said order released the accused on bail. The order runs as follows:-

"1. The petitioner is in custody since last more than two years in connection with FIR No. 305 of 2022 registered at Police Station Chandan Nagar, District Indore (M.P.) for the offence punishable under Section 8 read with Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act" for brevity).

2. Previously, when the petitioner approached this Court, vide order dated 15.5.2023, his bail petition was not entertained. However, liberty was granted to approach the trial Court for bail, after the examination of the panch witnesses.

3. Learned counsel for the petitioner submits that the panch witnesses viz., PW3 (Sunder Pal) and PW4 (Vinod Rathore) have been examined and they have not supported the case of prosecution. On being applied afresh, the trial Court rejected his bail application only on the pretext that the Investigation Officer may also be a panch witness who has yet to examine. The High Court also rejected the bail application affirming those findings by the impugned order.

4. Learned counsel appearing on behalf of the respondent-State submits that in the facts of this case, the Investigation Officer may be treated as panch witness; therefore, the High Court has rightly rejected the bail application.

5. Heard learned counsel for the parties. We have considered the facts and all attending circumstances including the period of custody and also the previous orders where this Court while rejecting the bail was of the view that after the panch witness depose, fresh recourse may be taken.

6. Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

7. In view of the above, we are inclined to allow this petition and direct to enlarge the petitioner on bail on furnishing the suitable bail bonds and sureties and on such other terms and conditions as may be deemed fit by the trial Court.

8. It is needless to observe that the petitioner shall regularly attend the trial until exempted by the orders of the Court. Violation, if any, may give a cause to take recourse as permissible and the trial Court would be at liberty to do the needful.

9. Accordingly, and in view of the foregoing, this Special Leave Petition stands allowed. Pending applications(s), if any, shall stand disposed of."

Reference was further placed upon another order of the Hon'ble Supreme Court of India in **Criminal Appeal No(s).245/2020** arising out of **SLP (Crl.) No.8823/2019** wherein Hon'ble the Apex Court by order dated 07.02.2020 granted bail to the accused. The operative portion of the order runs as follows:-

"5. The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

6. Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs. 2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.

7. With the aforesaid directions, the appeal stands allowed."

Further reference was placed upon another case of in the ***Kulwinder Vs. State of Punjab*** reported in **2025 SCC OnLine P&H 94** dated 10.01.2025 wherein in Para Nos.8 and 9, the said High Court observed as under:-

"8. Reverting to the facts of the case in hand; as per the custody certificate dated 08.01.2025 filed by the learned State counsel in Court today, the petitioner has suffered incarceration for more than 02 years and 08 months. A perusal of the zimni orders dated 27.02.2023, 10.04.2023, 05.02.2024, 02.08.2024, 03.09.2024, 16.10.2024, 19.11.2024 & 27.11.2024 indicates that the trial is procrastinating, conclusion thereof is not visible in near future and the delay in culmination thereof cannot be attributed to the petitioner. In fact, a perusal of the zimni orders passed by the trial Court indicate that repeatedly summons as also bailable warrants have been issued against the Police officials who have not turned up to have their testimonies recorded as prosecution witnesses. The long inordinate custody of the petitioner as an undertrial, without him being responsible for procrastination of the trial, entitles him to grant of regular bail in the factual matrix of the case in hand. Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

9. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:—

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.

(iii) The petitioner shall not absent himself on any date before the trial.

(iv) The petitioner shall not commit any offence while on bail.

(v) The petitioner shall deposit his passport, if any, with the trial Court.

(vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.

(vii) The petitioner shall not in any manner try to delay the trial.”

Further reference was placed upon another judgment of the Hon’ble Supreme Court of India in ***Nitish Adhikary alias Bapan Versus State of West Bengal*** reported in ***2022 SCC OnLine SC 2068*** wherein in Para Nos.3 and 4, Hon’ble the Apex Court observed as under:-

“3. During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

4. Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.”

Learned Counsel also referred citation of the Hon’ble Supreme Court of India in ***Mohd. Muslim Alias Hussain Vs. State (NCT of Delhi)*** reported in ***(2023) 18 Supreme Court Cases 166*** wherein in Para No.22, Hon’ble the Apex Court observed as under:-

“22. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused’s guilt may be proved. The judgments of this Court have, therefore, emphasised that the

satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Mallik* : (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil* supra). Having regard to these factors the Court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

Further reference was placed upon another judgment of the Hon’ble Supreme Court of India in **Special Leave to Appeal (Crl.) No(s). 8656/2023** dated 14.09.2023 wherein in Para No.2, Hon’ble the Apex Court observed as under:-

“2. Learned counsel for the petitioners submitted that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future.”

Referring all those cases, Learned Counsel submitted that considering the period of incarceration of the accused-in-custody he may be released on bail in any condition.

5. On the other hand, Learned P.P., Mr. R. Datta appearing on behalf of the State-respondent submitted that in this case charge was framed under Section 21(C)/29 of NDPS Act and to substantiate the charge prosecution upto this stage has adduced in total 16 numbers of witnesses out of 19 numbers of witnesses now the case is pending for recording evidence of the informant and the I.O. So in such a situation if the accused is released on bail then there is every chance that the accused may abscond and the trial would be vitiated and it was further submitted that there is evidence against the accused-in-custody

for his involvement with the alleged offence. So, Learned P.P. strongly opposed this bail application.

6. It was further submitted by Learned P.P. that earlier in two occasions bail application was moved before this Court by the accused but in both the occasions this bail application was rejected.

7. In addition to that Learned P.P. submitted that this present accused is also involved in some more other cases which would be evident from the chargesheet submitted by I.O. so at this stage, Learned P.P. opposed the bail application and relied upon one citation of the Hon'ble Supreme Court of India in **Union of India Vs. Vigin K. Varghese** reported in **(2025) SCC OnLine SC 2440** arising out of Special Leave Petition (Crl.) No(s).7768 of 2025 wherein in Para Nos.11 and 17, Hon'ble the Apex Court observed as under:-

"11.The appellant further submits that incriminating materials such as call data records, seizure memos, and statements recorded under Section 67 of the NDPS Act clearly implicate the respondent and reveal his active participation in facilitating import and concealment of narcotic consignments. The High Court, according to the appellant, misapplied considerations such as delay of trial and health, which cannot override the statutory embargo. It is contended that offences of this magnitude undermine public interest and that a liberal approach in granting bail defeats the object of the NDPS Act. The Union accordingly prays that the Impugned orders be set aside and the respondent be directed to surrender.

17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must

necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent Involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance."

Referring the same, Learned P.P. submitted that since the trial is going to be completed shortly and there is evidence against the accused. So, if at this stage the accused is released on bail then there is every possibility of absconsion of the accused.

8. I have heard both the sides at length. Initially at the time of hearing the bail application on 05.02.2026 the record was send back to Learned Trial with a direction to complete the process of recording evidence of rest witnesses. By this time, witnesses turned up and the Learned Trial Court recorded the evidences. Now, the case is pending for recording evidence of the informant and the I.O. of this case. From the record of the Learned Trial Court further it appears that the informant due to his engagement to some other preoccupied works could not appear before the Court on that date and the I.O. is on maternity leave so she could not appear. I think these grounds are not at all satisfactory. The accused is incarceration in jail. So the plea of the informant that for his preoccupation he could not appear before the Court is not a suitable ground to remain absent in the Court.

Situated thus, Learned Trial Court may either send a communication to the authority of the informant to direct/permit him to appear before the Court and in case of failure may pass appropriate order in accordance with law for his ensuring appearance.

9. Regarding I.O. since she is on maternity leave so there is no certainty when she would resume her duties. In that case another person who is conversant with the hand writing of the I.O. may appear. In that case a letter may be communicated to the S.P. of the district by the Learned Trial Court to ensure the presence of another person who is conversant with the hand writing of the I.O. or direction may be given to the I.O. to appear before the Court if by this time she is in a position to appear to depose as witness.

10. I have also perused the citations referred by Learned Counsel for the accused-in-custody. In all the cases on the ground of delay bail was granted to the accused for non recording of evidence or in some cases for non recording of evidence of prosecution of witnesses or without any effective reasons for incarceration of the accused-in-custody. Here in the case at hand the trial is almost complete. Now the case is pending for recording evidence of I.O and the informant. So, considering the materials on record at this stage I find no scope to release the accused on bail on the grounds of long incarceration. Furthermore, at the time of hearing, Learned Counsel for the accused-in-custody also failed to satisfy the Court regarding non application of Section 37 of NDPS Act against the accused-in-custody in this case.

Thus, the bail application is accordingly rejected.

The accused is to remain in J/C as before.

However, Learned Trial Court shall make all endeavour to dispose of the case record within a period of 4 (four) months from the date of receipt of the copy of this order.

Send down the record to the Learned Trial Court along with a copy of this order also supply a copy to the I.O. through Learned P.P. for information.

With this observation, this present bail application stands disposed of.

JUDGE

Amrita

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by AMRITA DEB
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