

GAHC010058512024



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

Case No. : Bail Appln./833/2024

MD. GANESAN G @ GANESH
S/O GOMATHINAYAGAM
R/O 49A, GARDEN, 3RD STREET,
P.S. ROYAPURAM
CHENNAI, TAMILNADU.

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, NARCOTIC CONTROL
BUREAU.

Advocate for the Petitioner : MR U S BORGOHAIN

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 26.04.2024

Heard Mr. U.S.Borgohain, learned counsel for the accused petitioner and Ms. M.Deka, learned counsel for the NCB.

2. By this application under Section 439 CrPC, the petitioner, namely, **Md. Ganesan G @ Ganesh** has prayed for bail in connection with NDPS Case No.131/2021 under Sections 8

(C)/22 (C) (ii)/29 of the NDPS Act arising out of NCB Case No. 6/2021 pending before the learned Additional Sessions Judge, No.2, Kamrup (M), Guwahati.

3. The brief fact of the case is that on 06.03.2021 the NCB officials , Guwahati on receipt of secret information searched one Ford car bearing No.MN-05A-7260 and recovered 10 packets of Methamphetamine tablets and apprehended two persons namely, Md. Safiquil Rahman and Krishna Mahapatra Mali and accordingly one case was registered vide NCB Case No.06/2021 and the contraband was seized.

4. It was urged by the learned counsel for the petitioner that though the case was lodged on 06.03.2021 and two persons were arrested on the same date but the present petitioner was arrested after six months of the alleged recovery of narcotic drugs on 15.09.2021 and since then he has been languishing in judicial custody. It is further submitted that the arrested co-accused stated the name of the accused petitioner in his statement before the NCB officials and notice was issued against the present petitioner to appear before the NCB office. On his appearance, he was arrested. No any contraband item was recovered from the possession of the present petitioner.

5. It is further submitted by the learned counsel for the petitioner that the charge sheet has been laid against the petitioner along with other co-accused. It is also the submission of the learned counsel for the petitioner that the petitioner has been detained in custody for more than two years. Out of 15 witnesses, only one witness was examined by the trial court. Though earlier bail application was rejected by this court with a direction that the trial court shall make an endeavor to dispose of the case expeditiously but even then there is no progress of completion of trial.

6. According to learned counsel for the petitioner that the petitioner has a travel agency in Chennai. The allegation against the petitioner is that he supplied the flight tickets from his travel agency to the co-accused for trafficking of the contraband.

7. Learned counsel has also pointed out that the statement of co-accused are inadmissible in law as the ratio laid down in the case of *Tofan Singh –vs- State of Tamil Nadu* reported in (2020) SCC online SC 882. In the said case, Hon'ble Apex Court held that such statements are inadmissible in law. Accordingly the learned counsel for the petitioner prays to

release the accused petitioner on bail.

8. In support of his submission, learned counsel has relied on the following case laws:

1. Bail Application 1411/2023 (Junush Khan –vs- State of Assam).
2. Bail Application 2917/2023 (Kapil Deu Ray & anr. –vs- State of Assam).
3. Bail Application 3887/2023 (Anil Malakar –vs- State of Assam).

9. In response, learned counsel for the NCB has vehemently opposed in granting bail to the petitioner by stating that the present petitioner was the receiver of the seized commercial quantity of narcotic drugs along with other co-accused. Statements given by co-accused Tyagarajan that the present petitioner arranged to book flight tickets for his journey from Chennai to Guwahati and the other co-accused was going to hand over the consignment of methamphetamine to the present petitioner. According to the learned Standing Counsel, NCB, the present petitioner was very much involved in trafficking narcotic drugs in the State of Assam.

10. It is further submitted that on several dates i.e. on 02.09.2023, 05.10.2023, 02.11.2023 and 04.01.2024, on each date, two witnesses were present but they were not examined as the learned counsel for the accused took adjournment. As such, delay has not been caused on the part of the NCB and prays for dismissal of the bail application.

11. I have considered the submission of learned counsel for the parties. Perused the trial court records.

12. It is true that out of 15 witnesses only one witness was examined by the prosecution. However, from the trial court records, it reveals that on several dates, though witnesses were present but they were not examined due to adjournment taken by the counsel for the accused. Under such backdrop, it cannot be said that there was procedural delay on the part of the prosecution.

13. In the case of *Gurwinder Singh –vs- State of Punjab & anr.* reported in (2024) 0 Supreme (SC) 104, it was held that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail.

14. By referring the judgment of *Rajesh Ranjan Yadav @ Pappu Yadav –vs- CBI* reported in (2007) Vol 1 SCC 70, learned counsel for the CBI has pointed out that the Hon'ble Supreme Court has held that the mere fact that the accused has undergone a long period of incarceration by itself would not entitle him to be enlarged on bail. It all depends on the facts and circumstances of each case. While it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty but at the same time, a balance has to be struck between the right to individual liberty and the interest of society. While it is true that one of the consideration in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society.

15. In the case in hand, it reveals that the petitioner was the receiver of the seized narcotic drugs which were supplied through the co-accused. As the trial is going on, at this stage, this court is not inclined to comment on merit of the case. However, the bail application is rejected. The trial court is directed to expedite the matter and no further adjournment be granted to either of the parties when the witnesses are present before the trial court.

With the aforesaid observations, the bail application is disposed of.

JUDGE

Comparing Assistant