

GAHC010125182024



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

Case No. : Bail Appln./1840/2024

SAURABH DUTTA
D/O LATE SADHAN DUTTA,
R/O LHOMITHI COLONY
P.S. SUB URBAN
DIST. DIMAPUR, NAGALAND.

VERSUS

UNION OF INDIA
TO BE REPRESENTED BY THE NARCOTICS CONTROL BUREAU,
GUWAHATI ZONAL UNIT, GUWAHATI.

Advocate for the Petitioner : MR. A AHMED, MR A AHMED,U U KHAN

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 26.09.2024

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. By filing this application under Section 439 CrPC, the Petitioner, **Saurabh Dutta** has prayed for bail in connection with **NDPS case no. 222/2021 (arising out of NCB Guwahati Crime No.13 & 13 A/2021)** pending in the court of learned Additional Sessions Judge No. 2 Kamrup (M), Guwahati.
3. The brief fact of the case is that the NCB, Guwahati Unit on 24/06/2021, received an information that huge quantity of narcotic substance were being transported through Shree Maruti Courier Services Pvt. Ltd from Kolkata to Dimapur. Accordingly, the NCB officials moved to the office of Maruti Courier Services at Guwahati and on inquiry, came to know that the consignor was one Raj Cosmetic and Consignee was Shweta Enterprises of Dimapur. On opening of the said parcels, huge quantity of Spasmoproxyvon capsules containing tramadol were recovered and seized.
4. To apprehend the real owner of the seized items, the dummy consignments were sent by Maruti Courier service, Guwahati Branch to Dimapur Branch. On the same day, the present petitioner came to the office of the courier service Dimapur to collect the parcels and thereafter, the petitioner was arrested. Accordingly, a case was registered vide NCB Crime Case No. 13 and 13 A/2021.
5. The learned counsel for the petitioner has argued that the petitioner is innocent and no way connected with the alleged offence. From the facts and circumstances of the case, it is crystal clear that the contrabands were recovered from the office of Maruti Courier Service, Guwahati and not from the conscious possession of the petitioner.
6. It is further submitted that the consignor of the said contraband was Raj

Cosmetic and Consignee was one Shweta Enterprises of Dimapur, Nagaland and therefore, the rigors of section 37 of the NDPS Act is not attracted in the present case against the petitioner. It is further submitted that the accused/petitioner has been languishing in judicial custody for more than 3 years. Out of 11 witnesses, only one witness is examined in the case and if the trial is continued in this manner, it will take another five to six years for completion of the trial.

7. Further submission of the learned counsel for the petitioner is that two co-accused Krishna Biswas and sister of the petitioner, Puja Dutta, were granted bail by this court. Therefore, the petitioner may be enlarged on bail on the same footing as he was arrested along with the co-accused in connection with the same offence.

8. In response, the learned Standing Counsel CBI, submits that the petitioner came to receive the consignment (Dummy parcels) in the office of Shree Maruti Courier Service, Dimapur, Nagaland. Photographs of consignment note meant for delivery of Parcels was available in his mobile phone which he showed to the officials of Maruti Courier service, Dimapur for delivery of the parcels. After taking delivery of the parcels, the petitioner also put his signature in the register of the courier service.

9. It is further submitted that the petitioner had confessed in his voluntary statement recorded u/s 67 of NDPS Act that he came to receive the parcels of drugs and also that he helped his sister Puja Dutta in the trafficking of drugs. It is also contended that from the analysis of bank account pertaining to accused Puja Dutta, it was found that significant numbers of transactions were made amongst the accused Puja Dutta and the accused/petitioner. As commercial

quantity of narcotic substance were recovered in which the present petitioner is involved, the rigors of section 37 of NDPS Act will come into play.

Learned counsel has referred some case laws –

- a. Union of India vs. Ajay Kumar Singh @Pappu, reported in (2023) 0 Supreme SC 285.
- b. State of Meghalaya vs. Lalrintluanga Sialo and another, reported in (2024) 0 INSC 537.
- c. Sahil Sharma and Another vs. Union of India, in (Bail Application No.2048/2024)

10. Having heard the learned counsel for the parties and after going through the scanned copy of the record, the admitted fact is that the alleged recovered contraband items were seized from the office of Maruti Courier Service, Guwahati. Subsequently, when dummy consignments were reached to the office of Maruti Courier Service, Dimapur, the petitioner came to collect the said consignment and accordingly he was arrested.

11. Coming to the question of long incarceration, though it is not a ground to grant bail to the accused facing trial in NDPS case, but the order sheet of the record shows that the witnesses were present on several dates but they were not examined due to paucity of time as stated by the trial judge in his order. It appears that only one witness was examined on 04/07/2023. After that two witnesses were present on 27/09/2023, 30/10/2023 and 28/11/2023, but the presiding officer of the court failed to examine them as he was busy in recording evidence of other witnesses. It transpires that for last one year no witness was

examined by the trial judge though they were present. The grounds shown by the trial judge is apparently not satisfactory.

12. Considering the fact that though witnesses were present but the trial judge is not interested to examine the witnesses by showing some flimsy grounds, under such backdrop, it is not expected that the accused/ petitioner shall be detained in custody for an indefinite period. It also reflects from the record that the accused was arrested on 28/06/2021 and for last three years no such effective steps have been taken by the learned trial court to dispose of the matter early.

13. In the case of ***Dheeraj Kumar Shukla vs. State of Uttar Pradesh*** vide Criminal Appeal No. 6690/2022, it was held by the Hon'ble Supreme Court that –

“.... It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of section 37 of the Act may ordinarily be attracted. However, as the petitioner is in custody for last two and half years, we are satisfied that the conditions of section 37 of the Act can be dispensed with at this stage.... ”

14. In the case of ***Mohammad Salman Hanif Sheikh vs. the State of Gujarat***, reported in Special Leave to Appeal (Criminal No. 5530/2022), Hon'ble Supreme Court observed that –

“.....We are inclined to release the petitioner on bail only on the ground that he has spent 2 years in custody and conclusion of trial will take some time.....”

15. Hon'ble Supreme Court in the case of ***Rabi Prakash vs. State of***

Orissa, reported in 2023 Live Law (SC) 533, observed 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 first condition stands complied with. So far as the second 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 half years in custody.....”

16. In view of the aforesaid legal mandates and taking into consideration the custody period of the petitioner, without expressing any views on the merits of the case, this court is inclined to grant bail to the petitioner.

17. Accordingly, it is directed that the petitioner shall be released on bail on furnishing bail bond of **Rs. 1, 00,000/- (Rupees One Lac Only)** with two suitable sureties of the like amount to the satisfaction of the learned **Addl. Sessions Judge No. 2, Kamrup(M), Guwahati, Assam**.

18. The direction for bail is further subject to the conditions that the petitioner:

(a) shall be present before the trial court on each and every date fixed from time to time by the trial court;

(b) shall not leave the territorial jurisdiction of learned Addl.

Sessions Judge No. 2, Kamrup(M), Guwahati, Assam without prior written permission from him/her;

(c) shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses;

(d) shall surrender his Passport, if any, before the trial court.

19. The learned Addl. Sessions Judge No. 2, Kamrup(M), Guwahati, Assam is at liberty to impose any other condition(s) as it deems fit and proper at the time of releasing the accused/petitioner on bail to procure his attendance during trial.

20. 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.

21. This court has seriously taken note of the fact that the trial judge used to send back the witnesses without showing any such plausible grounds. Registry is directed to place the matter before the NDPS Monitoring Committee of this Court for information.

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

JUDGE

Comparing Assistant