

GAHC010174912024



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

Case No. : Bail Appln./2591/2024

KAJAL DEBNATH
S/O LATE MANTU DEBNATH
R/O ISHANPUR LAKEPARA, TEH-SHANKHALA,
P.O. PANCHAVATI
P.S. SIDHAI MOHANPUR
DIST. WEST TRIPURA, TRIPURA, 799212

VERSUS

THE UNION OF INDIA
REP. BY THE SC, NCB

Advocate for the Petitioner : MS. S K NARGIS, MR F H LASKAR (2),MS N SULTANA,MS S BEGUM

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18.11.2024

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, *Kajal Debnath*, who has been detained behind the bars since 18.04.2022 (for more than 2 years and 6 months) in connection with NDPS Case No. 32/2020 arising out of NCB Crime No. 16/2019 under Section 8(c)/22(c)/29 of the NDPS Act, 1985 pending in the Court of learned Sessions Judge, Kamrup (M), Guwahati.

3. The gist of accusation in this case is that on 17.04.2020, the Narcotic Control Bureau represented by one Manish Modi, Intelligence Officer, Guwahati Zonal Unit, Guwahati, lodged a complaint before the learned Special Judge, Kamrup(M), Guwahati against four numbers of accused persons, namely, (1) Sandeep, (2) Suraj Singh, (3) Sandeep Kaushik and (4) Govind Shah @ Gobind Shaw, *inter alia*, alleging that on 20.10.2019 at about 1700 hours, the Intelligence Officer, NCB, Guwahati got an information through reliable sources that two persons, namely, Sandeep and Suraj Singh are carrying huge quantity of Ganja concealed in a special chamber behind the cabin of a truck bearing Registration No. HR-63C-6237, accordingly a team of NCB was constituted and a naka checking was conducted and the vehicle bearing Registration No. HR-63C-6237 was intercepted near Raju Dhaba, Kothari Supermarket, Beltala, at National Highway No. 37. During search operation, two persons were found in the said vehicle, namely, Sandeep and Suraj Singh and on search of vehicle 243.8 kgs of ganja (cannabis), were recovered from the said vehicle and on the basis of the aforesaid complaint, NDPS Case No. 32/2020 was registered.

4. After about more than two years of the filing of the aforesaid complaint, on 29.04.2022, a supplementary complaint was filed against the present petitioner, namely, Kajal Debnath alleging that the present petitioner is

the main supplier of the seized 243.8 kgs of ganja.

5. The learned counsel for the petitioner has submitted that the supplementary complaint was filed against the present petitioner after a gap of more than two years of filing of the main complaint without there being any additional evidence on record. She has submitted that there is no admissible evidence on record against the present petitioner and he has been implicated in this case merely on the basis of statement of the co-accused, namely, Sandeep, Suraj Singh and Govind Shah as well as his alleged confessional statement recorded under Section 67 of the NDPS Act, 1985.

6. The learned counsel for the petitioner has submitted that in view of the rulings of the Apex Court in the case of “**Tofan Singh –Vs- State of Tamil Nadu**” reported in “**(2021) 4 SCC 1**” that a confessional statement recorded under Section 67 of the NDPS Act, 1985 will remain inadmissible in trial of evidence under NDPS Act, 1985, there is no admissible evidence on record to implicate the present petitioner in the offence alleged in the complaint.

7. The learned counsel for the petitioner has also submitted that the phone numbers mentioned in paragraph No. 6 of the supplementary complaint does not belong to Kajal Debnath. She also submits that there is no admissible evidence on record except the statement recorded under Section 67 of the NDPS Act, 1985 to show that the said phone numbers belonged to Kajal Debnath. She submits that in view of the rulings of the Apex Court, the statement of the accused or the co-accused recorded under Section 67 of the NDPS Act, 1985 cannot be the basis of filing complaint against the petitioner in absence of any admissible evidence. She also submits that the petitioner is an

innocent person and he has been falsely implicated by the Narcotic Control Bureau.

8. The learned counsel for the petitioner has also submitted that the petitioner has been detained behind the bars for more than two years and six months and even after lapse of such prolonged incarceration, the trial of NDPS Case No. 32/2020 has not fairly progressed. She submits that till date only four out of ten listed witnesses have been examined and there is no hope of early culmination of the trial.

9. The learned counsel for the petitioner has also submitted that in the meanwhile all the other co-accused have been granted bail by this Court on the ground of prolonged incarceration.

10. 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.

11. 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).

12. On the other hand, learned Standing Counsel, NCB has vehemently opposed the grant of bail to the present petitioner has submitted that the offence involving narcotic drugs and psychotropic substance under NDPS Act, 1985 is not committed in an organized manner and, therefore, in most of the cases it is difficult to get direct evidence against the drug traffickers. He submits that as the crime of drug trafficking is a crime against society, it has to be dealt with iron hands. He has submitted that in the instant case, from the statement

of the co-accused as well the petitioner's recorded under Section 67 of the NDPS Act as well as from the analysis of call detailed reports of the mobile phone used by the present petitioner, it is clear that he was in constant touch with the other co-accused and is in fact the person who had supplied the seized contraband to the other co-accused. He has also submitted that the petitioner is a habitual offender and is also an accused in NCB Crime No. 6/2020 and NCB Crime No. 18/2021 on the charges of supplying ganja from Tripura to other places. He has also submitted that the facts of the cases which are cited by the learned counsel for the petitioner in support of her submission are distinguishable from the facts of the incident case and hence are not applicable to the instant case.

13. The learned Standing counsel, NCB has also submitted that the contraband seized in this case is of commercial quantity. Hence, apparently the embargo of Section 37 of the NDPS Act, 1985 is applicable to the instant case and due to such embargo, the petitioner is not entitled to get bail as he has failed to overcome the said embargo.

14. In support of his submission, the learned Standing Counsel, NCB has cited the following rulings:

- i. ***Hira Singh and Another Vs. Union of India and Another*** reported in **2020 (20) SCC 272.**
- ii. ***Satender Kumar Antil v. CBI*** reported in **2022 (10) SCC 51.**
- iii. ***Narcotics Control Bureau v. Mohit Aggarwal***, reported in **2022 0 Supreme (SC) 619.**

iv. ***Union of India v. Ajay Kumar Singh @ Pappu***, reported in ***2023 0 Supreme (SC) 285***.

v. ***Harjit Singh –Vs- Inderpreet Singh @ Inder and Anr.*** reported in ***(2021) 19 SCC 355***

15. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record very carefully. I have also considered the rulings cited by the learned counsel for both the sides.

16. On perusal of the records, it appears that in the instant case, the complaint against other co-accused was filed by the NCB, on 17.04.2020, in which the present petitioner was not named as an accused. The said complaint was filed about six months after receipt of information regarding carrying of huge quantity of ganja concealed in a vehicle. Two of the accused, namely, Sandeep and Suraj Singh who were found in the said vehicle were arrested on the said date. However, after more than two years of filing of the aforesaid complaint, a supplementary complaint was filed against the present petitioner making him as an accused in the case.

17. On perusal of the supplementary complaint, it appears that apart from the evidence collected earlier the only additional evidence which was collected is the statement of the petitioner recorded under Section 67 of the NDPS Act, as well as of the other co-accused and call detailed report of mobile phone, which as stated by the co-accused persons in their statement recorded under Section 67 of the NDPS Act, 1985 was used by the petitioner.

18. Thus, it appears that apart from the statement of the petitioner recorded under Section 67 of the NDPS Act, as well as those of the co-accused persons, also recorded under Section 67 of the NDPS Act, 1985, there is no other admissible evidence on record to implicate the present petitioner in the offence involved in this case.

19. The other aspect of this case is that the petitioner has been detained behind the bars for more than two years and six months and the trial has not fairly progressed. It appears that till date only four out of ten listed prosecution witnesses have been examined by the prosecution side. Moreover, the other co-accused of this case have already been granted bail on the ground of prolonged incarceration.

20. In the case of "***Hussainara Khatoon and Ors. –Vs- Home Secretary, State of Bihar***" reported in "***(1980) 1 SCC 98***" the Apex Court has observed that the procedure prescribed by law for depriving a person of his personal liberty cannot be regarded as reasonable, fair or just unless that procedure ensures a speedy trial for determination of guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21 of the Constitution of India.

21. The Supreme Court of India in "***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***" reported in "***2023 SCC Online SC 352***" has observed that "*Grant of bail on ground of undue delay in trial, cannot be said to be fettered by section 37 of the NDPS Act, 1985*".

22. Similarly, the Apex Court of India has also observed in "***Rabi Prakash Vs.***

State of Orissa” reported in “**2023 SCC OnLine SC 1109**” wherein, it observed that *“prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985.”*

23. Though, the provisions of section 37 of the NDPS Act, 1985 are very stringent in nature and same has to be interpreted keeping in the mind the object and purpose of the Act, however, it is also to be kept in mind that the NDPS Act, 1985 also mandates speedy and expeditious trial of offences under the said Act. If there is undue delay in the trial and the accused has been detained for long period, his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India would outweigh the embargo of Section 37 of the NDPS Act, 1985.

24. This Court is also of the considered opinion that while considering an application for bail involving commercial quantity of contraband, if the court comes to a finding that there has been undue delay in completion of the trial and that there has been prolonged incarceration of the petitioner during this time, he would be entitled to get bail in such case of prolonged incarceration as the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.

25. The petitioner is entitled to expeditious trial of the case, in which he has already been incarcerated for more than two years and six months. If delay has been caused in trial and if it is not due to the fault of the petitioner then to keep

him under incarceration for long period on one hand and to cause delay in culmination of trial on the other hand would certainly be violative of his fundamental rights guaranteed under Article 21 of the Constitution of India.

26. It is also pertinent to mention herein that the Supreme Court of India had granted bail to the accused facing charges for possession of commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), wherein the accused was detained behind the bars for one year and six months.

27. In "***Nitesh Adhikari @ Bapan Vs. State of West Bengal***" (Order dated 01.08.2022 in SLP Criminal No. 5769/2022) the Apex Court granted bail to the accused facing accusation under Section 21(c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

28. In the instant case also, the petitioner has been detained behind the bars for more than two years and six months and only four witnesses have been examined by the prosecution side till date. There seems to be no fault on the part of present petitioner which has caused the delay in trial as he has been detained behind the bars since the date of his arrest.

29. Under the facts and circumstances of this case, considering the prolonged incarceration of the petitioner as well as slow progress of the trial, this Court is of the considered opinion that the fundamental right to life and personal liberty of the petitioners guaranteed under Article 21 of the Constitution of India has outweighed the fetters imposed under Section 37 of

the NDPS Act, 1985 and accordingly the petitioner is entitled to get bail in this case.

30. In view of above, the above named petitioner is hereby directed to be released on bail on furnishing a bond of Rs. 1,00,000/- (Rupees One Lakh) with two suitable sureties, one of whom should be a government employee and should be resident of the State of Assam, of like amount to the satisfaction of the Trial Court with following conditions: -

- i. That the petitioner shall cooperate in the trial of NDPS Case No. 32/2020, which is pending in the Court of learned Sessions Judge, Kamrup (M), Guwahati;
- ii. That the petitioner shall regularly 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 their contact details including photocopies of his Aadhar Card, Driving License or PAN card, mobile number and other contact details before the Trial Court;
- v. That the petitioner shall not leave the jurisdiction of the learned 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.

31. With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant