

GAHC010086292024



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

Case No. : Bail Appln./1258/2024

PANCHLAL SINGH
S/O GIRO SINGH
R/O VILLAGE - LAUALAGAM PASHCHIMI, WARD NO. 08,
ANCHALCHOUSA, LAUALAGAM, P.O. LAUALAGAN, DISTT -
MADHEPURA, BIHAR - 852213

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 : 04.06.2024

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Heard Mr. M. Biswas, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail

by the petitioner, namely, **Mr. Panchlal Singh**, in connection with **NDPS Case No. 26/2021 (Corresponding to NCB Crime No. 20/2021) under Section 20(b)(ii)(C)28/29 of NDPS Act, 1985**, pending trial before the learned Additional Sessions Judge No. 2, Kamrup(M), Guwahati.

3. The brief facts of the case is that on 06/08/2021, the NCB team of Guwahati, got information from a reliable source that two persons namely Goswami Dharmendra Ramnageshwar, and Kamleshwar Kumar, would be carrying huge quantity of ganja which was concealed in the truck bearing No. GJ-20-U-6697. Accordingly, the NCB team reached the spot and the said truck was intercepted and recovered 275.29 Kg of ganja from the roof of the truck covered with yellow colour plastic tarpaulin. Accordingly, the aforesaid case was registered, the two persons were apprehended and the contraband were seized.

4. Learned counsel for the petitioner has argued that contraband was recovered from aforesaid two persons who were travelling in the truck. Nothing was recovered from the possession of the present petitioner. The petitioner was arrested solely on the basis of the statement of the co-accused recorded u/s 67 of the NDPS Act, which is an inadmissible piece of evidence as laid down by the Hon'ble Apex court in Tofan Singh vs. State of Tamil Nadu, reported in (2021) 4 SCC 1.

5. It is further submitted that the accused has been languishing in jail hajat for more than two (2) years. The witnesses are not turning up in dates fixed for evidence and as a consequence, the trial is getting delayed. It is trite law that prolonged incarceration as an under trial and an inordinate delay in trial infringes the fundamental right of an accused guaranteed under Article 21 of the Constitution.

Learned counsel has placed reliance on the following case laws –

- a. Shariful Islam @ Sarif vs. State of West Bengal, in connection with appeal criminal (Criminal No. 4173/2022)
- b. Anjan Nath vs. State of Assam vide bail application No. 2022/2023.
- c. Rabi Prakash vs. State of Odisha reported in (2023) Live Law (SC) 533 and etc.

6. In response, Mr. Keyal, learned Standing counsel, NCB, has vehemently opposed in granting bail to the petitioner by stating that the petitioner is very much involved in the alleged offence. On CDR analysis, it came out that the mobile no of Pradip is registered with the name of the present petitioner and he was the receiver of the alleged ganja. From the disclosure statement of the witnesses, it reveals that the petitioner is very much involved in trafficking of Narcotic substances.

7. It is also submitted that the trial is going on and the petitioner is originally hailing from Bihar. If the petitioner is released on bail, there is every possibility of jumping bail. And therefore, the learned counsel prays for dismissal of the bail application. Learned counsel has relied on two case laws vide Bail application No. 1105/2024 and Bail application No. 1065/2024.

8. I have perused the scanned copy of the trial court record which reveals that as per seizure list the alleged ganja was recovered from the possession of Dharmendra and Kamlesh. The allegation against the present

petitioner is that he was the receiver of the said ganja but in the mean time the two accused i.e., Dharmendra and Kamlesh were apprehended along with the said ganja. It appears that charge was framed on 26/06/2023. Out of seven witnesses only one witness was examined on 08/09/2023, who is the Scientific Officer. No other witness is examined. For last Eight months the prosecution has failed to examine any witness without giving any plausible explanation.

9. As pointed out by learned counsel for the petitioner that in the case of Dhiraj Kumar Shukla (Supra), it was held by the Hon'ble Supreme court that –

“.....It is true that the quantity recovered from the petitioner is commercial in nature and the provision of Section 37 of the Act may ordinarily be attracted. However in the absence of criminal antecedents and the fact that the petitioner is in custody for last two and half years, we are satisfied that the condition of section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed....”

10. I have noticed that the submission of learned counsel for the petitioner has some force that no any contraband item was recovered from the possession of the petitioner. He has been detained in custody for more than two years and the trial is going on in a snail's pace.

11. In view of the above, this court is inclined to grant bail to the petitioner.

12. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **NDPS Case No. 26/2021 (Corresponding to NCB Crime No. 20/2021) under Section 20(b)(ii)(C)28/29 of NDPS Act, 1985**, on furnishing bail bond of **Rs.1,00,000/-** with **two suitable sureties** of the like amount out of which one of the sureties should be a Government employee of Assam, to the satisfaction of the learned Additional Sessions Judge No. 2, Kamrup(M), Guwahati, Assam.

13. The direction for bail is further subject to the following condition that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of learned trial court without prior written permission from him/her.

14. The learned Additional Sessions Judge No. 2, Kamrup(M), Guwahati, Assam, is at liberty to impose any condition(s) as it deems fit and proper at the time of releasing the accused/petitioner on bail to procure his attendance during trial.

15. The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

16. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant