

GAHC010283822023



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

Case No. : Bail Appln./4605/2023

KRISHNA BISWAS
S/O LATE ABHOY BISWAS
R/O BHOWANIPORE, P.O. AND P.S. KALIGARH, DIST. SOUTH KOLKATA,
WEST BENGAL.

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 : 01.03.2024

Heard Mr. M. Biswas, 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, **Krishna Biswas**, in connection with **NDPS Case No. 222/2021**(Corresponding to NCB Crime No. 13 & 13A/2021), **under Section 20(b)(ii)(c)/29 of NDPS Act, 1985** pending in the court of learned Addl. Sessions Judge No. 2, Kamrup(M), Guwahati.

3. The background of the case is that on 12.07.2021, one intelligence officer, NCB at about 14.00 hours received an information regarding the present petitioner that who had received 61.560 kg of spsmoproxyvon capsules containing Tramadol which was seized in connection with NCB, Guwahati Crime Case No. 13A/2021. On receipt of the said information, the NCB officials conducted search in the house of the present petitioner and recovered some tablets and orange colour powdery substance and accordingly apprehended him.

4. It is submitted by the learned counsel for the petitioner that 61.560 kg of aforesaid capsules containing Tramadol was recovered from the shop of Maruti Courier Services Pvt. Ltd., Rehabari, Guwahati and the consignor of the said contraband was Raj Cosmetic and consignee was Shweta Enterprises, Dimapur, Nagaland.

5. According to the learned counsel for the petitioner, the petitioner is no way connected with the alleged offence. The petitioner is a drug addict and he used to consume pharmaceutical drugs and on suspicion, he was arrested. It is also submitted that only small quantity of heroine measuring 0.800 gm was recovered from his possession and the petitioner is no way involved with the seizure of 61.560 kg of spsmoproxyvon capsules containing tramadol.

6. It is also the submission of learned counsel for the petitioner that the alleged parcel containing capsules was received by one Saurav Dutta i.e. the brother of Puja Dutta who was in romantic relationship with the petitioner. When Saurav Dutta was apprehended by the NCB, he disclosed the name of his sister Puja Dutta and she in order to save her skin, took the name of the present petitioner. It is a settled law that confession of co-accused cannot be the basis of conviction.

7. It is further submitted that in the instant case, the NCB personnel had not complied with the mandate of Section 52A of NDPS Act when samples were drawn before the magistrate and as such, the petitioner cannot be convicted due to non-compliance of the mandatory provision. Thus, there is no possibility that the petitioner would be convicted in the instant case for the offence under the NDPS Act pertaining to commercial quantity.

8. The learned counsel for the petitioner has also pointed out that the petitioner has been languishing in jail hazot for more than two years. Out of 11 witnesses, only 1(one) witness has been examined. It is also submitted that if the trial is continued in this manner, it would take another 5/6 years for completion of the trial. As such, it is a fit case to enlarge the petitioner on bail.

9. 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.

10. In response, learned Standing counsel NCB has submitted that on 16.07.2021, the contraband articles were seized from the house of the present petitioner which was produced before the learned Magistrate and orange colour powdery substance i.e. heroine was seized from the house of the petitioner which was weighed before the learned Magistrate and its weight came into 1.2 gm. Accordingly, correctness of inventory was certified under Section 52(A) of NDPS Act and photograph of the sampling was also done. As such, there is no violation of Section 52(A) of NDPS Act.

11. Learned Standing counsel, NCB also submitted that the present petitioner was the kingpin and main receiver of the 61.56 kg of spasmoproxyvon capsules containing tramadol. Accused Puja Dutta had disclosed in her voluntary statement that after collecting the consignment of drugs, she used to hand it over to the petitioner and the petitioner used to pay her for that. During interception of the accused/petitioner at his house at Dimapur, some drug was recovered from his house. The recovered drugs were sent to FSL which gave positive test for heroine.

12. Learned Standing counsel, NCB by refereeing the judgment of State By the Inspector of Police vs. B. Ramu, reported in SLP(Crl.) No. 8137 of 2022, has pointed out that the Hon'ble Supreme court has held that- "in case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents."

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

(i) Baiju Thakur vs. Union of India, vide GHC Bail Application No. 3765/2023.

(ii) Union of India through Narcotic Control Bureau, Lucknow vs. Md. Nawaz Khan, reported in 2021 Legal Eagle (SC) 538

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

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

15. It appears that the petitioner was arrested on 12.07.2021 and charge was framed on 06.06.2023. Only one witness was examined till today. Though, learned Standing counsel, NCB has alleged that 61.560 kg of aforesaid drugs containing tramadol was seized from the possession of the present petitioner but the learned standing counsel has failed to show the seizure list that such amount of drugs were seized from the possession of the present petitioner. As per search cum seizure list, it reveals that 8 dexona tablets and 20 tablets of Buprenorphine along with orange colour powdery substance i.e. heroine and one syringe with needle was seized from the possession of the petitioner. As per offence report, the recovered orange colour powdery substance was in small quantity hence, the weight of the heroin could not be recorded with the help of the electronic weighing machine available at that time. As per seizure list, pertaining to the present petitioner, a small quantity of heroin was seized along with 28 tablets, which are not commercial quantity.

16. It is seen that though the accused was arrested in the year 2021 but the charge was framed only on 06.06.2023 and out of 13 witnesses, only one witness was examined. It transpires that the conclusion of the trial will thus take some more time.

17. 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.”

18. In the case of *Satender Kumar Antil vs. Central Bureau of Investigation & Anr.* reported in (2022) 10 SCC 51, the Hon'ble Supreme Court observed that prolonged incarceration attend attention of the court which considered the correct approach towards bail with respect to several enactments including Section 37 of NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia that the accused enlarged on bail if the trial is not concluded within specified period) of Criminal Procedure Code, 1973 would apply.

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided

under [Section 37](#) of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of [Section 309](#) of the Code.”

19. Reverting the case in hand, admittedly, the petitioner is in judicial custody for more than two and half years. It also reveals that out of 13 witnesses, only 1 witness was examined, as per the document available in the record. In view of the aforesaid legal mandate and considering the fact that as per seizure list small quantity of heroin was recovered from the possession of the petitioner, this Court is of the view that the accused/petitioner may be enlarged on bail.

20. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **NDPS Case No. 222/2021**(Corresponding to NCB Crime No. 13 & 13A/2021), **under Section 20(b)(ii)(c)/29 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 No. 2, Kamrup(M), Guwahati.

21. 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.

22. 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 his attendance during trial.

23. 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. The trial court is directed to expedite the matter and take initiative to dispose of the case by fixing day to day hearing.

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

JUDGE

Comparing Assistant