GAHC010199982026

2026:GAU-AS:16298

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

Case No. : Bail Appln./2714/2026

AMINA KHATUN
W/O- SIKANDAR ALI, R/O- VILL- SADHUCHAR, PS BILASIPARA, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY, MR. D BORA,MR. N MAHAJAN,MR. P K DAS

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

06-11-2026

Heard Mr. B. K. Mahajan, learned counsel for the petitioner and Ms. S. H. Borah, learned Additional Public Prosecutor, Assam.

2. This is an application filed under Section 483 of the BNSS, 2023, praying for grant of bail to the accused/petitioner, namely, **Amina Khatun** who has been arrested on 13.11.2024 in connection with **NDPS Case No. 132/2025** arising out

of Hatigaon P.S. Case No. 255/2024 under Section 21(b)/22(c)/29 of the NDPS Act.

3. Scanned copy of the TCR has been received and perused the same.

4. It is submitted by Mr. Mahajan, learned counsel that the petitioner is in custody list last 724 days, i.e., almost 2 year since her date of arrest. Out of 3 co accused person 2 were already granted bail and the other accused person expired during investigation.

5. The case of the present petitioner stands in the same footing as with the other co accused persons who are already released on bail.

6. Mr. Mahajan further submitted that the earlier bail application was rejected by this Court in BA No. 4051/2026 vide its order dated 06.02.2026 when the case was fixed for evidence, but inspite of lapse of 9 months, the prosecution could not examine any of the witness out of 9 listed witness.

7. Mr. Mahajan, learned counsel further submitted that the present petition is exclusively filed seeking bail for long period of incarceration undergone by the petitioner. As the case of the present petitioner also under the same footing with the other co accused persons of the case, her bail application may also be considered on the ground of parity.

8. He further submitted that inspite of two years in custody for the present petitioner, the prosecution could not examine any witness without any fault of the petitioner. So considering her long period of incarceration she may be released on bail and she being the law abiding person, she will contest the case by appearing before the learned Special Judge on each and every date to be fixed by the Court.

9. He further submitted that the case is registered under the commercial quantity, the Apex Court in the case of **Rabi Prakash (supra)** the bail was

granted by the Apex Court with the observation that "*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.*"

10. Mr. Mahajan also relied on the recent decision of the Apex Court in the case of **Sri Sujit Das and Ors Etc Vs. Union of India** Crl. A; No…… of 2026 (arising out of SLP (Crl) No. 12451-12453 of 2026) wherein it has been observed that the rights conferred by Article 21 of the Constitution of India are not only the constitutional right, but those are fundamental rights, right of life and liberty as enshrined under Article 21 and this fundamental right cannot be tinkered with so lightly, not even under the special statutes. The para 48.1 and 49 read as under:

> *48.1. In the course of the deliberation, this Court observed that the right to speedy trial rooted in Article 21 of the Constitution is undoubtedly a precious constitutional right. However, the Bench proceeded to further observe that in matters governed by special enactments such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override Section 37. The constitutional right under Article 21 and the special provisions of law under Section 37 of the NDPS Act are to be read harmoniously and not placed in opposition to each other.*
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> *49. We have our reservation on the aforesaid observations made by the Bench. First and foremost, the rights conferred by Article 21 of the Constitution of India are not only constitutional rights. These are fundamental rights. Right to life and liberty as enshrined in Article 21 are at the core of our constitutional jurisprudence. These fundamental rights cannot be tinkered with so lightly, not even under the special statutes. Such observations run counter to numerous judgments of this Court which reiterate the proposition that when there is a violation of Article 21 of the Constitution, the rigor of Section 37 of the NDPS Act or similar such provisions under the special statutes would have to give way. [Please see Union of India Vs. K.A. Najeeb16, Satender Kumar 16 (2021) 3 SCC 713 77 78 Antil Vs. CBI17, Mohd. Muslim Vs. State*

(NCT of Delhi)18, Ankur Chadha Vs. State of Madya Pradesh19, Vijay Singh Vs. Union of India20 wherein this Court clearly held that Article 21 of the Constitution of India over-rides Section 37 of the NDPS Act, Syed Iftikhar Andrabi Vs. National Investigation Agency21 and Jaskaran Jeet Singh Deol Vs. State of Punjab22]. In fact, it could be urged that such an observation by the two-Judge Bench in Sukhwinder Singh @ Gola may be hit by the principle of per incuriam as K.A. Najeeb is a judgment by a three-Judge Bench. However, we would not comment beyond this point since Sukhwinder Singh @ Gora is also by a coordinate Bench. That apart, from the facts of that case, it appears that the accused was in custody from 10.01.2024 and bail was granted to him by the High Court on 18.02.2026. At that stage, 2 out of the 24 prosecution witnesses were examined. It is a debatable issue as to whether a view could have been taken by the High Court that right to speedy trial of the accused was being jeopardized. Moreover, clause (2) of Article 22 was not an issue before the Bench in Sukhwinder Singh @ Gora. Therefore, this decision also cannot come to the aid of the respondent.

11. Citing the above referred judgment and also citing the judgment of this Court, it is submitted by Mr. Mahajan that considering the period of long incarceration of 2 years, the prayer for bail may be considered for the present petitioner and the petitioner will also provide sufficient surety before the learned Special Judge.

12. Ms. Borah, learned APP raised objection and submitted that the present petitioner along with other co accused person were caught red handed in intercepting the van wherefrom the commercial quantity of the contraband was recovered from the conscious possession of the petitioner and thus the rigor of Section 37 will attract where twin condition is to be satisfied while granting bail to an accused that whether there is reasonable ground that the accused has not committed the offence and at the same time there has to be reasonable ground to believe that the accused will not commit the same offence, if he is enlarged on bail.

13. But here in the instant case, it is seen that the contraband was directly recovered from the conscious possession of the petitioner and there is no

reason to believe that she is innocent or not involved in the alleged offence. She further submitted that the Coordinate Bench of this Court in BA No. 3019/2025 has observed that long incarceration cannot be the sole ground for allowing the bail in such a nature of case. Accordingly, she submitted that this is not at all a fit case to release the accused on bail at this stage.

14. Heard the submission made by the learned counsel for the parties and I have also perused the case record and the scanned TCR.

15. Admittedly, the petitioner got arrested along with other co accused person, when the vehicle was intercepted by police and commercial quantity of the contraband was recovered from the conscious possession of the petitioner along with other co-accused.

16. The earlier bail application of the petitioner was rejected by this Court vide order dated 06.02.2026 in BA No.4051/2025 considering the nature of allegation with other relevant consideration.

17. But the present petition has been filed exclusively on the ground of long incarceration. Admittedly the petitioner is in custody for almost 2 years i.e., 724 days, but till date the prosecution could not examine any of the witnesses out of 9 numbers of cited witnesses. At the same time, it also cannot be denied that the case falls under the commercial quantity and hence rigor of Section 37 of NDPS will be attracted and there is no reasonable ground to believe that the accused is innocent or she will not commit the same kind of offence, if enlarged on bail.

18. At the same time, it also cannot be denied that even after lapse of 2 years the prosecution could not examine any of the witness without the fault of the petitioner.

19. As referred above, the Apex Court in the case of **Rabi Prakash (supra)** had expressed the view that "*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.*"

20. Similar kind of observation was also made by the Apex Court in case of **Chitta Biswas @ Subhas Vs. The State of West Bengal** (Crl. A No(s). 245/2020 (SLP (Crl) No. 8823/2019) and in the case of **Nitish Adhikary @ Bapan (supra)** wherein also the bail was granted considering the period of long incarceration.

21. In the instant case, earlier bail application was rejected on 06.02.2026, but inspite of lapse of 9 months, the prosecution could not examine any witness till date and hence, the probability of completion of the trial within a reasonable period also cannot be expected at this stage.

22. From the scanned TCR also it is also seen that after the framing of charge, the case was posted for evidence since 19.08.2025, but the learned Special Judge did not make any extra effort or endeavour for production of the prosecution witnesses and stereotyped order has been passed since 19.08.2025, the date fixed for evidence.

23. So considering all these aspects of the case, it is seen that inspite of long incarceration of the present petitioner, the probability of completion of the trial cannot be expected within a reasonable time.

24. So without going into the other detail merit of the case, this Court is of the opinion that the petitioner may be released on bail considering the long period of incarceration, which otherwise violates the constitutional right of the accused

guaranteed under Article 21 of the Constitution of India.

25. Accordingly, the accused/petitioner, **Amina Khatun**, be released on bail in connection with in connection with **NDPS Case No. 132/2025** arising out of Hatigaon P.S. Case No. 255/2024 under Section 21(b)/22(c)/29 of the NDPS Act, on furnishing a bond of Rs. 1,00,000/- (Rupees One Lakh) only, with 2 (two) sureties of like amount, one surety has to be a government servant to the satisfaction of the learned Special Judge (NDPS), Kamrup (Metro), Guwahati, subject to the following conditions:

(i) that the petitioner shall appear before the Court of learned Special Judge (NDPS), Kamrup (Metro), Guwahati, on each and every date to be fixed by the Court;

(ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;

(iii) that the petitioner shall submit his Aadhar Card and PAN Card before learned Special Judge (NDPS), Kamrup (Metro), Guwahati; and

(iv) that the petitioner shall not leave the jurisdiction of the learned Special Judge (NDPS), Kamrup (Metro), Guwahati, without prior permission.

26. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant