

GAHC010104242024



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

Case No. : Bail Appln./1505/2024

MD. AJAJUDDIN
S/O NURJAMAL
R/O VILL- SORA CHANGWANGMA
P.O. AND P.S. KAKCHING,
DIST. THOUBAL, SATE- MANIPUR-795138

VERSUS

UNION OF INDIA
NARCOTICS CONTROL BUREAU,
REPRESENTED BY THE STANDING COUNSEL, NARCOTICS CONTROL
BUREAU.

Advocate for the Petitioner : MR. P K SAHARIA, MS K DAS

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 12.08.2024

Heard Mr. P.K. Saharia, learned counsel for the petitioner. Also
heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This is the second bail application filed under Section 483 of the Bharatiya Nagarik Suraskha Sanhita, 2023 by the accused petitioner namely, **Md. Ajajuddin** who has prayed for bail in connection with NDPS Case No. 143/2021 (arising out of NCB Crime No. 10/2021) under Sections 21(c)/25/29 of NDPS Act, pending in the court of learned Additional District and Sessions Judge No. 2, Kamrup(M), Guwahati.

3. The background of the case which leads to this application is that the Intelligence Officer, NCB, on receipt of an information on 09/04/2021 that two persons namely Md. Hasan and Md. Ajaj Uddin, resident of Thoubal, Manipur were coming in a truck bearing No. NL-01-Q-2793 from Nagaon side towards Guwahati. They were trafficking around 6 Kg of Morphine in the said truck. Accordingly, the NCB officials intercepted aforesaid two persons along with the truck. On being interrogated, both of them disclosed that the morphine was hidden inside left hanging tyre of the truck. Accordingly, left hanging tire was removed and two packets were found inside the tyre. Weights of the packets were found as 6.140 Kg of morphine.

4. The learned counsel for the petitioner submits that the accused/petitioner has been detained in custody since 11.04.2021. It is also submitted that out of 10 witnesses, 7 witnesses were examined. It is further submitted that while rejecting the bail application by this Court on 20.03.2024, the learned Standing counsel NCB has submitted that almost all the witnesses were examined and only 3(three) witnesses have remained to be examined in the case and the matter

would be disposed of within a short span of time. Thereafter, more than four months have been elapsed but the remaining witnesses are not examined and the trial is at the same stage. It is further submitted that the petitioner is suffering from Tuberculosis and he needs better treatment outside the jail. Under such backdrop, learned counsel for the petitioner has prayed that considering the period of detention, bail may be granted to the petitioner.

5. In support of his submissions, the learned counsel for the petitioner has placed reliance on the following case laws-

(i) Mohammad Muslim @ Hussain vs. State (NCB of Delhi) reported in 2023 AIR(SC) 1648.

(ii) Rabi Prakash vs. State of Odisha reported in 2023 Legal Eagle (SC) 697.

(iii) Md. Irfan Khan vs. The State of Assam in BA No. 3347/2023.

(iv) Deepak Sharma and Anr. vs. The State of Assam in BA No. 3736/2023.

6. On the other hand, learned Standing counsel, NCB has vehemently opposed in granting bail to the petitioner on the ground that commercial quantity of morphine was seized from the vehicle in which the petitioner was travelling at the relevant time of the incident. It is also submitted that in spite of best efforts, the prosecution has failed to examine the remaining witnesses. Considering the gravity of

the offence, bail may not be granted to the petitioner at this stage of trial.

7. In support of his submission, learned Standing counsel, NCB has placed reliance on the following case laws-

(i) The State of Meghalaya vs. Lalrintluanga Sailo & Anr. reported in 2024 INSC 537.

(ii) High Court Bar Association, Allahabad vs. State of U.P. & Ors. reported in 2024 2 Supreme 651.

(iii) Vinod Bijarnia vs. The Union of India in BA No. 1105/2024.

(iv) Ravindra Ray & Anr. Vs. The Union of India in BA No. 1240/2024.

8. I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of LCR.

9. It appears from the record that the accused has been detained in custody for more than three years. In spite of direction by this Court, the prosecution did not take so much of initiative to dispose of the matter within such stipulated period as per order dated 20.03.2024.

10. In the case of ***Union of India vs. K.A. Najeed*** reported in ***(2021) v. 3 SCC 713***, the Hon'ble Supreme Court observed that:-

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs

and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252] , Babba v. State of Maharashtra, (2005) 11 SCC 569 and Umarmia v. State of Gujarat, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial....."

11. In the case of **Satender Kumar Antil vs. Central Bureau of Investigation** reported in **(2022) (10) SCC 51**, the Hon'ble Supreme Court observed that prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging

the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

12. In view of the aforesaid legal mandates and considering the period of detention with of little chance of disposing of the case within 2/3 months as well as health condition of the petitioner, this Court is of the view that the accused/petitioner may be enlarged on bail.

13. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with NDPS Case No. 143/2021 (arising out of NCB Crime No. 10/2021) under Sections 21(c)/25/29 of NDPS Act, 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 in the State of Assam, to the satisfaction of Additional District and Sessions Judge No.2, Kamrup(M), Guwahati.

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

(a) shall not leave the territorial jurisdiction of learned Additional District and Sessions Judge No.2, Kamrup(M), Guwahati, without prior written permission from him/her till disposal of the case and shall attend the court on each and every date of hearing.

15. The learned Additional District and Sessions Judge No.2, Kamrup(M), Guwahati, 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.

16. 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.

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

JUDGE

Comparing Assistant