

GAHC010082032024



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

Case No. : Bail Appln./1193/2024

SAMBHU NANDI
S/O LATE NARESH NANDI
PERMANENT RESIDENT OF SANKARDEV NAGAR (NEAR D.C. OFFICE) P.O.
JURAPUKHURI
P.S. LANKA, DIST. HOJAI, ASSAM, PIN-782442, PRESENT RESIDENT
ADDRESS- HOUSE NO. 32, BYE LANE NO. 5 ABC, TARUN NAGAR, P.S.
BHANGAGARH, DIST. KAMRUP (M), ASSAM, AT GUWAHATI-781005

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE DRI

Advocate for the Petitioner : MR S DAS

Advocate for the Respondent : SC, NCB

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

27.06.2024

Heard Mr S Das, learned counsel for the petitioner, Sambhu Nandi, who has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 27.09.2019, in connection with NDPS Case No. 27/2020, arising out of DRI Case No. 11/CL/NDPS/METH/DRI/ GZU/2019-20, registered under Sections 8(c)/21/22 and 29

of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act, in short).

3. Heard Ms M Deka, learned counsel appearing on behalf of the learned Standing Counsel, DRI, Mr S C Keyal.

4. It is submitted on behalf of the petitioner that he is behind bars for 4 years 9 months. 8 out of 9 enlisted witnesses have been examined. The precious fundamental Right to Life of the petitioner has been curtailed due to the procrastination of this trial by the prosecution as well as by the Court. Even the Court has observed vide order dated 02.02.2024 that in spite of specific direction-*“the case record reveals that the complainant has not taken steps although fact remains that the UTP is languishing in the jail hazot since 4 ½ years and the complainant was directed to issue summons to the material witnesses by the next date positively.”*

5. It is further submitted that no witnesses were present on- 02.02.2024,

17.02.2024,

14.03.2024,

09.04.2024 and

18.05.2024,

despite the speaking order of the learned trial Court.

6. It is further submitted that the prosecution will not produce the witness even on the next date which is fixed on 10.07.2024. It is submitted that can the prosecution be allowed to infringe upon the Right to Liberty in such a manner, when the case is heading

for acquittal. It is submitted that this case suffers from discrepancies as Section 52-A of the NDPS Act, has not been complied with. The evidence of PW-3 clearly reveals that sampling was not done as mandated under Section 52-A of the NDPS Act.

7. It is further submitted that much indulgence cannot be given to the prosecution who has been procrastinating the trial by assuring the Court that prosecution will produce the witness. Further custodial detention will be akin to pre-trial punishment.

8. Ms M Deka, learned counsel for the respondent has submitted that final complaint was submitted on 19.03.2020 and charge was framed on 05.10.2021. The petitioner was found in conscious possession of the contraband. There are incriminating materials against the petitioner and there is every possibility that the petitioner will be convicted. It is not that only the prosecution is responsible for pendency of the case. The accused took time on 10.06.2022. Two witnesses were present but the accused sought adjournment and adjournment was granted and costs were imposed and two witnesses were not cross-examined by the defence/accused. Again on 20.12.2023, the witnesses were present, but the accused sought adjournment and cost was imposed as the accused did not cross-examine the witness.

9. I have considered the submissions at the Bar with circumspection.

10. The learned counsel for the petitioner has relied on the decision of this Court in ***Ramesh Bhutiani –Vs- The Union of India***, in connection with Bail Application No. 513/2023, wherein vide order dated 10.04.2023, the petitioner Ramesh Bhutiani was granted bail in a case where the offence alleged is similar to this case. The petitioner

Ramesh Bhutiani was apprehended with 1.992 kgs of Methamphetamine tablets and he was behind bars for 3 years 2 months 12 days and he was granted bail by this Court vide order dated 10.04.2023, in connection with Bail Application No. 513/2023, whereas the present petitioner has been languishing in the jail for 4 years 9 months.

11. It has not been proved that the petitioner was in possession of 2.858 kgs of Methamphetamine tablets also, i.e., 29000 tablets, also known as WY tablets.

12. On the contrary, the learned counsel for the respondent has relied on the decision of Hon'ble the Supreme Court in *State By (NCB) Bengaluru –Vs- Pallulabid Ahmad Arimutta & Another* and other cases reported in **2022 0 Supreme (SC) 56**, wherein it has been observed that-

“11. However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding recovery of substantial commercial quantities of drugs from a rented accommodation occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A-4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB succeeds in SLP (Crl.) No. 1569/2021. The bail granted to the respondent-Mohammed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions

Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody.”

13. In the instant case, the petitioner has prayed for bail not only on the grounds of parity, but also for the prolonged incarceration due to the procrastination of trial. The petitioner has been behind bars for 4 years 9 months, but trial has not been concluded for a prolonged period. It is true that only one witness has been left to be examined.

14. Trial has been procrastinated and protracted by the Court as well as by the prosecution. The petitioner has also taken adjournments when witnesses were present.

15. I have perused the deposition of the witnesses examined so far.

16. The merits of the case are not brought to the fore. The case is at the fag end of trial. Only one witness has to be examined. This Court cannot be oblivious of the embargo under Section 37 of the NDPS Act. Out of the double pronged conditions, the vehement objection of the prosecution is taken into consideration. The petition is rejected at this juncture, as this case is at the fag end of trial. However, the prosecution and the Court is directed to make every endeavour to conclude the trial expeditiously. The petitioner is at liberty to apply for bail if trial will be procrastinated any further.

JUDGE

Comparing Assistant