

GAHC010156412024



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

**Case No. : Bail Appln./2306/2024**

MD SHUHUD AHMED LASKAR  
S/O LATE MD FAKHARUDDIN, R/O NILBAGAN, P.O.-NILBAGAN, P.S.-  
MURAJHAR, DIST- NAGAON, ASSAM-782445

VERSUS

N.C.B.  
REPRESENTED BY THE S.C., N.C.B.

**Advocate for the Petitioner** : MS. S K NARGIS, MS N SULTANA, MS S BEGUM

**Advocate for the Respondent** : SC, NCB,

**BEFORE**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**Date : 04.10.2024**

**1.** Heard Ms. S. K. Nargis, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel, NCB for the respondent.

**2.** This application under Section 483 of BNSS 2023 has been filed by the petitioner, namely, *Md. Shuhud Ahmed Laskar*, who has been detained behind the bars since 19.02.2022 (for more than 2 years and 7 months) in connection

with NDPS Case No. 180/2022 arising out of NCB Crime No. 3/2022 under Section 8(c)/21(C)/25/29 of the NDPS Act, 1985.

**3.** The gist of accusation in this case is that on 18.02.2022 at about 1200 Hrs., Shri Anil Kushawaha, Intelligence Officer, Narcotic Control Bureau, Zonal Unit, Guwahati, received an information through reliable sources that three persons, namely Ataur Rahman, Md. Suhud Ahmed and Akram Hussain Choudhury are coming in two vehicles, namely, Maruti Swift Dzire bearing registration No. AS-03-H-3191 and Maruti Gypsy vehicle bearing Registration No. AS-01-EV-8493 carrying huge quantity of illegal morphine from Dimapur. Accordingly, a team of NCB officials was constituted and started surveillance at Nazirakhat Toll Plaza area.

**4.** On 18.02.2022 at about 18 Hrs. a Maruti Swift Dzire bearing Registration No. AS-03-H-3191 was intercepted at the collection point of toll plaza. The present petitioner as well as another accused, namely Ataur Rahman, were inside the said vehicle. After sometime, one Maruti Gypsy vehicle bearing Registration No. AS-01-EV-8493 was also intercepted at the Nazirakhat Toll Plaza and one person was found seated inside the said vehicle. He introduced himself as Akram Hussain Choudhury.

**5.** On search of the said vehicles, 10 packets containing 5 kgs. of morphine were recovered from the Maruti Swift Dzire vehicle and 14 packets containing 7.040 kgs of morphine were recovered from Maruti Gypsy vehicle. The accused persons were apprehended and the contraband was seized by the NCB officials. Thereafter, on 16.08.2022, formal complaint under Section 36A of the NDPS Act, 1985 was laid against four numbers of accused persons,

including the present petitioner under Section 21(C)/25/29 of the NDPS Act.

**6.** The learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case by the Narcotic Control Bureau. She submits that nothing was found from the possession of the present petitioner from the swift desired vehicle in which the present petitioner was travelling and the recovered contraband was implanted in the said vehicle by the NCB officials. She also submits that the CCTV camera footage, which were there at the toll plaza where the recovery has alleged to have been made would reveal the true fact that the petitioner is innocent. She has also submitted that the petitioner has also filed an application before the Trial Court for producing the CCTV footage of the camera installed at the toll plaza where the recovery is alleged to have been made.

**7.** The learned counsel for the petitioner has also submitted that the petitioner was also falsely implicated and was put under preventive detention under PIT NDPS Act 1988 against which the present petitioner had filed a WP(Crl.) Habeas Corpus No. 39/2023 which became infructuous on completion of the period of preventive detention by the present petitioner. She has also submitted that though charges were framed against the petitioner on 04.04.2023, however, in spite of long incarceration of 2 years 7 months, only 7 out of 17 listed witnesses have been examined till date and the trial in NDPS Case No. 180/2022 has not been fairly progressed and there is no hope of early culmination of the trial and, therefore, she submits that the petitioner is entitled to get bail on the ground of prolonged incarceration.

**8.** Learned counsel for the petitioner has also submitted that by keeping

the present petitioner detained behind the bars for a long period and if any delay in the trial is caused either due to the prosecution side or the court and where there is no fault of the present petitioner, it would certainly violate the fundamental rights guaranteed to the present petitioner under Article 21 of the Constitution of India and hence, she has submitted that the petitioner is entitled to get bail solely on the ground of prolonged incarceration as such a prolonged incarceration has violated the fundamental right to life and personal liberty guaranteed to him by Article 21 of the Constitution of India.

**9.** To support her submissions, learned counsel for the petitioner has cited following rulings:

- i. ***Hussainara 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 & Others*** 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).

**10.** On the other hand, learned Standing Counsel, NCB has vehemently opposed the grant of bail to the present petitioner on the ground that the quantity of contraband recovered from the present petitioner is of commercial quantity and, therefore, the embargo of Section 37 of the NDPS Act is applicable in this case. He also submits that the present petitioner is also a habitual offender dealing with narcotics drugs as he was earlier convicted for possessing 1200 kgs of ganja and after trial in Special Case No. 3/2010 before the Court of learned Sessions Judge, Morigaon he was convicted under 20(b)(ii)(c) of the NDPS Act, 1985 and was sentenced to undergo rigorous imprisonment for 10 years. He also submitted that after serving out the sentence in the said case, the petitioner has involved himself again in the illegal dealings of narcotics drugs and, therefore, he should not be granted bail in this case merely on the ground of prolonged incarceration.

**11.** Learned Standing Counsel, NCB has also submitted that in a criminal trial it is not possible to lay down a fixed period for conclusion of trial as the conclusion of criminal trial depends on many factors like nature of offence, the number of accused, the number of witnesses, the workload in the particular court, the means of communication and several other circumstances which are to be kept in mind and if the delay is not for any wrong on the prosecution side the accused should not get benefit of any such systemic delay.

**12.** Learned Standing Counsel, NCB has cited a ruling of the Apex Court in the case of "**High Court Bar Association, Allahabad Vs. The State Of Uttar Pradesh**" reported in **2024 Legal Eagle (SC) 198** to buttress his submission. Apart from above cited rulings learned Standing Counsel, NCB has also cited following ruling in support of his submission:

- i. **Hira Singh and Another Vs. Union of India and Another** reported in **2020 (20) SCC 272**.
- ii. **Narcotics Control Bureau v. Mohit Aggarwal**, reported in **2022 0 Supreme (SC) 619**.
- iii. **Union of India v. Ajay Kumar Singh @ Pappu**, reported in **2023 0 Supreme (SC) 285**.
- iv. **State of Bihar & Anr. v. Amit Kumar @ Bacha Rai**, reported in **2017 (13) SCC 751**.
- v. **MattuLal v. Radhe Lal**, reported in **AIR 1974 SC 1596**.
- vi. **National Insurance Company Limited v. Pranay Sethi** reported in **2017 16 SCC 680**.
- vii. **Secundrabad Club v. CIT** reported in **2023 0 Supreme (SC) 765**.

**13.** Learned Standing Counsel, NCB has also submitted that since the contraband seized in this case is of commercial quantity, the embargo of Section 37 of the NDPS Act, 1985 comes into play and as there are incriminating materials against the petitioner, he is not entitled to get bail in this case. He has

also submitted that in view of the embargo of section 37 of the NDPS Act, 1985, the long incarceration in itself cannot be a ground for allowing the petitioner to go on bail.

**14.** I have considered the submissions made by the learned counsel for both the sides and have gone through the scanned copy of the case records of NDPS Case No. 180/2022 which was requisitioned in connection with this case.

**15.** I have also gone through the rulings cited by the learned Standing Counsel for both the sides.

**16.** Though, the Supreme Court of India has observed in a catena of rulings that any procedure which does not ensure speedy trial for determination of guilt of a person who is undergoing incarceration for a long period would not be regarded as a reasonable, fair and just procedure and it would fall foul of Article 21 of the Constitution of India. However, this Court is of considered opinion that before giving the benefit of bail on the ground of prolonged incarceration, the Court has to come to a finding that the incarceration of the petitioner is long enough so as to outweigh the fetters imposed by Section 37 of the NDPS Act, 1985. The period of incarceration would depend on facts of each case.

**17.** This court is of considered opinion that the case of a habitual offender in narcotic drugs cannot be treated at par with an accused person who is facing the trial for the first time without any previous record of conviction.

**18.** The petitioner in the instant case has already been a convict in Special Case No. 3/2010 for possessing 1,200 kgs of ganja and had also served out sentence for ten years. He was also detained under preventive detention under

the provisions of PIT NDPS Act, 1988. Hence, his case shall have to be considered on a different footing from that of the other co-accused who has already been granted bail by this Court.

**19.** On perusal of the materials available on record, it appears that there are sufficient incriminating materials against the petitioner on record, which invokes the provision of Section 37 of the NDPS Act, 1985 in this case. Moreover, considering the fact that the petitioner has indulged in dealing with narcotic drugs again after being convicted and after serving out sentence of 10 years for possessing 1,200 Kgs. of ganja, this Court is of considered opinion that the period undergone by the present petitioner may not be considered as long enough and the petitioner may not be granted the benefit of long incarceration at this stage of the trial. The prayer for bail is, thus, rejected.

**20.** The Trial Court is, however, directed to expedite the trial and finish it as early as possible.

**21.** With above observation, this bail application is rejected.

**JUDGE**

**Comparing Assistant**