

(2025) 01 GAU CK 1566
In the Gauhati High Court
Case No : Bail Appln. Of 3068 Of 2024

Lalpian Mawii @ Khumi Khabug

APPELLANT

Vs

The State Of Assam

RESPONDENT

Date of Decision : 22-01-2025

Acts Referred:

Constitution Of India, 1950 — Article 21

Bharatiya Nagarik Surakhsha Sanhita, 2023 — Section 483

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 22(c), 29, 36, 37

Citation : (2025) 01 GAU CK 1566

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : Asif Ahmed, D Das

Final Decision : Allowed

Judgement

Devashis Baruah, J

1. Heard Mr. Asif Ahmed, the learned counsel appearing on behalf of the petitioner. Mr. D. Das, the learned Additional Public Prosecutor Assam appears on behalf of the State.

2. This is an application under Section 483 of the Bharatiya Nagarik Surakhsha Sanhita, 2023 for granting bail to the petitioner, namely, Lalpian Mawii @ Khumi Khabug, who was arrested on 27.08.2021 in connection with NDPS Case No.18/2022, which is presently pending before the learned Additional District and Sessions Judge No.2, Kamrup(M) at Guwahati arising out of Bhangagarh Police Station Case No. 507/2021 under Sections 22(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as 'the Act of 1985').

3. A perusal of the FIR enclosed to the instant application reveals that one Mr. Omar Faruk, SI UB of Police, Bhangagarh Police Station had lodged an FIR stating inter-alia that on 26.08.2021, at 4:30 PM acting on a tip off the informant

including the WSI, Woman Constable, 1 Sec.Commando BN.1Sec of CRPF B128 Crime Staff of East District PAPA Staff along with DCP (east), ACP Dispur arrived at Kunjalata Bibah Bhawan near Mizoram House, G.S. Road and searched the room No.15 of Kunjalata Bibah Bhawan as authorized by ACP, Dispur and recovered one packet of yaba tablets from the petitioner, 42 years resident of B-67/D, BIAL-II, DAWRPUI VENGTHAR, near YMA Hall, Aizawl and opened the packet in front of witnesses where 8500 numbers of yaba tablets weighing 950 grams including plastic packets (suspected psychotropic substance) which was duly seized on 26.08.2021 at 6:10 PM from the possession of the said Smti. Lalpian Mawii by observing all formalities as per the Act of 1985. It was further mentioned that during the search, one JIO LYF mobile handset bearing Mobile No.9863724502 was also seized from her possession. Further to that, it was also mentioned that on preliminary investigation, it was learnt that the petitioner kept the yaba tablets with her for commercial selling to other drug peddlers for her personal gain. On the basis of the said FIR being lodged, Bhangagarh P.S. Case No.507/2021 was registered under Sections 22(c)/29 of the Act of 1985.

4. It is further seen that subsequent to the lodging of the FIR and on the basis of some alleged statement made by the petitioner, one Dimsiannem @ Princilla, a resident of East Kasi Hills, Meghalaya was also arrested on 01.09.2021. Subsequent thereto, the investigating officer submitted the charge-sheet being charge sheet No.85/2021 dated 21.12.2021 under Sections 22(c)/29 of the Act of 1985 against the petitioner as well as the said Dimsiannem @ Princilla.

5. It is relevant to take note of that pursuant to the charge sheet being submitted, charges were framed by the Court of the learned Additional District & Sessions Judge No.2 Kamrup(M) at Guwahati on 11.04.2022 under Sections 22(c)/29 of the Act of 1985. This Court further takes note of that the co-accused, i.e. Dimsiannem @ Princilla had filed a bail application before this Court which was registered and numbered as Bail Application No.2090/2022. This Court, by the judgment and order dated 27.05.2022 had enlarged the said co-accused, namely Dimsiannem @ Princilla, subject to certain terms and conditions which were required to be adhered to. The question, however arises in the instant proceedings as to whether the petitioner herein, who has been languishing in the jail since her arrest i.e. from 27.08.2021 would be entitled to the privilege of bail.

6. Mr. Asif Ahmed, the learned counsel appearing on behalf of the petitioner submitted that the respondent authorities have been delaying the disposal of the trial and thereby affecting the fundamental rights of the petitioner under Article 21 of the Constitution. He further submitted that the petitioner had been falsely implicated in the FIR. The learned counsel further submitted that the stringent provisions of Section 37 of the Act of 1985 cannot go counter to the fundamental rights under Article 21 of the Constitution.

7. Mr. D Das, the learned Additional Public Prosecutor, Assam appearing on behalf of the State, however, opposed the petition stating, inter alia, that the recovery was made from the petitioner and as such, the petitioner does not deserve the

concession of regular bail.

8. The learned Additional Public Prosecutor, Assam further submitted that steps have been duly taken for the purpose of early completion of the trial and as such, when the trial is at the stage of evidence of the prosecution witnesses, the petitioner be not enlarged on bail.

9. This Court had duly heard the learned counsels appearing on behalf of the parties and had given an anxious consideration to the materials on record. This Court had duly perused the charge sheet which was submitted on 21.12.2021, wherein there are specific allegations that the alleged Yaba tablets were recovered from the petitioner. Be that as it may, a question, therefore, arises as to whether the compliance required under Section 37 of the Act of 1985 can be pressed into the service, taking into account that the petitioner had been in detention since 27.08.2021, which is more than three and a half years.

10. This Court at this stage finds it relevant to take note of the judgment of the Supreme Court in the case of Hussainara Khatoon vs. Home Secy., State of Bihar, reported in (1980) 1 SCC 81, wherein the Supreme Court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by the Court". The Supreme Court observed that the procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. It was observed that no procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21.

11. In another judgment of the Supreme Court in the case of Abdul Rehman Antulay Vs. R.S. Nayak, reported in (1992) 1 SCC 225, the Supreme Court emphasized the right to speedy trial and further held that an accused facing prolonged trial has no option. It was observed that the State or the complainant who prosecutes him is obligated to proceed with the case with reasonable promptitude. The Supreme Court further observed that of course, in a given case, if any accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But the accused cannot be disentitled from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.

12. In a recent judgment of the Supreme Court in the case of Javed Gulam Nabi Shaikh Vs. the State of Maharashtra and Another, reported in (2024) 9 SCC 813, it was held at paragraphs 16, 17 and 18, which being relevant are reproduced hereinunder:

"16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the

crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

18. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."

13. This Court further takes note of a recent order passed by the Supreme Court in the case of Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) reported in 2023 SCC Online SC 352 wherein the Supreme Court observed the following pertaining to a bail plea in respect of a case under the Act of 1985 pertaining to commercial quantity contraband. Paragraphs 22, 23 and 24 of the said judgment being relevant are reproduced hereinunder:

"22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in *A Convict Prisoner v. State* as "a radical transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

24. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the

weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

14. From the above decisions so rendered by the Supreme Court, it is therefore clear that the right to speedy and expeditious trial is not only a vital safeguard to prevent undue and oppressive incarceration, but it is also to mitigate anxiety and concern accompanying the accusation, as well as to curtail any impairment in the ability of an accused to defend himself. There is also an overarching societal interest paving way for a speedy trial. The concept of speedy trial is amalgamated into Article 21 as an essential part of the fundamental right to life and liberty, guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed at the time of the arrest of the accused and the consequent incarceration which continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision, so that any possible prejudice that may result due to impermissible and avoidable delay since the time of the commission of the offence till the criminal proceedings consummates into a finality, could be averted. The speedy trial, early hearing and quick disposal are sine qua non of criminal jurisprudence. The overcrowded Court-dockets, the heavy volume of work and the resultant pressure on the prosecution and the Police, indubitably keeps the entire criminal jurisprudential mechanism under stress and strain. However, this cannot be an excuse to keep the accused in incarceration for an indefinite period of time. It does not serve any credit to the criminal justice system, rather it makes for a sad state of affairs.

15. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the Court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. First, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost on memories dimmed by the passage of time, thus, impairing the ability of the accused to defend himself. It goes without saying that the consequences of a pre-trial detention are grave. It is a settled position as per criminal jurisprudence that an accused is presumed innocent, till proven otherwise. This Court cannot be unmindful that the burden of detention of such an accused frequently falls heavily on the innocent members of the family.

16. There is another aspect of the matter which deserves consideration at this stage. The allegation in the present case relates to an accused being involved in an FIR relating to commercial quantity of a contraband under the Act of 1985. While considering a bail petition in a case involving commercial quantity, the Court has to keep in mind the rigours enumerated under Section 37 of the Act of

1985, which mandate that the Court can grant bail to an accused only after hearing the public prosecutor and after having satisfied itself of the twin conditions which are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that he is not likely to commit any offence while on bail. The stringent rigours of Section 37 of the Act of 1985 must be meticulously scrutinized against the backdrop of the accused's fundamental rights to speedy trial. The right to life and personal liberty cannot be rendered nugatory for unwarranted delays in the judicial process, particularly where such delay(s) is neither attributable to the accused nor justified at the end of the prosecution by cogent reasons. An individual cannot be kept behind bars for an inordinate period of time by taking shelter to the rigours laid down in Section 37 of the Act of 1985. The legislature in its wisdom, in order to ensure speedy and timely disposal of the cases under the Act of 1985 had provided for constitution of special courts under Section 36-A of the Act of 1985.

However, this Court cannot turn a blind eye to the protracted delays and the systematic inefficiency that frustrate this legislative purpose. A Court of law is duty-bound to ensure that it does not become complicit in violation of an individual's fundamental rights, notwithstanding anything contained in a statute. While dealing with a bail petition in a case governed by the rigours of Section 37 of the Act of 1985, this Court must strike a judicial balance between the legislative intent to curb the menace of drugs and the sacrosanct right of the accused to a fair and expeditious trial. Prolonged incarceration, without justifiable cause, risks transforming pre-trial detention into punitive imprisonment, an outcome antithetical to the principle of justice and equity.

17. In the backdrop of the above, now let this Court take note of the facts involved in the instant proceedings. It would be seen that the petitioner herein has been in detention from 27.08.2021. The charge sheet was submitted on 21.12.2021 and the charges were framed on 11.04.2022. The instant bail application was filed on 27.09.2024. Thereupon, when the matter was listed before this Court on 18.11.2024, 27.11.2024, 29.11.2024, 16.12.2024 as well as 06.01.2025, this Court passed certain directions so that the trial in respect to NDPS Case No. 18/2022 is given some impetus. However, the order sheets which have been produced during the course of the hearing including the order sheet produced today dated 17.01.2025 shows a dismal state of affairs, inasmuch as, the prosecution had not taken active steps for the purpose of an early culmination of the trial. Summons are still issued for the prosecution witnesses to appear and time and again they have not appeared.

18. Under such circumstances, in the opinion of this Court, the snail pace manner in which the trial is proceeding coupled with the protracted incarceration of the petitioner since more than three and a half years, it is the opinion of this Court that the instant bail petition is required to be allowed.

19. Accordingly, the petitioner, namely, Lalpian Mawii @ Khumi Khabug is allowed to be enlarged on bail on furnishing a bail bond of Rs.1,00,000/-(Rupees One

Lac) only with two local securities of the like amount to the satisfaction of the learned Additional District and Sessions Judge No.2, Kamrup(M) at Guwahati subject to the following conditions:

(a) The accused petitioner shall not leave the territorial jurisdiction of the Police Station Vaivakawn, in the District of Aizawl, Mizoram without prior written permission from the Officer-in-Charge of the said Police Station;

(b) the accused petitioner shall not tamper with the evidence of the case;

(c) the accused 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;

(d) the accused petitioner shall regularly appear before the Court below and the learned Court below shall be at liberty to continue the trial of the case keeping the petitioner in custody in the event the petitioner fails to appear before the Court below on a single date fixed by the Court without there being any satisfactory ground(s) assigned therein;

(e) the accused petitioner shall deposit her passport/visa, etc, if any, in the learned Court below; and

(f) the accused petitioner shall not commit any offence under the Act of 1985 while on bail.

20. The observation made herein above are only tentative to the consideration of the bail application and the trial Court shall not be influenced in any manner during the trial of the said proceedings.

21. With the above observations and directions, this Bail Application stands allowed.