

GAHC010060422023



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

Case No. : Bail Appln./1080/2023

SANJOY DEBBARMA
S/O DILIP DEBBARMA
R/O VILL-KALAGACHIABARI
P.O. AND P.S. SIDHAI, MOHANPUR
DIST. WEST TRIPURA, TRIPURA- 799212

VERSUS

THE UNION OF INDIA
REP. BY PP, (SPECIAL), NCB

Advocate for the Petitioner : MR. S CHETIA

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 10.04.2023

Heard Mr. S Chetia, learned counsel for the accused petitioner as well as Mr. SC Keyal, learned Standing Counsel for the NCB.

By second this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Sanjoy Debbarma** has prayed for grant of bail in connection with **NDPS Case No.07/2022** under

Section 20(b) (ii) (C) of NDPS Act.

The scanned copy of the case records is received.

It may be mentioned herein that vide order, dated 26.10.2022, bail application of the present accused petitioner was rejected in Bail Application 2281/2022.

Mr. S Chetia, learned Counsel for the accused petitioner, submits that the accused has been languishing in judicial custody for 615 days without any progress in trial for a prolonged period for non-appearance of the prosecution witnesses. Mr. Chetia, therefore, submits that subject to any condition, the accused may be directed to be released on bail.

Per contra, Mr. SC Keyal, learned Standing Counsel for the NCB submits that the complaint reveals sufficient *prima facie* incriminating material against the accused petitioner, who is a member of a gang of drug smugglers. Admitting that some delay has been caused in appearance of the prosecution witnesses, Mr. Keyal submits that the NCB authority has initiated steps to ensure production of the witnesses on time and if necessary to take coercive procedural steps to compel appearance against those who despite receipt of notice do not appear for evidence in Courts. Mr. Keyal assures to produce all the remaining witnesses at the earliest and for this purpose prays to grant some more time to assist the Court to complete trial of the case without further delay. Mr. Keyal, learned Standing Counsel for NCB, however, submits that in view of the expressed bar contained in Section 37 of the NDPS Act and abundance of *prima facie* incriminating materials emerged during investigation as well as during trial of the case, , the bail application of the accused may not be accepted.

The case relates to an allegation of recovery and seizure of 434.91 Kg. of ganja contained in 43 packets kept concealed under 250 bundles of treated bamboos in a truck bearing registration No. UP-21-CB-8524 and from the possession of the present accused and another.

It is noticed that the accused petitioner is in judicial custody for 615 days since 03.08.2021.

A perusal of the case record reveals that although charges under Sections 20 (b) (ii) (c) of the NDPS Act was framed vide order, dated 28.07.2022 and thereafter, several dates were fixed for evidence of prosecution witnesses, it is noticed that none of them could be examined due to seeking adjournments by the defence or absence of learned defence counsel vide orders, dated 22.09.2022, 20.10.2022 and 02.02.2023 and status report on trial

of the case submitted by the learned trial court.

In view of the above reasons and the bar in granting bail under Section 37 of the NDPS Act, the accused petitioner is not entitled to be released on bail on mere ground of long detention, when delay of trial is not absolutely attributed to the conduct of the prosecution/ NCB.

However, it is provided that the NCB shall ensure production of all the prosecution witnesses on dates to be fixed by the learned trial court for conclusion of trial of the case without unnecessary further delay.

The learned trial court shall pre-fix calendar of hearing to expedite trial of the case.

With the above direction, the bail application stands rejected.

Accordingly, the bail application stands disposed off.

A copy of this order be served to Mr. SC Keyal, learned Standing Counsel for the NCB within two days.

JUDGE

Comparing Assistant