

GAHC010054142024



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

Case No. : Bail Appln./777/2024

MAHENDRA SINGH
S/O SANTRAM
R/O VILL- ABHEDEPUR, P.O. ABHEDEPUR, P.S. SIRSAKALA, TEHSIL-KALPI,
DIST. JALAUN, PIN-285130 UTTAR PRADESH

VERSUS

THE UNION OF INDIA
REPRESENTED BY NARCOTICS CONTROL BUREAU.

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

28.03.2024

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

By this petition filed under Section 439 Cr.P.C., the accused-petitioner, namely, **Mahendra Singh**, has prayed for grant of bail in connection with **NDPS Case No.46/2021** corresponding to NCB Crime No. 8/021 under Sections **21(C)/29 of NDPS Act**, pending in the court of learned District and Sessions Judge, Amingaon at Kamrup.

The factual matrix leading to this bail application is that on 29.03.2021 one officer of NCB received an information that two persons i.e. the present petitioner and one Ayodhya Prasad of Uttar Pradesh were coming in a truck bearing No. UP 22T 8859 from Rangia side and would go towards Agartala, Tripura, carrying about 10,000 bottles of phensedyl, codeine based cough syrup. Accordingly the vehicle was intercepted near Narayana Hospital, Amingaon. Two persons were found inside the truck, they introduced themselves as Ayodhya Prasad and Mahendra Singh, the present petitioner. On being searched, about 9979 plastic bottles containing phensedyl cough syrup were recovered and seized accordingly. Two persons found inside the truck were arrested.

It was urged by the learned counsel for the petitioner that the petitioner was arrested on 01.04.2021 and it has been about three years that the petitioner is languishing in jail. Out of eight witnesses till now only three prosecution witnesses have been examined. The charge of the instant case was framed on 27.03.2023 after almost two years of arrest.

It is also the submission of the learned counsel for the petitioner that the petitioner is the handyman travelling in the alleged truck. He is no way connected with the alleged offence. As per offence report, the seized contraband were being supplied by one Sohaib @ Rahul and one person from Agartala namely, Apu @ Apu Das is the receiver of the said contraband. The petitioner being a poor handyman does not know anything about codeine based cough syrup and as to what license/documents are required for selling and purchasing of such medicine.

The learned counsel for the petitioner has also contended that it is a trite law that prolonged incarceration as an undertrial and inordinate delay in trial infringes the fundamental right of an accused guaranteed under Article 21 of the

Constitution of India. It is also submitted that the petitioner is the only sole bread earner of his family and his arrest has caused lots of hardship to his family. The petitioner has thoroughly been interrogated. As the trial is going on, there is no question of hampering or tempering with investigation. Considering the length of detention, the petitioner may be enlarged on bail.

In support of his submission, learned counsel has placed reliance on the following case laws:

- (i) *Ravi Prakash and others Vs state of Orissa*, reported in 2023 0 Supreme SC 707.
- (ii) *Satender Kr. Antil vs CBI*, reported in (2022) 10 SCC 51.
- (iii) *Sariful Islam @ Sarif vs the State of West Bengal* reported in *Special Leave to Appeal (Crl) No. 4173/2022* are some of them.

Per contra Mr. S. C. Keyal, learned standing counsel, NCB has submitted that the accused petitioner is the handyman travelling in the alleged truck along with the driver and he has knowledge regarding carrying of the commercial quantity of psychotropic substances in the vehicle. At the time of interrogation, the petitioner has voluntarily stated his involvement in illegal trafficking of phensedyl in the alleged vehicle. It is also submitted that about 9975 bottles of codeine based cough syrup (phensedyl) was recovered from the conscious possession of the present petitioner i.e. the handyman and the driver of this alleged truck.

According to the learned standing counsel, NCB, as the commercial quantity was recovered from the possession of the present petitioner, the provision of Section 37 of the NDPS Act is attracted here in this case. In support of his submission learned standing counsel has placed reliance on the following case laws:

(i) *Union of India vs Niyazuddin Sk and another*
reported in (2019) 1 SCC (Crl.) 407.

In the said case, it was held that grant of bail by High court without satisfying mandatory requirements under Section 37 of the NDPS Act is not permissible. The matter was remitted back to the High Court for consideration afresh.

By referring the judgment of *State of Kerala Vs Rajesh* reported in (2020) 12 SCC 122 learned counsel for the NCB has pointed out that the scheme of Section 37 of the NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of Cr.P.C. which commences with non obstante clause. The operative part of the Section is in the negative form prescribing the enlargement on bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application and the second is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

It is true that the petitioner has been detained in custody for last three years and the prosecution has failed to complete the trial within such period. Out of eight witnesses, three witnesses have been examined. Though the petitioner was arrested on 01.04.2021 but the charge was framed on 27.03.2023. The trial court record shows that one accused was shown as absconder. As a result of which there was delay in proceeding with the case. But the admitted position is that the accused petitioner was travelling in the alleged truck bearing No. UP 22T 8859 along with another person from which 9979 plastic bottles containing phensedyl cough was recovered which is undisputedly of more than commercial quantity.

Under such backdrop, it cannot be said that there are reasonable ground for

believing that the accused petitioner has not committed the said offence and he is not likely to commit any offence if released on bail.

Situated thus, this Court is of the view that the petitioner is not entitled to be released on bail as accusation is of commercial quantity and the provisions of Section 37(1)(b)(ii) of NDPS Act are not satisfied.

Accordingly, the bail application is rejected and disposed of.

JUDGE

Comparing Assistant