

GAHC030001592024



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

Case No. : Bail Appln./28/2024

Sh. Selim Uddin @ Salim Uddin
S/o Sh. Samach Uddin
Presently under Judicial Custody at Central Jail, Aizawl, Mizoram.

VERSUS

The State of Mizoram and Anr.
through the Excise and Narcotics Department, Commissionerate of Excise and
Narcotics, Opposite Aijal Club, Khatla, Aizawl, Mizoram.

2:The Officer-in-Charge
Anti-Narcotic Squa

Advocate for the Petitioner : Mr. Lalruatpuia Sailo

Advocate for the Respondent : P.P./Addl.PP, Mizoram

JUDGMENT / ORDER

Date : 14-03-2024

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Heard Mr. Lalruatpuia Sailo, learned counsel for the applicant. Also heard Ms. Mary L Khiangte, learned Additional Public Prosecutor for the State of Mizoram.

2. This an application under Section 37 of the ND&PS read with 439 of the Code of Criminal Procedure praying for grant of bail to the accused/petitioner,

namely, **Shri Selim Uddin@Salim Uddin**, who has been arrested on 14.11.2019 in connection with Criminal Trial No. 291/2021 under Sections 22(c) of NDPS Act, 1985.

3. It is submitted by Mr. Lalruatpuia Sailo, learned counsel for the petitioner that the accused/petitioner was arrested in connection with this case on 14.11.2019 at the outskirts of Serchhip, Mizoram for alleged possession of Methamphetamine weighing 21.523 Kilograms which were packed in 9 boxes wrapped in black polythene bags. He further submits that after apprehension of the co-accused Shri Sabul Uddin, the present accused/applicant was arrested by the Sub-Inspector of Excise & Narcotics from his residence at around 02:30 AM on 14.11.2019 suspecting his involvement in the seizure of the said Narcotics drugs. It is alleged that the said Narcotics contraband was purported to be transported from Hnahthial to Serchhip by the co-accused Shri Sabul Uddin and was supposed to be delivered to one person named Uddin from Silchar. After the investigation of this case, prima facie case was found to be established against the present accused/applicant along with the co-accused and accordingly, charge-sheet is submitted by the I.O on 28.08.2020 before the Special Court, ND&PS Act, 1985, Aizawl. The present accused/applicant along with the co-accused were initially detained at Serchhip District Jail but were released by the learned Chief Judicial Magistrate, Serchhip on 11.02.2020. However, on 05.11.2021, the present accused/applicant along with the co-accused were again remanded back to judicial custody by the learned Special Judge vide order dated 05.11.2021 and since then they are in judicial custody. The present accused/applicant along with co-accused had filed 2/3 numbers of bail application before the learned Special Judge, NDPS Act but those were rejected by the learned Special Judge and hence, the present petition has been

filed seeking bail for the present accused/applicant.

4. It is alleged that the present accused/applicant had paid the co-accused Shri Sabul Uddin to hire one Auto Rickshaw for delivery of the drugs to one person, namely, Uddin from Silchar at Serchhip. Further he submits that the present accused/applicant has been arrested in connection with this case only on suspicion and on the basis of the statement made by the co-accused. No contrabands or Narcotics substances were seized from the possession of the present accused/applicant at the time of his arrest and he was arrested from his residence at Serchhip.

5. From the available records, it is seen that the contraband i.e., 1,80,000 numbers of Methamphetamine tablets were seized from the possession of the co-accused and on the basis of the statement made by the co-accused, the present accused/applicant was arrested from his residence. He further submits that the statement made under Section 67 of NDPS Act cannot be treated as evidence and therefore cannot be the basis of further detention of the accused/applicant.

6. In support of his submission, the learned counsel for the petitioner further relies on the decision of Hon'ble Apex Court reported vide (2022) 12 Supreme Court Cases 633 [***State (by NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.***], wherein, in paragraph No. 12 of the said judgment the Hon'ble Apex Court has held as under:

"12. It has been held in clear terms in Tofan Singh v. State of Tamil Nadu,

that a confessional statement recorded under Section 67 of the NDPS act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16-9-2019, 14-1-2020, 16-1-2020, 19-12-2019 and 20-1-2020 passed in SLP (Crl.) No. arising out of Diary No. 22702 of 2020, SLP (Crl.) No. 1454 of 2021, SLP (Crl.) No. 1465 of 2021, SLP (Crl.) Nos. 1773-74 of 2021 and SLP (Crl.) No. 2080 of 2021 respectively. The impugned orders are, accordingly, upheld and the special leave petitions filed by the petitioner NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless”.

7. He further relies on the another decision of the Co-ordinate Bench passed in B.A./06/2024, wherein, the Co-ordinate Bench of this Court considering the view of the above referred judgment of the Hon’ble Apex Court and the case of the Tofan Singh has released on bail considering that the basis of voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence when there is no other material on record to connect the accused/applicant to the offence alleged against him.

8. The learned counsel for the petitioner also relies on another decision of the Hon'ble Apex Court passed in ***Rabi Prakash vs. State of Orrisa*** reported vide ***2023 SCC Online SC 1109***, Wherein, in the Hon'ble Apex Court has expressed the view that the prolonged incarceration, generally militates against the most previous 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. The paragraph No. 4 of the said judgment is read as under:

"4. 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 re: 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 previous 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 "

9. Accordingly, the learned counsel for the petitioner submitted that considering all these aspects of the case as well as considering the period of incarceration the accused may be released on bail.

10. The learned Additional Public Prosecutor Ms. Mary L Khiangte has

submitted that huge quantity of Methamphetamine tablets were recovered from the possession of the co-accused persons and from the materials available in the case record, it is seen that the present accused/applicant is the person who asked the co-accused to deliver those Methamphetamine tablets to one Uddin from Silchar at Serchhip. After investigation of this case, the I.O found sufficient materials against the present accused/applicant and accordingly, charge-sheet was filed against him. She further submitted that initially the accused/applicant was released on bail on 11.02.2020 after 3(three) months of their custody by the learned Chief Judicial Magistrate under Section 167 Cr.P.C, however, the present accused/applicant was re-arrested in connection with this case on 05.11.2021 and since then he is in custody. His period of incarceration at present is 2(two) years 5(five) months and during that period the charge-sheet has also been filed and 3(three) numbers of witnesses were also examined out of 8(eight) numbers of witnesses. Next date of evidence is fixed on 26.03.2024 and thus, it can be expected that trial will be completed within short period.

11. She further submitted that probability of absconding of the present accused/applicant as well as tampering with the evidence of other witnesses also cannot be denied at this stage, as the accused/applicant hails from outside Mizoram. Thus, the learned Additional Public Prosecutor vehemently raised the objection in allowing the accused/applicant to go on bail.

12. After hearing the submissions made by the learned counsel for both sides, I have also perused the case record and other documents supported along with the petition.

13. It is a fact that initially the present accused/applicant was arrested in connection with this case on the basis of the statement made by the co-accused

under Section 67 of NDPS Act but subsequently, the I.O has collected sufficient materials against the present accused/applicant showing his involvement in alleged offence rather it has come out in the investigation that the present accused/applicant is the master mind who asked the co-accused to collect the contraband which was supposed to deliver to one Uddin from Silchar at Serchhip. Thus, it is not the case that only on the basis of the statement made by the co-accused under Section 67 of NDPS Act, the case was charge-sheeted against the present accused/applicant. Further it is seen that the accused is presently behind the bar since 05.11.2021 after his re- arrest in connection with this case. Within these period, the case has already been charge-sheeted and of 3(three) numbers of witnesses are examined out of 8 (eight) witnesses and as per the submission of the learned Public Prosecutor, it is seen that next date is fixed on 26.03.2024 for examination of other witnesses. Thus, I find force in submission of the learned Additional Public Prosecutor for completion of trial within a reasonable time. In the order passed by the Co-ordinate Bench of this Court, it is seen that in the said case the instruction was given for the said contraband through phone call but the mobile phone of the accused persons were not seized nor call data record was collected during the investigation. Thus, I do not find that the order of the Co-ordinate Bench will be applicable in the present case.

14. Coming to the period of incarceration, it is seen that the learned counsel for the petitioner relied on the decision of the Rabi Prakash of the Hon'ble Apex Court, wherein, the applicant has spent more than 3(three) and a half years in custody and one witness out of 19 witnesses was only examined and thus, it has been held that the trial will take some more time and accordingly, considering the period of incarceration, the Hon'ble Apex Court allowed the

accused/applicant to go on bail. But herein the instant case, it is seen that trial is already proceeded and there is no undue delay as 3(three) witnesses are already been examined out of 8(eight) numbers of witnesses and 1(one) or 2(two) witnesses are expected to be examined by this month as the next date of evidence is fixed on 26.03.2024.

15. Thus, only considering the period of incarceration, I do not find it justified to allow the accused to go on bail at this stage. More so, it is a case of commercial quantity, wherein, a huge quantity of Methamphetamine tablets were alleged to have been recovered from the present accused/applicant along with the co-accused and target is the new and young generation which will affect the society at large.

15. In view of the above, considering all the facts of the case, release of accused on bail does not appears to be justified at this stage and accordingly, the same stands rejected. However, the learned Court below is hereby directed to complete the trial expeditiously.

16. With the above observation, this bail application stands disposed of.

JUDGE

Comparing Assistant