

GAHC010030422023



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

Case No. : Bail Appln./513/2023

RAMESH BHUTIANI
S/O LATE RAGHUNATH BHUTIANI,
R/O VILL- C/O RESMA, HOUSE NO. G-1, RABINDRABAN, NATUNPARA
ROAD, BARUIPUR, KOLKATA

VERSUS

THE UNION OF INDIA
REP. BY THE STANDING COUNSEL, NCB, GUWAHATI, ASSAM

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.04.2023

Heard Mr. J.I. Borbhuiya, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, NCB.

2. By this petition under Section 439 Cr.P.C., the accused petitioner, namely **Ramesh Bhutiani** has prayed for grant of bail in connection with **N.D.P.S.**

Case No. 42/2020 u/s 22(c)/29 of the NDPS Act, pending in the Court of learned Addl. Sessions Judge No.1, Kamrup(M), Guwahati arising out of NCB Crime Case No. 03/2020 under Sections **22(c)/29** of the NDPS Act.

3. The scanned copy of the case record has been received.
4. In the order, dated 31.03.2023, this Court recorded the submissions in detail and other details as hereinbelow extracted-

“Mr. JI Borbhuiya, learned counsel for the accused petitioner, submits that the accused has been in judicial custody since 30.01.2020 on an accusation of alleged illegal possession of 1.992 kgs of Methamphetamine tablets. Mr. Borbhuiya, further submits that despite his detention for more than 4 years on charges of Sections 22 ©/29 of the NDPS Act framed on 09.11.2020, the prosecution/ NCB has not exhausted examination of 9(nine) listed witnesses till date and thereby the accused’s right to speedy justice has been violated. Drawing this Court’s attention to the order, dated 30.09.2022, passed in Bail Application 2097/2022, whereby this Court directed the learned trial court to complete the trial within 04 (four) months has also been deliberately flouted by not taking any serious steps to examine the remaining 04 (four) witnesses by the prosecution/ NCB. Mr. Borbhuiya submits that the prime 02 (two) co-accused persons are already released on bail whereas the present accused, who is an engineer by profession (B Tech. Engineer) and not the main accused, has been continuing in detention for years altogether. Therefore, Mr. Borbhuiya submits that subject to any condition, the accused may be granted the liberty of bail subject to any condition(s). Mr. Borbhuiya, learned counsel for the accused petitioner relied on the ratio of the judgment rendered by the Hon’ble Supreme Court in the case of Mohd. Muslim @ Hussain –vs- State (NCT of Delhi) in Special Leave Petition (Crl.) No(s).915 of 2023.

Mr. SC Keyal, learned Standing Counsel, NCB, submits that there is abundance of materials to show that the accused petitioner had received 1.9992 kgs of Methamphetamine tablets and he is involved directly in an organised crime. Mr. Keyal further submits that two accused persons were granted interim bail by the learned Special Judge (Additional) No.1 on serious health issues, after obtaining opinion of the Medical Board vide order, dated 30.01.2023 and as such, the present accused petitioner cannot claim bail on parity. In support of his submission Mr. Keyal has relied on the ratio of the judgment rendered by the Hon’ble Supreme Court in the case of Union of India –vs- Ajay Kumar Singh @ Pappu reported in 2023 0 Supreme (SC) 285.

The report as called for from the learned trial Court is received. The report, inter-alia, reveals that the order of this Court, dated 30.09.2022 passed in Bail Application 513/2023 was not communicated to the learned trial Court and it was only on 21.03.2023, that, after passing of the order, dated 16.03.2023, calling for report, the learned Special Public Prosecutor of NCB

filed an application stating about this Court's order, dated 16.03.2023, aforementioned. Accordingly, the learned trial court has fixed for recording evidence of NCB on 04.04.2023, 05.04.2023 and 06.04.2023 respectively .

The above report of the learned trial court leaves no doubt about the sluggish continuation of trial of the case instituted by the NCB in utter violation of the accused's right guaranteed under Article 21 of the Constitution.

Therefore, this Court finds it expedient to examine the matter in detail indepth.

Accordingly, let a fresh report be called for from the learned trial court as to the dates directing issue of summons etc to the witnesses and whether pursuant to those orders steps were taken mentioning actual dates of taking such steps and whether those summons were returned after service as well as the authority which took steps as directed.

Also call for scanned copy of depositions of witnesses recorded on and from 04.04.2023.

List on 10.04.2023."

5. Accordingly, the learned trial Court has submitted its fresh report along with additional depositions of prosecution witnesses. The fresh report reads as hereunder-

“

Report

The Charge in NDPS Case No. 42/2020 was framed on 09.11.2020. A table showing the dates of order directing issue of summons to the witnesses thereafter and dates of issuance of summons to the witnesses pursuant to those orders is appended herewith as per the direction of the Hon'ble Gauhati High Court's order dated 31.03.2023 in Bail Application No. 513/2023.

It is to be mentioned herein that after issuance of summons to the witnesses by the office of this Court, most of the times NCB collects those summons to serve to the witnesses and no service reports thereof are submitted by NCB to this Court except one summon returned after service on 18.11.2021 by Dispur police station.

It is also to be mentioned herein that during the year 2021 due to COVID-19 pandemic related regulations and restrictions, the court proceedings were not functioned in regular manner affecting the speed of the trial. Besides, the Court of the Additional District & Sessions Judge No.1, Kamrup(M) was lying vacant from 17.07.2022 to 20.11.2022.

Serial No.	Date of Order/direction to issue summons	Date of issuing summons	Issue No.	Date of returning summons after service	The authority which took step
1	04.03.2021	05.03.2021	432/2021	-	NCB
2	12.11.2021	12.11.2021	1598/2021 1599/2021 1600/2021	Summons issued vide Memo No. 1599/2021 was returned on 18.11.2021	NCB
3	25.11.2021	29.11.2021	1721/2021 1722/2021	-	NCB
4	18.12.2021	18.12.2021	1890/2021	-	NCB
5	04.02.2022	07.02.2022	242/2022 243/2022	-	NCB
6	18.02.2022	21.02.2022	348/2022 349/2022	-	NCB
7	08.03.2022	10.03.2022	524/2022 523/2022	-	NCB
8	14.03.2022	17.03.2022	596/2022 597/2022	-	NCB
9	12.04.2022	26.04.2022	907/2022	-	NCB

10	23.05.2022	25.05.2022	1254/2022 1255/2022 1256/2022 1257/2022	-	NCB
11	06.06.2022	06.06.2022	1350/2022	-	NCB
12	06.12.2022	08.12.2022	2127/2022 2128/2022 2129/2022	-	NCB
13	06.12.2022	08.12.2023	2130/2022	-	NCB
14	30.01.2023	02.02.2023	527/2023	-	NCB
15	21.02.2023	27.02.2023	1010/2023	-	NCB
16	06.03.2023	17.03.2023	1347/2023	-	NCB
17	21.03.2023	22.03.2023	1478/2023 1479/2023	-	NCB
18	21.03.2023	30.03.2023	1596/2023	-	NCB
19	05.04.2023	05.04.2023	1718/2023	-	NCB

6. Mr. S.C. Keyal, learned Standing Counsel, NCB, submits that all the prosecution witnesses except one have been examined. Learned Standing Counsel, however, added that the defence side's co-operation is not satisfactory. It has been further submitted that the N.C.B. takes steps for producing the witnesses and for this purpose, the summons are issued by registered post to

them, who are resident/posted outside the state and in case of persons locally available served through departmental local arrangements. Mr. Keyal also submits that in the event of no response despite service of summons, the department has taken steps to initiate coercive steps to compel their appearance.

7. On bare perusal of the case record along with the above report, it transpires that after the charges under Sections 22(c)/29 of the N.D.P.S. Act were framed against the accused petitioner and 2(two) others on 09.11.2020 for illegally possessing 1.992 kg of Methamphetamine tablets, which amounted to commercial quantity under the Act, the summons issued to the prosecution witnesses were not served regularly by the N.C.B. nor service reports were submitted to the learned trial Court by the N.C.B. The summons were issued by the Court for service by the N.C.B. The laxity in service of Court process on the witnesses and disruption caused by Covid-19 pandemic resulted in inordinate delay in disposal of the case.

8. The prosecution allegation is that on 29.01.2020, the officials of NCB, Guwahati Zonal Unit recovered and seized 1.992 kgs. of Methamphetamine tablets from the possession of the accused petitioner and two others.

9. It is pertinent to refer to the observations of the Hon'ble Supreme Court in Para No. 23 and 24 of the judgment rendered in *Mohd Muslim@ Hussain Vs. State (NCT of Delhi)* reported in *2023 SCC OnLine SC 352* which is extracted hereinbelow-

“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. State²¹ 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”²² (also see Donald Clemmer's ‘The Prison Community’ published in 1940²³). 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.”

10. Again, in Para No. 16 of the judgment, rendered by the Hon’ble Supreme Court in *Union of India Vs. Ajay Kumar Singh @Pappu*, reported in *2023 0 Supreme (SC) 285*, it was held as under-

“16. it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable ground for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

11. A perusal of the case record reveals that the accused petitioner has been in judicial custody for 3 years 2 months 12 days since 30.01.2020 and after filing of the Final Complaint (Offence Report) on 28.07.2020, the learned trial Court framed charges under Sections 22(c)/29 of the N.D.P.S. Act against the present accused and two others on 09.11.2020. The learned trial Court fixed as many as nineteen dates for examination of 09(nine) listed prosecution witnesses. All the nine prosecution witnesses are examined.

12. It may be pointed out that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution.

13. On scrutiny of the evidence of the prosecution witnesses, it cannot prima facie conclusively be said that the accused is not guilty of the charges. This presumption is, of course, subject to final finding by the learned trial Court after hearing of both sides and indepth appreciation of evidence, oral and documentary, on record.

14. In view of the above present status of trial of the case and prolonged detention of the accused petitioner, despite the factors to be considered while granting bail provided in Section 37 of the N.D.P.S. Act and further, in view of the principles laid in the above referred judgments of the Hon'ble Apex Court, this Court is of the considered opinion that the accused petitioner can be granted the liberty of bail subject to conditions. In this regard, the principles followed in the bail orders passed by the Hon'ble Supreme Court in *Mohd Muslim@ Hussain (supra)* and *Ajay Kumar Singh @Pappu(supra)* are also kept in mind.

15. For the above stated reasons, it is provided that the accused petitioner namely, **Ramesh Bhutiani**, who is a resident of Kolkata, West Bengal, shall be released on bail of **Rs. 1,00,000/- (Rupees One Lakh)** with two sureties of like amount to the satisfaction of the learned **Special Judge (N.D.P.S. Act), Kamrup(M), Guwahati** subject to the following conditions-

- i) That the accused petitioner shall regularly appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed off; and
- ii) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall

return the original documents retaining legible scanned copy thereof on record for future reference.

16. The learned trial Court is directed to expeditiously dispose of the case avoiding unnecessary adjournments.
17. The learned Standing Counsel, N.C.B. shall forward a copy of this order to the Director, N.C.B. for necessary action from his end so as to ensure appearance of all the prosecution witnesses cited in the N.C.B. instituted cases.
18. A copy of this order be furnished to Mr. S.C. Keyal, learned Standing Counsel within 2(two) days.
19. Also furnish a copy of this order to the Registrar (Vigilance) of this Court for information and record.
20. Be it mentioned that no observation/ finding made in course of this order shall have any bearing in the judicial discretion of the learned trial Court.

With the above directions, the bail application stands disposed off.

JUDGE

Comparing Assistant