

GAHC010245632023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 3978/2023

Ariful Islam, aged about 36 years,
Son of Shirajul Haque,
Resident of village-Bhergaon,
P.S.-Barpeta, District-Barpeta,
Assam, Pin-781314,
Presently residing at Saukuchi,
Guwahati, District-Kamrup (Metro)

.....Petitioner (In Jail)

-Versus-

The Union of India,
Represented by SC, NCB

.....Respondent.

Advocates for the Petitioner : Ms A Medhi
Advocate for the respondent : Mr S C Keyal, SC, NCB.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 01.02.2024

ORDER

Heard Ms A Medhi, learned counsel for the petitioner, Ariful Islam.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 01.08.2021, in connection with NDPS Case No. 18/2021, arising out of NCB Crime No. 15/2020, under Sections 22(C)/25/27(A)/28/29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS, for short).

3. Heard Mr S C Keyal, learned Standing Counsel appearing on behalf of the Narcotics Control Bureau (NCB, for short).

4. It is submitted on behalf of the petitioner that the petitioner has been languishing in jail for more than 900 days. He was arrested on 01.08.2021.

5. It is submitted that the petitioner is a local resident and he will not jump the bail. As his precious right to personal liberty guaranteed by Article 21 of the Constitution of India has been curtailed, he is entitled to bail, being

a local resident and he is not a flight risk. Co-accused has already been enlarged on bail.

6. It is submitted on behalf of the petitioner that the voluntary statement of the co-accused under Section 67 of the NDPS Act reveals that an associate of Sushil Prasad Sahu, namely, Dhaniklal Prasad @ Pappu, is the main kingpin of Methamphetamine trafficking and he is, at present, residing in the house of Sushil Prasad Sahu. The statement under Section 67 of the NDPS Act is marked as Annexure-1. Further, it is submitted on behalf of the petitioner that the statement under Section 67 of the NDPS Act, given by Sushil Prasad Sahu, incriminates Nantu. The petitioner is not complicit. Sushil Prasad Sahu has voluntarily stated that 1.844 kgs of Methamphetamine tablets were to be supplied to Nantu. Dhaniklal Prasad @ Pappu has also stated that the aforementioned tablets given by Sushil Prasad Sahu was through bank transactions with Tarik Aziz. It is submitted that nowhere the petitioner has been implicated.

7. Per contra, the learned Standing Counsel, Mr S C Keyal, has submitted that the same statement marked as Annexure-1 reveals that the voluntary statement of the present petitioner, Ariful Islam, incriminates that he had

supplied the Methamphetamine tablets weighing 1.844 kgs. An amount of Rs. 8,05,000/- was deposited in Sushil Prasad Sahu's bank account from the SBI account of Ariful Islam. The CDR Analysis reveals constant contact between Sushil Prasad Sahu and Ariful Islam.

8. The learned Standing Counsel, NCB has prayed to reject the bail petition.

9. The submission of the learned Standing Counsel, NCB has been refuted by the learned counsel for the petitioner stating that a statement under Section 67 of the NDPS Act, cannot be used against the accused as per the ratio laid down in the case of ***Tofan Singh –Vs- State of Tamil Nadu;*** reported in **(2021) 4 SCC 1.**

10. To this argument, the learned Standing Counsel, NCB has submitted that similarly, the present petitioner cannot be exonerated using the same statement of the co-accused, which the learned counsel for the petitioner has highlighted.

11. I have considered the submissions at the Bar with circumspection.

12. I have also perused the scanned copies of the LCR.

13. The scanned copies of the LCR, reflects that vide order dated 28.11.2023, this case was fixed for consideration of charge on 11.12.2023. It is true that not a single witness has been examined. Initially, the contraband was not found from the possession of the present petitioner. On a tip off, that Sushil Prasad Sahu would be travelling in a grey-coloured Honda Activa Scooty, bearing Registration No. AS-01-BG 7311, with 1.5 kgs to 2 kgs of the contraband tablets to be delivered to an unknown person, a search operation was conducted by the investigating team. On 06.11.2020, at around 05:20 pm, a naka checking was conducted and the aforementioned scooty was intercepted and Sushil Prasad Sahu was found carrying the tablets. Investigation commenced and during the course of investigation, the present petitioner was arrested finally, on 01.08.2021.

14. It is submitted on behalf of the petitioner that the petitioner is not connected to the other accused in any manner. A further perusal of the case record reveals that investigation had to be conducted for a prolonged period as several accused were working in a coordinated manner. Finally, the offence report was submitted on 01.05.2021. It cannot be ignored that the learned trial Court had delayed in framing charge during the pandemic. Even after the pandemic, there was a delay in framing charge. Finally, after a prolonged

period, this case was fixed for consideration of charge on 11.12.2023. It cannot be ignored that the petitioner is behind bars for 903 days without trial since 01.08.2021. The learned trial Court has delayed in framing charge and in initiating the trial against the present petitioner. The co-accused, Sushil Prasad Sahu and Dhaniklal Prasad @ Pappu, have already been granted bail by a coordinate Bench of this Court, vide order dated 10.01.2024, in connection with Bail Application No. 2917/2022 (***Sushil Prasad Sahu @ Sushil Sahu & Anr. –Vs- Union of India***). It has been held by Hon'ble the Supreme Court in ***Rabi Prakash -Vs- The State of Odisha***, in connection with Special Leave to Appeal (Criminal) No. 4169/2023, vide order dated 13.07.2023, 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.”

15. It has also been observed by a coordinate Bench of this Court vide order dated 01.12.2023, in connection with Bail Application No. 3487/2023

(Hussain Ahmed Khan –Vs- State of Assam, that-

“Grant of bail, on the ground of undue delay in the trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985, inasmuch as Section 436A of the Cr.P.C., is made applicable to the offences under the NDPS Act by the Hon’ble Apex Court in the case of Satender Kumar Antil –VS- CBI reported in 2022 10 SCC 51.”

16. I have also considered the submission that the present petitioner being a local resident of Barpeta, is not a flight risk. The merits and technicalities of this case is not brought to the fore at this juncture.

17. I have considered the submission that the petitioner is willing to abide by any bail conditions, if imposed upon him. He will comply with any stringent conditions, if imposed upon him.

18. Considering all aspects and in view of my foregoing discussions, I deem it to be a fit case to grant bail to the petitioner. The petitioner is, therefore, enlarged on bail of Rs. 1,00,000/-, with two suitable sureties of the like amount to the satisfaction of the learned trial Court, under the conditions

that-

i) the petitioner shall appear on every date fixed, before the learned trial Court.

ii) the petitioner shall not jump the bail,

iii) the petitioner shall refrain from such activities with which he is alleged, and

iv) the petitioner shall not exercise threats to witnesses or tamper with the evidence.

v) the petitioner shall not leave the jurisdiction of the Court without prior permission till completion of trial.

On breach of any bail conditions, bail order shall stand cancelled.

19. Bail Application stands disposed of.

JUDGE

Comparing Assistant