GAHC010241002023

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

Case No. : Bail Appln./3860/2023

BALA NARENGBAM
W/O NARENGBAM CHOURAJJIT SINGH
R/O VILL- NAGAMAPAL SINGJUBUNG LEIRAK, P.O. IMPHAL, P.S. IMPHAL,
DIST. IMPHAL WEST
STATE- MANIPUR,
PIN-795001

VERSUS

UNION OF INDIA
REP. BY CUSTOMS DIVISION, GUWAHATI.

Advocate for the Petitioner : MR S DEKA

Advocate for the Respondent : SC, CUSTOMS

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 06-12-2023

1. Heard Mr. S. Deka, learned counsel for the petitioner Bala Narengbam.

2. The petitioner has filed this application under Section 439 Cr.PC with prayer for bail as she is in custody since 01.06.2018.

3. It is submitted that the petitioner is behind bars for almost 5½ years but trial is yet to be concluded. The personal liberty of the petitioner has been curtailed due to

the procrastination of the trial. Not a single witness has been examined since 25.07.2022. Nine (9) witnesses are enlisted in the offence report but the witnesses were examined after long intervals, and it took the Court almost 1½ years to complete examination of all the witnesses. The IO is yet to be cross-examined. Further incarceration of the petitioner will militate against the most precious fundamental right guaranteed under Article 21 of the Constitution. The petitioner has also relied on the decision of Hon'ble the Supreme Court of India in ***Rabi Prakash v. State of Odisha*** in connection with Special Leave to Criminal Appeal No. 4169/2023 dated 13.07.2023 wherein it has been observed that:-

> " **As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.**"

4. Heard Mr. S.C. Keyal, learned Standing Counsel for the respondent –DRI.

5. The learned Standing Counsel for the respondent has raised serious objection against the prayer for bail. It is submitted that the embargo u/s 37 of NDPS acts as fetters to the bail application. The petitioner was caught carrying a huge cache of drugs amounting to crores of rupees. If the petitioner is released on bail there is every possibility that the petitioner may continue peddling of drugs. It is also submitted that the case was not procrastinated by the prosecution but by the petitioner's side as an application u/s 311 Cr.PC was filed before the trial court and the trial Court had to re-examine the witnesses on the additional evidence adduced. The learned counsel for the respondent has also relied on the decision of Hon'ble the Supreme Court in ***Ash Mohammad v. Shiv Raj Singh @ Lalla Babu and Another***, reported in ***2012 0***

Supreme(SC) 642, wherein it has been observed that:-

"**13. In Prasanta Kumar Sarkar v. Ashis Chatterjee and another[5] it has been observed that normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail of the accused, however, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. Among other circumstances the factors which are to be borne in mind while considering an application for bail are whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail; character, behavior, means, position and standing of the accused; likelihood of the offence being repeated; reasonable apprehension of the witnesses being influenced; and danger, of course, of justice being thwarted by grant of bail."**

6. I have considered the submissions at the Bar with circumspection. It is true that the petitioner has been behind bars for more than 5 years, but at the same time the scanned copies of the LCR reveals that all the nine witnesses have been examined. The case is at the fag end of the trial. The cross-examination of the IO is to be recorded. The offence is of a serious nature. The merits of the case and the statements of depositions of the witnesses are not discussed at this stage as the case is *sub judiced* before the trial Court. This is not a case where not a single witness has been examined. The ratio of the decision in *Rabi Prakash's* case *(supra)* is not applicable to the present case. It is manifest that this case is at the fag end of the trial. The next date fixed for evidence is 19.12.2023. I am not inclined to grant bail to the petitioner at this juncture.

7. The petition for bail is rejected at this juncture.

8. However, the trial Court is to expedite the trial and complete the trial within 1 (one) month.

JUDGE

Comparing Assistant