

GAHC010185122023



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

Case No. : Bail Appln./2927/2023

GOPAL SARKAR
S/O NRIPENDRA CH. SARKAR
R/O FLAT NO. 02G, APURBA RESIDENCY, ANDU RABHA PATH,
IN FRONT OF STATE BANK OF INDIA,
ODALBAKRA, KAHILIPARA, GUWAHATI-781034, DIST.KAMRUP (M),
ASSAM

VERSUS

THE UNION OF INDIA
REPRESENTED BY SPECIAL PROSECUTOR, NCB, GUWAHATI.

Advocate for the Petitioner : MR. D K KOTHARI

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.11.2023

Heard Mr. P Das, learned counsel for the accused petitioner as well as Ms. M Deka, learned counsel appearing on behalf of Mr. S.C.Keyal, learned Standing Counsel, NCB.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Gopal Sarkar**, has prayed for grant of bail in connection with **NDPS Case No. 60/2019** pending in the court of learned Additional District and Sessions Judge, No. II, Kamrup (M), Assam.

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

It is noticed that the accused petitioner has been in judicial custody since 03.09.2019, i.e., for 1498 days.

Mr. P. Das, learned counsel for the accused petitioner, submits that the accused has been languishing in jail for 1498 days and as such considering his prolonged period of detention, the accused may be released on bail and he undertakes to continue to appear before the learned trial Court.

Ms. M Deka, learned counsel appearing on behalf of Mr. S.C. Keyal, learned Standing Counsel, NCB, submits that in view of the bar contained in section 37 of the N.D.P.S. Act, the bail application of the accused, if accepted, may likely to hamper the remaining part of trial of the case.

The prosecution allegation is that 600 bottles of Relaxcof (Batch No. 19128- BG 141) and 1200 bottles of Recofex Codeine based Cough Syrup (Batch No. 02128 – BG150) and 68 Gms. (758 Nos. tablets) of Methamphetamine tablets were recovered and seized from one Renault Kwid Car bearing registration number AS26-B-5506 at Barsajai, Lalmati, Near Maruti Suzuki Showroom along with the FIR named accused persons, who were in the car at the time of the seizure on 01.03.2019.

A perusal of the case record reveals recovery and seizure of 600 bottles of Relaxcof (Batch No. 19128- BG 141) and 1200 bottles of Recofex Codeine based Cough Syrup (Batch No. 02128 – BG150) and 68 Gms. (758 Nos. tablets)

of Methamphetamine tablets from the possession of the FIR named accused persons. In this case charges under Sections 21(c)/22(c)/29 were framed against the accused petitioner and 6 others vide order, dated 20.12.2021. Thereafter, out of the 17(seventeen) prosecution witnesses 7(seven) PWs have already been examined in the case. On 11.09.2023, one co-accused, namely Sofiquil Islam was released on bail by the learned trial Court.

In paragraphs 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. ”

This Court is of the opinion that although there is bar under Section 37 of the N.D.P.S. Act in granting bail to accused in matters involving commercial quantity in view of the mandate under Article 21 of the Constitution of India, if

the accused petitioner, who is a permanent resident under P.S.Dispur, District-Kamrup (M), Guwahati and has been in judicial custody for last 1498 days, is released on bail the remaining part of the trial is unlikely to be hampered.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 1,00,000/- (Rupees One Lakh only)** with 2 (two) Government servant sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Kamrup (M), Guwahati** subject to the following conditions-

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to the remaining prosecution witnesses, who are acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court; and
- iii) That the accused petitioner shall refrain from committing any offences similar to the one of which he is accused of commission.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant