

GAHC010172312023



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

Case No. : Bail Appln./2758/2023

HUIREM RAJEN MEITEI @ HUIRAM RAJEN SING @ H RAJEN MEITEI
S/O- L. HUIREM NUNGSHI BABU MEITEI, VILL- KONGPAL CHANAM
LEIKAI, P.S. POROMPAT, IMPHAL EAST MANIPUR, PIN- 795005

VERSUS

THE UNION OF INDIA
REPRESENTED BY SC, NCB

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

18.10.2023

Heard Mr. S. Munir, learned counsel for the accused and Mr. S.C. Kayel, learned Standing Counsel, NCB.

2. This application, under Section 439 of Cr.P.C., is preferred by accused namely, **Huirem Rajen Meitei @ Huiram Rajen Sing @ H. Rajen Meitei**, who has been languishing in jail hazoot in connection with **Sessions (Spl.) NDPS Case No. 103/2019**, under Sections 20[b][[ii][C]/29 of the

NDPS Act, corresponding to NCB Crime No. 08/2019, registered under Section 20(b)(ii)(C) of the NDPS Act, since 17.06.2019.

3. The said case has been registered on the basis of one complaint lodged by one Tapan Singha, Intelligence Officer, NCB Guwahati on 16.12.2019. The essence of allegations made in the complaint is that on 17.06.2019, acting on a tip off, they have intercepted one vehicle bearing registration number NL02-N-1312, near Khanapara and recovered 323.04 Kgs of Ganja and arrested the present accused Huiaren Rajen Metei @ Huiaren. After investigation final complaint has been lodged before the court of learned Sessions Judge, Kamrup Guwahati against the accused to stand trial under section 20(b)(ii)(C) of the NDPS Act.

4. Mr. Munir, learned counsel for the accused submits that the accused was arrested on 17.06.2019, and since then he has been languishing in jail for last 1577 days. Mr. Munir further submits that after completion of investigation final complaint has been laid, citing as many as 15 witnesses and out of 15 witnesses, 7 witnesses have already been examined and there is no immediate prospect of conclusion of trial and he has been languishing for a considerable period of time and therefore, considering the delay in trial, Mr. Munir contended to allow the petition. Further, Mr. Munir referred to one case law of Hon'ble Supreme Court of India in **Rabi Prakash vs. The State of Odisha** in **Special Leave to Appeal [Crl.] No[s]. 4169/2023** dated 13.07.2023, to contend that prolonged incarceration is against the fundamental right guaranteed under Article 21 of the Constitution of India and the conditional liberty must override the statutory embargo created under Section 37[1][b][ii] of the NDPS Act.

5. Per-contra Mr. Kayel, learned Standing Counsel, NCB has vehemently opposed the petition on the ground that the final complaint against the accused, though file on 16.12.2019, charge was framed against the accused on 23.03.2022, and since then the prosecution side has examined as many as 7 witnesses, out of 15 cited witnesses. Mr. Kayel further submits that the trial was delayed on account of Covid-19 Pandemic, which was prevailing in the year 2020 and 2021, and as such, it cannot be said that there is considerable delay in the trial of the case and the cause of delay has duly been explained in the Para No.6 of the Additional Affidavit. Mr. Kayel also submits that the offences are serious in nature and trial is going on and if the accused is enlarged on bail, at this stage, it will cause delay in disposal of the case, as the accused hails from another State.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. From the petition and the documents placed on record following facts and circumstances emerges:-

(i) The investigation has already been completed and final complaint has been laid before the learned court below, on 17.06.2019, and the accused was arrested on the same day.

(ii) The accused has been languishing in jail hazot for last 1577 days.

(iii) The complainant has recovered 323.04 Kgs of Ganja from Truck

No. NL-02-N-1312, at Khanapara, which was being driven by the accused.

(iv) The learned court below has framed charge against the accused on 22.03.2022, under Sections 20(b)(ii)(C)/29 of the NDPS Act.

(v) Altogether 7 witnesses have been examined, out of the 15 cited witnesses, by the learned court below and the case is now pending for further evidence.

(vii) As the quantity of Ganja recovered from the possession of the accused is of commercial quantity.

8. Further, it appears from the record received from the learned court below and also from the affidavit-in-opposition submitted by the State respondent, it cannot be said that there is considerable delay in the trial and prior to framing of charge the learned court below could not conduct trial, on account of Covid-19 Pandemic, during the year of 2020-2021. This being the position, it cannot be said that there is any considerable delay in the trial of the case, so as to violate the right to speedy trial of the accused guaranteed under Article 21 of the Constitution of India.

9. It is not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused persons are of commercial quantity, and as such the accused persons have to satisfy the twin conditions of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

10. But, from the materials on record, specially from the scanned copy of the record received from the learned court below also from the submission of

learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail.

11. I have gone through the case law referred by Mr. Munir, learned counsel for the accused, but I find that the facts and circumstances of the said case is different from the case in hand. It is held by the Hon'ble Supreme Court in that said case that a fact that prolonged incarceration is against the fundamental right guaranteed under Article 21 of the Constitution of India and the conditional liberty must override the statutory embargo created under Section 37[1][b][ii] of the NDPS Act, cannot override the provision of the Constitution. But, in the case of **Union Of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, a bench of co-equal strength of Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

12. Same principle is echoed by another bench of co-equal strength of Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of petitions for Special Leave to

Appeal (Crl.) No. 6128-29 of 2021, decided on 19 July, 2022. It may be noted here that these decisions are earlier in point of time, and therefore, the same also cannot be ignored altogether in view of the Doctrine of binding precedent, as held by a five Judges bench of Hon'ble Supreme Court in - **National Insurance Company Ltd. vs. Pranay Sethi & Another reported in (2017) 16 SCC 680.)**

13. Under the aforesaid facts and circumstances as well as considering the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the view that this is not a fit case, where the bail can be granted to the accused. Accordingly, the same stands dismissed.

14. However, the learned court below is directed to complete the trial within earliest possible time, by resorting to Section 309[1] of the Cr.P.C. without being influenced by any of the observations made herein above.

JUDGE

Comparing Assistant