

GAHC010125892024



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

Case No. : Bail Appln./1838/2024

MONGAL PAUL @ MODAN PAUL
(NAME SHOWN AS MADAN PAUL IN THE CHARGE SHEET AND IN THE
FORWARDING REPORT)
S/O LT. BHANU CH. PAUL
VILL- RANGAMATI
P.S. BAZARICHERRA,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 15.07.2024

1. Heard Mr. M. A. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State

respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mongal Paul @ Modan Paul who has been detained behind the bars since 05.11.2022 (for last 1 year 8 months 10 days) in connection with Special (NDPS) Case No. 158/2022 corresponding to Bazaricherra P.S. Case No. 194/2022 under Sections 22(c)/25/29 of the NDPS Act, 1985, which is pending in the Court of learned Special Judge, Karimganj.

3. Prior to filing of the instant bail application, the petitioner had earlier approached this Court by filing another bail application which was registered as Bail Application No. 161/2024, however, by order dated 03.04.2024, the said application was rejected mainly on the ground that the petitioner is not entitled to get benefit of observations made by the Apex Court in the case of "**Toofan Singh Vs. State of Tamilnadu**" reported in **2021 4 SCC 1**, as there are incriminating materials against the present petitioner in the case record.

4. The gist of accusation in this case is that on 05.11.2022, one Jyoti Prasad Das, S.I. of Police and In-charge Nagra PP under Bazaricherra Police Station, had lodged an FIR before the Officer-in-Charge of Bazaricherra Police Station, *inter-alia*, alleging that on receipt of information through reliable sources, regarding carrying of huge quantity of cough syrups by two persons in a motorcycle bearing registration No. AS-11D-2500, a GD Entry to that effect was made in the Nagra PP, bearing GD Entry No. 41 dated 05.11.2022 and a surprise naka checking was conducted at Rangamati bridge. Two Independent persons, namely, Sri Biresh Das and Sri Biptupaul were requested to accompany the police team to remain as a witness during entire process, which they voluntarily agreed. During naka checking duty at Rangamati bridge, the police team was able to apprehend two persons, namely, Azim Uddin and one Sri Amar

Bahadur Chetri, while they were riding on a motorcycle bearing Registration No. AS-11D-2500. During interrogation, the apprehended persons revealed that though they carried the cough syrup, they had hidden the same at Rangamati Forest and, thereafter led the Police team to Rangamati Forest. Two white colour plastic bags containing cough syrup bottles (total 520 bottles of 100 ml each) containing codeine phosphate were recovered from the said place.

5. After completion of the procedure of search and seizure, the police team departed from the place of occurrence at 3.00 AM and reached the Police Station at 4.00 AM along with the seized articles and the apprehended accused persons. On receipt of the said FIR, Bazarichera P.S. Case No. 194/2022 was registered and investigation was initiated.

6. After completion of the investigation, the charge-sheet was laid bearing Charge-sheet No. 15/2023 dated 27.02.2023 against the present petitioner and three others. In the charge-sheet, total 7 numbers of prosecution witnesses have been listed.

7. The learned counsel for the petitioner has submitted that on the earlier instance when the petitioner approached this Court seeking his bail, he had prayed for bail on the ground that the statement of co-accused under Section 67 of the NDPS Act, 1985 is not admissible in the trial against the present petitioner, and hence, he should be granted bail as the only material against him in the record is the statement of the co-accused recorded by the Investigating Officer during investigation, however, the prayer for bail was rejected, at that time, as 2 of the 4 prosecution witnesses who are already examined in the trial, namely PW-1 and PW-4 have implicated the present petitioner.

8. However, learned counsel for the petitioner has submitted that in the instant bail application, the petitioner has approached this Court seeking bail on

the ground of prolonged incarceration, as even after long incarceration of 1 year, 8 months, 10 days of the present petitioner behind the bars, the trial has not culminated, and only 4 out of 7 prosecution witnesses have been examined till date.

9. It is also submitted by learned counsel for the petitioner that the last prosecution witness who was examined by the Trial Court was on 16.03.2024, and thereafter, no prosecution witness has yet been examined.

10. The learned counsel for the petitioner has submitted that though the embargo of Section 37 of the NDPS Act, 1985 is mandatory in nature, however, in view of the observation made by the Supreme Court of India in a number of cases, in case of inordinate delay in trial, the embargo is lifted and it gives way to the right of accused under Article 21 of the Constitution of India.

11. The learned counsel for the petitioner has submitted that as the detention of more than 1 year, 8 months and 10 days of the present petitioner is long enough, his prolonged incarceration in this case would override the embargo of Section 37 of the NDPS Act, 1985.

12. In this regard, the learned counsel for the petitioner has cited a ruling of the Apex Court in the case of "**Shariful Islam @ Sarif Vs. State of West Bengal**" [order dated 04.08.2022 in SLP (Criminal) No. 4173/2022] and in the case of "**Nitish Adhikari @ Bapan Vs. State of West Bengal**" [order dated 01.08.2022 in SLP (Criminal) No. 5769/2022], wherein the petitioners were allowed to go on bail on the ground of prolonged incarceration in a case involving commercial quantity of contraband after they have completed a period of detention of 1 year and 6 months, and 1 year and 7 months respectively.

13. The learned counsel for the petitioner has submitted that in light of the observations made by the Supreme Court of India in the cases cited by him in

this case, the petitioner, who has also undergone prolonged incarceration and in whose case also the independent seizure witness has become hostile, is entitled to get the benefit of bail.

14. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor has vehemently objected the grant of bail to the present petitioner. He has submitted that the prayer for bail of the present petitioner on an earlier instance has been rejected by this Court after considering all the materials and as apparent from the said bail order dated 03.04.2024 in Bail Application No.161/2024, the PW-1 and PW-4 have implicated the present petitioner.

15. Learned Additional Public Prosecutor has also submitted that the trial of the Special (NDPS) Case No. 158/2022 has been progressing properly and already 4 of the 7 listed witnesses have been examined and only on 4 occasions since 16.03.2024, the prosecution witnesses have remained absent.

16. Learned Additional Public Prosecutor has submitted that the remaining 3 witnesses would be examined very shortly, and if the petitioner is granted bail at this stage, it would derail the trial, which is pending before the Trial Court.

17. Learned Additional Public Prosecutor has also submitted that in the instant case total 520 numbers of bottles of 100ml each of cough syrup containing codeine phosphate have been recovered, and considering the huge quantity of contraband which is recovered, which happens to be commercial quantity, the embargo of Section 37 of the NDPS Act, 1985 comes into play and therefore, he opposes the grant of bail to the present petitioner.

18. I have considered the submissions made by learned counsel for both sides and have perused the materials available on record, including the up-to-date status report of the Special (NDPS) Case No. 158/2022 received from the Court of learned Special Judge, Karimganj.

19. The observations made by the Apex Court in the case of “**Satender Kumar Antil Vs. Central Bureau of Investigation**”, reported in **(2022) 10 SCC 51** are relevant, in this case, hence, same is quoted herein below:

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the noncompliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own.

20. The Supreme Court of India has observed in the case of “**Mohd Muslim @ Hussain Vs. State (NCT of Delhi)**” reported in **2023 SCC Online SC 352** 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*”.

21. The Supreme Court of India has also observed in the case of “**Rabi**

Prakash Vs. State of Orissa” reported in **2023 SCC Online SC 1109**, that “*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.*”

22. In the cases cited by learned counsel for the petitioner also , namely, “***Shariful Islam @ Sarif Vs. State of West Bengal***” (*supra*) and “***Nitish Adhikari @ Bapan Vs. State of West Bengal***” (*supra*), the Apex Court granted bail to the accused persons on the ground of prolonged incarceration and in first two cases the period of incarceration was almost similar to that undergone by the irritation in the instant case.

23. Under the facts and circumstances of this case, as discussed herein above, and in the light of observations made by the Apex Court, this Court is of considered opinion that though, the earlier bail application preferred by the present petitioner was rejected on the ground of non-applicability of the observation made by Apex Court in the case of “***Toofan Singh Vs. State of Tamilnadu***” (*Supra*) to the case of the petitioner, however, the fact remains that even after long detention of 1 year, 8 months, 10 days of the present petitioner behind the bars, the trial has not culminated and such a long incarceration of the petitioner, in the considered opinion of this Court, outweighs the embargo of Section 37 of the NDPS Act, 1985, and hence, this Court is of the view that he is entitled to get bail on the ground of prolonged incarceration, only. More so, when one of the co-accused who is facing trial along with the present petitioner, has already been granted bail on the ground of prolonged incarceration.

24. In view of the above, the petitioner, namely, Mongal Paul @ Modan Paul is allowed to go on bail of Rs.50,000/- (Rupees Fifty Thousand Only) with two sureties of like amount subject to the satisfaction of the learned Special Judge, Karimganj with following conditions:-

- i. That the petitioner shall cooperate in the trial of Special (NDPS) Case No. 158/2022, which is pending in the Court of learned Special Judge, Karimganj;
- ii. That the petitioner shall appear before the Trial Court as and when so 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 before the Trial Court in the trial pending against the present petitioner;
- iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card and mobile number and other contact details before the Trial Court;
- v. That the petitioner shall not leave the jurisdiction of the 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; and
- vi. That the petitioner shall not commit any similar offence while on bail.

25. With the above observation, this bail application is disposed of.

JUDGE

Comparing Assistant