

GAHC010092022023



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

Case No. : Bail Appln./1576/2023

KRISHNA BISWAS
S/O LATE ABHOY BISWAS
R/O H. NO. 109, RIO COLONY, P.S. SUB-URBAN, DIST.DIMAPUR,
NAGALAND.

VERSUS

UNION OF INDIA
REP. BY NARCOTICS CONTROL BUREAU THROUGH INTELLIGENCE
OFFICER, GUWAHATI ZONAL UNIT, GUWAHATI, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

01.06.2023

Heard Mr. M. Biswas, learned counsel appearing for the accused 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

Krishna Biswas has prayed for grant of bail in connection with **NDPS Case No.222/2021** pending in the Court of learned Addl. Sessions Judge No.2, Kamrup(M) corresponding to **NCB Crime No. 13 &13A/2021** under Sections **22(c)/29** of the NDPS Act, 1985.

3. The scanned copy of case record along with the status report is received.

4. Mr. M. Biswas, learned counsel appearing for the accused petitioner, submits that the accused has been languishing in judicial custody for about one year ten months despite he was not even remotely concerned with the commission of the alleged offences. Mr. Biswas further submits that only 0.080 gram of heroin was recovered and seized from the room of the accused, which amounts to small quantity. It has been contended that the N.C.B. has filed an incomplete charge-sheet in the case to frustrate the benefit of Section 167 Cr.P.C. to the accused persons and thereafter, started taking adjournment after adjournments for enabling them to apprehend the main culprits of the case and thereby stalled the expeditious trial of the case, where the accused has been detained for a long period without trial. Mr. Biswas submits that the charges under Sections 8(c)/22(c)/29 of the NDPS Act were framed on 24.12.2021, but till today not a single witness has been examined. Mr. Biswas also submits that the accused's health condition has been deteriorating in jail due to lung disease, for which the attending doctor of G.M.C.H. has recommended for surgery. It has been submitted that he is suffering from Lipoma and Pleural Effusion and although medicines are prescribed and administered, there is no improvement to his health condition. Therefore, Mr. Biswas submits that the accused petitioner may be granted the liberty of bail subject to any condition(s).

5. Opposing the bail application Mr. S.C. Keyal, learned Standing Counsel for

N.C.B., submits that the trial against the present accused and two others, who are in prolonged judicial custody is split up by the learned trial Court to expedite their trial. Mr. Keyal further submits that the counsel for the accused persons did not appear on consecutive dates which caused delay in consideration of charges and as such, Legal Aid Counsel had to be appointed to defend their case, but again the accused persons informed the Court that they have engaged Advocate on their own and the said Advocate has also prayed for adjournment. Mr. Keyal, learned Standing Counsel, further submits that the defence is playing delaying tactics to get release of the accused persons on bail on mere ground of prolonged detention. Therefore, Mr. Keyal strongly raises objection against grant of bail to the accused at the present stage and when the health status report of him shows improvement of health condition due to treatment of the doctors of G.M.C.H.

6. The case relates to recovery and seizure of 42.080 kg of Spasmoproxyvon capsules containing Tramadol and 19.48 kg of Spasmoproxyvon capsules containing Tramadol on 24.06.2021 and 25.06.2021 respectively from Shree Maruti Courier Services Pvt. Ltd., Guwahati, Assam.

7. The case record shows that the accused petitioner was produced under arrest before the learned Special Judge (NDPS Act), Kamrup(M) at Guwahati on 14.07.2021, in pursuance of an order, dated 13.07.2021 passed by the learned Chief Judicial Magistrate, Dimapur, Nagaland in Misc. Case No. 04 of 2021 and since then, he has been in judicial custody.

8. The case record shows that as per order, dated 21.10.2022, other two accused persons namely Arun Sharma and Kanchan Malakar were arrested by N.C.B., Kolkata in connection with N.C.B., Kolkata Case No.21/2021. Therefore, the learned trial Court has been issuing production warrants to produce them,

but they are yet to be produced from the Presidency Correctional Home, Alipur, Kolkata. In the meantime, the case of the present accused petitioner, Puja Dutta and Saurav Dutta is split up to expedite their trial vide order, dated 03.02.2023. The order, dated 17.03.2023, shows that copy has been furnished to them. However, the orders, dated 11.04.2023, 25.04.2023 and 09.05.2023 shows that on those three dates, the learned counsel for the co-accused persons, namely Puja Dutta and Sourav Dutta did not appear at the time for hearing on consideration of charges and as such, the Legal Aid Defence counsel was appointed to defend their case. But, on 23.05.2023, at the time of production of the aforesaid two co-accused persons, they informed the learned trial court that they have engaged their Advocate and their engaged counsel sought for adjournment by filing petition No. 1016/23. Thus, the case is presently pending for production of the co-accused persons and hearing on framing charges fixing 06.06.2023.

9. Therefore, it is noticed that even the charges are yet to be framed against the present accused due to either conduct of the co-accused persons not congenial to expeditious trial of the case or nonproduction of the co-accused persons, who are detained in judicial custody at Alipur, West Bengal in connection with another case of NCB, Kolkata as stated above. In such circumstances, it is needless to point out that the delay in commencement of trial against the accused petitioner cannot be attributed to the learned trial court which may be said to have amounted to deprivation of the accused petitioners' right to speedy justice enshrined in Article 21 of the Constitution of India. Further, the case diary reveals prima facie abundance of materials showing that the present accused petitioner, who is the prime accused in the case, has been running the illegal trade of drugs trafficking from Dimapur, Nagaland in

association with a group of drug smugglers inter-state of a wide magnitude and as such, it is a case of serious nature. During search at the room of the accused petitioner located at Dimapur, the N.C.B. allegedly recovered and seized heroin.

10. In the above backdrop of facts and circumstances that emerge from the case record along with the case diary, this Court is of the opinion that if the liberty of bail is granted to the accused petitioner, there is every chance of him again indulging in such illegal trade of drugs and fleeing from the course of justice and as such, he is not entitled to be released on bail in view of the bar under Section 37 of the N.D.P.S. Act.

11. With regard to the status of health and requirement of proper medical treatment, this Court, on perusal of the report of the Jail Doctor, finds that appropriate medical treatment has been given regularly to the accused in the premier medical institution of the North-East, namely Gauhati Medical College and Hospital (G.M.C.H.), where all required advanced medical facilities are available.

12. In view of the above, the bail application of the accused petitioner stands **rejected**.

13. The learned trial Court shall expedite trial of the case, if charges are framed, by maintaining calendar of hearing and avoiding unnecessary adjournments.

14. The prosecution N.C.B. shall ensure production of all the witnesses, on the dates to be fixed so as to prevent delay in disposal of the case.

15. Forward a copy of this order to the learned trial Court urgently.

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

17. Be it mentioned that no observation made in this bail order shall have any bearing in the judicial discretion of the learned trial Court.

This disposes of the bail application.

JUDGE

Comparing Assistant