GAHC010233542026

2026:GAU-AS:16299

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

Case No. : Bail Appln./3429/2026

KHAIRUL ISLAM ALIAS ALIM UDDIN
S/O AFTAB UDDIN, R/O VILL SOUTH BANDARKUNA, PO ERALIGOOL, PS PATHARKANDI, DIST SRIBHUMI, ASSAM 788720

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. S NAG, MS. F SIDDIKA,A DEY,A RAHMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

06-11-2026

Heard Mr. A. Rahman, 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, **Khairul Islam @ Alim Uddin** who has been arrested on 26.05.2025 in connection with **Special (NDPS) Case No.**

112/2024 (corresponding to Patharkandi P.S. Case No. 334/2024) under Sections 21(C)/25/29 of the NDPS Act.

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

4. It is submitted by Mr. Rahman, learned counsel that this is the second bail application after rejection of the earlier bail application by this Court on 25.03.2026. He further submitted that nothing has been recovered from the conscious possession of the petitioner, though it is alleged that he was one of the occupant of the auto van wherefrom the other two accused persons along with the contraband was recovered by police.

5. The petitioner was shown as an absconder in the charge sheet. However after coming to know about the pendency of this case, he himself surrendered before the Court on 26.05.2025 and since then for about 1 year 6 months, the petitioner is behind the bar. The charge was framed on 19.08.2025, but even after lapse of 1 year the prosecution could not examine any witness out of 9 listed witnesses. The petitioner is a law abiding persons, who himself surrendered before the learned Special Judge and hence, there is no question of absconding, if the petitioner is granted with the privilege of bail. Rather, he will appear before the learned Special Judge on each and every date to be fixed by the Court and will contest the case accordingly.

6. To substantiate his case, Mr. Rahman also relied on the decision of the Apex Court as well as Coordinate Bench of this Court and one case is also cited from the High Court of Punjab and Haryana at Chhatisgarh. The following cases were relied by the learned counsel for the petitioner:

(i) Majir Uddin Vs. State of Assam

(ii) Gopal Basumatary Vs. State of Assam

(iii) Chitta Biswas @ Subhas Vs. The State of West Bengal (Crl. A No(s). 245/2020 (SLP (Crl) No. 8823/2019)

(iv) Mohammad Salman Hanif Shaikh Vs. State of Gujarat (SLP No. 5530/2022)

(v) Nishant Pal Vs. State of Haryana (SLP No. 12970/2026)

(vi) Smti Rita Boro Vs. State of Assam

(vii) Sunny Vs State of Punjab

(viii) Rabi Prakash Vs. State of Odisha

7. It is submitted by Mr. Rahman that 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.*"

8. Relying on the other judgments of the Coordinate Bench of this Court, he further submitted that considering the period of prolonged incarceration, the Apex Court as well as the Coordinate Benches of this Court had allowed the bail applications for the petitioners, even in case of commercial quantity.

9. He further submitted that out of 9 numbers of cited witnesses, the prosecution could not examine a single witness though the petitioner is in custody since last 1 year 6 months.

10. He further submitted that the accused petitioner being a law abiding citizen and will regularly appear before the learned Trial Court as and when the date is fixed.

11. Ms. Borah, learned APP raised objection and submitted that this is a case

of commercial quantity, wherein the rigor of Section 37 will attract and in the present case, it is seen that the petitioner is one of the occupant of the said autorikshaw wherefrom the commercial quantity of the contraband was recovered by police, when it was intercepted by police. However, the present petitioner managed to flee away from the place of occurrence and hence, he had to be shown as an absconder in the charge sheet.

12. Relying on the judgment of the Coordinate Bench of this Court in BA No 3019/2025, it is submitted by her that only considering the prolonged incarceration, bail cannot be granted in such a nature of case. She accordingly raised objection and submitted that it is not at all a fit case to grant bail to the petitioner at this stage. She further submitted that the learned Trial Court may be directed to dispose of the case within a reasonable period of time.

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

14. It is the case of the prosecution that the present petitioner was also an occupant of the auto van wherefrom the commercial quantity of the contraband was recovered after intercepting of the said auto van.

15. But only two accused persons got apprehended by police and the present petitioner fled away from the place of occurrence and as he could not be arrested during the investigation, he was shown as an absconder in the charge sheet. The earlier bail application of the petitioner was rejected on 25.03.2026 finding prima facie involvement of the present petitioner and the record also reveals that the charge was framed on 19.08.2025 after surrender of the petitioner before the Court of learned Special Judge and since then the case is at the stage of evidence, but till date, the prosecution could not examine any of

the witnesses out of 9 listed witnesses. Though the petitioner is in custody for last 1 year 6 months and the case is also fixed for evidence since about 1 year as the charge has already been framed on 19.08.2025.

16. But from the record it reveals that till date no witness could be examined by the prosecution. Further it is seen from the record that though the case is fixed for evidence for about 1 year, but no extra endeavour taken by the learned Special Judge for production of the witnesses by the prosecution.

17. Thus, it is seen that the petitioner has already in long incarceration, but, probability of completion of the trial within a reasonable period cannot be expected at this stage as inspite of lapse of 1 year, the prosecution could not examine any witnesses till date.

18. In the case of **Rabi Prakash (supra)**, the Apex Court has granted bail to the accused with a view that "*the 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.*"

19. In the case of **Chitta Biswas @ Subhas Vs. the State of West Bengal** [Criminal Appeal No(s). 245/2020 (@ SLP (Crl.) No. 8823/20190] also, the bail was granted by the Apex Court considering the long period of incarceration and also considering the fact that out of 10 (ten) numbers of witnesses, only 4 (four) witnesses were examined by the prosecution.

20. Again, in the case of **Nitish Adhikary @ Bapan (supra),** considering the period of detention of 1 year 7 months, the bail was granted considering that the prosecution could examine only one witness and also considering that the case is at the preliminary stage of trial.

21. 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 guaranteed under Article 21 of the Constitution of India.

22. Accordingly, the accused/petitioner, **Khairul Islam @ Alim Uddin**, be released on bail in connection with **Special (NDPS) Case No. 112/2024 (corresponding to Patharkandi P.S. Case No. 334/2024)** under Sections 21(C)/25/29 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, Sribhumi, subject to the following conditions:

(i) that the petitioner shall appear before the Court of learned Special Judge, Sribhumi, 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, Sribhumi; and

(iv) that the petitioner shall not leave the jurisdiction of the learned Special Judge, Sribhumi, without prior permission.

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

JUDGE

Comparing Assistant