



HIGH COURT OF TRIPURA
A G A R T A L A

B.A. No.103 of 2026

Smt. Jaya Rani Debbarma
wife of Sri Bishu Kumar Tripura, resident
of Rampadapara (Larmai), P.S. Melaghar,
District- Sepahijala, PIN-799103

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

On behalf of:
Shri Bishu Kumar Tripura,
son Sri Malindra Kumar Tripura, resident
of Rampadapara (Larmai), P.S. Melaghar,
District- Sepahijala, Tripura, PIN-799103

..... **Accused person(s)**

- Versus -

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

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

For the petitioner(s)	:	Mr. S. Sharma, Adv.				
For the respondent(s)	:	Mr. R. Datta, P.P.				
Date of hearing	:	21.05.2026				
Date of delivery of order	:	03.06.2026				
Whether fit for reporting	:	<table border="1"><thead><tr><th>Yes</th><th>No</th></tr></thead><tbody><tr><td>✓</td><td></td></tr></tbody></table>	Yes	No	✓	
Yes	No					
✓						

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

ORDER

This application praying for bail of the accused, Bishu Kumar Tripura, is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, (in short, BNSS) 2023 in connection with Melaghar P.S. Case No.2025/MLG/002, subsequently renumbered as Special (NDPS) 42 of 2025 pending in the court of the learned Special Judge, Sonamura, Sepahijala, Tripura.

[2] On 10.01.2025, an FIR was lodged by S.I. Uttam Paul of Melaghar P.S. to the effect that a written information was received by them from sub-zonal Office Guwahati of ED, Ministry of Finance that while they had conducted a search in the house of the accused in connection with another case, they found some suspected psychotropic substances in the said residence of the accused. Therefore, they requested Melaghar P.S. authority to assist them in search and seizure of said suspected psychotropic substances. Thereafter, as authorized by SDPO, Sonamura, the informant went there and recovered one number of blue colour plastic drum and two numbers of while colour sacks containing Ganja of total weight 66 Kg. The father of the accused informed them that the accused had stored all these contraband items for selling it in the market. Accordingly, FIR was lodged against the present accused petitioner. He could not be apprehended at that time. Subsequently, he was arrested on 13.05.2025.

[3] On two occasions, earlier he filed applications for bail in this Court and a coordinate Bench of this Court rejected the same on 28.08.2025 in B.A. No.70 of 2025 and on 20.03.2026 in B.A. No.42 of 2026. Now again, the present bail application has been filed seeking this bail.

[4] Mr. S. Sharma, learned counsel appearing for the accused petitioner submits that the accused is in custody for 373 days and trial has not progressed further. Out of total 22 charge-sheet cited witnesses, only 9[nine] witnesses have been examined and according to the learned counsel, the fundamental right of the accused as enshrined in Article 21 of the Constitution for such delayed trial is being infringed and therefore,

he prays for bail. He also submits that the items were recovered from a land which was a forest land.

[5] Learned counsel also refers to the statement of PW-8, Sri Narayan Ch. Shil, Tehshildar of Durlabnarayan Tehshil, who deposed before the learned trial Court that as per order of SDM, Sonamura, he had verified the location of the house of the accused, Bishu Kumar Tripura and found that the same was recorded in Khatian No.01/21 under plot No.892/p, Mouja- Toxapara area of 0.19 acres of viti class of land and the said Khatian stood in the name of the Government of Tripura. Thereafter, he submitted the report. He also stated that he heard that the said house was occupied by the accused, Bishu Kumar Tripura. Learned counsel, therefore, submits that it is a subsequent event and such evidence shows that the land was a Government Khash land and therefore, according to learned counsel, the alleged ganja was recovered from an abandoned land and not from the house of the accused.

[6] Mr. Sharma, learned counsel relies on a decision of the Hon'ble Supreme Court in the case of **Santosh Pawar vs. State of Chattisgarh & Anr., Criminal Appeal No.4833 of 2025** [**@ SLP (CRL.) No.12368/2025**], decided on 14.11.2025, wherein it was observed that the appellant in that case was only a cleaner of the vehicle. He was under incarceration for about 19 months and the trial was just started. In view of the matter, the rigour of Section 37 of the NDPS Act would not be a bar for considering the case of the appellant for bail as early completion of the trial, was not happening in that case. There were no criminal antecedents of the accused and bail was ultimately granted.

[7] Mr. Sharma, learned counsel further relies on a recent decision of the Hon'ble Supreme Court in the case of **Syed Iftikhar Andrabi vs. National Investigating Agency, Jammy, 2026 INSC 503**, which will be discussed in later paragraphs.

[8] Mr. R. Datta, learned P.P appearing for the State opposes the prayer for bail and submits that incarceration for a considerable period cannot be a sole ground to release the accused on bail unless rigour of Section 37 of the NDPS Act are mitigated. In this regard, he relies on a decision of 3 Judge Bench of Hon'ble Supreme Court in the case of **Narcotics Control Bureau vs. Mohit Agarwal, 2022 18 SCC 374** wherein at paragraph No.19, it is observed by the Hon'ble Court that the length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

[9] Mr. Datta, learned P.P further relies on a recent decision of the Hon'ble Supreme Court in the case of **State of Punjab vs. Sukhwinder Singh @ Gora, 2026 SCC OnLine SC 671**, wherein at paragraph No.10, the followings were observed:

10. The impugned order, on its own showing, does not record the satisfaction mandated under Section 37(1)(b)(ii) of the NDPS Act. Far from recording such satisfaction, the High Court has gone on to observe that 'the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial.' Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone. The right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious Constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the 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. The constitutional right under Article 21 and the special provision of law under Section 37, NDPS Act are to be read harmoniously and not

placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has in this Court's view, committed an error.

[10] The Court has considered the submissions of both sides and has also gone through the relevant records.

[11] Mr. Sharma, learned counsel in support of his application for bail, heavily relies on the said decision of Hon'ble Supreme Court in case of **Syed Iftikhar Andrabi** (supra). The accused person in said case was charged for the offences both under the provisions of Unlawful Activities (Prevention) Act, 1967 (for short-UAPA Act) and NDPS Act. He was suffering from incarceration of about 5 years and 9 months. Charge-sheet was submitted in the month of December, 2020 and trial was moving at a very slow pace. There were more than 350 witnesses still to be examined and only 38 witnesses were examined so far. One of the issues cropped up in said case is about the intersection between stringent conditions of bail in special legislations like UAPA Act or NDPS Act and the Art.21 of the Constitution which now confirms that right of speedy trial is a fundamental right.

[12] While dealing with the issues, the Hon'ble Apex Court refers to a decision of a three Judge Bench of the Court in case of **Union of India v. K.A. Najeed**, (2021) 3 SCC 713. In **K.A. Najeed** (supra), and as observed in **Syed Iftikhar Andrabi** (supra), it was held that such statutory restrictions would not come in the way of a constitutional court from granting bail to an accused if it finds that the right of the accused under Art.21 has been infringed. The relevant discussions made in **K.A. Najeed** (supra), are also reproduced hereunder:

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.”

[13] Subsequent thereto, taking note of **K.A. Najeed** (supra), Hon’ble Supreme Court in **Sk. Javed Iqbal v. State of U.P., (2024) 8 SCC 293**, held thus:

“42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, *K.A. Najeed* [*Union of India v. K.A. Najeed*, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us.”

In this case, the accused appellant was in custody for more than 09 years and the charge-sheet against him was submitted under sections 489-B and 489-C of Indian Penal Code and under section 16 of UAP Act. The Apex Court ultimately granted bail to the said accused with above said observations.

[14] However, the decision of **K.A. Najeed** (supra) has further been explained in above said **Syed Iftikhar Andrabi** (supra) in paragraph

No.27.11 observing that holding in **Najeeb** was never that mere passage of time automatically entitles the accused to bail. Instead, the larger Bench recognized that where incarceration becomes unduly prolonged and the trial is unlikely to conclude within a reasonable time, the continued application of Section 43-D(5) becomes constitutionally suspect given the mandate of Article 21 and in that sense **Najeeb** articulated a constitutional limitation on the operation of the statutory embargo. It has also been further observed in paragraph no.30 that no reading of **Najeeb** suggests that mere passage of time, divorced from all surrounding circumstances, mechanically entitled an accused to release. The Apex Court further observes that the Court in **Najeeb** was concerned with the manner in which Section 43-D(5) was, in practice, being deployed as an almost conclusive basis for denial of bail notwithstanding extraordinary delay in trial and prolonged incarceration. It is precisely for that reason that the Court observed that the 'rigours' of Section 43-D(5) would 'melt down' where there is no likelihood of the trial being completed within a reasonable time and where the period of incarceration undergone has already exceeded a substantial part of the prescribed sentence.

[15] At paragraph no.31 of **Syed Iftikhar Andrabi** (supra), the Apex Court further explains that in **K.A. Najeeb** (supra), the Bench was clear and unequivocal in holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge the accused on bail.

[16] In **Syed Iftikhar Andrabi** (supra), the Hon'ble two Judge Bench of the Apex Court distinguished with other two decisions of coordinate

Benches in case of **Gulfisha Fatima vs. State (Govt. of NCT of Delhi)**, 2026 SCC Online SC 10 and in case of **Gurwinder Singh vs. State of Punjab**, (2024) 5 SCC 403. Recently, in **Tasleem Ahmed vs. State Government of NCT of Delhi**, [Cri. Appeal No..... of 2026 @ SLP (CRL) No.2867 of 2026 decided on 22.5.2026], another Bench of the Hon'ble Supreme Court of equal strength taking note of the views taken in **Syed Iftikhar Andrabi** (supra) regarding the earlier decision of **Gulfisha Fatima** (supra), has referred the matter to the larger Bench to decide as to how Article 21 is to be applied in a statutory field where Parliament has consciously imposed restrictions on bail in respect of offences alleged to affect the security of the State and the stability of civic life, and to settle the correct approach to bail under special statutes where Art.21, prolonged incarceration and statutory restrictions intersect. The decision is yet to be received.

[17] Very recently, Hon'ble the Supreme Court in the case of **State of Punjab vs. Barlaj Singh @ Billa**, in Criminal Appeal No..... of 2026 @ Special Leave Petition (Crl.) No.896 of 2026, decided on 02.06.2026 has observed the followings:

22. However, we note that recently this Court in **Tasleem Ahmed v. State Govt. of NCT of Delhi**, Crl.A.@ SLP(Crl.) No.2867 of 2026 has referred the question concerning the approach of constitutional Courts in bail matters under special statutes, where "Article 21, prolonged incarceration and statutory restrictions intersect". In view of the said reference, we do not wish to deliberate on this issue further, save and except that in our view paramount consideration is nothing but interest of justice for all. Should there be any conflict between the sovereignty of country and personal liberty, undoubtedly, the former shall prevail, particularly, when a war is waged against the nation, be it in the form of supply of drugs, which vitally affects the national economy and health of the people.

[18] Now, so far the present case is concerned, the accused person is in judicial custody from 14.05.2025. Charges have been framed in this case against the accused person under sections 20(b)(ii)(C) and 25

of NDPS Act. Maximum prescribed punishment under section 20(b)(ii)(C) of NDPS Act is twenty years of imprisonment. Meanwhile, out of total 21 cited witnesses, 09 witnesses are already examined. Therefore, it cannot be said that the accused person has suffered substantial part of the prescribed sentence or that the trial will continue for uncertain period. Therefore, it is not a fit case to extend the benefit of bail by applying the principle laid down in **Syed Iftikhar Andrabi** (supra) as relied on by learned counsel of the petitioner.

Considering thus, the bail prayer is rejected.

Learned Special Judge is however directed to take endeavour to dispose of the case at the earliest.

Reconsign the trial Court records with a copy of this order immediately.

Interim application(s), if any stands disposed of.

JUDGE

SUJAY GHOSH Digitally signed by SUJAY GHOSH
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