

GAHC010219432024



2024:GAU-AS:11959

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

Case No. : Bail Appln./3223/2024

PRABHA SHANKAR TIWARI
S/O SWAMI DAYAL TIWARI
R/O 551 K/252, BHILAWAN
P.O. AND P.S. ALAMBAGH
DIST.LUCKNOW
UTTAR PRADESH, PIN-226005

VERSUS

THE UNION OF INDIA AND ANR.
REPRESENTED BY THE DEPUTY SOLICITOR GENERAL OF INDIA.

2:NARCOTICS CONTROL BUREAU
GUWAHATI ZONAL UNIT
VIP ROAD
RUPKONWAR PATH
CHACHAL KHANAPARA
GUWAHATI-78102

Advocate for the Petitioner : MR. S MITRA, MR S.MITRA,MR. R. RAMEEZ,MR A K BORO

Advocate for the Respondent : DY.S.G.I., SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

29.11.2024.

Heard Mr. S. Mitra, learned counsel for the accused and also heard
Mr. S.C. Keyal, learned Standing Counsel, NCB, for the respondent.

2. This application, under Section 483 of the Bharatiya Nagarik Surakhya Sanhita, 2023 is preferred by accused, namely, **Prabha Shankar Tiwari**, who has been languishing in jail since 25.09.2021, in connection with the **NDPS Case No. 47/2022**, corresponding to NCB Crime No. 24/2021, registered under Sections 8(c)/21(c)/29/35/53A/54/60/66/67/68 and 69 of the NDPS Act, pending before the learned Additional Sessions Judge No. 5, Kamrup (M) at Guwahati, for grant of bail.

3. The above noted case has been registered on the basis of a complaint, lodged by one C.S.K. Singh, Intelligence Officer, NCB Guwahati.

4. The gravamen of the allegation against him is that on 04.09.2021, acting on a tip off; the complainant and other staffs of NCB having intercepted a Truck, bearing Registration No. UP-32-KN-6464, at about 10:45 p.m., near Madanpur Toll Plaza, Guwahati and recovered 40,102 bottles of Codeine based cough syrup, manufactured by Laborate Pharmaceuticals India Ltd. (LESL-292), and apprehended driver of the Truck namely, Santosh Kumar, and owner of the Truck, namely, Amrendra Kumar Singh. As per statement of accused Amrendra Kumar Singh, on the direction of his friend, Prabha Shankar Tiwari, he went to Coochbehar and with the help of one Sanjay, he had loaded the contraband substances in his Truck.

5. Thereafter, while Prabha Shankar Tiwari came to the office of the NCB, Guwahati in connection with NCB Crime No. 24/2021 and he was arrested on 25.09.2021. Then after completion of investigation, Final Complaint was lodged before the learned court below to stand trial under Sections 21(c)/29 of the NDPS Act.

6. The respondent NCB has filed its affidavit, opposing the petition. It is stated that the accused is a habitual offender and involved in following offences,

where commercial quantity of contraband substances were recovered. He is main culprit of the offence. Therefore, it is contended to dismiss the petition

S1. No.	Case No.	Quantity of contraband substances
01.	NDPS Case No. 47/2022	40102 bottles of codine based cough syrup
02.	NDPS Case No. 49/2022,	18989 bottles of codine based cough syrup

7. Mr. S. Mitra, the learned counsel for the accused, submits that having been arrested on 25.09.2021, the accused is behind the bars for 3 years 2 months and despite direction of this court the learned trial court could not complete the trial and out of 8 cited witnesses 3 have been examined so far. Mr. Mitra further submits that charge was framed against the accused on 20.05.2023, thereafter on several occasions the prosecution side had failed to produce the witnesses for which the accused is suffering a lot. There is glaring lapse on the part of the prosecution side in production of witnesses. Mr. Mitra further submits that there is no immediate prospect of conclusion of trial and prolong incarceration of the accused violates his fundamental right and therefore, it is contended to allow the petition. Mr. Mitra has referred following decision in support of his submission:-

(I) Ankur Chaudhury vs. State of Madhya Pradesh in Special Leave to Appeal (Cr1.) No. 4648/2024.

8. Per contra, Mr. S.C. Keyal, learned Standing Counsel for the respondent NCB submits that there is some delay in the trial, but the NCB is not alone responsible for the same, as sometimes the Presiding Judge was also absent

and that trial is going on and three witnesses have already been examined. And given the quantity of contraband substances recovered and seized in both the cases and given the antecedent of the accused, he cannot be granted bail on this count alone. The accused has to satisfy the requirement of Section 37 of the NDPS Act and he has failed to satisfy the twin requirement of the said section. In support of his submission Mr. Keyal has referred following decision:-

**(I) State by Inspector of Police vs. B. Ramu reported in
2024 0 Supreme (SC) 130.**

9. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the case record, and the status report received from the learned Court below. Also I have gone through the decisions referred by learned Advocates of both the parties.

10. It appears that the learned court below had framed the charge against the accused on 20.05.2023. Since then more than a year elapsed and the prosecution side has been able to examine only three witnesses out of 8 cited witnesses. Further it appears that the court below was also vacant for some time and on some occasions no order was passed to summon the witnesses and on some occasions no step was taken by the NCB to summon the witnesses.

11. In the given factual backdrop and considering the submission of Mr. Keyal, learned Standing Counsel for NCB and Mr. Mitra, learned counsel for the accused, this court is of the view that the delay can not be termed as inordinate delay so as to violate the right to speedy trial of the accused. It is well settled that mere delay in trial, pertaining to grave offences, cannot be a ground to grant bail.

12. Indisputably, 40,102 bottles of Codeine based cough syrup were recovered here in this case from the Truck. That being so the accused has to

satisfy the twin requirement of Section 37(1)(b)(ii) of the NDPS Act, that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials and evidence brought on record, this court is unable to derived satisfaction that the accused has been able to satisfy the said requirement.

13. Though it is argued by Mr. Mitra, referring to decision of Hon'ble Supreme Court in **Ankur Chaudhury(supra)** that conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act, yet, it appears that in the said case bail was granted to the accused on account of not supporting the prosecution case by the punch witnesses. This is not the position in the case in hand.

14. Under the given factual background as discussed herein above and also considering nature and gravity of the offence and antecedent of the accused, this court is of the view that no case for granting bail to the accused is made out.

15. In the result, the petition stands dismissed.

JUDGE

Comparing Assistant