

GAHC010173412023



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

Case No. : Bail Appln./2754/2023

DEEPAK CHOUHAN
S/O DEVI PRASAD CHOUHAN R/O VILL. THALDANA P.O. T WAICHANG P.S.
KANGPOKPI DIST. KANGPOKPI MANIPUR 795112

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.12.2023

- 1)** Heard Mr. D. Das, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State respondent.
- 2)** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Deepak Chouhan, who has been

detained behind the bars since 11.01.2022 (last 695 days) in connection with NDPS Case No. 26/2022 corresponding to Dillai P. S. Case No. 01/2022 under Section 21 (c) of the NDPS Act, 1985 which is pending in the Court of learned Special Judge, NDPS, Karbi Anglong, Diphu.

3) The facts relevant for consideration of the instant bail application, in brief, are as follows:

i. That on 11.01.2022 one Lutfur Rahman, S. I. of Police had filed an FIR before the Officer-In-Charge of Dillai Police Station, *inter-alia*, alleging that on that day at about 2.00 am the first informant received an information that huge quantity of drugs is coming from Manipur side in a truck bearing Registration No. NL 01 88 5840.

ii. On receiving the information and after receiving the authorization required under Section 41 of the NDPS Act 1985 a *naka* checking was conducted at Lahorijan area.

iii. At about 7.30 am on the said day, the aforementioned truck was found coming from the Manipur side and was signaled and stopped. During the search operation 110 numbers of identical soap boxes containing brown colored powder substance suspected to be heroin which was kept concealed inside the truck were recovered, the truck was being driven by the present petitioner who was apprehended. The total weight of the seized heroine was found to be 1444.96 grams which was seized in presence of independent witnesses.

iv. On receipt of the FIR, the Officer-in-Charge of Dillai Police Station registered Dillai P. S. Case No. 01/2022 under Section 21(c)

of the NDPS Act, 1985 and an investigation was initiated after the completion of the investigation, A charge sheet was laid against the present petitioner under Section 21 (c) of the NDPS Act, 1985.

v. The present petitioner is facing the trial before the learned Special Judge, NDPS Karbi Anglong in NDPS Case No. 26/2022 remaining in detention.

4) Learned counsel for the petitioner has submitted that though the petitioner has been detained behind bars since 12.01.2022 (for last 695 days) and learned Special Judge, NDPS Karbi Anglong had framed charges against the present petitioner under section 21 (c) of the NDPS Act, 1985 on 13.05.2022, however, till date only three prosecution witnesses have been examined and thereafter, the case has not been progressed.

5) Learned counsel for the petitioner has further submitted that prior to moving the instant bail application the petitioner had approached this Court by filing another bail application bearing AB No. 1431/2023 which was rejected by a co-ordinate Bench of this Court on 05.06.2023 due to the embargo of Section 37 of the NDPS Act, 1985 and as the said Hon'ble Judge is no longer available, there is no embargo for this court to consider this application on the ground of prolong incarceration of the petitioner.

6) Learned counsel for the petitioner has submitted that as the trial against the present petitioner is not progressing any further and as he has been detained behind the bars for last one year ten months and twenty-seven days (695 days), he is entitled to get bail only on the ground of prolong incarceration. It is further submitted by learned counsel for the petitioner that continued detention of the present petitioner for last one year ten months and twenty-seven days when trial is no longer progressing is a violation of the fundamental

rights of the petitioner has enshrined in Article 21 of the Constitution of India.

7) Learned counsel for the petitioner has cited the ruling of the Hon'ble Apex Court in ***Rabi Prakesh Vs. State of Orissa*** reported in ***2023 live law (SC) 533***, wherein it has been observed by the Hon'ble Apex Court that "***The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.***"

8) Apart from the ground of long incarceration, learned counsel for the petitioner has also submitted that a female child was born to the petitioner on 10.12.2021 and due to prolonged detention of the present petitioner, his wife as well as his newborn child are facing immense hardship.

9) Learned counsel for the petitioner has submitted that even on merit the petitioner has a strong case as he was only the driver of the truck in which the said contraband was being carried however, it is submitted that it was not within the knowledge of the present petitioner that illegal contraband were kept in the truck which was being driven by him.

10) On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that as the quantity of contraband seized in that case is of commercial nature and due to the embargo of Section 37 of the NDPS Act, 1985, the petitioner may not be released on bail.

11) I have perused the scanned copy of the case record of NDPS Case No. 22/2022 as well as the scanned copy of the case diary of Karbi Anglong P. S. Case No. 01/2022 which was called for in connection with this case.

12) This case involves commercial quantity of heroin weighing about 1444.96 grams and the charge has been framed against the present petitioner under

Section 21 (c) of the NDPS Act, 1985 on 13.05.2022, hence, apparently it appears that the embargo of Section 21 (c) is applicable in the instant case. However, it appears that the petitioner has been detained behind the bars for the last 695 days. However, only 5 prosecution witnesses have been examined out of 12 listed witnesses and the petitioner has been languishing behind the bars since the date of his arrest on 11.01.2022.

13) It appears that the delay in trial is not due to the fault of the petitioner as he has been detained behind bars throughout his trial. The petitioner has a right to get a speedy trial under Article 21 of the Constitution of India.

14) Hon'ble Supreme Court of India in "**Mohd Muslim @ Hussain Vs. State (NCT of Delhi)**" reported in "**2023 SCC Online SC 352**" has observed that "*grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985*" and also considering the observation of Hon'ble Supreme Court of India in **Rabi Prakash Vs. State of Orissa (supra)**, wherein Hon'ble Apex Court has observed that "*prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37 (1) (b) (ii) of the NDPS Act, 1985*", this Court is of considered opinion that if this Court comes to a finding that there is undue delay in completion of trial and that there is prolong incarceration of petitioner, he would be entitled to get bail on the ground of prolong incarceration only as in such case of prolong incarceration, the right to life and personal liberty under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.

15) It is also pertinent to mention herein that the Hon'ble Supreme Court of

India had granted bail to the accused facing charges for possession of commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), wherein the accused was detained behind bars for one year and six months.

16) In "***Nitesh Adhikari Vs. State of West Bengal***" (Order dated 04.05.2022 in SLP Criminal No. 5769/2022), Hon'ble Apex Court granted bail to the accused facing accusation under Section 21 (c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

17) Similarly in "***Md. Salman Hanif Shaikh Vs. State of Gujarat***" (Order dated 22.08.2022 in SLA Criminal No. 5530/2022), the petitioner was granted bail, by the Apex Court, on the ground of prolonged incarceration of two years.

18) In the instant case, as already discussed hereinabove the petitioner has been behind the bars since 11.01.2022 and the trial is yet to near its conclusion as more than half of the prosecution witnesses are yet to be examined. Under such circumstances, this Court is of considered opinion that in view of the facts and circumstances of this case as well as on the basis of the observation made by Hon'ble Apex Court in the rulings cited hereinabove, the prolonged incarceration of the present petitioner under the facts and circumstances of this case overrides the embargo of the Section 37 of the NDPS Act, 1985 and therefore, on the ground of prolonged incarceration, the petitioner is entitled to get bail in NDPS Case No. 26/2022 pending in the Court of learned Special Judge, Karbi Anglong during the pendency of the trial.

19) In view of the above, the petitioner, namely, Deepak Chouhan, is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of like amount subject to the satisfaction of the learned Special Judge, Karbi

Anglong with the following conditions:

- i.** That the petitioner shall cooperate in the trial of NDPS Case No. 26/2022, which is pending in the Court of learned Special Judge, Karbi Anglong.
- ii.** That the petitioner shall appear before learned Trial Court as and when so required by the learned Trial Court
- iii.** That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the learned Trial Court in the Trial pending against the present petitioner.
- iv.** That the petitioner shall provide his contact details including photocopies of his Aadhar Card, Driving License, PAN card, mobile number, and other contact details before the Officer-in-Charge of Dillai Police Station and before the Court of learned Special Judge, Karbi Anglong.
- v.** That the petitioner shall not leave the jurisdiction of the learned Trial Court without prior permission of the learned Trial Court and when such leave is granted by the learned Trial Court, the petitioner shall submit his leave address and contact details during such leave before the learned Trial Court as well as before the Officer-In-Charge of Dillai P. S. Case No. 01/2022.
- vi.** That the petitioner shall not commit any offence similar to the one for which he has been accused of, while he is on bail.

With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant