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

Case No. : Bail Appln./2341/2026

JAHIYA KHAN
S/O LATE AJIMUDDIN
VILLAGE- SANGAIYUMPHAM MAIRENKHUL, P.O. WANGJING, P.S. THOUBAL, DISTRICT THOUBAL, MANIPUR

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL NCB

Advocate for the Petitioner : MOTIUR RAHMAN, I AMIN,MR. O ULLAH,MR. A S TAPADER

Advocate for the Respondent : SC, NCB,

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

08.10.2026

1. Heard Mr. M Rahman, the learned counsel for the petitioner. Also

heard Mr. RK Dev Choudhury, the learned Senior counsel cum Deputy Solicitor General of India assisted by Ms. L Devi, the learned counsel appearing for the NCB.

2. This application under Section 483 of BNSS, 2023 has been filed by the petitioner, Jahiya Khan, who has been detained behind bar since 04.09.2025 in connection with NDPS case No. 13/2026 under Section 8(c)/22(c)/25/29 of the NDPS Act, 1985 pending before the court of learned Special Judge, NDPS, Hojai.

3. The gist of accusation in this case is that, on 25.07.2025, the officials of Narcotics Control Bureau (NCB) had conducted a search operation in the Nagaland Express (Train No. 15670) at Platform No. 1 of the Hojai Railway Station in between 01:40 hours to 10:00 hours and during search operation, 33.617 kg of methamphetamine tablets were recovered from the possession of one Santosh Kumar Tamil Selvan.

4. The said accused was arrested from the place of seizure and later on, during preliminary interrogation, the arrested accused implicated one another co-accused namely, Rakesh Ahammad regarding his complicity in the alleged offence. The said Rakesh Ahammed as well as arrested accused Santosh Kumar Tamil Selvan were also employed in the Central Reserve Police Force (CRPF). Later on the basis of the statements made by the co-accused, the present petitioner was arrested on 03.09.2025.

5. In his statement recorded under Section 67 of the NDPS Act, 1985, the petitioner confessed regarding his involvement in supplying of the seized contraband.

6. Mr. Rahman, the learned counsel for the petitioner submits that this is

for the third occasion, the petitioner has approached this court seeking his release on bail. He submits that on earlier occasions, his prayer for bail was rejected by this court by its order dated 07.01.2026 passed in Bail Application No. 3760/2025 as well as by order dated 08.04.2026 passed in Bail Application No. 579/2026.

7. The main contention of the learned counsel for the petitioner is that the petitioner has been detained behind the bars for the last 1 year, 1 month, 6 days (396 days) and even the charges are not yet framed and trial has not yet commenced. He submits that out of the 5 accused persons, who have been charge-sheeted, only 3 have been arrested and 2 accused persons, namely, Dulal Miya and Abdul Matalip Khan, who hail from other States, are yet to be arrested. He submits that the contraband was seized from the possession of the present petitioner and he was arrested only on the basis of secret reports from the Guwahati Airport, while he was on his way Kolkata. The learned counsel for the petitioner submits that the petitioner has no criminal antecedents and he was serving as a CRPF personnel and had an unblemished service career for the last 23 years. He submits that said fact may be taken into consideration while considering the prayer for bail made by the present petitioner.

8. The learned counsel for the petitioner submits that in similar nature of cases involving commercial quantity of contraband, the Apex Court has released many accused persons, who have undergone incarceration of more than one year. As such, he submits that the petitioner may also be granted bail in view of the fact that under similar circumstances, Apex Court has also released the accused persons facing charges under commercial quantity of contraband. In support of his submission, the

learned counsel for the petitioner has cited following rulings:

i. ***Sohil Osmanbhai Sandhi versus State of Gujarat*** [order dated May 19, 2025 in SLP (Criminal) No. 5091/2025]

ii. ***Aijul Sheikh vs Stat of West Bengal*** [order dated January, 12, 2026 in SLP (Crl) No. 19312/2025]

iii. ***Nitish Adhikary @ Bapan vs. The State of West Bengal*** [Order dated 01.08.2022 passed in SLA (Crl) 5769/2022]

iv. ***Hasanujjaman & Ors vs The state of West Bengal*** [Order dated 04.05.2023 in SLA (Crl) 3221/2023]

v. ***Md. Aliul Islam @ Aliul Islam @ Aliul vs The State of West Bengal*** [Order dated February 26, 2024 in SLP (Crl) 736/2024]

vi. ***Santosh Prasad Sahu @ Santosh Kumar Sahu vs The State of Jharkhand*** [Order dated 17.01.2025 in SLA (Crl) No. 17114/2024].

vii. ***Hanef Kharsani @ Hanef Sheikh vs Union of India*** [Order dated April 08, 2024 in SLP (Crl) No. 2685/2024]

9. On the other hand, Mr. R.K. Devchoudhury, the learned Senior counsel appearing for the NCB vehimently opposed the grant of bail to the petitioner on the ground that the quantity of contraband, seized in this case is 33.617 kg of methamphetamine tablets, which are of commercial quantity, and as such, the embargo of Section 37 of the NDPS Act is attracted in this case. He submits that even in his earlier orders while rejecting the prayer for bail, this court has taken into consideration all the pleas taken by the present petitioner in the instant bail application and

same are not required to be reconsidered again. He further submits that the plea of prolonged incarceration depends upon the facts of the case. He further submits that the incarceration of only 1 year 1 month in the instant case, when the quantity of contraband involved in this case is of commercial quantity, may not be regarded as long enough to grant bail to the petitioner on the ground of prolonged incarceration.

10. In support of his submission, he has cited a ruling of ***State of Punjab vs. Balraj Singh @ Billa*** reported in ***2026 INSC 618***, where the Apex Court rejected the bail of the petitioner of that case who was retained behind bar for more than 1 year 7 months on the charges of possessing commercial quantity of contraband.

11. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

12. It appears that while rejecting the bail of the petitioner on earlier two occasions, this court has dealt in the merits of the case and after considering the pleas of the petitioner as well as learned counsel for the NCB, the prayer for bail was rejected on two occasions on the ground that the petitioner had failed to overcome the embargo of Section 37 of the NDPS Act.

13. Though, the plea of prolonged incarceration was not considered by this court on earlier occasions and this time the main emphasis of the petitioner is on prolonged incarceration. It appears that to get bail in a case involving commercial quantity of contraband, the petitioner has to overcome two

conditions as mentioned in Section 37 of the NDPS Act, 1985. Unless the petitioner is able to overcome the embargo of Section 37 of the NDPS Act, 1985, he may not be entitled to get bail in such a case involving commercial quantity of contraband.

14. Though, this court is in agreement with the legal proposition that prolonged incarceration overrides the embargo of Section 37 of the NDPS, Act, 1985 entitling a person who has been incarcerated for a long period to get bail in such cases, however, how much time would be regarded as long enough to give a benefit of prolonged incarceration to a person depends upon facts and circumstances of the said case and it is for the court considering the bail application to decide the question as to whether the period of detention undergone by the petitioner may be regarded as long enough to treat the said period as overriding the embargo of Section 37 of the NDPS Act.

15. In the several of rulings cited by the learned counsel for the petitioner, it appears that the petitioners in those cases were released on bail after completing detention of about 1 year 2 months, and in some cases less than 1 year 4 months. However, the facts of those cases are different. In some of the rulings cited by the learned counsel for the petitioner, even the facts of the said cases could not be discerned as the facts are not discussed in the said rulings and in a few cases, the contraband involved in such cases were codeine phosphate, whereas in the instant case the contraband is methamphetamine. Moreover, the fact that the petitioner belongs to Central Armed Police Forces is also relevant while considering the question as to whether to release him on bail or not.

16. This court is of considered opinion that considering the circumstances involved in this case as well as the quantity of contraband involved in this case, the period of 1 year 1 month 6 days may not be regarded as long enough incarceration to override the embargo of Section 37 of the NDPS Act, 1985. As such, this court does not find this case to be a fit case, where the petitioner may be allowed to release on bail on the ground of prolonged incarceration.

17. Accordingly, the prayer for bail is dismissed.

JUDGE

Comparing Assistant