

GAHC010168252023



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

Case No. : Bail Appln./2748/2023

SAMBHU NANDI
S/O- LATE NARESH NANDI PERMANENT RESIDENT OF SANKARDEV
NAGAR, (NEAR D.C.OFFICE) P.O. JURAPUKHURI, P.S. LANKA, DIST.- HOJAI
(ASSAM), PIN- 782442, PRESENT RESIDENT ADDRESS- HOUSE NO.32, BYE
LANE-5 ABC, TARUN NAGAR, P.S. BHANGAGARH, DIST.- KAMRUP (M),
ASSAM, AT GUWAHATI- 781005

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE NARCOTICS CONTROL BUREAU

Advocate for the Petitioner : MR S DAS

Advocate for the Respondent : MR. S C KEYAL

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

18.10.2023

1. Heard Mr. S. Das, learned counsel appearing for the petitioner as well as Mr. S.C. Keyal, learned Standing Counsel for the DRI.

2. This application under Section 439 Cr.P.C, is preferred by the petitioner, namely, Sambhu Nandi, who is in judicial custody since 27.09.2019 in connection with NDPS Case No.27/2020, arising out of DRI Case No. 11/CL/NDPS/METH/DRI/GZU/2019-20 registered u/s 8(C)/21/22 &29 of NDPS Act.

3. The brief facts of this case are that on 27.09.2019 at about 14:45 hours, the present petitioner along with his co-accused were apprehended by the investigation team formed by the DRI, while they were proceeding in a two wheeler. The co-accused of the present petitioner fled the scene whereas, the present petitioner was apprehended and the contraband was recovered from his possession. The contraband was seized along with some other articles by the investigation team. 145 packets each containing 200 tablets were recovered and the total quantity of tablets was found to be 29,000/- tablets weighing 2.858 kgs.

4. It is submitted on behalf of the petitioner that his liberty has been curtailed, as the offence report was submitted on 18.03.2020 and till date only 6(six) witnesses have been examined, whereas, the petitioner has been languishing in the jail since 27.09.20219. The petitioner has relied on decision of Honble the Supreme Court in ***Mohd. Muslim Alias Hussain Vs. State***

(NCT of Delhi) reported in **2023 SCC OnLine SC 352**, wherein, it has been observed that:-

“21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused’s guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.”

5. The learned counsel for the petitioner has also relied on decision of several judgments passed by the coordinate Bench of this Court in connection with Bail Appln. 513/2023 vide order dated 10.04.2023 and also Bail. Appln. 1790/2022 vide order dated 11.04.2023.

6. The learned Standing Counsel for the DRI, Mr. S.C. Keyal has raised serious objections stating that a huge cache of tablets was recovered from the petitioner. The trial cannot be said to be delayed, as 6 (six) witnesses out of 9(nine) cited in the witness list have already been examined.

7. I have considered the submissions at the Bar with circumspection.

8. The learned counsel for the petitioner has submitted that the rigour of Section 37 of the NDPS Act cannot be considered as an embargo to the personal liberty of the petitioner, who is in the jail since 27.09.2019. Three witnesses are yet to be examined.

9. Mr. S.C. Keyal, learned Standing Counsel has relied on decision of a Coordinate Bench of this Court in ***Aminul Islam Vs. NCB, Guwahati Zonal Unit***, reported in 2023 0 Supreme (Gau) 70, wherein, it has been observed that:-

27. In the case of Mohd. Muslim (Supra), the Hon'ble Supreme Court laid down the primary importance on the right to speedy trial and in this case, the appellant was found to be in custody for seven long years as an under trial. The Hon'ble Supreme Court had also taken into consideration the provisions of Section 436A of the CrPC. Though a discussion has been made on Section 37 of the Act, the observation made appears to be only on one part of the said Section. Juxtaposed, in the case of Mohit Aggarwal (Supra), the other requirement that the accused person is unlikely to commit any offence while on bail has also been taken into consideration. Further, in this case the provisions of

Section 436A of the CrPC is prima facie is not applicable qua the period in custody.

31. So far as the provision under Section 37 of the Act regarding requirement of a satisfaction to be arrived at by the Court that the accused is not likely to commit any offence while on bail, this Court is of the view that the aforesaid satisfaction can be based more on presumption and speculation as it is impossible to foresee one's action in the future. Therefore, the only yardstick which may be applied is to examine the antecedents of the accused. This will necessarily require the Court to see as to whether the accused is involved in any other offence. In the instant case, the petitioner is admittedly an accused in another criminal case namely, Chapar PS Case No. 367/2020 which is also under the NDPS Act involving commercial quantity.

32. Though length of detention may be one of the factor in consideration the prayer for bail, the same cannot be the sole factor more so when all the requirement of Section 37 of the Act are not fulfilled.

33. In the case of Chandrakeshwar Prasad Vs. State of Bihar, reported in (2016) 9 SCC 443 (Popularly known as Md. Sahabuddin Case), the Hon'ble Supreme Court has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof: "We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the

interest of the society."

10. I have also scrutinized the LCR. In the case ***Mohd. Muslim Alias Hussain Vs. State (NCT of Delhi) (supra)***, the appellant was found to be in custody for seven long years as an under trial. The Instant case, is not such a case where trial has been delayed for a prolonged period. Three witnesses are yet to be examined. I have also considered the gravity of the offence. A balance has struck between the personal liberty of the petitioner and also the societal interest.

11. In view of my foregoing discussions, this petition with prayer for bail stands rejected at this stage of investigation. The learned trial Court is directed to expedite the trial.

Send back the case diary.

JUDGE

Comparing Assistant