

GAHC010216862023



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

Case No. : Bail Appln./3406/2023

MD SENAUL SK @ SANAUL SEKH @ SENAUL SEKH AND 2 ORS
S/O LALANU SEKH VIL. BIBIGRAM KISHANPUR P.O. SAIDPUR PS.
KALICHAK DIST. MALDA WEST BENGAL PIN 732206

2: SAJJAT SEKH
S/O OHAB SEKH R/O BADACHANDGHAR KARIKARPARA KALIGANJ
NADIA WEST BENGAL 741196

3: LALANU SEKH
S/O LT. JAMIRUDDIN SEKH R/O VILL. BIBIGRAM KISHANPUR P.O.
SAIDPUR P.S KALICHAK DIST. MALDA WEST BENGAL PIN 73220

VERSUS

THE UNION OF INDIA
REP BY THE SC, NARCOTIC CONTROL BUREAU, NCB

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

01.12.2023

1. Heard Mr. M. Biswas, 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. Senaul SK @ Sanaul Sekh @ Senaul Sekh (2) Sajjat Sekh and (3) Lalanu Sekh**, who were arrested on 26.11.2019, 22.11.2019 and 28.07.2019 respectively, in connection with NDPS Case No. 04/2020 registered under Sections 20(b)(ii)(C)/29/of the NDPS Act, 1985.
3. Mr. Biswas, 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 4 years.
4. 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. Accordingly, Mr. Keyal, learned Standing Counsel vehemently objected to the prayer of the petitioners for the grant of bail.
5. Heard the learned counsel for the parties, perused the material available on record.
6. 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 call 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.

7. 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**.
8. 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**).
9. 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.

10. 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.
11. On the aforesaid backdrop, now let this Court looked into the facts of the present case.
12. The prosecution case is that on 18.07.2019 at around 1300 hrs, commercial quantity of Methamphetamine weighting about 953 grams were recovered from inside the dashboard of a Maruti Swift Car bearing registration No. As 01DY 8873.
13. The final complaint was filed on 22.01.2020, charges under Sections 22(c)/27/29 of NDPS Act, were framed by the learned trial Court 17.02.2022. The prosecution has proposed to lay their case on the basis of

fourteen witnesses.

14. First prosecution witness was examined on 28.02.2022 and altogether nine witnesses have been examined till date and the last witness was examined on 30.09.2022. Thus, total five witnesses are yet to be examined and in the meantime, the petitioners have been in custody for more than four years as on date.
15. It is seen from the record that this Court by its order dated 28.01.2022 passed in B.A. No. 167/2022, directed for day to day hearing and disposal of the matter preferably within 6 months. Thereafter, this Court by yet another order passed on 11.05.2023 in B.A. No. 3204/2022, directed to complete the trial within 4 months. From 11.05.2023, only one witness has been examined. It is also seen from the record that the no recovery has been made from the possession of the petitioner No. 1 and 2. Petitioner No. 1 is implicated because he sent some money to his father's accounts i.e. petitioner No. 3. Petitioner No. 2 is implicated on the basis of disclosure statement made by the co-accused under Section 67 of Cr.P.C. as well as on the basis of CDR report. However, the alleged recovery was made from the possession of the petitioner No. 3.
16. Considering the matter in entirety, this Court is of the view that the petitioner No. 1 and 2 have made out a good case for grant of bail, however, the petitioner No. 3 has failed to make out a good case for grant of bail. Accordingly, the prayer of the Petitioner No. 3 stand rejected. However, the prayer of the petitioner No. 1 and 2 is allowed.
17. In the case in hand, it is seen that the present petitioner is implicated

along with other co-accused on the basis of alleged voluntary statement made by the co-accused recorded under Section 67 of the NDPS Act, 1985.

18. That being the position and in view of the ratio laid down in the case of **State –Vs- Pallulabid Ahamed Arimutta & Others** reported in **2022 12 SCC 633**, the ratio laid down in the case of **Tofan Singh –Vs- State of Tamil Nadu** reported in **(2021) 4 SCC 1**, that a confessional statement recorded under Section 67 of the NDPS Act, 1985, will remain inadmissible in the trial of an offence under the NDPS Act and therefore, such statement more particularly on the basis of the confessional statement/voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence.
19. 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.
20. Now coming to the other aspect of the matter is that there is no likelihood of the petitioners 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.
21. Therefore, the aforesaid leads to a belief of this Court that there are reasonable grounds that the petitioners are not guilty of such offence. In the aforesaid background, to balance the stringent condition of the NDPS Act, 1985 and the right of the petitioners under Article 21 of the Constitution of India, in the considered opinion of this Court, the petitioner

No. 1 and 2 can be released on bail with stringent conditions to ensure that the petitioners does not commit any such similar offence while on bail.

22. 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 No. 1 and 2, before the learned trial Court could be secured and they can be barred from hampering and tampering or influencing the witnesses.
23. In view of the peculiar facts and circumstances of the case, the petitioners namely **(1) Md. Senaul SK @ Sanaul Sekh @ Senaul Sekh (2) Sajjat Sekh**, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) with two suitable solvent sureties of like amount each to the satisfaction of the learned Additional Sessions Judge No. 3, (FTC), Kamrup (M) at Guwahati, in connection with aforementioned case. The bail granted to the petitioner shall be subject to following conditions:-
- (a) The petitioner No. 1 and 2 shall not leave the territorial jurisdiction of learned Additional Sessions Judge No. 3, (FTC), Kamrup (M) at Guwahati, without prior written permission from him;
 - (b) The petitioner No. 1 and 2 shall not hamper and tamper with the evidence of the case;
 - (c) The petitioner No. 1 and 2 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 petitioner No. 1 and 2 shall surrender his passport, if any (if not already surrendered) before the learned Additional Sessions Judge No. 3, (FTC), Kamrup (M) at Guwahati.
- (e) The petitioner No. 1 and 2, shall not try to contact any of the witnesses by any mode including telephone, social media etc.
- (f) The petitioner No. 1 and 2, 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 petitioner No. 1 and 2 shall appear before the I.O of the case being NCB Crime No. 10/2019 on the 1st day of every week.
- (h) The petitioner No. 1 and 2, 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