

GAHC010275082023



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

Case No. : Bail Appln./4461/2023

ST. ROMAR KOM
S/O LATE ST. WANIKHUP KOM
R/O MOHOUTERA VILLAGE, P.S. WANGOO
DIST. CHANDEL MANIPUR.

VERSUS

UNION OF INDIA
REP. BY THE STANDING COUNSEL, NARCOTIC CONTROL BUREAU (NCB)

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 22.02.2024

Heard Mr. M. Biswas, learned counsel for the petitioners. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This bail application is filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **St. Romar Kom**, in connection with

NDPS Case No. 83/2019(Corresponding to NCB Crime No. 06/2019), **under Section 20(b)(ii)(C)/27(A) and 29 of NDPS Act**, pending in the court of learned Addl. Sessions Judge No. 2, Kamrup(M), Guwahati.

3. The learned counsel for the petitioner has argued that the petitioner is a retired Army personnel who had served in 8th Assam Regiment of the Indian Army and he has used to draw pension for which he is submitting 'Life Certificate' every year. After his retirement, he joined as a security guard in the Food Corporation of India (FCI), Lachit Nagar, Guwahati.

4. It is also submitted by the learned counsel for the petitioner that the petitioner is neither the owner of the seized truck nor the goods which was found inside the truck. The petitioner was completely unaware of the presence of the seized contraband in the truck.

5. It is also the submission of the learned counsel for the petitioner that nothing was recovered from the possession of the petitioner. Without committing any offence, the petitioner has been languishing in jail hazot for more than 4 years 6 months. It is also submitted that out of 10 witnesses, only 7 witnesses were examined and none of the witnesses specifically stated that any contraband was recovered from the possession of the petitioner. Under such backdrop, learned counsel for the petitioner has prayed that considering the length of detention, bail may be granted to the petitioner.

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

(i) Shariful Islam @ Sarif v. The State of West Bengal, reported in

CRM(NDPS) No. 299/2022.

(ii) Dheeraj Kumar Shukla v. The State of Uttar Pradesh, reported in Special Leave to Appeal (Crl.) No. 6690/2022.

(iii) Anjan Nath v. The State of Assam, reported in Special Leave to Appeal (Crl.) No. 9860/2023.

(iv) Chitta Biswas @ Subhas v. The State of West Bengal, reported in Criminal Appeal No. 245/2020.

(v) Nitish Adhikary @ Bapan v. The State of West Bengal, reported in Special Leave to Appeal (Crl.) No. 5769/2022.

(vi) Mohammad Salman Hanif Shaikh v. The State of Gujarat, reported in Special Leave to Appeal (Crl.) No. 5530/2022.

(vii) Harish Mia @ Harij Miah v. The State of Assam, GHC Bail Application No. 2475/2023.

(viii) Abu Sufian v. The State of Assam, GHC Bail Application No. 1128/2023.

(ix) Bayar Debbarma @ Jakki & Anr. v. Union of India, GHC Bail Application No. 3548/2023.

(x) Rabi Prakash v. The State of Odisha, reported in 2023 LiveLaw (SC) 533.

7. Per contra, Mr. Keyal, learned Standing counsel, NCB has submitted that on the date of the incident, the accused/petitioner was travelling in the alleged truck from which commercial quantity of poppy straw were recovered.

8. By referring the case of State by the Inspector of Police vs. B. Ramu, reported in SLP(Crl.) No.(s). 8137 of 2022, Mr. Keyal has pointed out that

the Hon'ble Supreme Court held that "for entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act."

9. The learned Standing counsel for the NCB also has 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.

10. In support of his submissions, the learned Standing counsel, NCB has also cited some other case laws-

(i) Gurwinder Singh v. State of Punjab & Anr., reported in 2024 Legal Eagle (SC) 107

(ii) Baiju Thakur v. Union of India vide GHC Bail Application No. 3765/2023.

(iii) Mohammad Raqibuddin v. The Union of India vide GHC Bail Application No. 7/2024

11. I have considered the submissions made by the learned counsel for the parties and also perused the scanned copy of the LCR including the statement of the witnesses recorded so far.

12. It reveals from the record that the petitioner was arrested on 12.05.2019 and charge was framed on 12.11.2021. As per search cum seizure list, 1260 kg of poppy straw was recovered from a truck bearing Regd. No. UP-15ET-1855. The allegation against the present petitioner is that he was travelling in the said truck from which the poppy straw was

seized. However, the petitioner is not the owner or driver or the handyman of the said truck. It also appears that out of ten witnesses, seven witnesses were examined till date. The petitioner is in jail hazot for about 4 years 8 months. There is no explanation from the side of NCB why such delay was caused in adducing evidence in the case.

13. In the case of Rabi Prakash (siupra), the Hon'ble Supreme Court held as under-

“ As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition i.e. formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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.”

14. Reverting back to the case in hand, admittedly, the petitioner has been detained in custody for about 4 years 8 months. The progress of the trial is very slow. The prosecution has failed to complete the trial within the period of more than four years without showing any such plausible explanation.

15. In view of the aforesaid legal proposition as well as the back ground of the case, this Court is of the view that the accused/petitioner may be enlarged on bail.

16. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **NDPS Case No. 83/2019**(Corresponding to NCB Crime No. 06/2019), **under Section 20(b)(ii)(C)/27(A) and 29 of NDPS Act**, on furnishing bail bond of **Rs.1,00,000/-** with **two suitable sureties** of the like amount out of which one of the sureties should be a Government employee, to the satisfaction of the learned Addl. Sessions Judge No. 2, Kamrup(M), Guwahati.

17. The direction for bail is further subject to the following condition that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of the learned trial court without prior written permission from him/her till disposal of the case.

18. The learned Addl. Sessions Judge No. 2, Kamrup(M), Guwahati, is at liberty to impose any other condition(s) as it deems fit and proper at the time of releasing the accused/petitioner on bail to procure their attendance during trial.

19. The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

20. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant