

GAHC010276652023



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

Case No. : Bail Appln./4528/2023

BOGIMAYUM SAMIUR RAHMAN @ REHAMAN
S/O BOGIMAYUM ABDUR RAHMAN
R/O VILL-HAOREIBI MAYAI LEIKAI
P.O. LILONG, P.S. LILONG,
DIST. THOUBAL, MANIPUR, PIN-795130

VERSUS

THE UNION OF INDIA
REP. BY THE STANDING COUNSEL, NARCOTICS CONTROL BUREAU.

Advocate for the Petitioner : MR S K SARKAR

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.02.2024

Heard Mr. S.K. Sarkar, learned counsel for the petitioner. 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, **Bogimayum Samiur Rahman @ Rehaman**, in connection with **NDPS Case No. 107/2020**(Corresponding

to NCB Crime No. 09/2020), **under Section 22(c) and 27-A of NDPS Act, 1985** pending in the court of learned Addl. Sessions Judge FTC No. 3, Kamrup(M), Guwahati.

3. The background of the case is that on 06.09.2020 at about 10.40 a.m., after getting an information from a reliable source that the present petitioner was coming at service lane, Baharbari, near Indian Oil Petrol Pump, NH-37 and he was going to deliver some methamphetamine tablets to the persons namely Tajnur Ali and Abdus Salam who were coming by Maruti Alto car bearing Regd. No. AS-19-G-4810. Thereafter, the NCB personnel went to the spot and intercepted the present petitioner along with two other persons and seized 1.190 kgs of methamphetamine tablets. Accordingly, a case was registered vide NCB Crime No. 09/2020, under Section 8(C) r/w Section 22(C), 29 and 60 of NDPS Act, 1985.

4. The learned counsel for the petitioner has submitted that the present petitioner was arrested on 09.06.2020 along with Tajnur Ali and Abdus Salam. The alleged narcotic contrabands were recovered from the possession of Tajnur Ali on 09.06.2020 by the NCB team. About three witnesses were examined in the case and none of the witness has stated that any contraband items were recovered from the possession of the present petitioner.

5. It is also submitted that the petitioner is sole bread earner of his family which consists of his wife and minor children. According to the learned counsel for the petitioner that no any contraband items were recovered from the possession of the accused petitioner. As such, there is no chance of his conviction in this case. Therefore, the accused may be

released on bail in any condition(s).

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

(i) Mohd Muslim @ Husain vs. State (NCT of Delhi), reported in 2023 LiveLaw (SC) 260.

(ii) Naib Sing vs. State of Haryana, reported in CRM-M-29466-2022.

(iii) Mohammad Taslim Ahamad vs. Union of India, vide GHC Bail Application No. 1317/2023.

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

7. On the other hand, learned Standing counsel, NCB submits that commercial quantity of narcotic drugs were recovered from the possession of the accused. When the NCB team reached at service lane, Baharbari near Indian Oil Petrol Pump, NH-37, one person i.e. the present petitioner, after some time came there by a scooter bearing Regd. No. AS-25-K-1355 and started waiting there getting down from the scooter. The present petitioner was holding one white coloured carry bag in his hand. After sometimes, one vehicle bearing Regd. No. AS-19-G-4810(Maruti Alto) arrived there and stopped near the present petitioner. There were two persons inside the vehicle. One person came out from the said vehicle and the person standing there handed over the white coloured carry bag with blue marking to the person who came out from the said vehicle. On the same time, the NCB team encircled the vehicle and both the persons and the petitioner were apprehended. From the conduct of the present petitioner, it reveals that the petitioner is very much involved in the alleged

offence. It is further submitted by the learned Standing counsel, NCB that as the commercial quantity of narcotic substance were recovered from the possession of the present petitioner, there is no question of granting bail to the petitioner at this stage.

8. In support of his submissions, the Standing counsel, NCB has also cited a case law- Mohammad Raqibuddin vs. The Union of India, vide GHC Bail Application No. 7/2024.

9. I have considered the submissions of learned counsel for the parties. I have also perused the trial court record.

10. Though, the learned Standing counsel, NCB has submitted that the commercial quantity of narcotic substance were recovered from the possession of the present petitioner when he came to service lane in his scooty. But as per seizure list, it reveals that 1.190 Kg of methamphetamine tablets were recovered from the possession of Tajnur Ali. One IDBI Debit card, driving licence and Adhaar card were recovered and seized from the possession of the present petitioner.

11. It appears from the record that the petitioner was arrested on 09.06.2020 but the charge was framed after more than one year i.e. on 02.08.2021. Out of 11 witnesses, only 2 witnesses were examined. P.W.3 was examined in part. It also appears from the record that the examination of P.W.1 was started in the month of September, 2021 and the cross-examination of P.W.1 was closed on 18.01.2023. It transpires that the parties took more than one year time to complete the examination and cross-examination of P.W.1.

12. At this stage, we are not coming into the merits of the case. However, it transpires that there was delay in examination of the witnesses within more than three years. It appears from the record that on several dates, the examination and cross-examination of P.W.1 was fixed but due to paucity of time, it could not be completed. So, it is not possible to ascertain for whose fault, the delay was occurred. The prosecution has failed to complete the trial within more than three years. It also appears that it will take some more time to conclude the trial of this case.

13. In the case of Rabi Prakash(supra), the Hon'ble Supreme Court has 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. 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.

15. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **NDPS Case No. 107/2020**(Corresponding to NCB Crime No. 09/2020), **under Section 22(c) and 27-A of NDPS Act, 1985**, 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 FTC No. 3, Kamrup(M), Guwahati.

16. 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.

17. The learned Addl. Sessions Judge FTC No. 3, 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 his attendance during trial.

18. 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.

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

JUDGE

Comparing Assistant