



**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Tirthankar Ghosh

CRM (NDPS) 1437 OF 2026

***Shaista Khan
versus
The Union of India***

For the Petitioner : Mr. Sourav Chatterjee, Sr. Adv.
Mr. Arka Kumar Nag
Mr. Sourav Choudhury
Mr. Akash Ghosh
Mr. Kaushik Bandyopadhyay

For the NCB : Mr. Arun Kumar Maiti (Mohanty)
Mr. Nonigopal Chakraborty
Mr. R.R. Mohanty
Ms. Pusprita Chowdhury

Heard On : 03.07.2026, 07.07.2026, 08.07.2026,
13.07.2026. & 16.07.2026

Judgement On : 16.07.2026

Tirthankar Ghosh, J. :

The present application for bail has been preferred by the petitioner in connection with N.D.P.S Case No.22 of 2026, arising out of NCB Crime No. 06/NCB/KOL/2026 dated 03.04.2026 under Sections 8(c) read with sections 20(b)(ii)(B)/21(C)/29 of the NDPS Act, 1985.

The bail application has been preferred by the petitioner only on the issue relating to pregnancy of the petitioner who is at an advanced stage of pregnancy and the expected date of delivery has been fixed on 13.08.2026.



Learned Senior Advocate appearing for the petitioner submits that the petitioner was arrested in connection with the instant case on 04.04.2026 and since then she is in custody. Emphasis has been made only on the medical documents which have been enclosed and which do support the claim of the petitioner relating to the expected date of delivery. A report was called for from the NCB and such report was submitted on 07.07.2026 which do support the contention of the petitioner. However, so far as the issue is concerned, it has been emphasized by the learned advocate appearing for the NCB that the petitioner is being examined at Gynecology and Maternity Outpatient Department (OPD), S.S.K.M. Hospital wherein there has been follow up visits from 08.05.2026 to 03.07.2026. There is no complaint regarding her health and she has been prescribed regular medication which is under the supervision of Alipore Correctional Home Hospital.

Learned Senior Advocate for the petitioner has referred and relied upon judgments wherein, under similar circumstances, bail was granted to the accused. To that effect, reference has been made to ***Kamana Naykar alias Kamana Singh v. State of Uttar Pradesh***, reported in **2023 SCC On Line SC 942**, and the attention of the Court has been drawn to paragraphs 3 and 4 thereof, which reads as follows:

“3. The deceased - Shyam Sundar, who is said to have committed suicide happened to be the husband of the appellant (accused) - Kamana Naykar @ Kamana Singh. It is the case of the prosecution that the appellant (accused) - Kamana Naykar @ Kamana Singh abetted the commission of suicide by the deceased - Shyam Sundar. We take notice



of the fact that this Court vide order dated 30.06.2023, ordered release of the appellant (accused) - Kamana Naykar @ Kamana Singh on interim bail, as she is pregnant.

4. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the appellant (accused) - Kamana Naykar @ Kamana Singh has been able to make out a case for release on bail. The appellant (accused) - Kamana Naykar @ Kamana Singh is accordingly ordered to be released on bail, subject to the terms and conditions which the trial Court may deem fit to impose.”

Petitioner has also relied upon the order passed in **C.R.M. (DB) No. 1676 of 2023 (in the matter of : Payel Mukherjee)**, wherein, under similar circumstances, the Hon'ble Division Bench of this Court was pleased to release the applicant on humanitarian grounds.

Attention of the Court was drawn to the judgment of the Punjab and Haryana High Court in **Amanjot Kaur -versus- State of Punjab, (2023: PHHC:157283)**, wherein, in a case under the provisions of the NDPS Act, after assigning reasons with regard to the applicability of Section 37 of the NDPS Act, the Court was pleased to release the accused on bail. Paragraph 5 of the said judgment is relevant and reads as follows:

“5. Although petitioner is alleged to have been found in possession of the contraband falling in commercial category but pregnancy of a woman is a special circumstance, in which the gravity of the offence for the time being is liable to be ignored. Giving birth to a child while in custody is not only traumatic to the mother but also to the child to be born because psyche of a child will always have an adverse impact, as and when said child is questioned about his birth. Besides, dignity is liable to be



ensured to a pregnant woman, in view of fundamental right enshrined under Article 21 of the Constitution of India guaranteeing life and liberty. The interest of the child is also to be taken into consideration, who is not expected to be exposed to the prisons, unless and until it is found that there is grave danger in releasing the petitioner on bail. No doubt that Section 37 of the NDPS Act creates fetter on grant of bail in such like cases involving possession of contraband of commercial category but at the same time when bail is considered on humanitarian grounds, said Section 37 of the NDPS Act cannot be considered to act as a blanket ban on the power of the Court to grant interim bail.”

Reliance has also been placed on **Alfiya Faisal Shaikh -versus- Union of India (Bombay High Court)**, and reference has been made to paragraphs 3, 4, 5, 10, 13 and 15 of the said judgment. The said paragraphs are set out hereinbelow:

“3. As a follow up action, a search operation at the house of the applicant was conducted on 9th June, 2023 in the presence of public witnesses. The applicant was found in her house Room No.103, Ansari Heights. Upon being enquired, the applicant allegedly voluntarily disclosed that anticipating action by NCB she had concealed a packet containing 15 kg. MD on the second floor of the said building behind the door, near the lift. The raiding party accompanied by the public witnesses went to the said spot and found a bag consisting of 15 packets of “white colour substance” concealed behind the door, near the lift. The applicant allegedly identified and confirmed that the said bag was concealed by her. The contraband article was seized and samples were collected from each of the packets.

4. During the house search, cash amount of Rs.1,10,24,000/- and gold ornaments were also found. The applicant disclosed that the cash amount and the ornaments were the proceeds of the drug trafficking indulged in by the applicant and her husband. Eventually, the applicant, her husband and other co-accused were arrested.



5. *At the time of arrest, the applicant was carrying two months pregnancy. Now the applicant is carrying an advanced pregnancy. The applicant preferred an application before the Special Judge for bail on medical ground. The learned Special Judge declined to exercise the discretion. Hence, this application.*

10. *Mr. Shirsat, the learned Counsel for respondent No.1/NCB, however, stoutly resisted the prayer for interim bail. It was submitted that respondent No.1 NCB does not contest, for a moment, the necessity of medical treatment and intervention for the delivery by the applicant. However, the applicant does not deserve to be released on bail for the said purpose as the applicant can be provided the requisite medical treatment and care at a Government Hospital. Therefore, the application does not deserve to be entertained especially having regard to the fact that the applicant and her entire family has been habitually indulging in drug trafficking. The release of the applicant on bail is fraught with the risk of tampering with evidence, threatening witnesses and even absconding. There is imminent risk that the applicant, taking undue advantage of the interim bail, would indulge in drug trafficking.*

13. *I have carefully considered the submissions canvassed across the bar. The position that the applicant was allegedly found in possession of commercial quantity of MD and, therefore, the interdict contained in Section 37 of the NDPS Act comes into play and the Court is required to satisfy itself about the twin conditions envisaged by Section 37 of the NDPS Act cannot be contested. The question that emerges for consideration is, whether the applicant, who is admittedly carrying advanced pregnancy, deserves to be released on temporary bail?*

15. *It is true that applicant can be made to have the treatment at a Government Hospital for the said purpose. However, the impact of such course not only on the applicant but also the child cannot be lost sight of. A prisoner is entitled to the dignity which the situation demands. Giving birth to a child in the prison may have consequences not only to the mother but the child as well. Ordinarily, a situation of this nature where*



a lady is carrying advanced pregnancy, deserves most humane consideration.”

Lastly, the petitioner has relied upon the judgment in **R.D. Upadhyay v. State of Andhra Pradesh and Others**, reported in **(2007) 15 SCC 337**. Emphasis has been made on paragraph 45 of the said judgment. The relevant extract from the said paragraph is reproduced below:

“45. In light of various reports referred to above, affidavits of various State Governments, Union Territories, the Union of India and submissions made, we issue the following guidelines:

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2. Pregnancy:

(a) Before sending a woman who is pregnant to a jail, the authorities concerned must ensure that the jail in question has the basic minimum facilities for child delivery as well as for providing prenatal and post-natal care for both, the mother and the child.

(b) When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the Superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

(c) Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper prenatal and



post-natal care shall be provided to the prisoner as per medical advice.

3. Childbirth in prison:

(a) As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

(b) Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

(c) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.....”

Mr. Maiti, learned advocate appearing for the NCB initially argued regarding the gravity of the offence by emphasizing three seizures which have been effected at three different locations. The relevant part of the written notes which has been advanced before this Court is quoted below in respect of the seizures which are effected;

“i. Premises 1 (Residence of Shaista Khan): Located at 16/C, 1st Floor, Bindubasini Street, Mominpur, Kolkata. A search in the presence of independent witnesses yielded a handbag inside an almirah containing 70g Ganja, 239g MDMA tablets, 8g Cocaine, 118 LSD blots (~2g), and 9 vials of liquid LSD (~90g). Additionally, Rs. 4,35,000/- in cash (suspected drug proceeds) was recovered and seized.



ii. Premises 2 (Residence of Grenville Russel D'cruz): Located at 4/1B, Rajab Ali Lane, Iqbalpur, Kolkata, yielding 5g Ganja, 31 MDMA tablets, and electronic evidence (laptop).

iii. Premises 3 (Batanagar Flat): Following an on-spot voluntary disclosure by Shaista Khan, NCB teams raided Flat No. 8A4, Tower 7, Hiland Greens Phase I, Batanagar. A trolley bag was recovered containing monumental quantities of drugs: 2.441 kg Ganja, 3,974 MDMA tablets (~1.505 kg), 184g Cocaine, 760g Amphetamine, 263 LSD blot papers, 2.016 kg liquid LSD, and 1,770 Tramadol capsules.

It was also pointed out that the total quantum of seizures is worth Rs. 63 crores and the husband of the petitioner has been detained at Philippines in respect of similar set of offences. Further materials were produced by the Investigating Agency to show the communication between the present petitioner and other persons associated to organize criminal network and conspiracy, a direct nexus between the persons who are operating including another accused who has been arrested in connection with this case; the quantum of contraband seized and particularly the nature of contraband which has been seized are available only by way of international import by surreptitious means.

Learned advocate for the NCB additionally submitted that in order to investigate such offences, a coordination in respect of different organizations are required which includes the Customs Authority, Coastal Authority, Police Authority, Courier Companies, Airline Companies, FRRO and Passport Authorities along with cooperation of Interpol and other Overseas authorities. On such background, learned advocate for the NCB



submitted that the investigation of the case is in progress. As such, at this stage, release of the petitioner on bail would jeopardize the investigation for unearthing the truth.

On behalf of the NCB reliance was placed on the judgment of **Chonghoi Haokip -versus- Union of India** passed by the Gauhati High Court, wherein in a case under the provisions of the N.D.P.S. Act, pregnant lady was refused bail. To that effect, paragraphs 27 and 28 of the said judgment have been relied upon which is quoted below: -

“27.The ground of pregnancy, though relevant, has to be examined from the nature of the offence. When the Court, prima facie has come to a finding that there is no scope of enlarging the applicant on bail at this stage, the issue of pregnancy, in the opinion of this Court shall not play a major role. While coming to the said finding, this Court has taken into consideration the communication made by the Medical and Health Officer, Central Jail, Guwahati regarding the health condition of the applicant, the treatment provided to her, timely and regular check-ups etc.

28.Without further going into the merits of the case so as to avoid causing any prejudice to either of the parties, this Court also cannot ignore the objective and purpose of the enactment which is to curb the menace of drugs in the society.”

Learned advocate for the NCB also referred to the decision of the Hon’ble Supreme Court to substantiate that Section 37 of the NDPS Act creates fetter for granting bail, the primary consideration would be to ensure that twin conditions are complied with. Reference was made to the judgment of **State of U.P. -versus- Gayatri Prasad Prajapati**, reported in **SLP (Crl.)**



No. 4337/2020 and reference was made to paragraphs 15, 16, 17 & 18 of the said judgment which reads as follows:

“15. The above report of the S.G.P.G.I.M.S., i.e., the super-speciality hospital, which was on the record as well as report of the medical board dated 10.06.2020, which was brought in the notice of the High Court have neither been considered nor referred to by the High Court in the impugned order. When the respondent was being given treatment in the superspeciality hospital, i.e., S.G.P.G.I.M.S. as recommended by K.G.M.U., we fail to see as to what were the shortcomings in the medical treatment offered to respondent, which could have been the basis for grant of interim bail on medical ground. Further, as per condition (ii) mentioned in paragraph 27, the High Court contemplated that respondent shall ordinarily reside at a place of residence, as assured, far from the place of residence of the prosecutrix and her immediate family, thus, the contemplation was that respondent shall reside at his residence. There was no satisfaction recorded by the High Court that treatment offered to respondent was not adequate and he requires any further treatment by any particular medical institute for which it is necessary to release the respondent on interim bail on medical grounds.

16. Dr. Dhawan submits that every person, who is accused of an offence, even if the offence is a serious offence, requires a humane treatment by the prison authorities. There can be no two views with regard to above. Humane treatment to all including an accused is requirement of law. Furthermore, a prisoner, who is suffering from an ailment, has to be given due treatment and care while in prison.

17. Learned counsel for both the parties have referred to Clinical Summary dated 09.09.2020 as well as the letter dated 05.10.2020 of K.G.M.U. referring the respondent to S.G.P.G.I.M.S. for NCV testing.

18. Even as on date, due medical care is being taken of the respondent, which is apparent from the additional documents filed



as Annexure A-2 and Annexure A-3 alongwith the application dated 10.10.2020. The High Court, without considering the entire materials on record, has passed the impugned order dated 03.09.2020, which is unsustainable.”

On behalf of NCB reliance was placed on ***The State of Meghalaya Vs. Lalrintluanga Sailo & Anr.*** arising out of ***Special Leave to Appeal (Crl.) No(s). 16021/2023***. Attention has been drawn to Paragraphs 5, 6, 8, 10 & 11 of the said judgment, which are quoted below:

“5. There cannot be any doubt with respect to the position that in cases involving commercial quantity of narcotic drugs or psychotropic substances, while considering the application of bail, the Court is bound to ensure the satisfaction of conditions under Section 37(1)(b)(ii) of the NDPS Act. The said provision reads thus:-

“37(1)(b)(ii)- where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

6. While considering the cases under NDPS Act, one cannot be oblivious of the objects and reasons for bringing the said enactment after repealing the then existing laws relating to the Narcotic drugs. The object and reasons given in the act itself reads thus: -

“An act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.”



In the decision in **Collector of Customs, New Delhi v. Ahmadalieva Nodira**¹, the three judge bench of this Court considered the provisions under Section 37(1)(b) as also 37(1)(b)(ii) of the NDPS Act, with regard to the expression “reasonable grounds” used therein. This Court held that it means something more than the prima facie grounds and that it contemplates substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates the twin conditions under Section 37(1)(b)(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail it was held therein that they are cumulative and not alternative. Satisfaction of existence of those twin conditions had to be based on the ‘reasonable grounds’, as referred above.

8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications.

10. The subject FIR viz., FIR No. 06(02)23 under Section(s) 21(c)/29 of the NDPS Act, would reveal that the quantity of the contraband involved is 1.040 kgs of heroin. The impugned order granting bail to accused-Smt. X, dated 29.09.2023 would reveal, this time also, the bail was granted on the ground that she is suffering from HIV and conspicuously, without adverting to the mandate under Section 37(1)(b)(ii), NDPS Act, even after taking note of the fact that the rigour of Section 37, NDPS Act, calls for



consideration in view of the involvement of commercial quantity of the contraband substance. When the accused is involved in offences under Section 21(c)/29 of NDPS Act, more than one occasion and when the quantity of the contraband substance viz., heroin is 1.040 Kgs, much above the commercial quantity, then the non-consideration of the provisions under Section 37, NDPS Act, has to be taken as a very serious lapse. In cases of like nature, granting bail solely on the ground mentioned, relying on the decision in **Bhawani Singh v. State of Rajasthan**³ would not only go against the spirit of the said decision but also would give a wrong message to the society that being a patient of such a disease is a license to indulge in such serious offences with impunity. In the contextual situation it is to be noted that in **Bhawani Singh's** case the offence(s) involved was not one under the NDPS Act. We have no hesitation to say that in the above circumstances it can only be held that the twin conditions under Section 37 of the NDPS Act, are not satisfied and on the sole reason that the accused is a HIV patient, cannot be a reason to enlarge her on bail. Since the impugned order was passed without adhering to the said provision and in view of the rigour thereunder the accused-Smt.X is not entitled to be released on bail, the impugned order invites interference.

11. Consequently, the impugned order is set aside. The accused-Smt.X shall surrender before the trial Court within a week from today and in case of her failure to do so, she shall be taken into custody in accordance with law. Upon such surrender/production of the accused before the trial Court, it shall cancel the bail bond of the accused and discharge the sureties.”

Learned advocate for the NCB also relied upon **Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa & Anr.** arising out of **Special Leave Petition (Civil) No. 19142 of 2006**. Paragraphs 38 and 39 of the said judgment referred are quoted below.



“38. The decision of a Court is a precedent if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons does not amount to a precedent.

*39. In **State of Punjab vs. Baldev Singh** (1999) 6 SCC 172, a Constitution Bench of this Court observed (vide para 43) that a decision is an authority for what it decides (i.e. the principle of law it lays down), and not that everything said therein constitutes a precedent.”*

Additionally, paragraphs in the aforesaid judgment were referred and the number of references relied upon in the aforesaid judgement was stressed upon to emphasise that the ratio on which the judgments relied upon by the petitioner have been placed before this Court are not similarly placed as the instant case. The present case is distinguishable as investigation is being carried out, while in most of the cases cited either charge sheet has been submitted or there were no fetters similar to Section 37 of the NDPS Act.

In order to distinguish the same, Mr. Chatterjee referred to **Vijay Singh Vs. Union of India 2024 SCC Online SC 5304** and stressed upon paragraph 5 of the said judgment which is quoted below ;

“5. However, time and again, this Court has reminded different States as well as the Narcotic Control Bureau that Article 21 of the Constitution of India over-rides Section 37 of the Act. If there is an undue delay on the part of the prosecution in concluding the trial and that too for no fault on the part of accused, then accused cannot be kept in jail for indefinite period of time.”



I have taken into account the submissions of the learned advocates for both the parties. It is a fact that the seizures which have been made in the present case do reflect the gravity of the offence and allegedly the complicity of the present petitioner. The facts reveal that search was carried on 03.04.2026. The petitioner is in custody for about 100 days. After the petitioner was sent to jail custody, the investigating authorities for the first time required interrogating the petitioner after the application for bail was filed before this Court.

Records of the case which has been placed before this Court by the Narcotic Control Bureau (Case Diary) reflect that last occasion when the petitioner went outside India is on September, 2025. There are call records which do reflect continuous contact. The complicity of the petitioner definitely cannot be ruled out. However, inspite communications having been made to different organizations in respect of import of such materials from any foreign country, but till date no acknowledgment and/or corroborating materials have been received from the offices/organizations referred to above. The investigating agency obviously have with them another 80 days for obtaining the materials from the said organizations for completing the investigation within statutory period until and unless the same is extended by the learned Special Court.

There are complexities involved in the investigation of the present case. So far as the materials collected by the investigating officer. The investigating officer emphasizes on the fact that the nature of contraband which has been recovered in the present case along with their variety at few



locations is a unique feature of the present case. It has been further canvassed that there are other accused persons who may be available in foreign countries. Efforts are being made by the investigating agency. However, the same reflects a time consuming process. The gravity of the offence definitely has an impact on the remedy sought for. However, both the parties agree that the petitioner is pregnant. Although, pregnancy is not an automatic ground for releasing the petitioner on bail but having regard to the time which will be consumed in the present investigation and the admitted position that there are concerns of the mother's life and health as also the viability and interest of the foetus along with the additional issues which may be involved both to the mother and to the foetus keeping the following aspects in mind especially - (i) health of the mother; (ii) availability of obstetric facilities in jail; (iii) risk to unborn child and (iv) advanced stage of pregnancy, I am inclined to release the petitioner on **interim bail** till **21.09.2026** on such terms and conditions as the learned Special Court deems fit and proper which will include amongst others surrender of the passport, availability of a particular mobile number and to drop a pin on Google Maps which would show the location of the present petitioner. This is, in addition to any grounds, which the learned Special Court thinks fit and proper.

Petitioner shall not leave the jurisdiction of Kolkata Municipal Corporation.

Petitioner would, after release, inform the investigating officer of the case relating to the Nursing Home/Institute where she intends to get



admitted. If there is any change, such update must be informed to the investigating officer. Further, any change of location should be updated to the investigating officer of the case.

Additionally, the investigating officer and/or any member of the investigating agency would be empowered to give surprise check for assessing the availability of the petitioner at the available location which is furnished before release of the petitioner on bail and subsequently updated to the investigating agency.

Petitioner shall physically surrender before the learned Jurisdictional Special Court by 22.09.2026.

With the aforesaid observations CRM (NDPS) 1437 of 2026 is disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order/judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)