

GAHC010113662024



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

Case No. : Bail Appln./1671/2024

DHARMENDRA SINGH AND ANR.
S/O GURU PRASAD
R/O VILL- NAGLA PATIYA
P.O. KADIPUR,P.S. JASRANA, IN THE DISTRICT OF FIROZABAD, UTTAR
PRADESH-283130

2: HARI GOVIND SINGH
S/O GURU PRASAD
R/O VILL- NAGLA PATIYA

P.O. KADIPUR
P.S. JASRANA
IN THE DISTRICT OF FIROZABAD
UTTAR PRADESH-28313

VERSUS

UNION OF INDIA
REPRESENTED BY SENIOR INTELLIGENCE OFFICER, DIRECTORATE OF
REVENUE INTELLIGENCE, GUWAHATI ZONAL UNIT, GUWAHATI.

Advocate for the Petitioner : MR. N N JHA, MS M SAHOO,MR. M UDDIN

Advocate for the Respondent : SC, DRI,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 16.08.2024

Heard Mr. N. N. Jha, learned counsel for the petitioners and Ms. M. Deka, learned counsel, representing NCB.

2. By filing this application u/s 439 Cr.PC, the accused/ petitioners namely, **Dharmendra Singh** and **2. Hari Govind Singh** have prayed for bail in connection with NDPS case no. 89/2018, pending in the court of learned Additional Sessions Judge (FTC) No. 3, Kamrup (M) Guwahati, u/s 20 (b)(ii)(c) of NDPS Act.

3. The brief facts of the case is that on 12/04/2018 on receipt of a specific information that two consignments of ganja would be brought from Agartala, Tripura to Guwahati, Assam. Accordingly, the DRI officers intercepted the truck bearing No. WB-63A5427 and another truck UP-83-BT1213 at Khanapara area. Two persons were found occupying in the vehicle WB-63A5427 and introduced themselves as Bikash Roy of Gosaigaon and Maminur Mia from Cooch Bihar. In the other truck, three persons were travelling i.e., both the petitioners and one Alok Pratap. On being searched, 452.510 Kgs of Ganja was recovered and which were seized accordingly and the present petitioners were arrested.

4. Learned counsel for the petitioners has argued that the petitioners have been languishing in judicial custody for more than six years. Out of nine witnesses five witnesses were examined. The trial court has failed to complete

the trial within such six year. As per Article 21 of the Constitution of India, the accused petitioners may be released on bail due to prolonged incarceration as it is a little chance to complete the trial within short span of time.

5. By referring the Judgment of ***Mohammad Muslim vs. State (NCT of Delhi)*** reported in 2023 SCC Online SC 352, learned counsel for the petitioners has pointed out that the Hon'ble Supreme Court has held that the grant of bail on the ground of undue delay in trial cannot be said to be fettered by section 37 of the Act, given the imperative of section 436 A (that requires the accused to be granted bail if the trial is not concluded within specified period) which is applicable to offences under the NDPS Act too.

6. Learned counsel for the petitioner also has relied on some other case laws vide – ***Ngangom Somorendro Singh vs. O/C Moreh PS*** reported in (2022) O Supreme (Manipur) 2023 and ***Rabi Prakash vs. State of Orissa*** reported in 203 Livelaw (SC) 533 and submitted that in both the cases bail was granted to the accused on the ground of prolonged incarceration. According to learned counsel for the petitioners, considering the length of detention, the petitioners may be enlarged on bail.

7. In response, learned counsel NCB submits that out of nine witnesses, seven witnesses were examined and on the last occasion two witnesses came but one was not examined due to adjournment taken by the accused side and prays not to release the accused/petitioners on bail.

8. Learned counsel NCB has cited two judgments in the case of ***Union of India (NCB) Etc vs. Khalil Uddin Etc*** (Criminal Appeal Nos. 1841-1842/2022) and ***Bail Application No. 3939/2023 (Kamal Malakar & anr. Vs. NCB)*** passed by this court.

9. Having heard the learned counsel for the petitioners and on perusal of the

trial court record, the admitted fact is that both the accused/ petitioners have been in judicial custody for more than six years. The record reveals that neither the trial court nor the NCB took such initiative to dispose of the matter early. Record shows that charge was framed on 22/02/2021 i.e., after three years of submission of charge sheet. The orders of the trial court as per order sheet is also not clear why charge has not been framed within such three years after filing of charge sheet. The case is still pending for recording evidence of the witnesses. The NCB counsel has not given such assurance that they would complete the trial within a short period of one or two months.

10. In the case of Rabi Prakash (Supra) Hon'ble Supreme court has held that –

“As regard to the twin conditions contained in section 37 of the NDPS Act, learned counsel for the respondent/ state has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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.”

11. In view of the aforesaid legal proposition and considering the length of detention of the petitioners, they may be enlarged on bail.

12. Accordingly, the petitioners shall be released on bail on furnishing bond of Rs. 2,00,000/- (Rupees Two Lakhs) each with two local sureties each of like

amount to the satisfaction of learned Addl. Sessions Judge, FTC No. 3, Kamrup (M), Guwhati and out of two sureties, one of the sureties must be a government employee in the State of Assam.

(i) The petitioners shall not leave the territorial jurisdiction of learned Addl. Sessions Judge, FTC No. 3, Kamrup (M), Guwhati without prior written permission from him/her;

(ii) That the petitioners 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

(iii) That the petitioners shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses.

Violation of any condition shall tantamount to cancellation of bail.

The bail application stands disposed of.

JUDGE

Comparing Assistant