

GAHC010058792023



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

Case No. : Bail Appln./1019/2023

SANDEEP SINGH
S/O SRI FATEH SINGH
VILL- BAROLI, P.S. RAI
P.O. BAROLI
DIST.SONITPUR, HARYANA- 131021

VERSUS

THE UNION OF INDIA
REP. BY SC, NCB

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

19.05.2023

Heard Mr. M. Biswas, learned counsel appearing for the accused petitioner as well as Mr. S.C. Keyal, learned Standing Counsel, NCB.

2. By this petition under Section 439 Cr.P.C., the accused-petitioner, namely,

Sandeep Singh, has prayed for grant of bail in connection with **NDPS Case No. 32/2020** pending in the Court of learned Sessions Judge, Kamrup (M), Guwahati corresponding to **NCB Crime No. 16/2019** under Sections **20(b)(ii)(c)/29** of the NDPS Act, 1985.

3. The scanned copy of case record, as called for, is placed before the Court.
4. The case status report and health status report are received.
5. Mr. M. Biswas, learned counsel appearing for the accused petitioner, submits that the accused has been languishing in judicial custody for more than 3 years 6 months (as per submission, dated 08.05.2023). Mr. Biswas assures that if enlarged on bail, the accused shall not breach the conditions of bail.
6. Opposing the bail application, Mr. S. C. Keyal, learned Standing Counsel, NCB, submits that now a days the NCB Department has been strictly monitoring the cases and in appropriate cases, where there is order for issuing warrant, the same is executed expeditiously. Therefore, Mr. Keyal submits that expeditious trial of the case is undertaken and the result is expected soon. Mr. Keyal, however, submits that as directed by this Court, the latest health status report of the accused petitioner is not received from the jail authority.
7. The case relates to allegation of recovery and seizure of 243.8 kg of Ganja (cannabis) from the possession of the present petitioner and another while being transported in a truck bearing registration No.HR 63C 6237 on 21.10.2019 at NH 37 near Beltola, Guwahati.
8. It is noticed that the accused petitioner has been in judicial custody since 21.10.2019, that is, for 3 years 6 months 29 days.
9. A perusal of the case record reveals that the learned trial court has examined 2(two) prosecution witnesses out of 10(ten) listed witnesses in the offence report till

10.05.2022 although charges under Sections 20(b)(ii)(c)/29 of the NDPS Act were framed on 05.01.2022 against the present accused and two others. However, from the date of first production of the accused on 21.10.2019, the case progress suffered due to onset of Covid-19 pandemic and in the meantime, one co-accused was detained at Patna, Bihar in connection with another case under the NDPS Act and despite repeated issue of production warrant, his appearance could not be secured. On the other hand, on and from 01.04.2021, due to onset of second wave of Covid-19 pandemic, the process of trial was stalled. Despite being so, in order to expedite the trial of the case, the learned trial court by order, dated 08.12.2021, the case was split up against the present accused and another. Thereafter, belatedly on 21.09.2022, the co-accused was produced from Patna Jail and after furnishing copy to him, vide order, dated 20.10.2022, the charges were framed against him. Presently, the next date is fixed on 07.06.2023 for evidence of two more prosecution witnesses on the prayer of the N.C.B. Therefore, it appears that the trial of the case has been delayed due to natural calamity and non-production of a co-accused from Patna Jail for a long period and further, due to his production belatedly, which required follow of process against him from furnishing copy etc.

10. Be that as it may, the case record and the health status report reveal that the accused petitioner is an HIV positive patient, who requires constant medical treatment. The report shows that he is a known case of ART and presently under treatment of Dermatology Department of Guwahati Medical College and Hospital (G.M.C.H.).

11. In paragraph Nos. 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 23rd 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. ”

12. Therefore, despite having bar under Section 37 of the NDPS Act, this Court is of the opinion that in view of his prolonged detention in connection with the case and more particularly, he being a patient of HIV infection as well as applying the principles laid down by the Hon’ble Supreme Court in the case of *Mohd Muslim @Hussain(supra)* and order, dated 04.08.2022 passed in *Shariful Islam @Sarif Vs. State of W.B. in S.L.P. (Crl.) No. 4173/2022* by the Hon’ble Supreme Court granting bail on the grounds of prolonged incarceration (1 year 6 months) and there being no likelihood of completion of trial in the near future, the accused petitioner deserves a special consideration for release on bail.

13. Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 1,00,000/- (Rupees One Lakh) only** 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 continue to appear before the

learned trial Court on all dates to be fixed from time to time till the case is disposed of;

- ii) That 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 from disclosing such facts to the Court;
- iii) That the accused/petitioner shall refrain from committing any offences similar to the one of which he is accused of commission; and
- iv) That out of the two sureties, one must be a government servant subject to verification of the relevant documents by the N.C.B. within a period of 7(seven) days, if deemed necessary, by the learned trial court and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant