

GAHC010232302023



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

Case No. : Bail Appln./3676/2023

WANGKHEIRAKPAM SAMARJIT MEITEI
S/O LATE W. MUHINDRA MEITEI
R/O YUMNAM PATLOU
AWANG LEILAI, P.S. SAOGLMANG
DIST. IMPHAL EAST, MANIPUR.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.12.2023

- 1.** Heard Mr. S. Munir, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, appearing for the State of Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Wangkheirakpam Samarjit Meitei, who has been detained behind the bars since 25.11.2020 in connection with Special (NDPS) Case No. 19/2021 arising out of Dillai Police Station Case No. 48/2020 under Section 20(c) of the NDPS Act, 1985.

3. The gist of accusation in this case is that on 25.11.2020, one Manujal Gogoi, In-Charge of Laharijan Police Post under Dillai Police Station had lodged an FIR before the Officer-In-Charge of Dillai Police Station, *inter-alia*, that on receipt of an information through reliable sources that large quantity of suspected cannabis (ganja) is coming from Imphal side in a truck bearing Registration No. AS01CC8564, a Naka Checking duty was conducted in front of the Laharijan Police Post at National Highway No. 36 and on 24.11.2020 at about 4:30 PM, a white and red colour 10 wheeler LP truck bearing Registration No. AS01CC8564 was intercepted when it was coming from Imphal side. Two persons were found on the said truck and when the said truck was searched 408 kg of suspected ganja was recovered from the vehicle. Later on, the driver of the said truck was arrested, namely, C. Singh, who during interrogation has named the present petitioner as having been involved in the offence alleged in the FIR and on the basis of the statement of the co-accused, the present petitioner was arrested on 25.11.2020.

4. Learned counsel for the petitioner has submitted that on the basis of the said FIR, Dillai P.S. Case No. 48/2020 was registered and investigation was initiated and ultimately on completion of the investigation, on 31.01.2021 charge-sheet was laid against the present petitioner and the co-accused with 9 prosecution witnesses listed in the charge-sheet.

5. It is further submitted by learned counsel for the petitioner that though on 23.08.2021, charges were framed by the learned Trial Court,

however, till date, in spite of the fact that the petitioner has been detained behind the bars for more than 3 years some of the prosecution witnesses are yet to be examined.

6. It is further submitted that none of the witnesses has implicated the present petitioner in this case.

7. Learned counsel for the petitioner has also submitted that the last witness to be examined in the case was on 17.05.2023 and since then the prosecution side has failed to adduce any further witness for the prosecution side and it is unlikely that the trial would be completed soon.

8. It is further submitted by the learned counsel for the petitioner that the petitioner is entitled to get bail due to prolonged incarceration as per the observations of the Hon'ble Apex Court in "**Rabi Prakash Vs. The State of Odisha**" [order dated 13.07.2023 passed in Special Leave to Appeal (Crl.) No. 4169/2023] as well as in "**Mohd Muslim @ Hussain Vs. State**" (**NCT of Delhi**) reported in **2023 SCC Online SC 352** wherein, it was observed by the Apex Court that the prolonged incarceration overrides the embargo of Section 37 of the NDPS Act, 1985.

9. Learned counsel for the petitioner has also submitted that though the petitioner is a permanent resident of Manipur, he would be appearing before the learned Trial Court to face trial, if he is allowed to go on bail.

10. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the quantity of contraband seized in this case is 408 kg which is commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 is applicable here in this case.

11. It is further submitted that already 7 witnesses have been examined

and though on the last two dates fixed by learned Trial Court, the prosecution side has not produced any witness, however, considering the fact that only two witnesses are to be examined, there is unlikelihood that the trial would take long time for completion and on that ground he opposes the grant of bail to the present petitioner only on the ground of prolonged incarceration.

12. I have considered the submission made by learned counsel for both the sides and have perused the scanned copy of the case record of NDPS Case No. 19/2021 which was called for in connection with this case.

13. Though this case involves commercial quantity of contraband, which is also a huge quantity of 408 kg of ganja, however, considering the fact that the petitioner has been detained behind the bars for more than 3 years, the question before this Court is that whether the period of detention of the petitioner is long enough so as to outweigh the embargo of Section 37 of the NDPS Act, 1985 and if this Court comes to a finding that the delay is long enough, so that the embargo of Section 37 of the NDPS Act, 1985 is outweighed by the fundamental right guaranteed to the present petitioner under Article 21 of the Constitution of India, he may have to be released on bail in spite of the embargo of Section 37 of the NDPS Act, 1985.

14. It appears from the perusal of the scanned copy of the case record that the petitioner is not at fault for the delay in the trial in this case as he was all alone detained behind the bars throughout his trial. The petitioner has a right to get speedy trial under Article 21 of the Constitution of India.

15. 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***" (supra), 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 on the ground of prolonged incarceration only 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.

16. 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.

17. 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.

18. 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.

19. Learned counsel for the petitioner has also cited a ruling of Hon'ble Apex Court in ***Tapas Mondal Vs. The State of West Bengal & Ors. (Order dated 14.09.2023 in SLA Criminal No. 8464/2023)***, as well as another ruling of the Apex Court in ***Mandal and Another Vs. State of West Bengal (Order dated 14.09.2023 in SLA Criminal No. 8656/2023)***, wherein the Apex Court has allowed the accused persons to go on bail in spite of the fact that they were facing charges under Section 21(c)/29 of the NDPS Act, 1985 on the ground that they have been incarcerated for a period of almost 2 years and the trial is not likely to be taken away for hearing in the immediately near future.

20. In the instant case also though the petitioner has been detained behind the bars since 26.11.2020 and though the charges were framed on 23.08.2021, the prosecution side has not yet adduce the evidence of all listed prosecution witnesses. It also appears that even the last witness which was examined by the prosecution side was examined only 5 months ago. Under such circumstances, this Court is of the considered opinion that there is a likelihood that culmination of the trial would take some time and under the facts and circumstances of the present case and this Court is also of the considered opinion that the long incarceration of the petitioner for more than 3 years in this case has outweighed the embargo of Section 37 of the NDPS Act, 1985. Hence, the petitioner is entitled to get bail in this case.

21. 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 Trial Court with conditions:-

- i.** That the petitioner shall cooperate in the trial of NDPS Case No. 19/2021, which is pending in the Court of learned Special Judge, Karbi Anglong Diphu;
- ii.** That the petitioner shall regularly appear before the Trial Court as and when so required by the 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 Officer-In-Charge of Dillai Police Station;
- v.** That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the 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.

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

JUDGE

Comparing Assistant