

GAHC010207602023



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

Case No. : Bail Appln./3296/2023

RAFE @ MD. RAFI AND
S/O MD. ALAUDDIN
R/O VILL- SORA KHUNOU
P.O.AND P.S. KAKCHING
DIST. THOUBAL, MANIPUR-795103

2: PUKHRAMBAM SHYAM SINGH
S/O PUKHRAMBAM SHYAM SINGH
R/O PUKHRAMBAM TOMPOK SINGH
P.O. NAMBOL
PS. BISHNUPUR
MANIPUR-79513

VERSUS

UNION OF INDIA
REP. BY NCB

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : SC, NCB

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

01.12.2023

1. Heard Ms. S. K. Nargis, learned counsel for the petitioners. Also heard Mr. S. C. Keyal, learned Standing Counsel for the NCB.
2. This is an application made under Section 439 Cr. P.C. seeking bail by the accused/petitioners, namely, **(1) Md. Rafe @ Md. Rafi and (2) Pukhrambam Shyam Singh**, who were arrested on 29.06.2017 in connection with NDPS Case No. 111/2017 registered under Sections 20(b) (ii)(C)/29/35 of NDPS Act, 1985.
3. Ms. Nargis, learned counsel relying on the decision of the Hon'ble Apex Court in the case of **Mohd Muslim –VS- State (NCT of Delhi)** reported in **AIR 2023 SC 164** contends that, there is no scope for early disposal of trial and the petitioners have been under incarceration for more than 6 (six) years.
4. Ms. Nargis, learned counsel further submits that there is violation of the Section 52A of the NDPS Act and therefore, in the totality of the matter, the petitioners are entitled for release on bail inasmuch as there is no likelihood of early hearing.
5. Per contra, Mr. S. C. Keyal, learned Standing Counsel for the NCB relying on the judgment of the Hon'ble Apex Court in the case of **Narcotics**

Control Bureau –VS- Mohit Agarwal reported in **2022 SCC OnLine 891**, argues that without having the satisfaction as regard the embargo placed in Section 37 of the NDPS Act, 1985, only on the ground of long incarceration an accused cannot enlarged on bail. According to him, in the case in hand, the narcotics in commercial quantity have been recovered in a concealed state from a vehicle bearing registration No.NL-02-C-0811 and the petitioners were the occupants of the said vehicle. Therefore, the conscious possession has already been established and the alleged violation of Section 52 of the NDPS Act, 1985 cannot be considered at this stage on the basis of material available on record inasmuch as some witnesses are yet to be examined.

6. Heard the learned counsel for the parties, perused the material available on record.
7. Section 37 of the NDPS Act, 1985, mandates that a Court can grant bail to an accused only after hearing the Public Prosecutor and after having satisfactions of twin conditions that there are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. Such satisfaction, which the Court is required to record, should be based on reasonable reading and does not called for a meticulous examination of the materials collected during the investigation or during the trial otherwise, the same will amount to mean a complete denial of bail under Section 37 of the NDPS Act, 1985 and the said provision would effectively exclude grant of bail altogether.
8. Grant of bail, on the ground of undue delay in the trial, cannot be said

to be fettered by Section 37 of the NDPS Act, 1985, inasmuch as Section 436A of the Cr.P.C., is made applicable to the offences under the NDPS Act by the Hon'ble Apex Court in the case of **Satender Kumar Antil –VS- CBI** reported in **2022 10 SCC 51**.

9. Section 36A of the NDPS Act, 1985, mandates that the offences under the Act are triable by a Special Court. In the considered opinion of this Court, such mandate of the legislature is to achieve the object that the trials are completed at the earliest possible time inasmuch as the conditions of bail and other provisions under the Act, are very stringent in nature. It is also well settled that reasonable fair and just procedure in a criminal trial is a constitutional obligation on the part of the State. A speedy trial is also one of the dimensions of the fundamental right to life under Article 21 of the Constitution of India (Reference **Raghubir Singh –Vs- State of Bihar 1986-4SCC-481**).
10. So far relating to the constitution of Special Court, it is stated at the bar that in the State of Assam, though different Sessions Judges and Additional Sessions Judges are designated as Special Courts under Section 36A of the NDPS Act, 1985, however, these Courts are also simultaneously entrusted with the different Sessions triable offences under IPC, Criminal Appeals under IPC and to act as Special Judges under Special Act like POCSO Act, 2012. In view of such undisputed factual position, the object of speedy trial under the NDPS Act, as discussed hereinabove shall be hardly achievable.
11. In the totality of the aforesaid backdrop and propositions of law, this Court is of the view that alongside the embargo placed in Section 37 of the NDPS Act, 1985, the ground of undue delay in trial can also be a ground for

granting bail inasmuch as the Court is to come to the satisfaction that there is no likelihood of completion of trial in near future. Thus, such ground of inordinate delay, in the considered opinion of this Court, shall depend on the facts of the each case and the cause of delay is also required to be noted down.

12. On the aforesaid backdrop, now let this Court look into the facts of the present case.
13. The prosecution case is that on 29.06.2017 at around 11:45 hrs, commercial quantity of ganja of 384.210 kgs, were recovered from the body of the truck bearing registration No. NL-02-C-0811 which was just behind the cabin. The two petitioners were the occupants of the vehicle.
14. The Final Complaint was filed on 19.12.2017, charges under Section 20(b) (II)(C) of NDPS Act, were framed by the learned trial Court 20.03.2018. The prosecution has proposed to lay their case on the basis of twenty witnesses.
15. First prosecution witness was examined on 25.11.2019 and altogether eight witnesses have been examined till date and the last witness was examined on 24.05.2023. Thus, total twelve witnesses are yet to be examined and in the meantime, the petitioner has been in custody for more than six years five months as on date.
16. From the aforesaid, it is seen that the prosecution is relying on 20 (twenty) witnesses and till date only, eight witnesses have been examined. From the record, it is also seen that the prosecution has failed to produce official witnesses to depose before the Court on trial and it took five years

to examine eight witnesses till date and therefore, there is no scope for early disposal of the trial inasmuch as the petitioner is under custody for almost 6 ½ years. The seizing officer did not appear even after issuing several summons. Therefore, considering the matter in entirety, this Court is of the view that the petitioners right to fair and speedy trial under Article 21 of the Constitution of India has been violated.

17. For the reasons, discussed hereinabove, this Court is of the view that the petitioner has been able to make out a prima facie case that there is no plausible ground to believe that petitioner is guilty of any offence under Section 29 of the NDPS Act, 1985.
18. Now coming to the other aspect of the matter is that there is no likelihood of the petitioner committing any further similar offence, this Court is of the view that such anxiety of the prosecution can be redressed if stringent conditions are imposed while granting bail.
19. Therefore, the aforesaid leads to a belief of this Court that there are reasonable grounds that the petitioner is not guilty of such offence. In the aforesaid background, to balance the stringent condition of the NDPS Act, 1985 and the right of the petitioner under Article 21 of the Constitution of India, in the considered opinion of this Court, the petitioner can be released on bail with stringent conditions to ensure that the petitioner does not commit any such similar offence while on bail.
20. Considering the aforesaid aspects, propositions of law and in the given facts and circumstances of the present case, this Court is of the considered opinion that by imposing stringent conditions, the attendance of the

petitioner before the learned trial Court could be secured and he can be barred from hampering and tampering or influencing the witnesses.

21. In view of the peculiar facts and circumstances of the case, the petitioners namely **(1) Md. Rafe @ Md. Rafi and (2) Pukhrambam Shyam Singh**, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) with two local Government suitable solvent sureties of like amount each to the satisfaction of the learned Additional Sessions Judge No. 2, Kamrup (M) at Guwahati, in connection with aforementioned case. The bail granted to the petitioners shall be subject to following conditions:-

- (a) The petitioners shall not leave the territorial jurisdiction of learned Additional Sessions Judge No. 2, Kamrup (M) at Guwahati, without prior written permission from him;
- (b) The petitioners shall not hamper and tamper with the evidence of the case;
- (c) The petitioners shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer.
- (d) The petitioners shall surrender their passport, if any (if not already surrendered) before the learned Additional Sessions Judge No. 2, Kamrup (M) at Guwahati.
- (e) The petitioners shall not try to contact any of the witnesses by any mode including telephone, social media etc.

- (f) The petitioners shall furnish the present residential address with proof to the learned trial Court below and shall not change the said residence without prior permission of the learned trial Court.
- (g) The petitioners shall appear before the learned trial Court below on each and every date of appearance during trial.

In the aforesaid terms, this bail petition is allowed.

JUDGE

Comparing Assistant