

GAHC010093702023



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

Case No. : Bail Appln./1591/2023

MANIK SARKAR
S/O SRI NILMOHAN SARKAR
R/O BIJOY NAGAR
WARD NO. 1, P.O. BINOY NAGAR
P.S. SIDHAI, DIST. WEST TRIPURA,
STATE- TRIPURA

VERSUS

THE DIRECTORATE OF REVENUE INTELLIGENCE
REP BY THE STANDING COUNSEL OF DRI.

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

01.06.2023

Heard Mr. N.J. Dutta, learned counsel appearing for the accused petitioner.
Also heard Mr. S.C. Keyal, learned Standing Counsel, D.R.I.

2. By this second petition under Section 439 Cr.P.C., the accused/petitioner,

namely **Manik Sarkar** has prayed for grant of bail in connection with **NDPS Case No.48/2019** arising out of **DRI Case No.06/CL/NDPS/GANJA/DRI /GZU/2018-19 dated 04.10.2018** under Sections **8(c)/20/23/29** of the NDPS Act, 1985, pending in the Court of learned Addl. Sessions Judge (FTC) No. 3, Kamrup (M) at Guwahati.

3. The scanned copy of case record, as called for, is placed before the Court.
4. The earlier bail application of the accused petitioner being B.A. No. 3683/2021 was rejected by this Court vide order, dated 13.09.2022 with a direction to the learned trial Court for splitting the case of the accused petitioner to ensure expeditious trial of his case.
5. The case relates to recovery and seizure of commercial quantity of ganja weighing 534 kgs.(net) while being carried by the accused petitioner and another in a specially made cavity beneath the floor of a Force Traveller Bus bearing registration No.TR-01-C-1243.
6. It is noticed that the accused petitioner has been in judicial custody since 05.10.2018, that is, for 4 years 7 months 28 days.
7. Perusal of the case record reveals that charges under Sections 20(b)(ii) (c)/27A/29 of the NDPS Act are framed against the accused petitioner vide order, dated 28.03.2022. His case was split up as per direction of this Court, dated 13.09.2022 in B.A. No. 3683/2021 vide order, 27.03.2023 so as to ensure speedy trial of his case for prolonged detention. However, out of the 10(ten) listed witnesses of the Final Complaint, **not a single witness** has so far been produced by the prosecution D.R.I. and examined till date.
8. It is noticed that conduct of some co-accused persons, on the other hand, are not satisfactory as they defaulted in appearance to participate in the trial of

the case despite coercive actions were being initiated against them and sometimes, as noted by the learned trial Court, for want of due diligence of the prosecution D.R.I. in taking timely steps as per directions of the Court, the cumulative consequence of which is the inordinate delay in disposal of the case against the present accused petitioner although he has been languishing in judicial custody since 05.10.2018 (4 years 7 months 28 days). The situation is alarming in the case entailing deprivation of the present accused petitioner's right to speedy justice as envisaged in Article 21 of the Constitution of India.

9. It may be mentioned that the Intelligence Officer of D.R.I. has submitted objection against grant of bail to the accused petitioner by citing various grounds based on evidence that was collected and found during investigation into the case, whereas the instant case is pending for trial before the Court of learned Special Judge (NDPS), Kamrup(M) at Guwahati.

10. 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 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. ”

11. In the backdrop of the above facts and circumstances as well as the bar contained in Section 37 of the NDPS Act, this Court is of the opinion that at the present stage, it is expedient in the interest of a fair trial of the case that at least some material witnesses should be examined before considering release of the accused petitioner on bail.

12. Accordingly, it is provided that the learned trial Court shall complete examination of the listed witnesses within **a period of 3(three) months** from the date of receipt of a copy of this order, failing which, the accused shall be released on bail subject to stringent conditions.

13. Furnish a copy of this order to Mr. S.C. Keyal, learned Standing Counsel, D.R.I. so that he can cause urgent taking of steps to produce the witnesses on the next dates fixed for evidence.

14. Registry to forward a copy of this order to the learned trial Court by special messenger forthwith.

With the above direction, the bail application stands disposed of.

JUDGE

Comparing Assistant