

GAHC010113402024



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

Case No. : Bail Appln./1658/2024

SANJOY DEBBARMA
S/O DILIP DEBBARMA, R/O VILL- KALAGACHIABARI, P.O. AND P.S.-
SIDHAI, MOHANPUR, DIST-WEST TRIPURA, TRIPURA-799212

VERSUS

THE UNION OF INDIA
REPRESENTED BY PP (SPECIAL), NCB

Advocate for the Petitioner : MR. S CHETIA
Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 28.06.2024

Heard Ms. P.R. Mahanta, learned counsel for the petitioner. Also heard Ms. M. Deka, learned Standing Counsel for the NCB.

2. This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely Sri Sanjoy Debbarma, who has been detained in custody since 03.08.2021 for last 2 years 10 months in connection with NDPS Case No. 07/2022 under Section 20(b)(ii)(c) of the NDPS Act, 1985 pending in the court of the learned Special Judge, Kamrup, Amingaon.

3. The gist of accusation against the present petitioner in this case is that one Sri Shakil Ansari, Junior Intelligence Officer, Narcotics Control Bureau, Guwahati

had lodged a complaint before the court of the learned Special Judge, Kamrup, Amingaon against two numbers of accused persons including the present petitioner, *inter alia*, alleging that on 31.07.2021 at about 1000 hours one C.K.S. Singh, Intelligence Officer, Narcotic Bureau, Guwahati got the secret information through reliable sources that two persons including the present petitioner would be carrying a huge quantity of ganja in a truck which would be arrived at Amingaon flyover in between 1400 hours to 1500 hours.

4. Accordingly, a team of personnel of Narcotic Control Bureau was constituted and when the team had reached near at Amingaon Flyover at 1430 hours and intercepted one truck bearing Registration No. UP21C N 8524 and from the said truck two persons were apprehended including the present petitioner. During search of the said truck, 43 numbers of packets containing suspected contraband of ganja was recovered from them. The total weight of recovered ganja was found 434.91 Kgs. On receipt of the said complaint, NDPS Case No. 07/2022 was registered.

5. The learned counsel for the petitioner has submitted that the petitioner has been detained in custody for more than 2 years 10 months and though charges were framed against him as well as one another co-accused on 27.07.2022, however, only two out of twelve numbers of prosecution witnesses have been examined. The learned counsel for the petitioner has submitted that there is every likelihood of delay of trial of the case and in the meantime, this court has granted bail to the two accused persons by order dated 20.04.2024, passed in B.A. No. 4526/2023 (Dildar Hussain Vs. Union of India). She submits that in view of the long incarceration of the present petitioner and in view of the delay in convenience of trial, the fundamental rights guaranteed under Article 21 of the Constitution of India override the embargo under Section 37 of the NDPS Act, 1995. Hence, the above named petitioner may be allowed to go on bail.

6. In support of her submission, the petitioner has relied on the following citations:

- (i) Hussain Ara Khatoon & Ors. Vs. Home Secretary, State of Bihar, reported in (1980) 1 SCC 98.**
- (ii) Supreme Court Legal Aid Committee, Representing Under Trial Prisoners Vs. Union of India & Ors, reported in 1994(6) SCC 731.**
- (iii) Satender Kumar Antil Vs. Central Bureau of Investigation, reported in (2022) 10 SCC 51.**
- (iv) Mohd Muslim @ Hussain Vs. State (NCT of Delhi), reported in 2023 SCC Online SC 352.**
- (v) Rabi Prakash Vs. State of Orissa, reported in 2023 SCC Online SC 1109.**
- (vi) Chitta Biswas @ Subhas Vs. The State of West Bengal (Order dated 07.02.2020) in Criminal Appeal No. 245/2020.**
- (vii) Nitesh Adhikari @ Bapan Vs. State of West Bengal (Order dated 01.08.2022 in SLP Criminal No. 5769/2022)**
- (viii) Shariful Islam @ Sarif Vs. State of West Bengal (Order dated 04.08.2022 in SLP Criminal No. 4173/2022).**

7. On the other hand, learned Standing Counsel for the NCB has submitted that there are sufficient incriminating materials against the above named accused petitioner on record and as the commercial quantity of contraband was seized from the conscious possession of the petitioner, the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case and she therefore vehemently opposed to grant bail to the petitioner. She has also submitted that though 2 out of 12 prosecution witnesses have been listed in the complaint petition by the NCB were examined, however, most of the witnesses are official witnesses and due to transfer of the official job, it has become difficult for them to appear before the trial court causing delay in trial of the case. She also submitted that the co accused persons had granted bail by this Court who has jumped the bail and by order dated 18.06.2024, the trial Court had issued

NBWA against the co accused.

8. Under the aforesaid circumstances, she has opposed to grant bail to the above named petitioner.

9. I have considered the submissions of the learned counsel for both the parties and I have perused the materials available on record including the case diary and on careful perusal of materials available on record, it appears that before approaching this Court, by filing instant bail application, the petitioner had earlier approached before this court on two occasions and in both the occasions, the prayer for bail was rejected. While rejecting the prayer of bail a direction was given to the trial court fix the calander date of hearing and to expedite the trial. It also appears that the petitioner had approached the Supreme Court of India by filing bail application. However, by order dated 03.01.2024, passed in Special Leave Petition (Criminal) Diary No. 40016/2023, the Supreme Court of India dismissed the special leave petition (Crl.) with an observation that the petitioner may approach before the High Court, if there is delay in trial.

10. Though it is apparent that whether the commercial quantity of contraband involved, the embargo of Section 37 of the NDPS Act would be applicable. However, due to no fault in the part of the petitioner, there is delay in trial and the petitioner keeps behind the bars for a long time for such prolonged incarceration would entitle to grant bail to the petitioner as the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.

11. The Supreme Court of India in "**Mohd Muslim @ Hussain Vs. State (NCT of Delhi**" (**supra**), 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.

12. Similarly, the Apex Court of India has also observed in "**Rabi Prakash Vs. The State of Odisha**" (**Supra**) wherein it is observed that "prolonged incarceration, generally militates against the most precious fundament right guaranteed under Article

21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985.”

13. It is also pertinent to mention therein that the Supreme Court of India had granted bail to the accused facing charges for possession of the commercial quantity of contraband only on the ground of prolonged incarceration in “**Shariful Islam @ Sarif Vs. State of West Bengal (supra)**”, wherein the accused was detained behind the bars for one year six months.

14. In “**Nitesh Adhikari Vs. State of West Bengal (Supra)**”, the 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.

15. Though the fact that the accused petitioner has jumped the bail which was granted to him by this Court, is a matter of serious concern. However, the present petitioner is not on fault. Hence, under the facts and circumstances of the case and in the light of observation, this court is of the considered opinion only 2 out of 12 prosecution witnesses have been listed and examined till now, there is likelihood of prolonged delay in trial and therefore the petitioner is entitled to go on bail in this case.

16. I view of the above, the petitioner is allowed to go on bail of Rs. 1,00,000/- (Rupees one lakh only) with two sureties of like amount (one of whom should be Govt. servant & running within the State subject to the satisfaction of the learned Trial Court with the following conditions:

- (i) That the petitioner shall cooperate in the trial of Special (NDPS) Case No. 07/2022, which is pending before the learned Sessions Judge, Kamrup, Amingaon;
- (ii) That the petitioner shall regularly appear before the Trial Court

as and when 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 of the case before the Trial Court in the trial pending against the present petitioner;

(iv) That the petitioner shall provide his contract details including photocopies of his Adhar Card, or Driving licence, or PAN Card and Mobile Number as well as other contract details before the Trial Court;

(v) That the petitioner shall not leave the territorial jurisdiction of the learned 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.

17. With the above observation, this bail application is accordingly disposed of.
18. Send back the case diary.

JUDGE

Comparing Assistant