

GAHC010259102023



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

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 4224/2023

Biswajit Lahkar,
Son of Late Madhab Chandra Lahkar,
R/o- H. No. 7, Choudhury Lane, Bishnupur,
Gopinath Nagar, Guwahati, Kamrup (M),
PIN- 781006 (Assam)

.....Petitioner.

-Versus-

Union of India

(Represented by the Standing Counsel, NCB)

.....Opposite party.

Advocates for the petitioner : Ms S K Nargis,

Advocate for the respondent : Mr S C Keyal, SC, NCB.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order: 10.01.2024

ORDER

Heard Ms S K Nargis, learned counsel for the petitioner, Biswajit Lahkar and Mr S C Keyal, learned Standing Counsel for NCB.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail as he is behind bars since 30.12.2019, in connection with NDPS Case No. 37/2020, arising out of NCB Crime No. 19/2019, under Sections 22(C)/29 of the NDPS Act, pending in the Court of learned Additional Sessions Judge No. 3 (FTC)-cum- Special Judge, Kamrup (Metro).

3. The allegation against the petitioner is that the Intelligence Branch at Guwahati received an information that on 27.12.2019, at about 07:30 hours, Lambamayum Brojen Singh was approaching from Manipur on a tanker, bearing Registration No. MN 06T 1240 with a consignment of Methamphetamine Tablets to deliver the same to the present petitioner near ISBT, at about 14:30 hours. The investigating team proceeded towards the

place of occurrence (PO, for short), and kept vigil around the PO. At around 14:45 hours, one person alighted from one LPG tanker from the driver's seat with a white coloured carry bag. Within few minutes, another person arrived on a Hero duet, bearing Registration No. AS-01 DF- 1813 and both the suspects engaged in a conversation. The driver of the vehicle handed over the carry bag to the other person. When the other suspect was about to place the carry bag in the storage area of the motorcycle, the NCB team intercepted the suspects and after following all the formalities, carried out the search operation. The bag marked as 'Khadim's' was recovered from the boot space of the motor cycle. One cellotaped transparent polythene packet was recovered and Methamphetamine tablets were recovered from the packet (contraband, for short). Cash of Rs. 17,350 was also recovered. The person who arrived in the Hero duet motorcycle is the present petitioner, Biswajit Lahkar. After completion of investigation, offence report was submitted against the present petitioner.

4. It is submitted by the learned counsel for the petitioner that 11 witnesses are enlisted in the offence report and only 6 witnesses out of the 11 witnesses have been examined. He has been behind bars for 4 years since 30.12.2019. The witnesses have not at all incriminated the petitioner. He has

no relation with the other arrested accused, namely, Lambamayum Brojen Singh, who has already been enlarged on bail by a coordinate Bench of this Court in connection with Bail Application No. 3779/2023, vide order dated 10.10.2023. The petitioner has also prayed for bail on the ground of parity. Apart from the length of detention, the petitioner has prayed for bail as his minor daughter has to appear for her interview for admission in a reputed school and the petitioner's presence is essential for the interview. The petitioner's Aadhar Card, biometrics etc. has to be submitted for his daughter's admission.

5. It is submitted that the petitioner will abide by any bail condition, he being a law abiding citizen. The petitioner has pledged that he will not jump over the bail. His right to personal liberty has been curtailed due to his prolonged incarceration and due to procrastination of trial. The petitioner has prayed for bail and has pledged to abide by any stringent conditions, if imposed upon him.

5. The learned Standing Counsel, Mr S C Keyal has raised serious objection against the bail petition.

6. It is submitted by the learned Standing Counsel, NCB that charge was

framed on 11.01.2022 and six out of eleven witnesses were examined. There was a delay in the trial as the Court was vacant till 1st of November, 2021. Now, as the problem of the vacancy has been addressed, trial is proceeding. It is also submitted that trial had slackened during the pandemic.

7. Learned Standing Counsel, NCB, has submitted to reject the bail petition, as the present petitioner is a history sheeter and the embargo under Section 37 of the NDPS Act lies against him.

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

9. It is submitted on behalf of the petitioner that there is every possibility that the petitioner will be acquitted from this case. Section 52 of the NDPS Act was not complied with during search and seizure and sealing proceeding was not proper. The embargo under Section 37 of the NDPS Act, rather favours the petitioner, because there is every possibility that the petitioner will be acquitted. The scooty seized in connection with this case does not belong to the petitioner.

10. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in ***Thana Singh-Vs- Central Bureau of***

Narcotics; reported in **(2013) 2 SCC 590**, wherein it has been held and observed that-

“10. Between harmonizing the rights and duties of the accused and the victim, the witness is often forgotten. No legal system can render justice if it is not accompanied with a conducive environment that encourages and invites witnesses to give testimony. The web of antagonistic litigation with its entangled threads of investigation, cross-examination, dealings with the police etc., as it is, lacks the ability to attract witnesses to participate in a process of justice; it is baffling that nonetheless, systems of examination that sprout more disincentives for a witness to take the stand are established. Often, conclusion of examination alone, keeping aside cross-examination of witnesses, takes more than a day. Yet, they are not examined on consecutive days, but on different dates spread out over months. This practice serves as a huge inconvenience to a witness since he is repeatedly required to incur expenditure on travel and logistics for appearance in hearings over a significant period of time. Besides, it often causes unnecessary repetition in terms of questioning and answering, and also places greater reliance on one’s ever-fading memory, than necessary. All these factors together cause lengthier examinations that compound the duration of trials.

11. It would be prudent to return to the erstwhile method of holding “session’s trials” i.e. conducting examination and cross-examination of a witness on consecutive days over a block period of three to four days. This permits a witness to take the stand after making one-time arrangements for travel and accommodation, after which, he is liberated from his civil duties qua a particular case. Therefore, this Court directs the concerned courts to adopt the method of “session’s trials” and assign block dates for examination of witnesses.”

12. Learned counsel for the petitioner has submitted that this case has

been procrastinated during trial also. It is not that the case has been protracted by the pandemic. No endeavour was made by the learned trial Court to examine the witnesses on consecutive dates over a block period of 3 to 4 days. Such an endeavour would have resulted in speedy disposal of the case, without curtailing the fundamental right to liberty.

13. The learned counsel for the petitioner has also relied on the decision of Hon'ble the Supreme Court in ***Mohd. Muslim –Vs- State of NCT***, reported in **Manu/SC/0320/23**, wherein it has been observed that-

“8. Ms. Tanya Agarwal, learned counsel appearing on behalf of the appellant, urged that the period of long incarceration suffered, entitled the appellant to grant of bail. Further, 34 more witnesses were yet to be examined, with little or no progress to the trial since the High Court’s direction to expedite the trial. It was also pointed out that main accused Virender Singh @ Beerey and another co-accused Nepal Yadav, had both already been granted bail by the High Court. Counsel urged bail on the ground of parity.

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12. This court has to, therefore, consider the appellant’s claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, this court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act:

“On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225] , release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.”.

14. On the contrary, the learned Standing Counsel has submitted that the ground of parity is not applicable to the present petitioner, who is a history sheeter and there is every likelihood that this petitioner may jump bail and will not hesitate to commit a similar offence. The learned Standing Counsel has relied on the decision of Hon'ble the Supreme Court in ***Niranjan Hemchandra Sashittal vs- State of Maharashtra***; reported in (2013) 4 SCC 642, wherein it has been held that-

“21. It is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant. It is also interesting to note that though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournment and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right. When we say so, we may not be understood to have said that the accused is debarred in law to file applications, but when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding. In the present case, as has been stated earlier, the accused, as alleged, had acquired assets worth Rs. 33.44 lacs. The value of the said amount at the time of launching of the prosecution has to be kept in mind. It can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done. To put it differently, giving bribe, whether in cash or in kind, may become the “mantra” of the people. We may hasten to add, some citizens do protest but the said protest may not inspire others to follow the path of sacredness of boldness and sacrosanctity of courage. Many may try to deviate.

This deviation is against the social and national interest. Thus, we are disposed to think that the balance to continue the proceeding against the accused-appellants tilts in favour of the prosecution and, hence, we are not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings. However, the learned Special Judge is directed to dispose of the trial by the end of December, 2013 positively.

15. The learned Standing Counsel has also relied on the decision of a coordinate Bench of this Court in ***Aminul Islam -Vs- NCB, Guwahati Zonal Unit; 2023 0 Supreme (Gau) 70***, wherein it has been observed that-

“32. Though length of detention may be one of the factor in consideration the prayer for bail, the same cannot be the sole factor more so when all the requirement of Section 37 of the Act are not fulfilled.

33. In the case of Chandrakeshwar Prasad Vs. State of Bihar, reported in (2016) 9 SCC 443 (Popularly known as Md. Sahabuddin Case), the Hon'ble Supreme Court has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted hereinbelow:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof: "We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into

consideration other facts and circumstances, such as the interest of the society."

34. In that view of the matter and also taking into consideration the very object of the enactment, namely to curb the menace of drugs and its ill effects on the society which has the propensity to destroy the generation as a whole, this Court is of the opinion that no case for grant of bail is made out at this stage. Accordingly, the same stands rejected."

16. The learned counsel for the petitioner has submitted that the ***Aminul Islam's case (supra)***, is under challenge before the Hon'ble Supreme Court. It is also submitted by the learned counsel for the petitioner that the learned Standing Counsel for the respondent has relied on a decision relating to a case under the Prevention of Corruption Act, 1988, in ***Niranjan Hemchandra Sashittal (supra)***.

17. I have given my thoughtful consideration to the submissions at the Bar.

18. I have also relied on the decisions referred to by the learned counsel for both the sides.

19. It is true that delay can be caused by dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the Court vacant.

20. In the instant case too, the Court was kept vacant for a certain period

of time.

21. LCR reveals that the present petitioner was arrested and he has been behind bars for more than four years. Due to the abscondence of the two co-accused, there was a delay in submission of the offence report by the respondent. The offence report was submitted on 08.03.2021. However, after a prolonged delay, charge was framed on 11.01.2022.

22. It cannot be ignored that there was a delay in framing of charge. The case was then fixed for evidence and since 11.01.2022, six witnesses have been examined till 22.06.2023, but five witnesses are yet to be examined.

23. It is apparent that the trial has not been protracted by the petitioner. A balance has to be struck between personal liberty of the petitioner and the embargo by the rigours of Section 37 of the NDPS Act.

24. I have also considered the prayer of parity as the co-accused of the petitioner, Sri Lambamayum Brojen Singh has been enlarged on bail by a coordinate Bench of this Court, in connection with Bail Application No. 3779/2023, vide order dated 10.10.2023. Indeed, deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with

the right guaranteed under Article 21 of the Constitution of India.

25. I have considered the submission that the petitioner has pledged to abide by any stringent conditions, if imposed upon him.

26. Considering the peculiar and unique facts and circumstances of this case at hand, I deem it proper to enlarge the petitioner on bail.

27. In view of my foregoing discussions, petition is allowed. The petitioner is enlarged on bail of Rs. 1,00,000/- with two solvent sureties of the like amount, one surety being a Government Servant, under the following conditions that:-

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

ii) the petitioner shall cooperate with the trial and shall not jump the bail,

iii) the petitioner shall not tamper with the evidence,

iv) the petitioner shall appear before the learned trial Court, regularly, and,

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

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

28. Bail Application stands disposed of.

JUDGE

Comparing Assistant