

GAHC010057002023



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

Case No. : Bail Appln./1060/2023

SOFIQL ISLAM ALIAS SAFIQL ISLAM
S/O LATE SUJAB ALI SARKAR
R/O SUBHSH NAGAR,
WARD NO. 12, AMCO ROAD,
P.S. DHUBRI, DIST. DHUBRI, ASSAM

VERSUS

THE 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 : 25.05.2023

Heard Ms. S. K. Nargis, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, NCB.

By this petition under Section 439 Cr.P.C., the petitioner, namely, **Sofiquil Islam @ Safiquil Islam**, has prayed for grant of bail in connection with **NDPS Case No. 60/2019 u/s 8(c)/21(C)/29** of the NDPS Act, arising out of NCB Crime No. 03/2019.

The scanned copy of the case record along with a detailed status report on trial

of the case, as called for, is placed before this Court.

Ms. S. K. Nargis, learned counsel for the accused petitioner, submits that the accused has been detained in judicial custody for 1227 days since 14.01.2020 despite being innocent. Ms. Nargis further submits that the charges under Sections 21(c)/22(c)/29 of the NDPS Act were framed on 20.12.2021 and, thereafter, the learned Trial Court has examined four prosecution witnesses till 27.01.2023 out of eleven listed witnesses of the offence report. It has been submitted that two co-accused persons are already enlarged on bail and, as such, maintaining parity in order, the present accused petitioner, who is a local resident, may be directed to be released on bail, subject to any condition.

In support of her submission, Ms. S. K. Nargis, learned counsel, has relied on the judgments rendered by the Hon'ble Supreme Court in *Mohd. Muslim -vs- State (NCT of Delhi)*, reported in *Manu /SC/0320/2023* and *Sanjeev Chandra Agarwal and Ors. -vs- Union of India (UOI)* reported in *Manu/SC/1140/2021*.

Opposing the bail application, Mr. S. C. Keyal, learned Standing counsel for the NCB, submits that four prosecution witnesses out of eleven listed witnesses were examined in the case. Mr. Keyal further submits that the defence side is playing delaying tactics and due to paucity of time, the learned Trial Court also could not further examine and cross-examine the P.W.5 on two occasions. Mr. Keyal has also read out the nature of implicating evidence collected by the NCB Investigating Officer against the accused petitioner. Therefore, Mr. Keyal submits that the bail application of the accused petitioner may be rejected.

The prosecution allegation is that 600 bottles of Relaxcof (Batch No. 19128- BG 141) and 1200 bottles of Recofex Codeine based Cough Syrup (Batch No. 02128 – BG150) and 68 Gms. (758 Nos. tablets) of Methamphetamine tablets were recovered and seized from one Renault Kwid Car bearing registration number AS26-B-5506 at Barsajai, Lalmati, Near Maruti Suzuki Showroom along with the FIR named accused persons, who were in the car at the time of the seizure on 01.03.2019.

It is noticed that the accused petitioner has been in judicial custody since 14.01.2020, i.e. for 1227 days.

A perusal of the case record reveals that the learned Trial Court framed charges against the present accused and six others under Sections 21(c)/22(c)/29 of the NDPS Act, vide order, dated 20.12.2021. Thereafter, the prosecution/NCB has examined five witnesses out of eleven witnesses listed in the offence report. The aforesaid five prosecution witnesses were examined during the period 29.01.2022 to 10.05.2023, i.e. in a span of 1 year 3 months.

The case record reveals the status of trial of the case and the relevant portion is extracted hereinbelow:-

Sl. No	Fixed for evidence on	Summon to witness issued on	Steps taken by	Witness present or absent	remarks
1	17.01.2022	-	-	Absent	Steps not taken
2	29.01.2022	-	Ld. Spl. PP NCB	1 WITNESS	PW1-Dhrubajyoti Hazarika, retired Joint Director, DPS, Kahilipara, Assam
3	09.02.2022	-	Ld. Spl. PP NCB	Absent	Witness Rakesh Ch. Shukla and Tulika Morang were absent with steps showing cause of absence. Rakesh Kumar Shukla, Zonal Director was in Imphal, Manipur in connection with meeting of Election Commissioner of India and Tulika Morang, Superintendent was in a review meeting on taking over of cases from Bharat Vision of the Hon'ble Home Minister of India

4	08.03.2022			Absent	PW2, Rakesh Ch. Shukla, Sonal Director, NCB
5.	24.03.2023			Absent	Steps not taken
6	07.04.2022			Absent	Summon to witness not returned
7	28.04.2022			Absent	Steps not taken
8	13.05.2022			Absent	Witness absent with steps showing casue of absence
9	26.05.2022			Absent	Steps not taken
10	09.06.2022			Absent	Ld. Spl. PP, NCB prayed for adjournment showing cause of absence of the witnesses Dilip Robi Das and Phani Narjinary
11	06.07.2022			Absent	Summon to witness not returned
12	03.08.2022			Absent	Steps not taken
13.	26.08.2022			Absent	Steps not taken
14.	23.09.2022			Absent	Summon to witness not retuned
15.	21.10.2022			Absent	Summon to witness not retuned
16.	18.11.2022			Present	One witness Mr. Hridiya Nanda Mahanta, Drugs Controller in Charge, Office of the Health Service, Guwahati, Assam has appeared as witness but Ld. Spl PP for NCB has submitted that the relevant document was issued by Sri Ashim Kumar aNath in the capacity of Joint Drug Controller, Hengarabari.

					Hence said Ashim Kumar Nath may be summoned to be examined as prosecution witness.
17	15.12.2022			1 witness present	PW-3 Ashim Kumar Nath, retired Joint Drug Controller cross examination has been deferred as prayed for by the defence.
18	12.01.2023			Absent	Steps not taken
19	27.01.2023			1 witness present	PW3 Ashim Kumar Nath, was present and cross examined, and discharged
20	09.02.2023			Absent	Summon to witness not returned
21	23.02.2023			Absent	Steps not taken
22	21.03.2023			Absent	Summon to witness not returned
23	03.05.2023			2 witness present	PW4, Dilip Robi Das, is examined
24	10.05.2023			1 witness present	PW5, Phani Narjinary is further examined and further examination is deferred due to paucity of time
25	11.05.2023			1 witness present	PW5, Phani Narjinary is further examined and cross-examination is deferred due to paucity of time
26	07.06.2023 & 08.06.2023				Summon to witness issued to witness Phani Narjinary and Tulika Morang

In paragraphs 22 and 23 of the judgment rendered in *Mohd Muslim @Hussain Vs. State (NCT of Delhi)* in *Special Leave Petition (Crl.) No(s) 915/2023*, the Hon'ble Supreme Court observed has herein below extracted:-

“22. 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.”

23. 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[Working Papers- Group on Prisons & Borstals -1966 U.K.](also see Donald Clemmer’s ‘The Prison Community published in 1940 [Donald Clemmer, the Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, ‘ Donald Clemmer’s Concept of Prisonisation’, available at https://www.tkp.Edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf(accessed on 23 rd March, 2023)]). 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. ”

Further, a coordinate Bench of this Court in the case of *Aminul Islam -vs- the Narcotic Control Bureau* passed in Bail Appl. No. 193/2023, has observed as hereinbelow extracted:-

“

23. Further, this Court is of the view that it is a settled position of law that in a

case involving the NDPS Act, though the length of detention may be a relevant factor, the same shall not be the sole factor for determining a bail application and various other factors are taken into consideration like the quantity of the contraband, nature of the substance, nature of involvement etc. In the present case, the contraband is a commercial quantity and the substance is chemically manufactured drug. Moreover, Section 37 of the NDPS Act lays down that before granting a bail, the relevant factors are that the Court should come to a satisfaction that prima facie the petitioner is not guilty of the offence and also the petitioner has to satisfy the Court that in case bail is granted, he is not likely to commit further offence. The aforesaid two factors do not seem to be fulfilled in the present case.”

Now, upon consideration of the pros and cons of the evidence available on the case record, this Court is of the opinion that on the ground of mere length of detention, the accused petitioner cannot be enlarged on bail at the present crucial stage of trial.

Therefore, the bail application stands rejected.

It is, however, provided that the learned Trial Court shall make an endeavour to complete examination of the remaining NCB prosecution witnesses within a period of three months from the date of receipt of a copy of this order, failing which, the accused petitioner shall be released on bail, subject to stringent conditions, if applied for.

Forward copy of this order to the Registrar (Vigilance); learned Trial Court and the Zonal Director of NCB, Guwahati for information and necessary action, as directed above.

Also furnish a copy of this order to Mr. S. C. Keyal, learned Standing Counsel for NCB.

This disposes of the bail application.

JUDGE

Comparing Assistant