

GAHC010173792024



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

Case No. : Bail Appln./2554/2024

MITHILESH KUMAR
S/O LT. BARAMDEV PRASAD
R/O BURANATH BHAGALPUR
P.O. BURANATH
P.S. JOGSAR
DIST. BHAGALPUR (BIHAR), 812001.

VERSUS

UNION OF INDIA
REPRESENTED BY SC, NCB

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 counsel for the Narcotics Control Bureau (NCB).
- 2)** This application under Section 483 of the BNSS, 2023 has been filed by the petitioner Mithilesh Kumar, who has been detained behind the bars since 14.10.2020 (for more than 3 years 11 months) in connection with NDPS Case No.16/2021, arising out of NCB Crime No.13/2020 under Section 22(b)(ii)(C)/29

of the NDPS Act, 1985.

3) The gist of accusation in this case is that on 14.10.2020 at about 16.30 hours, one Sh. Phani Narjinary, Intelligence Officer, NCB, Guwahati got an information that 3 persons, namely, Sakil Khan, Md. Yahiya Khan and Mithilesh Kumar (present petitioner) were carrying huge quantity of Methamphetamine tablets to deliver it to someone at VIP Road, Six Mile, Khanapara, Guwahati at 18.00 hours on the same date.

4) On receipt of the said information, a search team of the Official of NCB was constituted and the accused petitioners were found carrying 2 Black color Polythene and 1 Yellow color Polythene packet. The present petitioner was found in possession of the Yellow color Plastic Polythene packet and on opening the said packets, 2.146 Kgs of Methamphetamine tablets were found from the said packet. The contraband was seized and the accused persons including the present petitioner were apprehended.

5) Thereafter, on 18.04.2021, a formal complaint under Section 36A of the NDPS Act, 1985 was filed against the five accused persons including the present petitioner.

6) The learned counsel for the petitioner has submitted that the charges were framed against the present petitioner on 10.03.2022 and all the prosecution witnesses have been examined, however the case is again fixed for re-examination of the Investigating Officer and it is pending at the stage of re-examination of the Investigating Officer.

7) The learned counsel for the petitioner has also submitted that in the meanwhile, the two co-accused, namely, Sakil Khan was granted bail by the Trial Court with certain conditions and another co-accused, namely, Md. Yahiya Khan was granted bail by this Court in Bail Application No.190/2024 on 26.06.2024.

8) The learned counsel for the petitioner has submitted that even after prolonged incarceration of 3 years 11 months behind the bars, the trial has not yet culminated and the petitioner is languishing behind the bars even though two of the co-accused have already been released on bail.

9) It is also submitted by learned counsel for the petitioner has submitted that the principle of releasing the accused on bail even in cases involving commercial quantity of contraband mainly on the grounds of prolonged incarceration has been recognized by the Apex Court in the case of "***Rabi Prakesh Vs. State of Orissa***" reported in **2023 live law (SC) 533**, wherein it has been observed by the Apex Court 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."

10) 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 observations made by the Supreme Court in a number of cases, way to the fundamental right of the accused which is guaranteed under Article 21 of the Constitution of India.

11) The learned counsel for the petitioner has also cited the rulings of the Apex Court in (i) "*Shariful Islam @ Sarif Vs. State of West Bengal*" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), (ii) "*Dheeraj Kumar Shukla Vs. State of Uttar Pradesh*" [order dated 25.01.2023 passed in Special Leave to Appeal (Criminal) No. 6690/2022], (iii) "*Anjan Nath V. The State Of Assam* [Order dated 17.10.2023 passed in Special Leave to Appeal (Criminal) No. 9860/2023], (iv) "*Nitesh Adhikari Vs. State of West Bengal*" (Order dated

04.05.2022 passed in SLP Criminal No. 5769/2022) and (v) "*Md. Salman Hanif Shaikh Vs. State of Gujarat*" (Order dated 22.08.2022 passed in SLA Criminal No. 5530/2022), wherein the petitioners (who were facing trial for possessing of commercial quantity of contraband) were granted bail by the Apex Court. However, due to the prolonged incarceration in all the above mentioned cases, the petitioners were allowed to go on bail. Therefore, on the same principle, the learned counsel for the petitioner has also submitted that in the instant case also, the petitioner who has been languishing behind the bars for more than 3 years 8 months may be allowed to go on bail.

12) On the other hand, Mr. S. C. Keyal, learned Standing Counsel, NCB has vehemently opposed the grant of bail to the present petitioner on the grounds that there are sufficient incriminating materials against the present petitioner for possessing a commercial quantity of methamphetamine tablets in this case, and hence the embargo of Section 37 of the NDPS Act, 1985 is applicable in the instant case, and therefore, he may not be allowed to go on bail.

13) Learned Standing counsel, NCB has also submitted that the conduct of the petitioner Mithilesh Kumar is also not inspiring so that Bail may not be granted on the ground of prolong incarceration.

14) As during the pendency of the trial, the petitioner once fled away from the custody of Police from the Guwahati Medical College and Hospital and thereafter he was arrested again after issuance of non-bailable warrant of arrest against him.

15) I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record including scanned copy of the Case record of NDPS Case No.16/2021, which was called for in connection with this Case.

16) Though the trial in this Case has been delayed and there is a prolonged incarceration of the present petitioner, which in normal course entitled him to get Bail on the ground of prolonged incarceration, however as in this Case, from perusal of the record, it appears that the petitioner had absconded from the judicial custody, when he was taken to Guwahati Medical College and Hospital for treatment on 18.10.2022 and thereafter he was again arrested.

17) The conduct of the petitioner in escaping from the judicial custody does not qualifies him to get bail in this Case.

18) Moreover, though there is a delay in culmination of trial in this Case, however all the witnesses have already been examined and the Case is pending for re-examination of PW-10, i.e., Investigating Officer, hence, there is every likelihood of trial coming to an end soon.

19) The Trial Court is directed to expedite the trial and finish it as early as possible.

20) The prayer for bail of the petitioner is rejected for the reasons stated herein above.

21) This Bail Application is accordingly disposed of.

JUDGE

Comparing Assistant