GAHC010011842026

2026:GAU-AS:9428

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./88/2026

SATMINTHANG KHONGSAI AND ANR
SON OF LETHANG KHONGSAI, RESIDENT OF BEREA, P.O. P.S. CHURACHANDPUR, CHURACHANDPUR, MANIPUR-795128.

2: DAVIN JAMTINLAL HAOKIP
SON OF SOLUNMANG HAOKIP
RESIDENT OF NEW MOREAH
WARD NO. 9
TENGNOUPAL SUB DIVISION
CHANDEL
MANIPUR- 795131

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C BISWAS, MR. MEHUL SHAH,MS. J GHOSH,MS. U NANDA,MS. S. CHANDA,MS P HALDER

Advocate for the Respondent : SC, NCB,

Linked Case : Bail Appln./3617/2025

SATMINTHANG KHONGSAI AND ANR
SON OF LETHANG KHONGSAI
RESIDENT OF BEREA
P.O. AND P.S. - CHURACHANDPUR

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VERSUS

THE UNION OF INDIA
REPRESENTED BY STANDING COUNSEL
NCB

Advocate for : MR. S C BISWAS
Advocate for : SC
NCB appearing for THE UNION OF INDIA

-BEFORE-
HON'BLE MR. JUSTICE PRANJAL DAS
ORDER

26.06.2026

Heard Mr. S.C. Biswas, learned counsel for the petitioner assisted by Ms. S. Chanda. Also heard Mr. R.K.Dev. Choudhury, learned Dy. SGI and Standing Counsel for the NCB assisted by Ms. L. Gogoi.

2. The instant criminal petition and the bail application are being disposed of together due to commonality of issues involved therein.

3. The criminal petition has been filed invoking section 528 BNSS by the two petitioners, namely, **Satminthang Khongsai and David Jamtinlal Haokip** seeking interference with order dated 16.10.2025 passed by the learned Special Judge, Cachar, Silchar, in

NCB Crime Case No. 5/2025, whereby, invoking the provisions of Section 36A(4) of the NDPS Act -the statutory period was extended by another 6(six) months (180) days.

4. By the bail application filed under 483 BNSS, the accused petitioners are seeking regular bail in connection with the same case i.e. NCB Case No.5/2025.

5. The facts in brief are that on 07.04.2025, the NCB Guwahati Zonal Unit seized 20.530 kgs of methamphetamine tablets from a Thar/vehicle bearing No.AS-01-GB-2498 at Lailapur Police Check Post, Cachar. The said contraband is stated to fall in the bracket of commercial quantity.

6. Accordingly, the FIR was lodged. The contraband and other materials seized, the accused persons apprehended and the case was registered under Section 22(C)/29 NDPS Act.

7. The petitioner contends that investigation is still continuing despite the extension of the statutory period. The primary contention of the petitioners in the criminal petition is that the extension of the statutory period was made without the report of the public prosecutor, as required under the statutory provision and the case laws in this regard. It is submitted that as the extension of the statutory period is bad in law and therefore, the same may be interfered with and the petitioners may also be granted bail at this stage.

8. In fact, it is contended and submitted on behalf of the petitioners that due to the infirmity in the extension order, the

petitioners have become entitled to default bail.

9. The NCB is represented by the learned Senior Counsel Mr. R. K. Dev. Choudhury, the learned Deputy SGI, who contends that the nature of the allegations and the alleged offences are very serious and that due to bonafide reasons, the investigation could not be completed within the initial statutory period of 180 days and therefore, prayer for extension was made and the learned Trial Court, upon being satisfied about the said reasons was pleased to extend the same.

10. I have perused the materials and considered the rival submissions.

11. The provisions of Section 36A of the NDPS Act may be reproduced herein below:-

> "***[36-A. Offences triable by Special Courts.***—*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973*
>
> *(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;"*
>
> *(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974)[3], such Magistrate may authorise the detention of such person in such*

custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him; that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974)[4], in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974)[5], be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure, 1973 (2 of 1974)[6],

and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under Section 36.

(4) In respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27-A or for offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974)[7] thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)[8], the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.]"

12. In the case of ***Sanjay Kumar Kedia v. Narcotics Control Bureau, (2009) 17 SCC 631***, the Hon'ble Apex Court explained the aforesaid provisions of Section 36A (4) of the NDPS Act and laid down the following essential conditions for its compliance. The para-12 is hereby reproduced herein below:-

"***12.*** *The maximum period of 90 days fixed under Section 167(2) of the Code has been increased to 180 days for several categories of offences*

under the Act but the proviso authorises a yet further period of detention which may in total go up to one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

(1) a report of the Public Prosecutor,

(2) which indicates the progress of the investigation, and

(3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and

(4) after notice to the accused."

13. In the case of ***Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602,** the Hon'ble Apex Court clearly held in para-38, in the context of similar extension provision in Clause(bb) of Section 20(4) of TADA, that – *the report of the Investigating Officer is not a substitute for the report of the Public Prosecutor.*

14. In the case of **Ravindran vs. Directorate of evenue Intelligence, (2021) 2 SCC 485,** the Hon'ble Apex Court held that if the application for extension is made before the expiry of the period and the application for default bail is also filed both can be taken up and disposed of together and that such disposal can be made even after the expiry of the period. The relevant paragraph 20.1 may be reproduced herein below:-

"**20.1.** The observations made in *Hitendra Vishnu Thakur* [*Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] and *Sanjay Dutt* [*Sanjay Dutt* v. *State*, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in

> situations where the Public Prosecutor files a report seeking extension of time *prior* to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time."
>
> [emphasis added]

15. In the case of ***Jayanandan Prasad v. State of Assam, 2012 SCC OnLineGau 8***, a co-ordinate Bench of this Court noticed the aforesaid principles laid down by the Hon'ble Apex Court and applied the same in the facts of that case by granting bail to the accused. The relevant paragraph-8 of the said decision may be reproduced herein below:-

> "***8.*** *The record of learned Special Judge contains the application of the Investigating Officer dated 3.9.2011 for extension of time of investigation. Though this application was forwarded to the court through Prosecuting Inspector, Dhubri Court, no separate report was submitted by the Public Prosecutor. The prayer for extension of time was allowed vide order dated 28.9.2011. The said order is totally silent about any report from the Public Prosecutor. Hence, rejection of the bail prayer by the learned Special judge on the ground that detention period of the accused persons has been extended for one year from 2.8.2011 is not sustainable in law."*

16. Coming back to the facts of the instant case, I go back to the impugned order dated 16.10.2025 passed by the learned Trial Court. From a perusal of the order, it appears that both sides, including defence were heard by the learned Trial Court.

17. I have also perused the application dated 03.10.2025. The said application is filed by the complainant through the Public Prosecutor. In the impugned extension order also, the learned Trial Court has referred to the petition filed by the complainant NCB through the learned Special P.P. for extension of the statutory period. In the said factual situation and the backdrop of the case laws noticed above - the extension vide ordered dated 16.10.2025 was not made on the basis of any report of the Special Public Prosecutor and therefore, such extension of the statutory period suffers from a fatal legal infirmity, which is required to be interfered with in this criminal petition.

18. In this context, I respectfully agree with the conclusions arrived at in the facts of that case by a Coordinate Bench of this Court in ***Jayanandan Prasad*** (supra). Consequently, the impugned extension order dated 16.10.2025 passed by the learned trial Court, extending the statutory period is hereby **set aside** and **quashed**.

19. The prayer for extension was stated to have been filed on the 179th day prior to the expiry of the initial statutory period of 180 days and the date of filing was 03.10.2025 and the extension was granted by the order dated 16.10.2025, as already narrated above. The extension order having been **set aside** for the reasons indicated above - it can be held that the statutory period of 180 days has expired and there are no materials to indicate completion of investigation. Therefore, the petitioners are required to be granted default bail.

20. Accordingly, in the facts and circumstances and in view of the

above discussion, I allow this bail petition and the accused persons are allowed to go on bail on furnishing a bail bond of **Rs.1,00,000/-** lakh **each** with two sureties of the like amount **each**, one of whom has to be from the State of Assam - to the satisfaction of the learned Special Judge, Kamrup (M), Guwahati. The following conditions are imposed:-

(i) The accused persons shall not abscond and shall be available for the remaining trial;

(ii) They shall not hamper or tamper with evidence;

(iii) They shall not commit any illegal activities or offences, including any offences under the NDPS Act,

(iv) They shall not in any manner intimidate, harass or try to influence any witnesses.

21. Violation of the bail conditions would lead to cancellation of the bail.

22. The criminal petition and the bail application stand **allowed** and **disposed** of.

JUDGE

Comparing Assistant