

GAHC010040622024



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

Case No. : Bail Appln./600/2024

BISHAL DEBBARMA
S/O SHIB CHANDRA DEBBARMA
R/O MOKAM PARA, P.O. DIGHALIA, P.S. LEFUNGA, DIST. WEST TRIPURA,
TRIPURA-799210

VERSUS

UNION OF INDIA
REPRESENTED BY NARCOTICS CONTROL BUREAU THROUGH
INTELLIGENCE OFFICER, GUWAHATI ZONAL UNIT, GUWAHATI, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 19.04.2024

1. Heard Mr. M Biswas, learned counsel for the petitioners. Also heard Mr. S C Keyal, learned Standing Counsel, NCB.
2. This is an application made under Section 439 Cr. P.C. seeking bail by

the accused/petitioner, namely, **Bishal Debbarma**, who was arrested on 22.07.2021 in connection with NDPS Case No.05/2021, NCB Crime No.17/2021 complaint under section 36A for commission of offence under section 8(c) and punishable under section 20(b)-(ii)(c) & 29,35,54,61, 60,66,68 and 69 of NDPS Act.

3. Mr. Biswas, learned counsel relying on the decision of the Hon'ble Apex Court in the case of **Mohd Muslim –VS- State (NCT of Delhi)** reported in **AIR 2023 SC 164** contends that, there is no scope for early disposal of trial and the petitioner has been under incarceration for more than two years. Mr. Biswas further argues that the petitioner has been implicated only on the basis of the statement of the prime accused as well as the statement of the petitioner recorded under section 67 of the NDPS Act and on the basis of such materials, there is every likelihood that the petitioner shall be acquitted in absence of there being any other materials.

4. Per contra, Mr. S C Keyal, learned standing counsel, NCB relying on the judgment of the Hon'ble Apex Court in the case of **Narcotics Control Bureau –VS- Mohit Agarwal** reported in **2022 SCC Online 891**, argues that without having the satisfaction as regard the embargo placed in Section 37 of the NDPS Act, 1985, only on the ground of long incarceration an accused cannot enlarged on bail. Mr. D Das learned Additional Public Prosecutor has vehemently objected to the prayer of bail.

5. Heard the learned counsel for the parties, perused the material available on record.

6. Section 37 of the NDPS Act, 1985, mandates that a Court can grant bail to an accused only after hearing the Public Prosecutor and after having satisfactions of twin conditions that there are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not

likely to commit any offence while on bail. Such satisfaction, which the Court is required to record, should be based on reasonable reading and does not call for a meticulous examination of the materials collected during the investigation or during the trial otherwise, the same will amount to mean a complete denial of bail under Section 37 of the NDPS Act, 1985 and the said provision would effectively exclude grant of bail altogether.

7. Grant of bail, on the ground of undue delay in the trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985, inasmuch as Section 436A of the Cr.P.C., is made applicable to the offences under the NDPS Act by the Hon'ble Apex Court in the case of **Satender Kumar Antil –VS- CBI** reported in **2022 10 SCC 51**.

8. Section 36A of the NDPS Act, 1985, mandates that the offences under the Act are triable by a Special Court. In the considered opinion of this Court, such mandate of the legislature is to achieve the object that the trials are completed at the earliest possible time inasmuch as the conditions of bail and other provisions under the Act, are very stringent in nature. It is also well settled that reasonable fair and just procedure in a criminal trial is a constitutional obligation on the part of the State. A speedy trial is also one of the dimensions of the fundamental right to life under Article 21 of the Constitution of India (Reference **Raghbir Singh –Vs- State of Bihar 1986-4SCC-481**).

9. So far relating to the constitution of Special Court, it is stated at the bar that in the State of Assam, though different Sessions Judges and Additional Sessions Judges are designated as Special Courts under Section 36A of the NDPS Act, 1985, however, these Courts are also simultaneously entrusted with the different Sessions triable offences under IPC, Criminal Appeals under IPC and to act as Special Judges under Special Act like POCSO Act, 2012. In view of such undisputed factual position, the object of speedy trial under the NDPS

Act, as discussed hereinabove shall be hardly achievable.

10. In the totality of the aforesaid backdrop and propositions of law, this Court is of the view that alongside the embargo placed in Section 37 of the NDPS Act, 1985, the ground of undue delay in trial can also be a ground for granting bail inasmuch as the Court is to come to the satisfaction that there is no likelihood of completion of trial in near future. Thus, such ground of inordinate delay, in the considered opinion of this Court, shall depend on the facts of the each case and the cause of delay is also required to be noted down.

11. On the aforesaid backdrop, now let this Court looked into the facts of the present case.

12. The prosecution case is that on 20.07.2021, at about 9.20 PM on the basis of secret information, a vehicle bearing Registration No. HR 55U 6974 was checked at Amingaon and contraband (suspected to be heroin) weighing 537.26 kgs were recovered from the aforesaid vehicle. Contrabands were concealed in the cabin of the vehicle driven by one Mujammil Hussain. The said Mujammil Hussain confessed his involvement in illicit trafficking of the seized contraband for monetary benefit and he was accordingly arrested. The accused Mujammil Hussain in his statement recorded under section 67 revealed that Bishal Debbarma, Bayar Debbarma @ Jakki, Bikram Debbarma and Sahison Debbarma @ Sanjit were the associate suppliers of the seized ganja.

13. The charges under section 20(b)-(ii)(c) & 29, of the NDPS Act, were framed by the learned trial Court 26.07.2023.

14. Till date, the prosecution has examined only 3 witnesses out of eight witnesses. Thus, total five witnesses are yet to be examined and in the meantime, the petitioner is in custody for more than three years as on date.

15. From the witness examined till date, it is seen that the contraband was not recovered from the possession of the petitioner but from the possession of the accused Mujammil Hussain, the driver of the Truck. The petitioner was also not arrested from near the place of seizure. The witnesses further deposed that the person of the petitioner was also not searched nor any materials were recovered from him. They have been implicated only on the basis of statement of the co-accused and on the basis of the statement recorded under section 67 of the NDPS Act, 1985.

16. That being the position and in view of the ratio laid down in the case of ***State Vs. Pallulabid Ahmed Arimutta & Others*** reported in **(2022) 12 SCC 633**, and the ratio laid down in the case of ***Tofan Singh Vs. State of Tamil Nadu reported in (2021) 4 SCC 1*** that a confessional statement recorded under Section 67 of the NDPS Act, 1985, will remain inadmissible in the trial of an offence under the NDPS Act and therefore, such statement more particularly on the basis of the confessional statement/voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence.

17. For the reasons, discussed hereinabove, this Court is of the view that the petitioners have been able to make out a prima facie case that there is no plausible ground to believe that petitioners are guilty of any offence under Section 29 of the NDPS Act, 1985 and have been able to make out a case for grant of bail under section 37 of the NDPS Act.

18. Now coming to the other aspect of the matter that there is no likelihood of the petitioners committing any further similar offence, this Court is of the view that such anxiety of the prosecution can be redressed if stringent conditions are imposed while granting bail.

19. Therefore, the aforesaid leads to a belief of this Court that there are

reasonable grounds that the petitioners are not guilty of such offence. In the aforesaid background, to balance the stringent condition of the NDPS Act, 1985 and the right of the petitioners under Article 21 of the Constitution of India, in the considered opinion of this Court, the petitioner can be released on bail with stringent conditions to ensure that the petitioner does not commit any such similar offence while on bail.

20. Considering the aforesaid aspects, propositions of law and in the given facts and circumstances of the present case, this Court is of the considered opinion that by imposing stringent conditions, the attendance of the petitioner before the learned trial Court could be secured and he can be barred from hampering and tampering or influencing the witnesses.

21. In view of the peculiar facts and circumstances of the case, the petitioners namely **Bishal Debbarma** be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) each with two suitable local government solvent sureties of like amount to the satisfaction of the learned District and Session Judge, Kamrup, Amingaon, in connection with aforementioned case. The bail granted to the petitioners shall be subject to following conditions:-

- (a) The petitioners shall not leave the territorial jurisdiction of learned District & Sessions Judge, Kamrup, Amingaon, without prior written permission from him;
- (b) The petitioners shall not hamper and tamper with the evidence of the case;
- (c) The petitioners shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

- (d) The petitioners shall surrender their passport, if any (if not already surrendered) before the learned District & Sessions Judge, Kamrup, Amingaon.
 - (e) The petitioners shall not try to contact any of the witnesses by any mode including telephone, social media etc.
 - (f) The petitioners shall furnish the present residential address with proof to the learned trial Court below and shall not change the said residence without prior permission of the learned trial Court.
 - (g) The petitioners shall appear before the learned trial Court below on each and every date of appearance during trial.
22. In the aforesaid terms, this bail petition is allowed.

JUDGE

Comparing Assistant