

GAHC010220842023



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

Case No. : Bail Appln./3534/2023

MD. AJAJUDDIN
SON OF MD. NURJAMAL, RESIDENT OF VILL- SORA CHANGWANGMA, P.O.
AND P.S. KAKCHING DIST.- THOUBAL, STATE- MANIPUR- 795138

VERSUS

UNION OF INDIA
NARCOTICS CONTROL BUREAU REPRESENTED BY THE STANDING
COUNSEL, NARCOTICS CONTROL BUREAU

Advocate for the Petitioner : MR. P K SAHARIA

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 20.03.2024

Heard Mr. P.K. Saharia, learned counsel for the accused-petitioner as well as Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail

by the accused-petitioner, namely, **Md. Ajajuddin**, in connection with **NDPS Case No. 143/2021(arising out of NCB Crime No. 10/2021)**, registered under Section **21(C)/25/29/35 and 54 of NDPS** Act, pending in the court of learned Addl. District and Sessions Judge No. 2, Kamrup(M), Guwahati.

3. The background of the case which leads to this application is that the Intelligence Officer, NCB, on receipt of an information on 09/04/2021 that two persons namely Md. Hasan and Md. Ajaj Uddin, resident of Thoubal, Manipur were coming in a truck bearing no NL01Q2793 from Nagaon side towards Guwahati. They were trafficking around 6 Kg of Morphine in the said truck. Accordingly, the NCB officials intercepted aforesaid two persons along with the truck. On being interrogated, both of them disclosed that the morphine was hidden inside left hanging tyre of the truck. Accordingly, left hanging tire was removed and two packets were found inside the tyre. Weights of the packets were found as 6.140 Kg of morphine.

4. It was urged by learned counsel for the accused/petitioner that the petitioner has been detained in custody for last three years. The prosecution has failed to complete the trial during the stipulated period. Though the bail application was filed before the trial court, but the same was rejected. It is also submitted that for last six months no any witness was examined by the trial court. Due to such prolonged incarceration, the personal liberty of the petitioner has been curtailed.

In support of his submissions, learned counsel for the petitioner has placed reliance on the following case laws -

- a. Shariful Islam @ sarif vs. State of West Bengal reported in Special leave to appeal (Crl) No. 4173/2022.
- b. Special leave to appeal (Crl) No 8656/2023 (Man Mandal and another vs. State of West Bengal)
- c. Jaginder Kumar vs. State of Up and others, reported in (1994) 4 SCC 260.
- d. Rabi Prakash vs. State of Odisha, reported in 2023 Legal eagle (SC) 697.

5. Per contra, learning standing counsel NCB has submitted that out of ten witnesses, seven witnesses have already been examined. The trial is about to complete within a short span of time. It is further submitted that commercial quantity of morphine was recovered from the alleged truck in which the present petitioner was travelling. It is also submitted that 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 learned standing counsel NCB prays for dismissal of the bail application.

6. As per section 37 of the NDPS Act, which deals with the bail to the accused charged with offence involving commercial quantity of narcotic drugs or psychotropic substance, which reads as follows –

“37. Offences to be cognizable and non-bailable.—

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a)every offence punishable under this Act shall be cognizable;

(b)no person accused of an offence punishable for offences under

section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i)the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii)where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2)The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

7. On a bare look at the provision, it reveals that in the event the public prosecutor opposes the prayer for bail, the court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

8. On perusal of the trial court records, it reveals that out of ten witnesses, seven witnesses have already been examined. From the statement of the witnesses, it reveals that they have identified the accused/petitioner in the court carrying 6 kgs of morphine in the alleged truck. Though trial has not yet been completed, however, on recovery of such large quantity of narcotic substances, it cannot be said at this stage that there are reasonable grounds for believing that the petitioner is not

guilty of such offence and that he is not likely to commit any such offence while on bail.

9. Regarding delay of trial, it appears from the record that the accused/petitioner was arrested on 12/04/2021; charge sheet was submitted on 05/10/2021. As the court was not functioning properly due to Covid 19 pandemic, the accused persons were not produced physically before the trial for framing of charge. Subsequently, on physical production of the accused/petitioner and co-accused before the trial court, charge was framed on 07/03/2022. Thereafter, summons were issued to the witnesses and accordingly seven witnesses were examined. Though PW6 was examined partly, however learned standing counsel NCB assures that on the next day, examination of PW6 would be completed. In view of the above, it cannot be said that there has been an inordinate delay to conduct the trial.

10. Under the facts and circumstances of the case, the bail application is rejected. However, the learned trial court is directed to take initiative to dispose of the matter early preferably within two months.

11. The bail application is disposed of accordingly.

JUDGE

Comparing Assistant