

GAHC010058912024



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

Case No. : Bail Appln./862/2024

RAJVEER SINGH
S/O SHRI RAJPAL SINGH
R/O TULSIPUR, P.O.LAKHANMAU
P.S. BARNAHAL, DIST. MAINPURI, UTTAR PRADESH-205261

VERSUS

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

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 16.07.2024

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

By filing this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Rajveer Singh** has prayed for grant of bail in connection with **NDPS Case No. 04/2021** (NCB Crime

No. 11/2020) under Sections 20(b)(ii)(C)/ 25/27A/28/29 of the NDPS Act.

3. The background of the case is that on 30.07.2020, the NCB team of Guwahati got information from a reliable source that one person namely, Rajveer Singh would be carrying a huge quantity of Ganja which was concealed in a truck bearing No. HR38R-7672. Accordingly, the NCB team intercepted the said truck and recovered 65.33 kg of Ganja from the roof of the truck. Thereafter, a case was registered vide NDPS Case No. 04/2021 under the NDPS Act and the contraband was seized accordingly and the present petitioner was arrested.

4. The learned counsel for the petitioner has argued that though the charge sheet was filed on 25.01.2021 but the investigation was not completed and as such, the NCB has prayed before the court to issue warrant of arrest against the absconding accused and for allowing the NCB to carry on further investigation. It is because of this the charge could not be framed on time and it took more than two and half years to frame charge only on 19.02.2024. It is further submitted that the NCB also has not made any attempt to split the trial against the arrested accused persons. As such, there was delay in proceeding of the trial.

5. According to the learned counsel for the petitioner, the petitioner has been languishing in jail about four years. The witnesses are not turning up on the dates fixed for evidence and as a result of which, the trial is getting late. It is trite law that prolonged incarceration as an under trial and inordinate delay in trial infringes the fundamental right of an accused guaranteed under Article 21 of the Constitution of India.

6. In support of his submission, learned counsel has relied on the following

case laws:

- i. *2023 Live law SC 533 (Rabi Prakash vs. State of Orissa)*
- ii. *Special Leave Appl.(Crl.) 5530/2022 (Md.Salman Hanif Sheik vs. State of Gujarat)*
- iii. *Special Leave to Appeal (Crl.) 6690/2022 (Dhiraj kumar Shukla vs. State of Uttar Pradesh)*

7. It is also submitted by the learned counsel for the petitioner that in the case of *Anjan Nath vs. State of Assam* and *Amal Das vs. State of Assam*, though this court rejected the bail application but the Hon'ble Supreme Court granted bail to the accused in both the cases on the ground of prolonged incarceration.

8. In response, the learned counsel for the NCB submits that out of nine witnesses, three witnesses were examined. Commercial quantity of Ganja was recovered from a truck which was driving by the present petitioner. Due to abscondence of other accused, the proceeding of the case is delayed. The delay in the proceeding of trial cannot be a ground to release the accused on bail.

9. The learned counsel for the NCB has relied on the following bail applications :

- i. *Bail Application/1105/2024 (Binod Bijarnia vs. State of Assam)*
- ii. *Bail Application/1065/2024 (Syed Ashik Alam vs. Union of India)*
- iii. *Bail Application/520/2024 (Prabha Shankar Tiwari vs. Union of India)*

10. Having regard to the submission of learned counsel for the parties, the admitted position is that commercial quantity of ganja was recovered from a

truck which was driven by the present petitioner. Admittedly, the accused petitioner was arrested on 30.07.2020. Thereafter, four years have been elapsed. The NCB has failed to dispose of the trial by adducing evidence within such period. Out of nine witnesses, only three witnesses were examined.

11. It is true that the quantity recovered from the petitioner is commercial quantity in nature and therefore the provision of Section 37 of the NDPS Act may ordinarily be attracted. As per the judgment of Dhiraj Kumar Shukla (supra), Hon'ble Supreme Court held that in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and half years, the conditions of Section 37 of the Act can be dispensed with at this stage.

12. In the case in hand, the accused petitioner has been detained in custody for last four years. Without going into the merits of the case and considering the length of detention in view of the aforesaid Judgment of the Hon'ble Supreme Court, this court is inclined to grant bail to the petitioner.

13. Therefore, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 1,00,000/- (One Lakh)** with 2 (two) sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), -cum- learned Additional Sessions Judge No.1, Kamrup (M) at Guwahati** subject to the following conditions-

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of; and
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses; and
- iii) That the accused petitioner shall refrain from committing any

similar offences in future, of which he is suspected of commission; and

iv) That out of the two sureties, one must be a government servant of the State of Assam.

14. Breach of any of the above conditions of bail shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant