REPORTABLE

Item No. 68

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

BAIL APPLN. No. 4 of 2026

Aziz Khan, aged about 22 years, S/o Md. Alaoddin of Lilong Chingkham Makha Dam Makha, P.O. & P.S. Lilong, District – Thoubal, Manipur.

.... *Petitioner*

- versus -

The Officer In-Charge, NAB PS, Imphal West, Manipur

.... *Respondent*

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

For the petitioner	:	Mr. S. Rajeetchandra, Advocate
For the respondent	:	Mr. Y. Ashang, Senior Advocate Ms. RK. Emily, Dy. G.A.
Date of hearing & order	:	**21.11.2026**

JUDGMENT & ORDER
(ORAL)

[1] Heard Mr. S. Rajeetchandra, learned counsel for the petitioner and Mr. Y. Ashang, learned senior counsel assisted by Ms. RK. Emily, learned Dy. GA for the respondent.

[2] The petitioner approached this Court by way of present bail application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, 2023 in short) for releasing him on bail in connection with FIR No. 04(05) 2025 NAB PS u/s 21(b)/29 ND & PS Act. The petitioner was arrested along with another person on 29.05.2025 by NAB-PS from North AOC, Imphal West; from his possession, contraband heroin powder of 36 grams contained in two soap cases was recovered; and he has been in custody since 29.05.2025. Three persons are still absconding; petitioner and another person arrested are in custody now; charge sheet was submitted on 16.07.2025; and in the charge sheet, twenty four prosecution witnesses were cited. Till date, charge has not been framed against the two accused who are in custody. As per last proceeding dated 17.11.2026 in the Court of Ld. Special Judge (ND & PS), Manipur at Lamphelpat, charge was also not framed and matter is listed on 30.11.2026 for issuance of arrest warrant of the absconders.

[3] Mr. S. Rajeetchandra, learned counsel for the petitioner submits that the petitioner has been in custody since 29.05.2025 and he has been more than one and half year in the custody since his arrest. Even though charge sheet was submitted on 16.07.2025, no appropriate order for framing charge was passed by Ld. Special Court. It is pointed out that 36 grams of heroin is an intermediate quantity as given at Sl. No. 56 in the notification issued by the Central Government for mentioning small and commercial quantity of the narcotic substances.

[4] Learned counsel for the petitioner submits that rigours and twin test of Section 37 of ND&PS Act will not be attracted in the present case, as Sections 19, 24 or 27 of the Act are invoked against the petitioner and seized quantity is not commercial quantity.

[5] Learned counsel for the petitioner refers to a decision of this Court passed in the case of **Shri Lunkhogin Kipgen Vs. Officer in-charge, Narcotics & Affairs of Border (NAB) Police Station** reported as **2026 : MNHC : 195** wherein a similar situation of commercial quantity of 487 grams of heroin, the accused was released on bail on long incarceration as established in twin test of Section 37 of ND & PS Act on the ground that charge sheet has not been framed for more than two years. Relevant portions at paragraph No. 24 and 25 of the aforementioned judgment are as follows:

> *"[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."

Learned counsel for the petitioner submits that present case is on different footing from the judgment of **Shri Lunkhogin Kipgen** *(supra)* because rigours of Section 37 is not applicable; and the petitioner can be considered for release only on long incarceration of one and half

year; and non-framing of charge and listing of twenty four witnesses which will take more than two years, if charge is framed.

[6] Mr. S. Rajeetchandra, learned counsel for the petitioner also relies on a decision of Hon'ble Supreme Court in the case of **Deep Chandra Gurjar @ Deepu Vs. State of Uttar Pradesh** reported as **2026 Legal Eagle (SC) 504** where a person arrested for commercial quantity of ganja was released on bail on long incarceration of one year and ten months.

[7] Learned counsel for the petitioner also relies on another decision of Hon'ble Supreme Court in the case of **Rambabu Vs. State of Rajasthan & Anr.** reported as **2025 Legal Eagle (SC) 1246** where the petitioner is in custody for two years; charge was framed; and out of twenty one witnesses, only witness was examined; and considering slow pace of the trial, accused was released on bail. It is submitted that in the present case, the petitioner may be released on bail on long incarceration, as the twin test of Section 37 of ND & PS Act is not attracted.

[8] Mr. Y. Ashang, learned PP for the respondent submits that releasing of an accused, in a Special Act like ND & PS Act, should not be of mere long incarceration and fact of the case is to be examined. The problem of drug in Manipur is a serious problem; and it is the duty of all to eliminate such problem; and if accused are released on bail only on long incarceration, the object behind such special Act will stand defeated.

Learned PP also explained that the charge could not be framed as three more accused persons are yet to be arrested.

[9] This Court has examined the materials on record; and the accused was arrested on 29.05.2025; and he has been in custody since then. As on date, he is almost one year and six months in custody; even though charge sheet was submitted more than one year i.e. on 16.07.2025, charge has not been framed till date. The explanation given by the learned PP is that charge could not be framed, as three persons are still absconding; and warrant of arrest has been issued against them; and in awaiting the same, framing of charge is postponed.

[10] This Court does not find any merit in the submission of learned PP. It may be noted that Section 299 of erstwhile Cr.P.C., now Section 335 of BNSS, 2023 provides that when some of the accused are absconding, charge can be framed against the accused before the Court; and the absconded accused can be brought before the Court upon being apprehended or surrendered, as the case may be. In the circumstance, non-framing of charge for the last more than one year is not a correct approach. It may be noted that charge sheet was filed within time. When the police had taken every effort to submit the charge sheet on time; non-framing of charge on this ground alone is not warranted; and Trial Court may proceed as per the provision of Section 299 of Cr.P.C./Section 335 of BNSS, 2023.

[11] Hon'ble Supreme Court in a series of decisions has held that right to speedy trial is a fundamental right within the meaning of Article 21 of the Constitution of India. Apart from the decisions cited by learned counsel for the petitioner, Hon'ble Apex Court has been upholding the right of speedy trial; and the persons accused in heinous offence are also released on long incarceration without any progress in the trial. In the present case, charge has not been framed; and criminal trial will be started upon framing of charge. After framing of charge, twenty four witnesses have be examined; and it will take substantive period of time. The maximum period to undergo by the accused person, if convicted, is up to ten years.

[12] In the circumstance, there is no doubt that there is delay in the trial; and without expressing any opinion on the complexity and involvement of the petitioner in the FIR case, 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 Ld. Special Judge, ND & PS, Manipur 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.

(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), Manipur.

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

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

[13] With the above observations, Bail Appln. No. 4 of 2026 is allowed and disposed of.

[14] Send a copy of this order to the Ld. Special Judge (ND & PS), Manipur for information.

JUDGE

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KHOIROM BIPINCHANDRA SINGH

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