GAHC010231132026

2026:GAU-AS:16377

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

Case No. : Bail Appln./3342/2026

KAMAL KUMAR
S/O LATE SHRI LALLURAM, R/O VILL ALAMPUR, PO BAGEHTA, PS BABERU, DIST BANDA, UTTAR PRADESH, PIN 210121

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE LEARNED STANDING COUNSEL, NARCOTICS CONTROL BUREAU

Advocate for the Petitioner : MS N KHATUN, MR S J CHOUDHURY

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06.11.2026

Heard Mr. S.J. Choudhury, learned counsel for the accused and also heard Mr. R.K.D. Choudhury, learned Senior counsel-cum-Dy. Solicitor General of India, assisted by Ms. L. Devi, learned counsel for the respondent NCB.

2. This bail application, under Section 483 of the Bharatiya Nagarik Suraksha

Sanhita (BNSS), 2023 is preferred by the accused, namely, **Kamal Kumar,** who has been languishing in jail hazot since 05.09.2021, in connection with NDPS Case No.49/2022, arising out of NCB Guwahati Crime No.25/2021, under Sections 8(c)/20(b)(ii)(C)/29 of the NDPS Act, 1985, pending before the Court of learned Special Judge, Kamrup (M) at Guwahati, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one complaint, lodged by one Sakil Ansari, Junior Intelligence Officer, NCB, Guwahati, on 04.09.2021.

4. The essence of allegation, in the complaint, dated 04.09.2021, is that on 04.09.2021, he had intercepted one Truck, bearing Registration No.UP-32HN-9008, and found accused **Kamal Kumar,** the present accused with another person, namely, **Imran** and during search, codeine based cough syrup in 64 nos. of white coloured plastic sacks concealed between rice bags, were detected and seized preparing seizure list.

4.1. Mr. Choudhury, learned counsel for the accused submits that this is the 2nd bail application preferred by the accused and the earlier one, being Bail Appln. No.2604/2024, was dismissed by this Court, vide order dated 22.01.2025. Mr. Choudhury also submits that against the order dated 22.01.2025, passed by this Court the accused herein had preferred one petition, being Special Leave to Appeal (Crl.) No.4598/2025, before the Hon'ble Supreme Court, wherein Hon'ble Supreme Court had dismissed the said petition, vide order dated 04.04.2025, however, Hon'ble Supreme Court had granted liberty to the accused to approach the learned Trial Court to renew the prayer for bail in the event of no progress is achieved during the period of one year from the date of the said order, i.e. 04.04.2025.

4.2. Mr. Choudhury further submits that thereafter, one year elapsed and no substantial progress could be achieved by the learned Trial Court in the trial. During the period of one year, the prosecution side has been able to examined only one

witness. And thereafter, the accused had renewed his prayer for bail before the learned Trial Court. But, vide order dated 01.10.2026, the learned Trial Court had dismissed the said prayer. And being aggrieved, the accused has approached this Court by filing the present application.

4.3. Mr. Choudhury also submits that this Court in Bail Appln. No.1942/2026, vide order dated 17.09.2026 was pleased to grant the privilege of bail to one of the co-accused, namely, **Prabha Shankar Tiwari,** on the ground that the said accused was languishing in jail hazot for 5 years and further considering the pace of trial, and also having seen no immediate prospect of conclusion of trial. He also submits that the present accused is also similarly situated and therefore, he has contended to grant bail to the present accused. He also assured that the accused will appear before the learned trial court on each and every date.

5. Per contra, Mr. R.K.D. Choudhury, learned Dy. Solicitor General of India, appearing for the respondent NCB has opposed the petition. He submits that the contraband substances were recovered from the possession of the present accused and there is a requirement of satisfying the twin condition of Section 37(1)(b) of the NDPS Act, which the accused could not. However, he admits that within the period of 5 years of incarceration, the NCB has been able to examine only 5 witnesses.

6. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Trial Court.

7. The basic facts here in this case are not in dispute. The accused was arrested on 05.09.2021 and since then he has been languishing in jail hazot for more than 5 years. And within these 5 years, the respondent NCB has been able to examine only 5 witnesses and six more witnesses, who are cited in the charge sheet, are yet to be examined and there appears to be no immediate chance of conclusion of the trial given the pace of the trial.

8. It is well settled in the case of **Union of India vs. K.A. Najeeb**, reported in **(2021) 3 SCC 713,** that when it is established that timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Court would ordinarily be obligated to enlarge them on bail.

9. In the case of **Rabi Prakash vs. State of Odisha**, reported in **2023 SCC OnLine SC 1109**, it has been held by Honble Supreme Court has held that prolonged incarceration of an under-trial generally militates against the fundamental right to life and personal liberty under Article 21 of the Constitution, and in such a situation conditional liberty must override the statutory embargo under Section 37(1)(b)(ii) of the NDPS

10. Similar observation was made in the case of **Mohd. Muslim @ Hussain vs. State (NCT of Delhi)**, reported in **2023 SCC OnLine SC 352**, wherein it has been held that grant of bail on the ground of undue delay in trial is not fettered by Section 37, given the applicability of Section 436A Cr.P.C. and Article 21 of the Constitution of India, which concerns about prolonged under trial detention.

11. And in view of the aforementioned legal proposition, even though the contraband substances were allegedly recovered from the possession of the accused and also are of commercial quantity, yet, the embargo under Section 37 cannot override Article 21 of the Constitution of India. And the Court would ordinarily be obligated to enlarge the accused on bail.

12. Further, it appears that one of the co-accused, namely, Prabha Shankar Tiwari has already been enlarged on bail vide order, dated 17.09.2026, in Bail Appln. No.1942/2026, on the same ground. The present accused, who is also similarly situated, is entitled to bail on the same ground.

13. Under the given facts and circumstances, this Court is inclined to allow this petition. It is provided that on furnishing a bond of Rs.1,00,000/- with two sureties of

like amount to the satisfaction of the learned Trial Court, the accused be enlarged on bail, subject however to the condition that he shall appear before the learned trial court on each and every date.

14. The learned Trial Court will also be at liberty to impose any other condition while accepting the bail bond, to ensure presence of the accused on each and every date during trial.

JUDGE

Comparing Assistant