

GAHC010118482024



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

Case No. : Bail Appln./1785/2024

GANESAN G @ GANESH
S/O GOMATHINAYAGAM
R/O 49A, GARDEN, 3RD STREET,
P.S. ROYAPURAM
CHENNAI, TAMILNADU

VERSUS

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

Advocate for the Petitioner : MR U S BORGOHAIN, MS DIPSY RAJA
Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

12.09.2024

Heard Mr. U. S. Borgohai, learned counsel appearing for the accused petitioner as well as Mr. K. Jain, learned counsel representing NCB.

2. By filing this petition under Section 483 of the BNSS, 2023 the accused-petitioner, namely, **Ganesan G @ Ganesh** has prayed for grant of bail in connection with **NDPS Case No.131/2021** under Sections **22(C)/29 of NDPS Act arising out of NCB Case No. 6/2021 pending in the court of learned**

Additional Sessions Judge, No.2, Kamrup(M), Guwahati.

3. The facts of the case leading to this bail application is that on 06.03.2021, the NCB team on receipt of secret information, searched one Ford car bearing No. MN-05-A-7260 and recovered ten packets of methamphetamine tablets weighing 10.276 kgs and arrested two accused persons namely Safiqur Rahman and Krishna Mahapatara Mali. A case was registered vide NCB Crime No. 06/2021 under Section 22(C)/29 of NDPS Act and the recovered items were seized. The co-accused namely Thiyagarajan M stated the name of the accused petitioner in his statement and thereafter, notice was issued to him directing the accused petitioner to appear before the NCB office. Accordingly, he appeared before the NCB officials and thereafter, he was arrested on 15.09.2021. Since then he has been detained in custody.

4. It is submitted by learned counsel for the petitioner that the accused petitioner is a reputed businessman having his business namely, 'New Mangus Cabs' located in Chennai. The petitioner took loan from the bank and also submitted income tax return. Hence, there is no question of his involvement in any illegal trafficking of narcotic drugs. It is further submitted that no any contraband item was recovered from the possession of the present petitioner. He was arrested only on the basis of the statement of the co-accused that he is involved in the instant case.

5. The learned counsel for the petitioner has argued that in this case charge-sheet has been laid and thereafter charge has also been framed by the trial court on 07.04.2022 but out of 15 witnesses only two witnesses were examined by the prosecution side. In fact there is no progress in the trial.

6. It is further submitted that the accused petitioner has been languishing in judicial custody for last three years since his arrest on 15.09.2021. The petitioner is

no way connected with the alleged offence. The co-accused mentioned his name before the NCB as such he has been falsely arrayed in this case. Considering the length of detention, the petitioner may be enlarged on bail.

7. In response, Mr. Jain, learned NCB counsel has submitted that the NDPS Act came into existence to curb the menace of narcotic drugs. The Act was amended subsequently and Section 37 of the Act was inserted in the year 1989 which provides restrictions on bail of those offenders who indulged in serious offences like trafficking of narcotic drugs in the state.

8. It is further submitted 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 trafficking of drugs. Article 21 of the Constitution of India guarantees personal liberty to everyone. In criminal law, a person accused of an offence which is non bailable 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. Learned NCB counsel also added that when the seriousness of an offence is such, the mere fact that he was in jail for however long should not be the concern of the court and in heinous crime, length of tenure in custody may not be the only factor of consideration for the grant of bail.

9. The learned NCB counsel also contended that mere delay in trial cannot be a ground for 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 aforesaid reasons and delay in trial, the Hon'ble Supreme Court while dealing in different factors for delay in trial in the case of Satyender Kr. Antil vs CBI reported in (2021) 10 SCC 51 held that Section 436A of Code of Criminal Procedure would apply to 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 NCB counsel also pointed out that in NDPS Case, the 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. But in the instant case, the present petitioner is in judicial custody for three years as such he is not entitled to be released on bail on the ground of either long incarceration or violation of his right under Article 21 or delay in trial.

In support of his submission the learned counsel, NCB has relied on the following case laws:

- (i) Hira Singh vs Union of India reported in (2020) 20 SCC 272.
- (ii) NCB vs Kishan Lal (1991) 1 SCC 705.
- (iii) Union of India vs Ram Samujh and another reported in (1999) 9 SCC 429.
- (iv) State of Punjab vs Rakesh Kumar reported in (2019) 2 SCC 466.
- (v) Rajesh Ranjan @ Papu Yadav vs CBI (2007) 1 SCC 70.
- (vi) Animul Islam vs Union of India reported in (2022) 0 Supreme Gou 321.

11. Having heard the learned counsel for the parties and on perusal of the trial court record, the admitted position is that the petitioner was arrested on 15.09.2021. Charge was framed on 07.04.2022. Two witnesses were examined on 29.02.2024 and 05.04.2024 respectively. It also reflects that on 02.11.2023 though two witnesses were present but they were not examined as learned counsel for the accused Krishna Mahapatra Mali has prayed for adjournment. It also appears from the order sheet that on 02.09.2023, 05.10.2023 and 04.01.2024 though witnesses

were present but they were not examined as the accused persons have failed to engage their counsel. It transpires that the trial of the case is not delayed only due to the fault of the prosecution side or the trial court. At the same time, the delay was caused for non co-operation of the counsel for the accused also.

12. As per trial court record the accused petitioner was the receiver of the seized commercial quantity of narcotic drugs for which he paid the money to the account of co-accused, Ramesh and Ramesh withdrew the said money and gave it to co-accused Thiyagrajan.

13. Under such backdrop, the rigors of Section 37 of NDPS Act will come into play.

Section 37 (b) (ii) of the NDPS Act provides that when the Public Prosecutor opposes the bail in respect of the offence u/s 19 or Section 24 or Section 27 (A) of the NDPS Act as well as the offence involving commercial quantity, court can grant bail only when it is satisfied that there is reasonable ground for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is no doubt true, that in order to have a satisfaction, that there is no reasonable ground for believing that the accused is not guilty of committing the offence, court is not required to enter into the detailed appreciation of evidence, nor the court is required to record a finding of not guilty. What the law requires is that there must be material, something more than prima facie, from which a reasonable person can believe that the accused has not committed the offence.

14. From the materials on record, it is apparent that the contraband seized in the instant case was of commercial quantity and evidently the petitioner was the receiver of the said contraband.

15. In view of the materials on record, as indicated above, I find no

reasonable ground to believe at this stage, that the petitioner was not involved in the offence alleged, and as such, the limitation [u/s 37](#) of the NDPS Act would apply in the instant case. It is also revealed from the record and the submission of the learned counsel that the trial has already commenced and two witnesses of the prosecution have been examined. Therefore, having considered the materials in its entirety, more particularly the fact that the offence involves the contraband of commercial quantity and in absence of convincing materials, from which one can reasonably believe even for the purpose of bail, that the petitioner was not involved in the offence, the petitioner cannot be held to have been able to make out a case for bail [u/s 37](#) of the NDPS Act.

16. Being of the above view, the prayer for bail is rejected.

17. Accordingly, this bail application stands disposed of.

JUDGE

Comparing Assistant