

GAHC010245112023



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

Case No. : Bail Appln./4051/2023

NARAHARI CHETRY
S/O LATE .P. CHETRY
R/O NALBARI, UDALGURI,
DIST. UDALGURI, ASSAM
PIN-784509

VERSUS

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

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : SC, NCB

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

14-12-2023

Heard Mr. M Biswas, learned counsel for the petitioner and Mr. S C Keyal, learned Standing counsel, Narcotics Control Bureau (NCB) for the respondents.

2. By this application under Section 439 CrPC, the petitioner, namely, **Narahari Chetry**, has prayed for his release on bail in connection with NDPS Case No. 22/2019 arising out of

NCB Crime No. 14/2018 presently pending before the Court of learned Special Judge (NDPS), Kamrup (Metro) at Guwahati.

- 3.** By order dated 15.11.2023, scanned copy as well as the status report of said NDPS Case No. 22/2019 was called for.
- 4.** Perused the records of said NDPS Case No. 22/2019 and heard the arguments of both the parties.
- 5.** It is seen that the petitioner was arrested on 06.09.2018 in said NCB Crime No. 14/2018 registered under Sections 20(b)(ii)(c)/29/35/54/60/66/69 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and since then he is in custody.
- 6.** The respondent NCB submitted the offence report/charge-sheet in said NCB Crime No. 14/2018 on 02.03.2019 against (i) Narahari Chetry, the petitioner herein and as well as the other arrested accused persons, namely, (ii) Om Nath Chetry, (iii) Ajay Sasni, (iv) Durlav Sutradhar and (v) Samprai Debbarma/Rakesh Debbarma. Out of those five charge-sheeted accused persons, the first four accused persons were arrested and the accused Samprai Debbarma/Rakesh Debbarma is yet to be apprehended.
- 7.** From the records, it is seen that after hearing, the learned Special Judge on 18.12.2019 in said NDPS Case No. 22/2019 framed charge under Sections 20(b)(ii)(c)/29 of the NDPS Act, 1985 that were read over to the arrested accused persons, to which they pleaded not guilty and claimed to be tried and the said Trial Court on 18.12.2019 itself fixed 20.01.2020 for evidence.
- 8.** It is noticed the offence report/charge-sheet of said NCB Crime No. 14/2018 contains a list of 7 (seven) named prosecution witnesses and also any other witness that may be deemed proper by the Court. However from the records of the case, it is seen that before the learned Special Judge in said NDPS Case No. 22/2019, the prosecution did not produce any of its witnesses for their examination and recording of evidence, though several dates were fixed since 20.01.2020 for evidence; thereby, the trial of the case practically did not commenced, after framing of the charge in the case on 18.12.2019.

9. Mr. S C Keyal, learned Standing counsel, NCB submitted that one of the arrested accused, namely, Om Nath Chetry, who happens to be the own brother of the petitioner, on 08.12.2022 was temporarily released on bail in said NDPS Case No. 22/2019 for a limited period of three months due to medical ground and after the expiry of the said period of bail, said Om Nath Chetry did not surrender before the Court of learned Special Judge in said NDPS Case No. 22/2019 till date and that if the petitioner is now allowed to be released on bail, he too will not co-operate with the trial of said NDPS Case and shall abscond.

10. Mr. Keyal, Standing counsel, NCB also submitted that the learned Special Judge on 28.11.2023 split up the said NDPS Case No. 22/2019 for the accused Om Nath Chetry and that previously the said NDPS Case was split up for another accused of the case, Samprai Debbarma/Rakesh Debbarma, who is evading arrest and that since the appearance is not yet complete, the trial of the case as such did not begin. Mr. Keyal, vehemently objected for bail of the petitioner Narahari Chetry, stating that he will also do the same thing as that of his brother Om Nath Chetry and in that case the entire trial will be a futile exercise. Mr. Keyal submitted that 699 Kgs of Cannabis were recovered from the possession of the accused persons of the case on 05.09.2018 from the truck that they were driving bearing registration No. AS 02 E 6914 while it was at Service Lane on NH 37 near Health City Hospital at Guwahati and that the FSL report dated 18.09.2018 of the samples drawn indicated positive as those to be Cannabis (Ganja).

11. Mr. Biswas, learned counsel for the petitioner submitted that the alleged Cannabis (Ganja) were not found in possession of the petitioner and were found in the said Truck. He further submitted that the samples of those alleged Cannabis (Ganja) from the Truck were even not drawn by the NCB as required and specified under the provisions of the NDPS Act, 1985 as amended. Mr. Biswas, learned counsel also submitted that considering the length of detention in custody since 06.09.2018 for more than 5 years, the petitioner is entitled for bail in said NDPS Case No. 22/2019.

12. Mr. Biswas submitted that the petitioner will abide by all the stringent conditions that may be imposed by the Court upon him, if considered for bail in said NDPS Case No. 22/2019, pending before the Court of learned Special Judge (NDPS), Kamrup (Metro) at Guwahati.

13. After considering the submissions of the learned counsels for the parties and on perusal of the records of said NDPS Case No. 22/2019, it is seen that in the said case the petitioner is in custody for more than 5 years where evidence is yet to be recorded though charges were framed in the case on 18.12.2019 and 20.01.2020 was fixed for evidence. It is also notice that even after the Covid period the prosecution NCB has not yet produced its witnesses on the dates fixed in the case.

14. In the aforesaid backdrop and considering the period of detention in custody for more than five years, the Court is of the opinion that the petitioner, namely, Narahari Chetry is entitled for his bail in said NDPS Case No. 22/2019 presently pending before the Court of learned Special Judge (NDPS) at Kamrup (Metro), Guwahati. As such, this bail application of the petitioner in said NDPS Case No. 22/2019 is accepted.

15. Accordingly, the petitioner, namely, **Narahari Chetry**, son of Late Hari Prasad Chetry, Resident of Village - Khanghelbari, Post Office - Udalguri, Police Station - Udalguri, District - Udalguri, Assam (address as found in the Offence Report/Charge Sheet filed by NCB in its NCB Crime No. 14/2018 on 02.03.2019) be released on bail in said NDPS Case No. 22/2019 arising out of NCB Crime No. 14/2018 on furnishing a bail bond of Rs.1,00,000/- with 2 (two) local sureties from Kamrup (Metro), Guwahati of the like amount, one of which shall be a Central Government employee of not less than a Grade-III officer, having confirmed and sufficient length of service, to the satisfaction of the learned Special Judge (NDPS), Kamrup (Metro), Guwahati on conditions that the petitioner –

- (i) shall appear before the learned Special Judge (NDPS), Kamrup (Metro) at Guwahati in the said NDPS Case No. 22/2019 on the dates the said case is fixed;
- (ii) shall not leave the territorial jurisdiction of the learned Special Judge (NDPS), Kamrup (Metro), Guwahati without giving the full details of the address of his destination and without obtaining prior written permission from the said Court;
- (iii) shall not hamper with the investigation, or tamper with the evidence of the case;
- (iv) shall not indulge in any illegal activities including illegal trade, transportation,

consumption etc. pertaining to Narcotic Drugs and Psychotropic Substances in future; and

- (v) 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 him from disclosing such facts to the Court or to any police officer.

16. The respondent in the Narcotic Control Bureau is directed that before releasing the petitioner from jail on bail, its authorities shall obtain the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner and thereafter, he shall be allowed to remain on bail, if not obtained earlier.

17. Failure on the part of the petitioner to comply with any of the terms and conditions as specified above and any violation of the aforesaid terms and conditions by the petitioner, namely, **Narahari Chetry**, the bail granted to him in said NDPS Case No. 22/2019 arising out of NCB Crime No. 14/2018 shall stand automatically vacated.

18. This bail application accordingly stands allowed to the extent above.

JUDGE

Comparing Assistant