

GAHC010087532024



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

Case No. : Bail Appln./1296/2024

PARAMJIT SINGH
S/O LATE SARDAR BACHAN SINGH
R/O WARD NO. 1, NEAR GOVT. GIRLS HIGH SCHOOL,
CHHATHA JAGIR, JAMMU-181101

VERSUS

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.

2. By filing this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Paramjit Singh** has prayed for grant of bail in connection with **NDPS Case No. 40/2020**

(NCB Crime No. 01/2020) under Sections 20(b)(ii)(C)/ 8/29 of the NDPS Act.

3. The case of the petitioner is that on 11.01.2020 at around 16 hrs one NCB official got information from a reliable source that three persons namely, Paramjeet Singh, Harpal Singh and Prodip Nepali were carrying huge quantity of Ganja inside their truck JK-02BS-8837. Accordingly, the NCB team intercepted the said truck and on being searched 38 packets of Ganja weighing around 384.800 kgs were recovered and a case was registered vide NDPS Case No.40/2020. Thereafter, the recovered ganja was seized and the accused petitioner and two other persons were arrested.

4. The learned counsel for the petitioner has submitted that the petitioner is no way connected with the alleged offence which is also evident from the fact that the samples in the instant case were not drawn in front of the Magistrate as per Section 52 A of the NDPS Act.

The Hon'ble Supreme Court in the case of ***Union of India vs. Mohanlal*** reported in (2016) 3 SCC 379 held that it is mandatory to draw samples before a Magistrate.

5. It is further submitted that in the offence report though the NCB stated that alleged contraband were to be dealt in terms of the mandate of Mohonlal (supra) but they have clearly violated the law laid down in the said case. Hence, there is bleak chance of conviction in the instant case and therefore the learned counsel for the petitioner prays to release the accused on bail.

6. Learned counsel for the petitioner further contented that the petitioner is suffering from acute tuberculosis and his health condition is deteriorating day by day. He is not getting the required treatment inside the jail and as such, the interest of justice would serve if the petitioner is enlarged on bail.

7. According to the learned counsel for the petitioner, the accused petitioner

has been languishing in judicial custody for more than four years. Though charge was framed on 17.08.2022, but out of nine witnesses only four witnesses have been examined till today.

8. By referring the judgment of Hon'ble Supreme court in the case of ***Rabi Prakash vs. state of Orissa*** reported in (2023) (O) Supreme 707 and ***Dhiraj Kumar Shukhla vs. State of U.P.*** vide SLP criminal No. 6690/2022, learned counsel for the petitioner has pointed out that the Hon'ble Supreme Court has held that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37 of the NDPS Act.

9. It is, therefore, prayed by learned counsel for the petitioner that considering the length of detention, the petitioner may be enlarged on bail.

10. Learned counsel for the petitioner also has relied on the case law vide Criminal Appeal No. 1443/2023 (Simranjit Singh vs. State of Punjab).

11. In response, learned Standing Counsel, NCB submits that charge was framed on 17.08.2022 and out of nine witnesses, four witnesses have already been examined. It is true that there is some delay in proceeding of the trial, however, which cannot be the ground to grant bail to the accused.

12. I have perused the trial court record including the evidence of the witnesses which reveals that four witnesses were examined. The last witness was examined on 03.06.2023. It transpires that no witness was examined for last one year. No effective order was passed by the trial court regarding non-production of the witness on fixed date.

13. One Bail Application vide No. 3985/2023 (Harpal Singh vs. State of Assam) is available in the record which shows that bail petition was moved for

the co-accused Harpal Singh on 01.03.2024. The prayer for bail was rejected on the ground that the mandatory provision of Section 42 and 52 A of the NDPS Act is a question of fact to be adjudicated at the time of trial. Though the bail application was rejected on 01.03.2024, however, the trial court was directed to expedite the matter and to take initiative to dispose of the matter early, if possible by fixing day to day hearing.

14. From the trial court record, it cannot be said that the trial court has taken such initiative to dispose of the case within a short span of time. The trial court also has failed to comply with the direction of the court by fixing day to day hearing. It reveals from the record that the accused has been detained in custody for more than four years and the NCB has failed to complete the trial within such period by examining only nine numbers of witnesses.

15. It is pertinent to say here that on each and every day around ten to twelve cases are fixed for bail hearing in NDPS cases wherein in almost all the cases, the submission of learned counsel for the accused is of prolonged incarceration. The trial court has failed to dispose of the case within three, four or five years by examining the listed witnesses which are maximum of ten in numbers. We are not going to find out the loopholes of the trial court why they failed to dispose of the NDPS cases in time in spite of repeated direction by this court. Generally, in NDPS cases, the accused are from different States. If bail is granted to them, there is every possibility of further delay in disposal of the case due to their non-appearance. But a person cannot be detained for an indefinite period when the trial will conclude.

16. Hon'ble Supreme Court on several occasions has pointed out that due to prolonged incarceration and inordinate delay in trial, the conditional liberty must override the statutory embargo under Section 37 of the NDPS Act. The settled

principle of law is that prolonged custody affects fundamental rights under Article 21 of the Constitution of India. There is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed Article 21 of the Constitution of India.

18. In the case of ***Shaheen Welfare Association vs. Union of India & ors.*** reported in (1996) 2 SCC 616, it was observed by the Supreme Court that it was necessary to grant relief to those persons who have been deprived of their personal liberty for a considerable period of time without any prospect of trial being concluded in near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offences, these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be there being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some reliefs become necessary.

19. In the case of ***NIA vs. Areeb Ejaz Majeed*** reported in (2021) SCC Online Bombay 239, it was observed as follows:

“There is no dispute about the fact that right to fair and speedy trial is a right recognized under Article 21 of the Constitution of India. The Hon’ble Supreme Court and various High Courts have consistently held that undertrials cannot be allowed to languish for years together in jail while the trial proceeds at snail’s pace. If ultimately the accused are found to be not guilty, the number of years, months, days spent by such accused as undertrials in jail, can never be given back to them and this is certainly a violation of their valuable right under Article 21 of the Constitution of India. Therefore, right to speedy trial has been recognized and re-affirmed consistently by the judgments of the superior courts.”

20. Adverting to the case in hand, this court is conscious of the fact that the charges levelled against the petitioner are grave in nature. However, keeping in mind the length of the period spent by the petitioner in custody and the unlikelihood of the trial being completed anytime soon, this court is inclined to grant bail to the petitioner.

21. 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 (FTC) No.3, 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.

22. 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