

GAHC010193392024



2024:GAU-AS:13081

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

Case No. : Bail Appln./2865/2024

PRABHAKAR SANJAY
R/O. GALI NO. 3, SHYAM VIHAR COLONY, NEW AMBEDKAR PARK,
NARICH, RAMBAG, P/S. EHTMADULA, P/O. YAMUNA BRIDGE, AGRA, PIN-
282006, UTTAR PRADESH.

VERSUS

THE UNION OF INDIA
REP. BY THE SC, NCB.

Advocate for the Petitioner : ANSHUMAN DAS, MR. P DEKA, MR. A CHETIA, MR R HOQUE

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

20.12.2024

1. Heard Mr. P. Deka and Mr. R. Hoque, learned counsel for the petitioner and Ms. M. Deka, learned counsel on behalf of Mr. S. C. Keyal, learned Standing Counsel for the NCB.
2. The petitioner has filed this application under Section 483 of Bharatiya

Nagarik Suraksha Sanhita, 2023 with prayer for bail as he is behind bars for almost 3 years in connection with NCB Crime Case No. 26/2021 with Spl. NDPS Case No. 21/2022 under Sections 21(C)/29 of the NDPS Act.

3. It is submitted on behalf of the petitioner that the petitioner has been languishing in the jail for 3 years. The petitioner was booked for transportation of goods for Agartala. The petitioner has an Office in Agra. It is submitted that the petitioner was not at all aware that cough syrup was being carried to the destination. He was arrested on 26.01.2022, and he has been languishing in the jail since then. 11 witnesses are enlisted in the charge-sheet and only 4 out of 11 witnesses have been examined so far. The petitioner deserves bail as the procrastination of this case by the prosecution and by the Court has entailed in the incarceration of the petitioner. The petitioner's precious right to personal liberty has been curtailed.

4. The Trial Court had granted the petitioner interim bail to perform the last rites of his father and after performing the last rites, the petitioner surrendered before the Trial Court and thus the conduct of the petitioner also entitles him to bail. It is further submitted that the petitioner is a father of 3 minor children and his family will suffer immensely as he is the sole bread winner of his family.

5. Learned counsel Ms. P. Deka has raised serious objection stating that trial has not been procrastinated by the prosecution or by the Court but by the petitioner himself. The petitioner had prayed for adjournment when witnesses were present and this led to the procrastination of the trial. There is every possibility that the petitioner may evade appearance, if he is enlarged on bail. 4 out of 11 witnesses have already been examined in connection with this case.

6. This case is relating to transportation of 3800 bottles of codein cough syrup from

Agra to Agartala. The destination was Agartala but this consignment was seized in Assam and was kept in the warehouse of Rivigo Services Public Limited, Amingaon. The information was received by NCB on 29.09.2021, at about 9 a.m, whereas the petitioner was arrested on 26.01.2022, in connection with this case after thorough investigation.

7. The petitioner has relied on the decision of the Hon'ble Supreme Court in ***State (By NCB) Bengaluru Vs. Pallulabid Ahmed Arimutta & Anr.*** reported in ***(2022) 12 SCC 633***, wherein it has been held and observed that:

“It has been held in clear terms in Tofan Singh v. State of T.N., that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders 1, 2, 3, 4, 5, 6 releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16-9-2019¹, 14-1-2020², 16-1-2020³, 19-12-2019⁴ and 20-1-2020⁵ passed in SLP (Crl.) No. arising out of Diary No. 22702 of 2020, SLP (Crl.) No. 1454 of 2021, SLP (Crl.) No. 1465 of 2021, SLPs (Crl.) Nos. 1773-74 of 2021 and SLP (Crl.) No. 2080 of 2021 respectively. The impugned orders¹. 2. 3. 4. 5. 6 are, accordingly, upheld and the special leave petitions filed by the petitioner NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”

The ratio of ***Pallulabid Ahmed Arimutta (Supra)*** is not applicable to this case, as this case is relating to prayer for cancellation of bail already granted to the petitioner by the High Court, whereas, the facts and circumstances of this case is not similar to the facts and circumstances of the case relied upon by the

petitioner.

8. Learned counsel Ms. M. Deka on behalf of NCB has relied upon the decision of the Hon'ble Supreme Court in ***Pallulabid Ahmed Arimutta (Supra)*** wherein it has been observed that:

“However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding recovery of substantial commercial quantities of drugs from a rented accommodation occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A- 4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB succeeds in SLP (Crl.) No. 1569/2021 The bail granted to the respondent-Mohammed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody.”

Learned counsel for the NCB has also relied on the decision of in ***Gurwinder***

Singh –Vs- State of Punjab and Another; reported in **(2024) 5 SCC 403,**

wherein it has been observed that:

“32. The Appellant’s counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb’s case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court’s decision to consider bail was grounded in the anticipation of the impending sentence that the respondent- accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb’s case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice.

Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted."

9. I have considered the submissions at the Bar with circumspection. Charges were framed against the petitioner on 05.09.2022. First witness was examined on 14.09.2023. 4 out of 11 witnesses have already been examined. Procrastination of trial cannot be blamed solely to the Court or to the prosecution. The petitioner also obtained adjournment. The rigors of Section 37 of the NDPS Act cannot be ignored. The petitioner is also not a local resident. There may be some possibility that the petitioner may evade appearance.

10. At this juncture, I am constrained to reject the bail petition. However, petitioner can pray for bail subsequently if trial is procrastinated any further.

11. The Trial Court is directed to expedite the trial for speedy disposal of this case.

JUDGE

Comparing Assistant