

GAHC010270592023



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

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 4388/2023

Prabhakar Sanjay,
Aged about 37 years,
S/o Sri Amar Singh,
R/o Gali No. 3, Shyam Vihar Colony near
Ambedkar Park, Narich, Rambagh, Agra,
Uttar Pradesh, PIN-282006.

.....Petitioner

-Versus-

Union of India,
Represented by S.C, NCB,
Guwahati Zonal Unit, Guwahati, Assam

.....Opposite party.

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

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 30.01.2024

ORDER

Heard Ms M Das, learned counsel for the petitioner, Prabhakar Sanjay.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 25.01.2022, in connection with NDPS Case No. 21/2022, corresponding to NCB Case No. 26/2021, under Sections 21(c)/21 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS, for short).

3. Also heard Mr S C Keyal, learned Standing Counsel, Narcotics Control Bureau (NCB, for short).

4. The gist of the case is that on a tip-off, the warehouse of Rivigo Services Private Limited, M/s Tirumala Estate Jaiguru, Amingaon, was searched by the investigating team under the NCB. It was alerted that the consignment of 11 packets containing huge quantity of illegal codeine based cough syrup are lying in the warehouse mentioned above. This consignment of illegal codeine based cough syrup had come from Agra, Uttar Pradesh and was destined to Agartala at Tripura. In consequence of the search, 3280 bottles in 11 packets of Eskuf Codeine based cough syrup was recovered

from the aforementioned warehouse and Prabhakar Sanjay was arrested and forwarded to custody on 25.01.2022.

5. It is submitted on behalf of the petitioner that on issuance of notice under Section 67 of the NDPS Act, the petitioner willingly went to participate in the investigation, but he was arrested instead and forwarded to custody and since then, he has been lodged in the jail without any respite. Only two witnesses have been examined so far. Charges were framed wayback on 05.09.2022. The petitioner is innocent and he was only an employee of the logistic company. It was not under his instruction that the seized articles have been transported. Co-accused has already been granted bail. The petitioner has also prayed for bail on the ground of parity.

6. It is further submitted that the petitioner was not aware that the consignment was illegally transported.

7. The learned Standing Counsel for NCB has raised serious objection stating that at this juncture, the petitioner cannot claim innocence. Charge has already been framed against him and he is facing trial.

8. I have perused the scanned copies of the LCR.

9. It is true that the trial has been procrastinated. However, at the same time, it cannot be held that the petitioner's personal liberty has been curtailed. The embargo under Section 37 of the NDPS Act, comes into play. There is no explanation as to why so many bottles of Codeine based cough syrup were found without valid documents. Although only two witnesses have been examined, it cannot be hastily held that trial is unlikely to conclude as there are 11 witnesses enlisted in the offence report.

10. Relating to the prayer for bail on the ground of parity, the decision of Hon'ble the Supreme Court in ***Tarun Kumar -Vs-Assistant Director, Directorate of Enforcement;*** reported in **(2023) 4 Crimes (SC) 442**, is relevant. It has been held by Hon'ble the Supreme Court that-

“18. The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co-accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration. It is not disputed in that the main accused Sh. Kewal Krishan Kumar, Managing Director of SBFL, and KMP of group companies and the other accused Devki Nandan Garg, owner/ operator/ controller of various shell companies were granted bail on the ground of infirmity and medical grounds. The co-accused Raman Bhuraria, who was the internal auditor of SBFL has been granted bail by

the High Court, however the said order of High Court has been challenged by the respondent before this Court by filing being SLP (Crl.) No. 9047 of 2023 and the same is pending under consideration. In the instant case, the High Court in the impugned order while repelling the said submission made on behalf of the appellant, had distinguished the case of Raman Bhuraria and had observed that unlike Raman Bhuraria who was an internal auditor of SBFL (for a brief period statutory auditor of SBFL), the applicant was the Vice President of Purchases and as a Vice President, he was responsible for the day-to-day operations of the company. It was also observed that the appellant's role was made out from the financials, where direct loan funds have been siphoned off to the sister concerns of SBFL, where the appellant was either a shareholder or director. In any case, the order granting bail to Raman Bhuraria being under consideration before the coordinate bench of this Court, it would not be appropriate for us to make any observation with regard to the said order passed by the High Court.

19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.

20. It is also difficult to countenance the submission of learned Counsel Mr. Luthra

that the investigation qua the appellant is complete and the trial of the cases likely to take long time. According to him the appellant ought not to be incarcerated indefinitely merely because the investigation is kept open with regard to the other accused. In this regard, it may be noted that the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities, nonetheless in the instant case there being sufficient material on record adduced by the respondent showing the thick involvement of the appellant in the alleged offence of money laundering under Section 3 of the said Act, the Court is not inclined to grant bail to the appellant.

21. The apprehension of the learned counsel for the appellant that the trial is likely to take long time and the appellant would be incarcerated for indefinite period, is also not well founded in view of the observations made by this Court in case of Vijay Madanlal (supra). On the application of Section 436A of the Code of Criminal Procedure, 1973, it has been categorically held therein that: -

“419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court,

unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.”

11. In the light of the decision of Hon'ble the Supreme Court in ***Tarun Kumar's case (supra)*** and considering all aspects, at this juncture, I am hesitant to grant bail to the petitioner.

12. Petition with prayer for bail is rejected, at this stage. However, the learned trial Court is directed to expedite the trial for speedy disposal of the case.

13. In terms of above, the anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant