

GAHC010171152023



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

Case No. : Bail Appln./2750/2023

AMAL DAS
S/O LATE NABIRAN CH. DAS
R/O MAA SEWALI APARTMENT,
M.T. ROAD, NARENGI, P.S. NOONMATI, DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

18.10.2023

Heard Mr. A.K. Bhuyan, learned counsel for the accused petitioner. Also heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused petitioner, namely **Amal Das** has prayed for grant of bail in connection with **NDPS Case No. 166/2022** under Sections **22(c)/29** of the N.D.P.S. Act pending in the Court of learned Special Judge (N.D.P.S. Act), Kamrup(M), Guwahati corresponding to **Basistha PS Case No. 1023/2021**.

3. The scanned copy of case record, as called for, is placed before the Court.

4. Mr. A.K. Bhuyan, learned counsel for the accused petitioner, submits that the accused petitioner has been languishing in jail for last 528 days in connection with the case on a false accusation of being a habitual drug trafficker from whose driver's possession 44,160 bottles of Eskuf Cough Syrup were seized while transporting by a truck. Mr. Bhuyan further submits that one Anirudh Kumar Singh, who is running a drug distributorship in the name and style of 'ANM Pharmaceuticals' in the Forest Gate, Narengi, due to his inability to manage the affairs of the said pharmaceutical medicine distributorship requested the accused petitioner to run the same and accordingly, executed one power of attorney on 21.01.2021 in his favour. Accordingly, one Sumit Dhar with a written authorization letter issued by the owner of M/s Nalini Drug Distributor, a wholesale drug distributor from Karimganj for supply of 48,000 bottles of Eskuf Cough Syrup on 08.06.2021 in the business pad along with drug license of M/s Nalini Drug Distributor with some post dated cheques being the value of the medicine. It has been further submitted that on receipt of the aforesaid order, the accused petitioner purchased the cough syrup bottles from M/s Daffodil Drugs Pvt. Ltd., Kolkata and sent the consignment on 09.06.2021. Mr. Bhuyan submits that the investigating agency after verification found that the purchase of the seized cough syrup bottles was genuine and invoices were also genuine and further, found that the drug licenses of both M/s Hematech Pharmaceuticals

and M/s Nalini Drugs Distributors were genuine, documents were valid and that authentication of the documents regarding existing guidelines etc. regarding CBCS was done by an Inspector of Drugs (HQ), Hengrabari, Guwahati, dated 11.08.2021, whereas the authentication of 'genuineness of GST Invoice' is concerned was also done by the Inspector of Drugs (HQ), dated 19.12.2021 and as such, the accused petitioner was competent to purchase and sale the cough syrup bottles. Therefore, Mr. Bhuyan submits that there was no reason to prosecute the accused petitioner allegedly for illegal possession and supply of Codeine Phosphate based cough syrup bottles. However, Mr. Bhuyan submits, the learned trial Court unfortunately rejected the zimma petition of Sumit Dhar by an order, dated 01.09.2021 passed in Misc. Case No.85/2021. Relevantly, Mr. Bhuyan refers to various Sections of the NDPS Act and Rules made thereunder more particularly, Section 67 of the NDPS Rules, 1985 which specifically provides the manner of transportation. Mr. Bhuyan submits that as per requirement under the law, psychotropic substances and materials of similar nature at the time of transportation must be accompanied by a consignment note in Form-6 or it be accompanied with invoice or cash memo by the consignor or by his authorized signatory or any other document. Mr. Bhuyan submits that these documents were readily available at the time of the alleged seizure of the drugs. Therefore, Mr. Bhuyan submits that for the aforesaid reasons, the bail application of the accused petitioner may be accepted.

5. Mr. B.B. Gogoi, learned Addl. Public Prosecutor, opposing the bail application submits that this is a case of commercial quantity of drugs and the case record reveals that charges under Sections 22(C)/29 of the NDPS Act were framed against the accused petitioner and two others on 27.03.2022 and thereafter, the case is presently pending for evidence. Mr. Gogoi submits that as

no witness could be examined by the learned trial Court for non appearance of the listed witnesses despite repeated issuance of summons by the prosecution to them, the learned trial Court may be directed to expedite trial of the case to avoid further undue continuation of detention of the accused petitioner.

6. The case relates to recovery and seizure of 44,160 bottles of Eskuf Cough Syrup (Codeine Phosphate & Chlorpheniramine Maleate Syrup) of 100 ml. each from a truck bearing registration No. NL 01 AB 9942.

7. It is noticed that the accused petitioner has been in judicial custody since 09.05.2022, that is, for 528 days.

8. A perusal of the case record, it is noticed that after framing of the charges against the accused petitioner and two others, as stated above, no witness could be examined for non appearance although the learned trial Court appears to have issued summons repeatedly. It may be noted that in view of the mandate of Article 21 of the Constitution of India no accused can be detained indefinitely depriving him of personal liberty without in accordance with law. Therefore, a duty is cast upon the prosecution to produce its witnesses to prove the case without unreasonable delay and so also, the trial Court is under an obligation to ensure speedy justice to both the parties to the proceedings. It may pertinently be stated that at the present stage of trial, the defence case cannot be set up except eliciting through cross-examination of the prosecution witnesses.

9. In view of the above reasons, it is provided that the learned trial Court shall make an endeavour to expedite trial of the case by fixing advanced schedule of hearing for prosecution evidence so as to prevent undue delay in the disposal of the case.

10. On consideration of the nature of prima facie incriminating evidence available on the case diary, this Court is of the opinion that the liberty of bail, if granted to the accused petitioner, the trial of the case may likely to be adversely affected.

11. Accordingly, the bail application stands rejected.

12. It is, however, provided that the accused petitioner shall have liberty to file bail application at an appropriate stage of trial of the case, if so advised and if such application is filed, the learned trial Court shall consider and dispose of the same in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant