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

Case No. : Bail Appln./1391/2026

JAMAL HUSSAIN
SON OF LATE ANOYAR UDDIN. RESIDENT OF VILL-MIRJAPUR, PS-BADARPUR. DIST- SRIBHUMI, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P, ASSAM.

Advocate for the Petitioner : MR H R CHOUDHURY,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date - 16.07.2026

1. Heard Mr. H. R. Choudhury, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 483 of BNSS, 2023 has been filed by the petitioner, namely, Jamal Hussain, seeking his bail in connection with Special (NDPS) Case No. 109/2023 pending in the Court of learned Sessions Judge, Sribhumi, arising out of Karimganj P. S. Case No. 627/2023 under Section 22(c)/29 of the NDPS Act, 1985. The petitioner has been detained behind the bars since 5.12.2024 (for last 1 year 7 months and 22 days).

3. It is pertinent to mention herein that before filing the instant bail application the petitioner had approached this Court on three occasions seeking bail, however, the prayer for bail was rejected on all the three occasions. This time the petitioner has approached this Court on the ground of prolonged incarceration, as one of the co-accused has also been granted bail by this Court on the ground of prolonged incarceration.

4. The gist of the accusation in this case is that on 22.08.2023, one Dibakar Gogoi, S.I of Police had lodged an F.I.R before the Officer-in-Charge of Karimganj Police Station, *inter-alia,* alleging that on 21.08.2023 at about 12.10 PM, the Additional S.P (HQ), Karimganj received an information through reliable sources regarding illegal transportation of suspected Yaba tablets from Seralipur towards Karimganj. Accordingly, a police team was constituted and dispatched towards Naka checking point in front of M.M Home Fashions at Chargola. While the police team arrived there, they saw a person holding a black color polythene in his hand who was trying to flee away from the police team. The said person was apprehended and after following due procedure, he was searched. The said person was identified as Joynal Hoque. After due search of the said person, 2.191 kg

of suspected Yaba tablets (containing methamphetamine) was recovered from his possession.

5. It is further stated in the FIR that during interrogation, Joynal Hoque revealed that the suspected Yaba tablets were peddled by him, as per the instructions of Jamal Hussain (present petitioner) who was staying in a rented house situated at Sorapur, Rangabazar. Accordingly, the police team rushed to Sorapur, Rangabazar at about 3:50 PM and as showed by Joynal Hoque, searched the house of Jamal Hussain. It is further stated in the FIR that during the search operation, the petitioner Jamal Hussain was not found in the said house. However, his wife was present there. During the search, a total of 0.489 kg of suspected Yaba tablets were recovered which were kept in black colour polythene hanging on the wall of the kitchen of the said house.

6. Mr. H. R. Choudhury, the learned counsel for the petitioner has submitted that the petitioner has been languishing behind the bars for last 1 year 7 months and 22 days and the examination of prosecution witnesses is yet to commence. He submits that though the charges were framed on 28.02.2025, however, till date not even a single witness out of nine enlisted prosecution witnesses have been examined. He further submits that in the meanwhile one of the co-accused namely, Joynal Hoque has already been granted bail by this Court on 03.03.2025 in bail application No. 3831/2024 on the ground of prolonged incarceration after he had completed more than 1 year 6 months of detention.

7. The learned counsel for the petitioner submits that the present petitioner has completed more time behind the bars than that of the co-accused, who was released on bail on the ground of prolonged incarceration.

Hence, he submits that the prolonged incarceration of the petitioner has infringed his fundamental rights guaranteed to him under Article 21 of the Constitution of India and as such, same outweighs the embargo of Section 37 of the NDPS Act, 1985 and on that ground he submits that the petitioner is entitled to get bail.

8. On the other hand, Mr. K. K. Das, the learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the contraband seized even from the residence of rented premises of the present petitioner is of commercial quantity i.e., 980 grams of methamphetamine tablets. Hence, he submits that the embargo of Section 37 of the NDPS Act, 1985 is applicable to this case. He further submits that the present petitioner was evading the arrest and he had to be arrested only after issuance of non-bailable warrant of arrest against him. Hence, he submits that the petitioner may not be enlarged on bail.

9. I have considered the submissions made by learned counsel for both sides and have gone through the records of scanned copy of the case records of Special (NDPS) Case No. 109/2023, which was requisitioned in connection with this case.

10. The Supreme Court of India in ***"Mohd Muslim @ Hussain Vs. State (NCT of Delhi)"*** reported in ***"2023 SCC Online SC 352"*** has observed that *"grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985".*

11. The Supreme Court of India in ***"Rabi Prakash Vs. State of Orissa" reported in "2023 SCC Online SC 1109,"*** has observed that *"the prolonged incarceration,* generally *militates against the most precious*

fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1) (b)(ii) of the NDPS Act."

12. In the case of ***"Ankur Chaudhary Vs. State of Madhya Pradesh"*** reported in ***"2024 LiveLaw (SC) 416",*** the Supreme Court of India has observed as follows: -

> *".....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."*

13. In this regard the observations made by the Apex Court in the case of ***"Satender Kumar Antil Vs. Central Bureau of Investigation & Another"*** reported in ***"AIR 2022 SC 3386"*** are relevant, same is quoted here in below:

> *"49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the noncompliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that*

lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own."

14. In the instant case, the petitioner has been languishing behind the bars for last 1 year 7 months and 22 days and not even a single prosecution witness has been examined till date. Hence, the prospect of early culmination of trial is very bleak.

15. This Court is of considered opinion that in view of the observation made by the Apex Court in the cases cited here in above, for whatsoever reason if inordinate delay is caused and if without any fault on the part of the

petitioner, he is kept under detention for a long period, it would certainly infringe his fundamental rights guaranteed under Article 21 of the Constitution of India. Under such circumstances, his constitutional rights guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37(1) (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and he would be entitled to get bail on the ground of prolonged incarceration only.

16. Under the facts and circumstances of this case, in the considered opinion of this Court, the long incarceration of the petitioner has, in the instant case as well, outweighed the embargo of Section 37 of the NDPS Act, 1985. Therefore, he is entitled to get bail on the ground of the infringement of his fundamental right guaranteed under Article 21 of the Constitution of India.

17. In view of the above, the petitioner, namely, Jamal Hussain, is allowed to go on bail of Rs. 2,00,000/- (Rupees Two Lakh only) with two sureties of like amount (one of whom should be residing within the State of Assam) subject to the satisfaction of learned Sessions Judge Sribhumi with the following conditions:

i. That the petitioner shall cooperate in the trial of Special (NDPS) Case No. 109/2023, which is pending in the Court of learned Sessions Judge, Sribhumi;

ii. That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;

iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be

acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present petitioner;

iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card, mobile number, and other contact details before the Trial Court;

v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the Trial Court; and

vi. That the petitioner shall not commit any offence while on bail.

vii. That the petitioner shall appear before the Officer-in-Charge of Sribhumi Police Station once in a fortnight without fail during pendency of the trial of Special (NDPS) Case No. 109/2023 pending before the Court of learned Sessions Judge, Sribhumi.

18. With the above observation, this bail application is, accordingly, disposed of.

JUDGE

Comparing Assistant