GAHC010185272026

2026:GAU-AS:15558

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

Case No. : Bail Appln./2549/2026

MD FARISH
S/O WAHID ALI, R/O SANGAIYUMPHAM PART II, CHERAPUR,
SANGAIYUMPHAM, PO WANGJING, PS THOUBAL, DIST THOUBAL,
MANIPUR, 795148

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, NARCOTICS CONTROL
BUREAU, (NCB)

Advocate for the Petitioner : MR. M BISWAS, A GHOSAL,J SINGPHO

Advocate for the Respondent : SC, NCB,

::BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

14.10.2026

Heard Mr. M. Biswas, the learned counsel appearing for the petitioner. Also heard Mr. R.K.D Choudhury, the learned senior counsel appearing for the N.C.B.

2. This is an application under Section 483 of the BNSS, 2023 whereby the

petitioner, namely- Md. Farish has prayed for releasing him on bail as he is facing trial in NDPS Case No.12/2025 corresponding to NCB Crime No.18/2023 pending in the court of the learned Additional Sessions Judge, Kamrup, Amingaon.

3. On 28.10.2023 at about 9.30 P.M., the car bearing Registration No.AS-01AE-8182 was caught by NCB team. The car was driven by Md. Jayed Khan and the present petitioner Md. Farish was sitting in the co-driver seat. On being searched, 32 packets, each containing 11 grams, 12 grams, 13 grams and 14 grams of suspected heroin was recovered from a secret cavity below the driver's seat and the co-driver seat.

4. *Charge sheet* has been filed and till now, for the last three years the petitioner has been facing trial. The trial court has already examined two witnesses and one witness has been partly examined.

5. The petitioner prayed for releasing him on bail on two grounds. The first ground is that his arrest in this case is illegal. The second ground is that he has been in custody for an exceptionally long period and the trial is still going on.

6. Mr. Biswas has submitted that the petitioner was arrested at about 9.30. P.M. on 28.10.2023 and on 30.10.2023, the petitioner along with the other accused Md. Jayed Khan was produced before the Chief Judicial Magistrate, Kamrup(M) at Guwahati. According to Mr. Biswas, the petitioner should have been produced before the Magistrate within next 24 hours after 9.30 P.M. on 28.10.2023.

7. To that effect, Mr. Choudhury has submitted that at about 9.30. P.M. on 28.10.2023, the petitioner was not arrested rather he was taken into custody for questioning.

8. In order to buttress his point, Mr. Biswas has relied upon a judgment of the Supreme Court that was delivered in *Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559*. Paragraph 7 of the said judgment is quoted as under:

> "**7.** When is a person in *custody*, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied

> authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in *custody* for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose."

9. Mr. Biswas submits that on 28.10.2023 at about 9.30 P.M., the petitioner was in physical custody of the respondent and he should have been produced before a Magistrate within next 24 hours and thus it was a violation of Article 22(2) of the Constitution of India.

10. Mr. Biswas has relied upon another judgment of the Supreme Court that was delivered in *Directorate of Enforcement v. Subhash Sharma*, *2025 SCC OnLine SC 240*. Paragraph 6 of the said judgment is quoted as under:

> "**6.** This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal

> as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated."

11. According to Mr. Biswas, the petitioner was detained at Amingaon locality of the city and even if the transportation time to the court of Chief Judicial Magistrate, Kamrup (Metro) is excluded, it would have been before 30.10.2023.

12. Regarding long incurs ration, the petitioner has relied upon the judgment of the Hon'ble Supreme Court that was delivered in *Rabi Prakesh v. State of Orissa, reported in 2023 (0) Supreme (SC) 707*. In this case, the Hon'ble Supreme Court has held that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, conditional liberty must override the statutory embargo created under Section 37(1) (b) (ii) of the NDPS Act, 1985.

13. Mr. Biswas has relied upon another judgment of the Hon'ble Supreme Court that was delivered in *Dheeraj Kumar Sukhla v. State of U.P.* In this case, the petitioner was in custody for 2½ years. The Supreme Court held that a conditions of Section 37 of the NDPS Act can be dispensed with, more so when the trial is yet to commence, in that particular case.

14. *Per contra*, Mr. Choudhury has relied upon a judgment of the Supreme Court that was delivered in *State of Punjab v. Balraj Singh @ Billa*, reported in *2026 Supreme (SC) 665*. Paragraph 22 of the said judgment is quoted as under:

> "22. However, we note that recently this Court in Tasleem Ahmed v. State Govt. of NCT of Delhi7 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 Crl. A. @ SLP (Crl.) No. 2867/2026."

15. I have considered the submissions made by the learned counsels of both sides.

16. The petitioner was arrested at about 9.30. P.M. on 28.10.2023. He was produced before the Chief Judicial Magistrate, Kamrup (M) at Guwahati on 30.10.2023. Considering the distance between Amingaon and Kamrup(Metro), even the journey time is excluded, the petitioner was produced before the court of the Chief Judicial Magistrate, Kamrup(Metro) at Guwahati beyond 24 hours of detention. This is a clear violation of Article 22(2) of the Constitution of India.

17. During the Puja Vacation, starting from day after tomorrow, the petitioner will complete 3(three) years of detention. Only two prospection witnesses have been examined and discharged after cross-examination. The third witness was partly examined only. It appears that there is nothing to show that the trial would be completed within a short period of time.

18. It is a settled law that long incarceration militates against the fundamental right guaranteed under Article 21 of our Constitution and in such a situation, conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985. The petitioner has been in custody for a period of 3(three) years. This Court is of the opinion that the embargo of Section 37 of the Act of 1985 can be dispensed with at this stage, more so, when there is no possibility of early disposal of the case before the trial court.

19. For the aforesaid reasons, this Court is of the opinion that the bail application of the petitioner deserves to be considered at this stage. The bail application is allowed accordingly. The petitioner Md. Farish shall be released on bail of ₹100,000/- with two sureties of like amount to the satisfaction of the learned Addl. Sessions Judge, Kamrup

at Amingaon.

With the above direction, the bail application is disposed of.

JUDGE

Comparing Assistant