

GAHC010092832024



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

Case No. : Bail Appln./1381/2024

RAMESH G
S/O GANESAN
R/O 1/3015, THANTHI PERIYAR STREET, NAGATHAMMAN NAGAR,
NALLUR, REDHILLS, DIST. TIRUVALLUR, TAMIL NADU-600052, PH. NO.
9678424277

VERSUS

THE UNION OF INDIA
REP BY STANDING COUNSEL, NCB

Advocate for the Petitioner : MR. B D KONWAR SR. ADV., MS S JAIN, MS M ZOMUANPUII, H
BAISHYA, MR J SINGH, MR H AGARWAL

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 02.09.2024

Heard Mr. B. D. Konwar, learned Senior Counsel assisted by Mr. Mr. H. Agarwal,
learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned standing
counsel representing the NCB.

2. By filing this application u/s 439 Cr.P.C., 1973, the petitioner, namely, **Ramesh G**, has prayed for granting bail in connection with NDPS case No. 131/2021 pending in the court of learned Additional District and Sessions Judge No. 2 Kamrup (M) u/s 22 (c)/ 29 of NDPS Act.

3. The prosecution case in brief is that on 06/03/2021, an information was received by NCB, Guwahati that two individuals namely Shafiqur Rahman and Krishna Mali would be driving a black ford car bearing No. NM-05-A-7260 from Sonapur side towards Lomati gaon, Assam and allegedly transporting about 10 kgs of methamphetamine. Accordingly, the said vehicle was intercepted and the driver of the car identified himself as Shafiqur Rahman and the passenger as Krishna Mahapatra Mali. On being searched of the said vehicle, 10 packets containing methamphetamine weighing 10.276 kgs were recovered. Accordingly, the said items were seized and two persons were arrested. A case was registered vide NCB case No. 06/2021.

4. Learned counsel for the petitioner has argued that the investigation of the instant case has already been concluded and charge sheet has been laid. Furthermore, charge was framed and out of 15 witnesses, only 2 witnesses were examined. Under such backdrop, there is no valid and tenable reasons for keeping the accused/petitioner any longer.

5. It is further submitted that nothing incriminating was recovered from the possession of the accused/petitioner when search was conducted by the NCB. There is no direct evidence which could link the accused/ petitioner to the instant case.

6. Learned counsel for the petitioner, has further contended that the accused/petitioner has been arrested based on the statement of the co-accused which is not permissible as per Judgment of the Hon'ble Supreme court in the case of **Tofan Singh vs. State of Tamil Nadu reported in (2021) 4 SCC 1.**

7. According to learned counsel for the petitioner, the petitioner has been languishing in judicial custody for more than two years and out of 15 witnesses only 2 witnesses have been examined. It is imperative to underscore that the right to speedy trial is legally entitlement of the accused/petitioner and no individual should be subjected to indefinite suffering due to delay of trial. It is further pointed out that detaining the accused/petitioner for an undetermined period during the trial is deemed a violation of the rights enshrined under Article 21 of the Constitution of India. Hence, the learned counsel for the petitioner prays to release the accused/petitioner on bail.

In support of his submission, learned counsel has placed reliance on the following case laws –

- a. Zakirul Islam @ Md Zakirul Islam @ Zakir v. The State of Assam (Special Leave to Appeal (Crl.) No(s). 3632/2024).
- b. Yahiya Khan v. The Union of India (BA No. 190/2024).

8. In response, learned Standing counsel NCB, submits that the ground of long incarceration and applicability of Article 21 of the Constitution of India cannot be a ground for seeking bail in heinous crime like NDPS. Learned Standing counsel further pointed out that Article 21 of the Constitution of

India guarantees personal liberty to everyone. In criminal law, an accused of an offence which is non-bailable one, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned, as being violative of Article 21 since the same is authorized by law.

The learned Standing counsel has placed reliance on the following case laws –

- a. Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI reported in (2007) 1 SCC 70.
- b. Pramod Kumar Saxena vs. Union of India reported in (2008) 9 SCC 685.
- c. State of Maharashtra vs. BuddhiKota Subba Rao reported in (1989) 0 Supreme SC 493.

9. Learned Standing counsel NCB has further submitted that mere delay in trial cannot be a ground seeking bail. There may be many reasons for delay in trial which is beyond the control of either prosecution, accused and his counsel or the trial court. Keeping in view the delay in trial, the Hon'ble Supreme Court while dealing with different factors has referred in the case of **Satyendra Kumar Antil vs. CBI** reported in **(2022) 10 SCC 51**, held that section 436 A of the Code of Criminal Procedure would apply in the special Acts also in the absence of any specific provisions meaning thereby when an accused is in jail during trial half of the maximum period of sentence then he is entitled to bail, and in such circumstances rigors of section 37 of the NDPS

Act will not come into play.

10. Learned counsel has further submitted that in NDPS case maximum sentence is twenty years and in case an accused is under judicial custody for ten years or more in such circumstances he would be entitled to bail. In view of the same, the petitioner in the present case is in judicial custody for about two and half years only, as such the accused petitioner is not entitled to be released on bail either on the ground of long incarceration or violation of his right under Article 21 or delay in trial.

Learned counsel has placed reliance on some other case laws –

- a. Animul Islam vs. Union of India (2022) 0 Supreme Gau 321.
- b. Gurwinder Singh vs. State of Punjab reported in (2024) 0 Supreme SC 104.
- c. High Court Bar Association Allahabad vs. State of UP reported in (2024) 0 Supreme SC 169.

11. Having heard the learned counsel for the parties and on perusal of the trial court record, it reveals that the accused/petitioner was arrested on 14/03/2022 and charge was framed on 07/04/2023. PW1 was examined on 29/02/2024 and PW2 was examined on 05/04/2024. According to learned NCB counsel, on many dates the witnesses have been sent back by the trial court as no defence counsel was appointed by the accused persons. I have also noticed some dates when witnesses were present but not examined due

to aforesaid reason vide dated 02/09/2023, 05/10/2023, 02/11/2023 and 04/01/2024.

12. Section 37(1) of NDPS Act is reproduced herein below: — “37. Offences to be cognizable and non bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure Code, 1973 (2 of 1974)- (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

13. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

14. In the case in hand, it appears that only two witnesses were examined out of fifteen witnesses. Hence, at this stage it cannot be said that the prosecution has failed to prove a case against the petitioner that he is not guilty of the offence as alleged of and that he is not likely to commit any offence while on bail.

15. It appears from the trial court record that initially the accused/petitioner was absconded but subsequently he was arrested. It also reveals that the petitioner along with other co-accused was travelling at the relevant time from Chennai to Guwahati to receive the contraband which was disclosed later on.

16. In view of the aforesaid facts and circumstances, and considering the role assigned to the petitioner and his involvement in trafficking the commercial quantity of contraband, this court is not inclined to grant bail to the petitioner. Hence, prayer for bail is rejected. However, trial court is directed to expedite the matter and take much more initiative to dispose of the matter at the earliest.

17. The bail application is disposed of accordingly.

JUDGE

Comparing Assistant