

GAHC010087152023



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

Case No. : Bail Appln./1479/2023

RAZOUSITO
S/O SHRI ASHIKHO
R/O VILL- CHUMUKEDIMA
SEITHEKEMA A DIMAPUR,
P.O. AND P.S. CHUMUKEDIMA
DIST. DIMAPUR, NAGALAND-797103

VERSUS

THE UNION OF INDIA
REP. BY THE NARCOTICS CONTROL BUREAU, GUWAHATI ZONAL UNIT,
GUWAHATI-781022

Advocate for the Petitioner : MR. T ISLAM

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

27.06.2024

1. Heard Mr. A. Azad, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel, Narcotics Control Bureau, (NCB).

2. This bail application under Section 439 of the Code of Criminal Procedure, 1973, has been filed by the petitioner, Razousito, who has been detained behind the bars since 12-08-2022 (for more than 01 year, 10 months) in connection with NDPS Case No. 219/2022, under section 21C/29 of the NDPS Act, 1985, corresponding to NCB crime Case No. 10/ 2022, pending before the Court of learned Additional Sessions Judge No. 1, Kamrup (Metro), Guwahati.

3. The gist of accusation in this case is that one Shri Manoj Sauguna, Intelligence Officer, NCB, Guwahati, had lodged a complaint before the learned Special Judge, Kamrup, (Metro), Guwahati, *inter alia*, alleging that on 08-04-2022, at about 1730 hours, one C.S.K. Singh, Intelligence Officer, received an information through reliable sources that two persons, namely, Abid Parvez @ Azad Pervez and Bijaya Kumar Sahoo, were coming from Guwahati in a train carrying huge quantity of heroin in their baggage. Accordingly, on 10-04-2022, a search team was constituted by the Narcotics Control Bureau, (NCB) and same came to Guwahati Railway Station at about 5:00 AM on 10-04-2022 and found that Vivek SF Express was to arrive at platform No. 3 of Guwahati Railway Station at about 6.45 AM on that day. The NCB team along with independent witnesses boarded the said train and apprehended the above-named accused persons, who were sitting near the seat No. 9 of the said coach and on search of the baggage carried by the accused Abid Parvez @ Azad Parvez. Heroin weighing about 1.045 kg was found therefrom.

4. On receipt of the said complaint, NDPS Case No. 219/2022 was registered.

5. It is also alleged in the complaint that on the basis of statement made by the arrested accused persons, namely Abid Parvez and Bijaya Kumar Sahoo, the present petitioner, namely Razousito was apprehended. In his voluntary statement also, the petitioner disclosed regarding the fact that he had supplied the seized heroin to Abid Parvez.

6. On receipt of the said complaint, NDPS Case No. 219/2022 was registered and in due course, charges were framed against the present petitioner and the other co-accused under section 21(C)/29 of the NDPS Act, 1985.

7. The learned counsel for the petitioner has submitted that the petitioner is an innocent person and he has been falsely implicated in this case. The learned counsel for the petitioner has also submitted that no recovery was made from the possession of the above-named petitioner.

8. It is submitted by the learned counsel for the petitioner that the only incriminating materials on record is the statements of the co-accused as well as that of the petitioner recorded under section 67 of the NDPS Act, 1985.

9. Learned counsel for the petitioner has also submitted that in view of the judgment of the Apex Court in the case of "**Tofan Singh vs State of Tamil Nadu**" reported in (2021) 4 SCC 1, wherein it was held by the Apex Court that the statement

recorded under section 67 of the NDPS Act, 1985, is inadmissible in a trial involving an offence under the NDPS Act, 1985.

10. Learned counsel for the petitioner has also submitted that though the petitioner has been detained behind the bars for more than 01 year, 10 months, however, till date, only four out of eight prosecution witnesses have been examined and there is unlikelihood that the trial would be culminating soon. Hence, it is submitted by learned counsel for the petitioner that the prolonged incarceration of the above-named petitioner, under the facts and circumstances of this case, would override the embargo of section 37 of the NDPS Act, 1985.

11. On the other hand, Mr. S. C. Keyal, learned Standing Counsel, NCB, has submitted that though the Apex Court has observed that the prolonged incarceration may be one of the grounds for considering the bail application of an accused, it has not laid down anywhere as to how long incarceration would be long enough to override the embargo of Section 37 of the NDPS Act, 1985.

12. The learned Standing Counsel, NCB, has also submitted that the long incarceration may not be a ground for releasing an accused charged with an offence for possessing commercial quantity of contraband. He has also submitted that as Section 436A of the Code of Criminal Procedure, 1973, is also applicable in NDPS cases. Hence, he has submitted that until an accused charged with an offence for possessing commercial quantity of contraband has completed half of the period of maximum sentence prescribed for

the offence with which he has been charged, the detention undergone by him for any less period than that would not be considered as long enough to override the embargo of Section 37 of the NDPS Act, 1985.

13. The learned Standing Counsel, NCB, has also submitted that the principle of parity would not be applicable to the present petitioner, as he stands on a different footing and in support of his submission, he has cited a ruling of the Apex Court in the case of "***NCB-vs-Pallulabid Ahamad Arimutta***"_reported in "**(2022) 12 SCC 633.**"

14. The learned Standing Counsel, NCB, has submitted that in the complaint filed by the NCB against the above-named petitioner, it has been clearly stated that the above-named petitioner, namely, Razousito, had supplied the seized heroin to the accused Abid Parvez @ Azad Parvez, from whose possession the heroin was seized. The C.D.R. analysis also shows that there are 28 calls in between both the present petitioner as well as the co-accused Abed Parvez in the month in which the contraband was seized.

15. The learned Standing Counsel, NCB, has also submitted that there are sufficient incriminating materials against the above-named petitioner on record and as the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case, the above-named petitioner may not be released on bail.

16. I have considered the submissions made by learned counsel for both the sides and have perused the scanned copy of the case

record of NDPS Case No. 219/2022.

17. It appears from record that the co-accused Abid Parvez @ Azad Parvez, from whose possession the contraband seized in this case was recovered, has already been released on bail by this Court by order dated 20-04-2024, passed in Bail Application No. 4307/2023, mainly on the ground of prolonged incarceration. The present petitioner, who has already completed for more than 01 year, 10 months behind the bars since the date of his arrest in connection with this case, is better placed than that of the accused, who has already been released on bail as no contraband was recovered from the present petitioner and he has been implicated solely on the basis of statement made by the co-accused as well as on the basis of the C.D.R. details, from where it appears that he had telephonic conversation with the accused from whose possession the seized contraband was recovered, namely Abed Parvez.

18. The submissions made by learned Standing Counsel, NCB that in a case under NDPS Act only because of the reason that Section 436A of the Code of Criminal Procedure 1973 is also applicable to the said Act, hence, until the accused has completed half of the period of the maximum sentence prescribed for the offence with which the accused has been charged does not appears to be a convincing argument.

19. The provision of section 436A is a statutory right, which accrues when accused who has completed half of the period of the maximum sentence prescribed for the offence with which the said accused has been charged, whereas release of an accused on the

ground of prolonged incarceration is based on the principle that the case of prolonged incarceration, the fundamental right to life and personal liberty guaranteed by Article 21 of the constitution of India overrides the statutory embargo contained in the Section 37 of the NDPS Act, 1985.

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

21. In the case of "***Rabi Prakesh Vs. State of Orissa***" reported in **2023 live law (SC) 533**, wherein it has been observed by the Apex Court that "The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

22. It is also pertinent to mention herein that the Supreme Court of India had granted bail to an accused facing charges for possession of a 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 passed in SLP Criminal No. 4173/2022), wherein the accused was detained behind bars for one year and six months.

23. In "***Nitesh Adhikari Vs. State of West Bengal***" (Order

dated 04.05.2022 passed in SLP Criminal No. 5769/2022), 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.

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

25. In "***Chitta Biswas Alias Subha Vs. The State Of West Bengal***" (Order dated 07.02.2020 passed in SLP Criminal No. 8823/2019), the Apex Court granted bail to the petitioner, who was facing a trial for possessing a commercial quantity of contraband on the ground of prolonged incarceration of 1 year 6 month.

26. In the instant case also, the present petitioner has been detained behind the bars for last more than 01 year, 10 months and the trial is yet to culminate and in view of the facts and circumstances of this case as well as in the light of the observations made by the Apex Court in the rulings cited hereinabove, wherein, it has dealt with the question of long incarceration of similarly situated petitioners who were before the Apex Court, this Court is of the considered opinion that in the instant case also, the facts and circumstances are such that the long incarceration of the present petitioner outweighs the embargo of Section 37 of the NDPS, Act 1985 and the petitioner is therefore entitled to get bail.

27. Moreover, in the instant case, the co-accused from whose

possession the contraband was seized has already been released on bail on the ground of prolonged incarceration and the present petitioner is better placed than that of the said co-accused, namely Abid Parvez, who has already been released on bail as nothing was seized from the possession of the above-named petitioner and the only materials against him on record appears to be the statement recorded under section 67 of the NDPS Act, which is inadmissible in evidence in a trial of any offence under NDPS Act as held by the Apex Court in the case of "**Tofan Singh vs State of Tamil Nadu**" (supra).

28. In view of the above, the above-named petitioners shall be allowed to go on bail of Rs. 1,00,000/- with two sureties of like amount (one of whom should be a government servant and residing within the State of Assam) subject to the satisfaction of the learned Additional Sessions Judge No. 1, Kamrup (Metro), with the following conditions:

- i.** That the petitioner shall cooperate in the trial of NDPS Case No. 219/2022, which is pending in the Court of the Court of learned Additional Sessions Judge No. 1, Kamrup (Metro), Guwahati;
- ii.** That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;
- iii.** That 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 in the trial pending against the present petitioner;

iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card; and mobile number, as well as other contact details before the Trial Court;

v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the Trial Court; and

vi. That the petitioner shall not commit any similar offence while on bail.

29. With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant