GAHC010223472023

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

Case No. : Bail Appln./3554/2023

MOHAMMAD LAKI AMIR
S/O MOHAMMAD SIRAJ AHMED
R/O LILONG HAOREIBI TUREL AHANBI DAM MAKHONG,
P.O. LILONG, P.S. LILONG,
SUB-DIVISION, DIST. THOUBAL, MANIPUR- 795130.

VERSUS

UNION OF INDIA
REP. BY THE STANDING COUNSEL, DIRECTORATE OF REVENUE INTELLIGENCE.

Advocate for the Petitioner : MR. P K SAHARIA

Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.12.2023

1. Heard Mr. P.K. Saharia, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, DRI.

2. This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mohammad Laki Amir who has

been detained behind the bars since 06.04.2022 (for last 1 year 11 months 14 days, i.e. 713 days) in connection with NDPS Case No. 304/2022 corresponding to DRI Case No. 01/CL/NDPS/ HEROIN/DRI/GZU/2022-2023 under Section 8(c)/21/22(c)/23(c)/25 of the NDPS Act, 1985 pending in the Court of learned Additional Sessions Judge No-2, Kamrup (M), Guwahati.

3. The gist of accusation in this case is that one Sarojranjan Kumar, Senior Intelligence Officer, Directorate of Revenue Intelligence lodged a complaint before the Court of learned Kamrup (M) on 05.04.2022, *inter-alia,* stating that on the basis of information received through reliable sources two persons namely, Md. Laki Amir and Md. Raquibuddin were intercepted near Sai Baba Mandir near VIP Road, Kamrup(M), Guwahati on 05.04.2022 in a Maruti Dzire Car bearing Registration No. AS01FA0867 and subsequently Md. Taslim Ahmed was intercepted from Om Shree Residency, Bholababa Path, Six Mile, Guwahati on 05.04.2022 at about 2:00 PM and a total of 65 numbers of soap cases containing heroin weighing about 807.18 gram was recovered from their possession.

4. Learned counsel for the petitioner has submitted that the petitioner is in no way involved in the offence alleged in the FIR against him.

5. Learned counsel for the petitioner has submitted that the petitioner has been languishing behind the bars for last 1 year and 11 months for no fault of his. It is also submitted by the learned counsel for the petitioner that though, there are 15 prosecution witnesses listed in the charge-sheet, however, not even a single witness has been examined and the charges are only framed recently i.e. on 27.10.2023 and it is unlikely that the trial would be completed soon.

6. It is further submitted by the learned counsel for the petitioner that the petitioner is entitled to get bail mainly on the ground of prolonged incarceration

as per the observations of Hon'ble Apex Court in "***Mohd Muslim @ Hussain Vs. State" (NCT of Delhi)"*** reported in "***2023 SCC Online SC 352"*** as well as in "***Rabi Prakash Vs. The State of Odisha"*** [order dated 13.07.2023 passed in Special Leave to Appeal (Crl.) No. 4169/2023]. The Apex Court has observed in the aforementioned cases that prolonged incarceration overrides the embargo of Section 37 of the NDPS Act, 1985.

7. Learned counsel for the petitioner has also cited the ruling of the Apex Court in "***Man Mandal and Another Vs. State of West Bengal***," (order dated 14.09.2023) passed in Spl. Leave to Appeal (Crl. No. 8656/2023) as well as in "***Tapas Mandal Vs. State of West Bengal,"*** (order dated 14.09.2023) in Spl. Leave to Appeal (Crl. No. 8464/2023), wherein the petitioners were granted bail in spite of the restriction of Section 37 of the NDPS Act, 1985 only taking into the consideration the fact that they were incarcerated for a period of almost 2 years and the trial is not likely to be taken up for hearing immediately.

8. Learned counsel for the petitioner has also cited the ruling of the Apex Court in "***Shariful Islam @ Sharif Vs. State of West Bengal"*** (infra) "***Nitesh Adhikary Vs. State of West Bengal"*** (infra) and "***Md. Hanif Sheikh Vs State of Gujarat"*** (infra) in which the Apex Court granted bail to the petitioner facing charge for possessing commercial quantity of contraband on the ground of prolonged incarceration.

9. On the other hand, learned Standing Counsel, NCB has vehemently opposed the grant of bail to the present petitioner on the ground that the quantity of contraband seized in this case is of commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 is applicable here in this case.

10. Learned Standing Counsel, NCB has also submitted that unless the

parameters of bail available under Section 37 of the NDPS Act, 1985 are satisfied a bail cannot be granted in a case involving commercial quantity of contraband. In support of his submission, he has cited the ruling of the Apex Court in "***Narcotics Control Bureau Vs. Mohit Agarwala"*** reported in "***2022 6 Supreme 588"***.

11. Learned Standing Counsel, NCB has also argued that unless the twin conditions mentioned in Section 37 of the NDPS Act, 1985 are satisfied bail may not be granted to the petitioner. To substantiate his submissions he has also cited the ruling of the Apex Court in "***Union of India Vs. Ram Samujh and Anr."*** reported in "***1999 9 SCC 429".*** He has also submitted that there cannot be any fixed tenure for completion of a trial in NDPS cases and each case is to be decided on the facts and circumstances specific and particular to the said case. He has further submitted that the question as to whether the petitioner has been deprived of his right of having speedy trial due to unreasonable delay shall have to be considered taking into consideration various factors like the length of the delay, justification for delay, the accused assertion of his right to speedy trial and prejudice caused to the accused for such delay.

12. It is submitted by the learned Standing Counsel, NCB that in the instant case the prosecution side was not at fault for causing delay in trial as for a brief period the Court in which it was earlier pending, i.e., the Court of learned Additional Sessions Judge No. 5, was vacant for about 3 months and thereafter the case was transferred to the Court of learned Additional Sessions Judge No. 2. Hence, the delay was caused due to non-availability of the Presiding Officer and the prosecution was not at fault and for that no benefit for the same should be granted to the present petitioner while considering his bail application.

13. Learned Standing Counsel, NCB has also submitted that though the right

to speedy trial of the petitioner is of great importance, a balance has to be struck between the right of individual liberty and the interest of society, and as in this case commercial quantity of heroin has been seized from the possession of the petitioner, merely on the ground of long incarceration the petitioner may not be entitled to get bail and other facts and circumstances such as interest of the society shall have to be considered in this case.

14. In support of his submission the learned counsel for the petitioner has cited a ruling of the Apex Court in ***Chandrakeshwar Prasad @ Chandu Babu Vs. State of Bihar*** reported in "***2016 9 SCC 443"*** wherein it was observed as follows:

> ***9) We have cautiously analysed the rival contentions and the materials available on record. For obvious reasons, more particularly having regard to the present stage of the case in which the impugned order has been passed, we consider it inexpedient to dwell on factual details. The crux of the charge against the respondent-accused in the case in hand is that he had entered into an conspiracy and in furtherance thereof, had eliminated a witness in an earlier case against him under Sections 302/364A/201 and 120B IPC, days before he was to finally testify in support of the charge.***
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> ***11) This Court in Rajesh Ranjun Yadav @ Pappu Yadav vs. CBI through its Director (2007) 1 see 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof "We are of the opinion that while it is true that Article 21 is***

of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

15. Learned Standing Counsel, NCB has also pointed out towards the statement of objects and reasons of the Amending Act of 2001 which brought amendment to the NDPS Act, 1985 wherein the intention of the legislature was to rationalize the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished in deterrent sentence the addicts who commit less serious offences are sentenced to less severe punishment.

16. In the instant case, as the quantity of contraband seized is of commercial quantity, it is submitted that the Court should not take lenient view of the matter while considering the application for bail in this case.

17. I have considered the submissions made by learned counsel for both the sides and has perused the scanned copy of the case record of NDPS Case No. 304/2022 along with other relevant documents available on record.

18. On perusal of the case record, it appears that in the instant case the petitioner was arrested on 05.04.2022 and was produced before the Court on 06.04.2022 in connection with seizure of 807.18 gram of suspected heroin from

his possession. Thereafter, the charge-sheet was laid on 01.12.2022 against the present petitioner and other accused persons. One of the co-accused namely Abdul Rahman was shown as an absconder in the charge-sheet and thereafter, on several subsequent dates, the petitioner along with the other accused persons were produced before the learned Trial Court and on 06.03.2023 as well as on 24.04.2023, the prosecution side took adjournment whereas on 20.03.2023, the engaged counsel for the present petitioner sought adjournment. It also appears from record that from 03.06.2023 to 08.09.2023, i.e., for about 3 months, due to the transfer of the Presiding Officer the case of the present petitioner remained pending and it was transferred to the Court of Additional Sessions Judge No. 2 on the basis of transfer petition filed by one of the accused persons. Thereafter, on 27.07.2023, the charges were framed and no witness has been examined till now.

19. It appears that though the prosecution side took a couple of adjournments, the prosecution side may not be blamed entirely for the delay caused as due to transfer of the learned Presiding Officer of the Trial Court, the said Court was vacant for at least 3 months. However, it is also true that the present petitioner was also not at fault as he has been detained behind the bars throughout his trial. Under Article 21 of the Indian Constitution, the petitioner also has the fundamental right to get speedy trial and he may not be denied of the said right, for whatsoever reasons if he himself is not at fault for the same. If the trial could not proceed expeditiously, he is at least entitled to get bail during the pendency of such trial and it would be unjust to keep him under detention during pendency of such trial.

20. 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"*** reported in "***2023 Live Law (SC) 533"***, 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 the considered opinion that if this Court comes to a finding that there is undue delay in completion of trial and that there is prolonged incarceration of the petitioner, he would be entitled to get bail as in such case of prolonged incarceration, the fundamental 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.

21. 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.

22. 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.

23. 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.

24. In "***Tapas Mandal Vs. State of West Bengal," (order dated 14.09.2023) in Spl. Leave to Appeal (Crl. No. 8464/2023)*** as well as in "***Man Mandal and Another Vs. State of West Bengal***," ***(order dated 14.09.2023) passed in Spl. Leave to Appeal (Crl. No. 8656/2023),*** the Apex Court granted bail to the petitioners before it taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future.

25. As already observed herein before that though the petitioner has been languishing behind the bars since 06.04.2022 (for last 713 days), the trial has progressed only upto the stage of framing of charges and not even a single witness has yet been examined. Even the interest of the society would be in expeditious hearing of such case. Under the facts and circumstances of this case and considering the slow progress of the trial and prolonged incarceration of the petitioner, this Court is of the considered opinion that the fundamental right guaranteed to the petitioner under Article 21 of the Constitution of India would outweigh the fetters imposed by Section 37 of the NDPS Act, 1985 in this case.

26. In view of above, the above named petitioner is hereby allowed to go on bail of Rs. 1,00,000/- (Rupees One Lakh) with two suitable sureties, one of whom should be a government employee and should be resident of the State of Assam, of like amount to the satisfaction of the learned Trial Court with conditions:-

i. That the petitioner shall cooperate in the trial of NDPS Case No. 304/2022, which is pending in the Court of learned

Additional Sessions Judge No-2, Kamrup (M), Guwahati;

ii. That the petitioner shall regularly appear before the 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 Court of the learned Additional Sessions Judge No-2, Kamrup (M), Guwahati;

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;

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.

27. With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant