

GAHC010236232022



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

Case No. : Bail Appln./3204/2022

MD. SENAUL SK @ SANAUL SEKH @ SENAUL SEKH
S/I KAKABY SEKH
R/O KISHANPUR, SAYEDPUR, KALIACHAK, MALDA, WEST BENGAL, PIN-
732206

VERSUS

THE UNION OF INDIA
REP. BY THE STANDING COUNSEL, NARCOTIC CONTROL BUREAU (NCB)

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

11.05.2023

Heard Mr. M. Biswas, learned counsel appearing for the accused petitioner as well as Mr. S.C. Keyal, learned Standing Counsel, NCB.

2. By this third petition under Section 439 Cr.P.C., the accused-petitioner,

namely **Md. Senaul Sk @Sanaul Sekh @ Senaul Sekh** has prayed for grant of bail in connection with **NDPS Case No.04/2020** corresponding to NCB Crime No. 10/2019 under Sections **22(c)/29** of the NDPS Act, 1985 pending in the Court of learned Addl. Sessions Judge No. 3, Kamrup(M), Guwahati.

3. The scanned copy of case record is placed before the Court.

4. The earlier bail applications of the accused petitioner being B.A. Nos. 1610/2020 and 167/2022 were rejected by this Court vide orders, dated 20.11.2020 and 28.01.2022.

5. Mr. M. Biswas, learned counsel appearing for the accused petitioner, submits that the accused has been languishing in jail for more than three years and four months since 26.11.2019 on mere suspicion of complicity in the commission of the alleged offence as he credited money into the account of one of the accused Kumam Dhaballo Singh on advice of his father accused Md. Lalanu Sheikh. Mr. Biswas further submits that the accused petitioner, on receipt of notice, dated 18.11.2019 under Section 67(c) of the N.D.P.S. Act from the N.C.B., voluntarily appeared before the N.C.B. officer, but he was put under arrest. Mr. Biswas also submits that although charges were framed in February, 2022, till date only 8(eight) prosecution witnesses are examined and none of them has implicated him. Mr. Biswas submits that although by order, dated 28.01.2022, passed in B.A. No. 167/2022, this Court directed the learned trial Court to proceed with the case by day to day hearing and dispose of the case within a timeframe preferably within 6(six) months from the date of order, no progress has been made in trial of the case despite more than a year elapsed by now. Therefore, Mr. Biswas submits that subject to any condition, the accused petitioner may be directed to be released on bail.

6. Opposing the bail application, Mr. S.C. Keyal, learned Standing Counsel, N.C.B. submits that there was no Presiding Officer for about three months after the charges were framed in January, 2020. However, Mr. Keyal submits 9(nine) prosecution witnesses are examined till date out of 14(fourteen) witnesses. Drawing attention to the bail objection by one C.S.K. Singh, Intelligence Officer, N.C.B. and affidavit-in-opposition, Mr. Keyal submits that the investigation revealed that the present accused had been in regular contact with three prime accused persons and he credited more than Rs.2 Crores in eight months from December 2018 to July 2019, which he earned by means of trafficking of drugs. Therefore, Mr. Keyal submits that as the case involves trafficking of huge commercial quantity of Methamphetamine and in view of the bar under Section 37 of the N.D.P.S. Act, the bail application of the accused petitioner may be rejected.

7. The matter relates to recovery and seizure of 953 grams of Methamphetamine in tablet form from the joint possession of (1) Kumam Dhaballo Singh (2) Longjam Brojen (3) Lalanu Sekh and (4) Md. Motahara Sekh on 28.07.2019 while being carried in a Maruti Swift Desire Car bearing registration No. As-01DY-8873.

8. I have given due consideration to the above submissions made by both sides and perused records including this Court's previous orders.

9. Section 37 of the N.D.P.S. Act contemplates that the accused can be released on bail only if- (i) the Public Prosecutor has been given an opportunity to oppose; and (ii) the Court is satisfied that- a) there are reasonable grounds that accused is not guilty and b) he is not likely to commit any offences while on bail. This is in addition to the conditions provided under Section 439 Cr.P.C.

10. In paragraph Nos. 22 and 23 of the judgment rendered in *Mohd Muslim @Hussain Vs. State (NCT of Delhi) in Special Leave Petition (Crl.) No(s) 915/2023*, the Hon'ble Supreme Court observed has herein below extracted:-

“22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²²[Working Papers- Group on Prisons & Borstals -1966 U.K.](also see Donald Clemmer’s ‘The Prison Community published in 1940 [Donald Clemmer, the Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, ‘ Donald Clemmer’s Concept of Prisonisation’, available at https://www.tkp.Edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf(accessed on 23rd March, 2023)]). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily. ”

11. It is seen that the accused petitioner has been in judicial custody since 27.11.2019, that is, for 3 years, 5 months, 15 days

12. A perusal of the case record reveals that the investigating officer laid offence report under Sections 22(c)/29 of the N.D.P.S. Act against the accused petitioner and 5(five) others vide order, dated 22.01.2020. In the meantime, due to outbreak of Covid-19 pandemic and Covid-19 infection of the Presiding

Officer normal functioning of the Court was disrupted from 08.04.2020 to 20.01.2022. Further, co-accused UTP Kuman Dhaballo Singh, who was released on interim bail for 45 days on 30.06.2020 did not turn up after expiry of the interim bail period, which prompted the learned trial Court to initiate coercive step to compel his appearance. Under such compelling situation, the learned trial Court split up the case under Section 317(2) Cr.P.C. against the accused and 4(four) others vide order, dated 24.03.2021 to expedite trial of their case. Thereafter, ultimately the charges under Sections 22(c)/27/29 of the N.D.P.S. Act were framed against them vide order, dated 17.02.2022. Thereafter, the learned trial Court has examined 9(nine) prosecution witnesses till 30.09.2022, out of listed 14(fourteen) witnesses. Thus, the trial of the case has suffered set back, which can be attributed to natural calamity, misconduct of co-accused and sickness of co-accused as well as of the Presiding Officer during the Covid-19 pandemic period beyond the control of the learned trial Court. The order of this Court passed on 28.01.2022 in B.A. No.167/2022 was passed at pre-charge stage of the case.

13. Undoubtedly, the bar in Section 37 of the N.D.P.S. Act cannot abridge the right under Article 21 of the Constitution of India. However, keeping in consideration of the magnitude of the offences including the offence under Section 29 of the N.D.P.S. Act, on examination of the various materials procured during investigation having noticed that still there are some most material witnesses to be examined in the case, it cannot be said that the trial of the case has been unreasonably delayed.

14. Therefore, the bail application of the accused petitioner, who is a resident of West Bengal, is **rejected** at the present stage of trial of the case.

15. However, the learned trial Court is directed to complete examination of the remaining prosecution witnesses within a reasonable period preferably **within 4(four) months** from the date of receipt of a copy of this order and on expiry of the aforesaid period or completion of examination of all the prosecution witnesses, whichever is earlier, if a fresh bail application is filed, the same shall be considered favourably subject to any stringent condition(s) as deemed necessary and proper.

The bail application stands disposed off.

JUDGE

Comparing Assistant