

GAHC010289542023



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

**Case No. : Bail Appln./4673/2023**

ARUN KUMAR MADDESHIYA  
S/O- DHOOP CHANDRA MADHESIYA PERMANENT ADDRESS JAINAGAR  
WARD NO.3, GOURA DEORIA, UP 2/4603, PRESENT ADDRESS H NO. 06,  
FAAKARUDDIN ALI AHMED NAGAR, PANJABARI ROAD, SIX MILE, GHY,  
DIST- KAMRUP(M), ASSAM

VERSUS

THE UNION OF INDIA  
REP. BY THE SC, NCB

**Advocate for the Petitioner : MR. H R KHAN**

**Advocate for the Respondent : SC, NCB**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**21.02.2024**

Heard Mr. S S Ali, learned counsel for the petitioner. Also heard Mr. SC Keyal, learned standing counsel for the respondent NCB.

2. This is an application under Section 439 Cr.P.C. praying for bail to the petitioner, namely, Arun Kumar Maddeshiya, who was arrested on 15.11.2019 in connection with NDPS Case No.33/2020 corresponding to NCB Crime No.17/2019 under Sections 22(C)/29/35/54 of the NDPS Act.

3. Learned counsel for the petitioner has submitted that no contraband item was recovered from the possession of the petitioner. The petitioner has been languishing in the jail since 2019. The learned counsel for the petitioner submits that out of 14 witnesses, only 10 witnesses were examined, however, no witnesses had implicated the present petitioner that any psychotropic substance was seized from the possession of the petitioner. It is also submitted that as per seizure list the psychotropic substance i.e. methamphetamine tablets, which were of commercial quantity was recovered from the possession of Raihanuddin, but not from the possession of the present petitioner. It is further stated that the said Raihanudin, the main accused, from whom the commercial quantity of psychotropic substance was found, had also been granted bail by this Court. Under such backdrop, the petitioner may be enlarged on bail.

4. On the other, learned standing counsel NCB has submitted that large quantity of psychotropic substance were recovered from the possession of the present petitioner along with two other accused. Charge was framed accordingly under Section 22(C) of the NDPS Act. It is further submitted that the framing of charge has not been challenged before this Court and out of 14 witnesses, the NCB had examined 10 witnesses and some more time would be required to complete the trial, therefore, at this stage, the bail may not be granted to the petitioner.

5. In support of his submission, learned standing counsel for the NCB has placed reliance on the proposition of law laid down in 2023 Legal Eagle (SC) 1135 *Tarun Kumar Vs. Assistant Director, Directorate of Enforcement*.

6. I have considered the submissions of the learned counsel appearing for the parties and also perused the scanned copies of the LCR. Perusal of the same, reveals that out of 14 witnesses, 10 witnesses were examined, the last witness PW-10 was examined on 17.03.2023 and for the last one year, the NCB has failed to produce any witness to complete the trial.

7. From the statement of the witnesses, it is reflected that the alleged methamphetamine tablets were recovered from a person who was wearing a black jacket and carrying a plastic packet.

8. It appears that the petitioner was arrested in the year 2019 and he has been detained in judicial custody for more than 4years. The progress of the trial appears to be very slow. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation* reported in (2022) 10 SCC 51, the Hon'ble Supreme Court held that prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The Court expressed the opinion that the accused be enlarged on bail, if the trial is not concluded within specified period. The observation of the Hon'ble Supreme Court is extracted hereinbelow:

*“We do not wish to deal with individual enactments as each special act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provisions contained in Section 436 A of the Code would apply to the special Act also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act as provided 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 rigour, 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.”*

9. Reverting to the case at hand, admittedly the petitioner has been detained in custody for more than four years and out of 14 witnesses, 10 witnesses were examined. It is also true that since last one year no witnesses have been examined. It transpires that the trial court did not take much initiative to dispose of the matter early, inspite of the direction of this Court to give preference to the cases where the accused is in custody.

10. In view of the above legal proposition laid down by the Hon'ble Supreme Court, this Court is inclined to enlarge the petitioner on bail on furnishing bail bond of Rs.1,00,000/- (Rupees one lac) with two sureties, of the like amount, out of which one of the sureties should be a Government employee, to the satisfaction of the learned Additional District & Sessions Judge, Kamrup (M) at Guwahati subject to the following conditions that the petitioner:

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

11. The learned trial court would be at liberty to impose any further condition(s) which it deems proper, at the time of releasing the accused petitioner.

12. The bail application, accordingly, stands disposed of.

**JUDGE**

**Comparing Assistant**