

GAHC010056962023



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

Case No. : Bail Appln./994/2023

SHAKIL KHAN
S/O MD ALLAUDDIN @ MD. AHMED ALI
R/O VIL-LILONG, WARD NO. 05,
P.O. AND P.S. LILONG,
DIST -THOUBAL (MANIPUR), 785130

VERSUS

UNION OF INDIA
REP. BY SC, NCB

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 02-05-2023

Heard Ms. SK Nargis, learned Counsel for the accused petitioner as well as Mr. SC Keyal, learned Standing Counsel, NCB.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Shakil Khan**, has prayed for grant of bail in connection with NDPS Case No. 16/2021 arising out of NCB Crime No. 13/2020 u/ss 8 (C)/22 (C)/29 of the NDPS Act.

Scanned copy of the case records is received.

Ms. SK Nargis, learned Counsel for the accused petitioner, submits that the accused petitioner has been languishing in judicial custody for 930 days in connection with the case despite being innocent. Ms. Nargis further submits that the NCB laid the Final Complaint on 08.04.2021 and accordingly, charges were framed on 10.03.2022, but till date the prosecution has not examined a single witness depriving the accusedp's right to speedy justice. Ms. Nargis submits that as there is no immediate possibility of completion of trial, the accused may be directed to be released on bail.

Opposing the bail application, Mr. SC Keyal, learned Standing Counsel, NCB submits that in this case, the NCB recovered and seized 2.146 Kg of Methamphetamine tablets from the possession of the accused petitioner and 4(four) others and after completion of investigation the Final Complaint was submitted against them. However, Mr. Keyal submits that although the charges were framed on 10.03.2022, the trial could not progress due to escape of one co-accused from custody on 18.10.2022 and absence of presiding Officer of the Court for about 3 months and also for such reason transfer of the case to another court for trial. Mr. Keyal in this regard referred to the relevant orders of the learned trial courts and submits that due to such compelling circumstances, the trial has been delayed. However, Mr. Keyal submits that in view of the bar in Section 37 of the NDPS Act, the matter of bail may be left to the learned trial court to consider at an appropriate stage of trial of the case.

The case relates to recovery and seizure of 2.146 Kg of Methamphetamine in tablet form from the possession of present accused petitioner and two other co-accused persons near Rahman Hospital, Six Mile, Guwahati.

It is noticed that the accused petitioner is in judicial custody for 930 days since 14.10.2020.

A perusal of the case record reveals that the learned trial court framed charges under Sections 8 (c) /22 (c) /29 of the NDPS Act, vide order, dated 10.03.2022. Thereafter, the case was fixed for evidence, but on and from 25.05.2022 to 12.08.2022, the learned trial Judge remained on leave and then transferred. By order, dated 12.08.2022, the learned Sessions Judge, Kamrup (M), Guwahati withdrew the case and transferred to the Court of learned Additional Sessions Judge No.2, Kamrup (M), Guwahati for disposal. Thereafter, the proceeding suffered due to either leave of the learned Judge or illness of one accused till 03.12.2022. In the meantime, accused escaped from the GMCH, where he was shifted for treatment on 18.10.2022. On 25.11.2022, the said accused was re-admitted in judicial custody. Thereafter, the case was continued to be fixed for evidence from 11.01.2023 and accordingly summons were issued to the prosecution witnesses, but none appeared. Thus, the trial of the case has been delayed.

It may be pointed out that the accused has a right to speedy justice and the accused cannot continue to be detained unreasonably for an indefinite period.

In view of the above reasons and considering the existence of *prima facie* case of serious nature against the accused petitioner, as well as in view of illegal possession of commercial quantity of drugs and the restrictions provided in Section 37 of the NDPS Act in granting bail, this Court is of the opinion that the liberty of bail cannot be granted at the present stage.

Accordingly, the bail application stands **rejected**.

However, it is provided that the learned Trial Court shall plan a calendar of hearing suitably so as to ensure early disposal of the case preferably within a

period of 06(six) months, failing which, the learned Trial Court shall consider for release of the accused on bail subject to suitable conditions.

Furnish a copy of this order to the learned Standing Counsel for NCB and the Registrar (Vigilance) respectively.

The bail application stands disposed of.

JUDGE

Comparing Assistant