

GAHC010189342023



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

Case No. : Bail Appln./3025/2023

SHAILEN NGATE @ NARAH
S/O SRI ARUN NARAH
R/O VILL- BATUA MUKH
P.S. DHEMAJI
DIST. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B K GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

20.09.2023.

Heard Mr. B.K. Gogoi, learned counsel for the accused and also heard Mr. P. Borthakur, learned Addl. P.P., Assam appearing for the State respondent.

2. This application under Section 439 of the Code of Criminal

Procedure, 1973, is preferred by accused, namely, Shailen Ngate @ Sailen Narah, who has been languishing in jail hazot, in connection with the Borpathar P.S. Case No.75/2021, under Section 21(C)/29 of the NDPS Act (Special NDPS Case No.14/2022), since 04.02.2022, for granting bail.

3. The aforementioned case has been registered on the basis of an FIR, lodged by SI (UB) Manujal Gogoi of Borpathar Police Station on, 29.11.2021, to the effect that on the same day, at about 10:10 A.M., acting on a tip off, they have conducted a Naka Checking at Khakrajan, on the NH-39 and at about 12:25 P.M., intercepted a Tata Ultra Bus, bearing Regn. No.AS-12AC-3477, which was coming from Dimapur towards Golaghat side and found two ladies namely, Neha Padun @ Kardong and Dina Sangson Narah and on conducting search of their body they found 13 numbers of soap boxes from the inner garments of Neha Padun @ Kardong and 12 numbers of soap boxes from the inner garments of Dina Sangson Narah, containing 330.49 grams of powdered substance and the same gave positive test for heroine, while tested on the spot with Drugs Detective Kits.

4. Upon the said FIR, the Officer-in-Charge of Borpathar Police Station registered the Borpathar P.S. Case No.75/2021, under Section 21(C)/29 of the NDPS Act and investigated the same and during investigation, the I.O. has arrested the accused Shailen Ngate @ Sailen Narah and forwarded him to the Court. Thereafter, on completion of investigation the IO laid charge sheet against all the three accused, named above, to stand trial in the court under Sections 21[c]/29 of the NDPS Act. The learned court below, thereafter, hearing both the parties and had framed charge against all the three accused and the accused pleaded not guilty and claimed to be tried. During the trial the learned

court below had examined three witnesses, out of six cited witnesses.

5. Mr. B.K. Gogoi, learned counsel for the accused submits that the accused was arrested on 04.02.2022, and since then, he has been languishing in jail hayat. Mr. Gogoi further submits that the materials collected and brought on record so far against the accused, is insufficient to show his complicity with the offence charged and nothing has been recovered from his possession and except the statement of co-accused, there is nothing on the record to show his complicity with the offence charged. Mr. Gogoi further submits that this court vide order dated 14.03.2023, in B.A. No. 786 of 2023, while rejecting the bail petition of the accused, had directed the learned court below to complete trial within a period of three months, but, despite elapse of six months the learned court below had failed to complete trial within the stipulated period and thus, the right to speedy trial of the accused, as guaranteed by Article 21 of the Cr.P.C. is violated. It is the further submission of Mr. Gogoi that one of the co-accused, namely, Smti. Neha Padun @ Kardong, from whose possession the contraband substances were recovered, had already been enlarged by this court vide order dated 28.08.2023, in B.A. No. 1826 of 2023. Thus, maintaining parity with the co-accused and considering the violation of the right of the accused guaranteed by Article 21 of the Constitution of India, Mr. Gogoi has contended to allow the accused to go on bail.

6. On the other hand, Mr. Borthakur, learned Addl. P.P., Assam has vehemently opposed the petition on the following grounds :-

(I) That, there are sufficient materials to show complicity of the accused with the offence charged;

(ii) That, though nothing has been recovered from the possession of the present accused, yet, as per statement of the co-accused the contraband substances, so recovered from their possession, was meant for the present accused;

(iii) That, the contraband substances, so recovered from the possession of co-accused are of commercial quantity and the bar of Section 37 of the NDPS Act is applicable in the present case and the accused has failed to satisfy the requirement of aforesaid sections;

(iv) That, out of six cited witnesses three have already been examined;

(v) That, the accused was arrested earlier in cases under NDPS Act and he is a habitual offender;

Under the aforementioned facts and circumstances, Mr. Borthakur has contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the status report received from the learned Court below.

8. It appears that the accused has been charged under sections 21(C)/29 NDPS Act, along with two other accused, namely, Neha Padun @ Kardong and Dina Sangson Narah @ Ngate, on 11th April 2022. Further, it appears from the status report of the learned court below that till date three witnesses have already been examined by the prosecution side, out of six cited witnesses. It also appears from the documents placed on record that nothing has been recovered from the possession of the present accused. But, there is statement of two co-accused, besides his own statement, indicates his

complicity with the offence. Though Mr. Borthakur submits that the accused was arrested earlier under NDPS Act by Dhemaji Police and remanded to jail hajoot, yet, no material is produced before the court to substantiate the same.

9. It also appears from the materials placed on record that this court, vide order dated 14.03.2023, in B.A. No. 786 of 2023, was pleased to reject the bail petition of the accused. However, a direction was issued to the learned court below to complete trial within a period of three months. But, despite elapse of six months the learned court below had failed to complete the trial. Thus, the right to speedy trial of the accused, as guaranteed by Article 21 of the Cr.P.C. is violated and Mr. B. K. Gogoi, the learned counsel for the accused has rightly pointed this out during hearing. It is to be noted here that while dealing with this aspect, in the case of **Satinder Kumar Antil vs. Central Bureau of Investigation & Anr, reported in 2022 LiveLaw(SC) 577**, Hon'ble Supreme Court has held that:-

“The general principle governing delay would apply to these categories also. To make it clear, the provision contained in [Section 436A](#) of the Code would apply to the [Special Acts](#) also in the absence of any specific provision. For example, the rigor as provided under [Section 37](#) of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of [Section 309](#) of the Code.”

It also appears that this Court has already enlarged one of the co-accused, from whose possession contraband substances were recovered, vide order dated

28.08.2023, in BA No. 1823/2023

10. Under the aforementioned facts and circumstances and also considering the fact that one of the co-accused has already been enlarged on bail, this Court is inclined to extend the privilege of bail to the accused.

11. Accordingly, it is provided that accused Shailen Ngate @ Sailen Narah, who has been languishing in jail hazot, in connection with the Borpathar P.S. Case No.75/2021, under Section 21(C)/29 of the NDPS Act (Special NDPS Case No.14/2022), since 04.02.2022, be released on bail on his executing a bond of Rs. 50,000/- and on furnishing two surety of like amount to the satisfaction of the learned court below. The above privilege is however subject to following conditions:-

(i) He shall appear before the learned court below on each and every date;

(ii) he shall not indulge in committing similar offences;

(iii) he shall not try to influence the witnesses;

12. In terms of above this bail application stands disposed of.

JUDGE

Comparing Assistant