

GAHC010058852024



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

Case No. : Bail Appln./817/2024

SUMIT DHAR
S/O LATE KIRANMOY DHAR, R/O SHIV BARI ROAD, KARIMGANJ TOWN,
P.O. AND P.S.-KARIMGANJ, DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

08.04.2024

1. Heard Mr. M. Biswas, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Shri Sumit Dhar, who

has been detained behind the bars since 29.05.2022 (for last 1 year, 10 months, 10 days) in connection with NDPS Case No. 166/2022, corresponding to Basistha P.S. Case No. 1023/2021 under Section 21(c)/29 of the NDPS Act 1985, pending in the court of learned Additional Sessions Judge No. 2, Kamrup Metro, Guwahati.

3. It is pertinent to mention herein that prior to this bail application, the petitioner had earlier approached this court seeking bail, however, his prayer for bail was rejected at that time, by order dated 08.06.2023 passed in Bail Application No. 1633/2023, wherein this court had directed expeditious trial of the case maintaining calendar of hearing. However, in spite of the said order, only one witness has been examined by the trial court till date.

4. The gist of accusation in this case is that on 10.06.2021, one Gourav Kousavmuni Bhumij, SI of Police of Basistha Police Station had lodged an FIR before the Officer-In-Charge of Basistha Police Station, *inter alia*, alleging that on a secret tip-off through reliable sources a Naka Checking was conducted and one truck bearing Registration No. NL01AB9942 was intercepted, while it was coming from Khanapara towards Jorabat and during search of the said vehicle, 44,160 bottles of Eskuf Syrup were found in 276 cartons and each carton containing 160 numbers of bottles. The driver of the said truck, one Zakir Hussain, was arrested and Basistha Police Station Case No. 1023/2021 was registered and investigation was initiated.

5. During the course of investigation, two other accused, namely Shri Amal Das and present petitioner were arrested. It is pertinent to mention herein that the present petitioner was arrested on 29.05.2022 from Karimganj and thereafter the charge sheet was laid on 18.07.2022 showing the names of three accused persons, namely Zakir Hussain, Amal Das and the present petitioner as

charge-sheeted accused.

6. The learned counsel for the petitioner has submitted that the other two accused persons, namely Zakir Hussain as well as Shri Amal Das are already allowed to be released on bail.

7. It is submitted by the learned counsel for the petitioner that recently by order dated 01.03.2024 passed in Criminal Appeal No. 1295/2023, the Apex Court of India had allowed the co-accused Amal Das to be released on bail after considering the period of detention of 1 year 9 months as well as other attending facts of the case.

8. The learned counsel for the petitioner has submitted that the petitioner is a holder of valid drug license bearing No. KMG3114 and the contraband seized in this case were not found from his possession.

9. It is also submitted by the learned counsel for the petitioner that the petitioner is the proprietor of Dhar Drugs Agency, which is dealing in lawful business of Drugs and it used to purchase drugs from M/S Hematech Pharmaceuticals of which Amal Das is proprietor.

10. It is submitted by learned counsel for the petitioner that the petitioner has been apprehended has been arrested detaining this case merely on the basis of the statement made by the co-accused Amal Das who has already been released on bail.

11. It is further submitted by learned counsel for the petitioner that prolonged incarceration in a case even if it involves commercial quantity of contraband entitles the detained accused to get bail if the trial is not progressing.

12. He has submitted that in the instant case also the petitioner

has been detained behind the bars for more than 1 year 10 months and when other two co-accused persons are all already released on bail there is no justification in detaining the present petitioner without any progress in the trial.

13. Learned counsel for the petitioner has therefore prayed for allowing the petitioner to go on bail.

14. On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner on the ground that huge quantity of cough syrup, without valid documents, has been seized and the evidence available on record shows that the present petitioner was also involved in commission of the offence alleged in this case.

15. Learned Additional Public Prosecutor has submitted that considering the quantity of contraband seized in this case the period of detention of 1 year 10 months of the petitioner may not be considered as long incarceration as the charges have been framed only on 27.03.2023 and already one prosecution witness has been examined.

16. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record including the scanned copy of case record of NDPS case No. 166/2022.

17. Though commercial quantity of contraband has been seized in this case however it appears that the seizure was not made from the possession of the present petitioner and present petitioner seems to have been holding a valid drug license.

18. It also appears that out of three accused persons against whom charge sheet was laid two of them are already released on bail and while releasing the co-accused Amal Das, the Apex Court of India in its order

dated 01.03.2024 passed in Criminal Appeal No. 1295/2024 also took into the consideration the period of detention already undergone by the co-accused Amal Das.

19. The Apex Court of India in "***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***" reported in "***2023 SCC Online SC 352***" has observed that "Grant of bail on ground of undue delay in trial, cannot be said to be fettered by [Section 37](#) of the NDPS Act, 1985.

20. Similarly, the Apex Court of India has also observed in "***Rabi Prakash Vs. The State of Odisha***" reported in "***2023 Live Law SC 533***" that "prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985."

21. This court is also of considered opinion that while considering an application for bail involving commercial quantity of contraband, if the court comes to a finding that there has been undue delay in completion of trial and during that time the petitioner has been incarcerated and same incarceration is a long incarceration, he would be entitled to get bail mainly on the ground of such prolonged incarceration.

22. Under such circumstances, the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India to the petitioner would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.

23. It is also pertinent to mention herein that the Supreme Court of India had granted bail to the accused facing charges for possession of

commercial quantity of contraband only on the ground of prolonged incarceration in "**Shariful Islam @ Sarif Vs. State of West Bengal**" (order dated **04.08.2022 in SLP Criminal No. 4173/2022**), wherein the accused was detained behind bars for one year and six months.

24. In "**Nitesh Adhikari Vs. State of West Bengal**" (Order dated **04.05.2022 in SLP Criminal No. 5769/2022**), the Apex Court granted bail to the accused facing accusation under Section 21(c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

25. Similarly in "**Md. Salman Hanif Shaikh Vs. State of Gujarat**" (Order dated **22.08.2022 in SLA Criminal No. 5530/2022**), the petitioner was granted bail, by the Apex Court, on the ground of prolonged incarceration of two years.

26. In the instant case also, the petitioner appears to have been holder of a valid drug license and the other two co-accused against whom the charge sheet was laid are already released on bail and he has been languishing behind the bars for last more than 1 year 10 months and the trial has not progressed properly. It appears that only one out of 13 listed prosecution witnesses has been examined till date.

27. Under aforesaid circumstances, this court is of considered opinion that the period of detention already undergone by the present petitioner is long enough to outweigh the embargo of Section 37 of NDPS Act, 1985 and therefore, this court is of considered opinion that the present petitioner is entitled to get bail in this case.

28. In view of above, the petitioner namely, Sumit Dhar is allowed to be released on bail of rupees 50,000/- with two sureties of like amount to the

satisfaction of the trial court with following conditions:-

i. the petitioner shall cooperate in the trial of NDPS case No. 166/2022 pending before the court of learned Additional Sessions Judge No. 2, Kamrup (M) and he shall regularly appear before the trial court as and when so required by the trial court;

ii. the petitioner shall not directly or indirectly make any inducement threat or promise to any person who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the trial court;

iii. the petitioner next the petitioner shall provide his contact details before the trial court;

iv. the petitioner shall not leave the State of Assam without prior leave of the trial court and if and when such leave is granted by the trial court, the petitioner shall submit the details of his leave address and other contact details during such leave before the trial court.

29. With above observation this bail application is hereby disposed of.

JUDGE

Comparing Assistant