

GAHC010027032024



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

Case No. : Bail Appln./443/2024

MANORANJAN DAS
S/O BADAL DAS
R/O NETAJI COLONY, WARD NO 36 SILIGURI (M.CORP.), JALPAIGURI,
GHUGAM ALI, WEST BENGAL-734006

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, NARCOTIC CONTROL
BUREAU (NCB).

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.04.2024

1.Heard Mr. M. Biswas, learned counsel for the petitioners. Also heard Ms. M. Deka, learned Additional Public Prosecutor appearing for the State of Assam.

2.This application under Section 439 of the Code of Criminal

Procedure, 1973, has been filed by the petitioner Manoranjan Das, who has been detained behind the bars since 22.02.2024 (for last 4 years 2 months 8 days).

3. The gist of accusation in this case is that on 18.08.2020 the Narcotics Control Bureau lodged a complaint before the learned Sessions Judge, Kamrup(M), Guwahati inter-alia, that on 22.02.2020, the Intelligence Officer, NCB received an information through reliable sources that two persons, namely, KSH Gautam Singh and Indra Kumar Bhattarai were coming to Basistha Chariali, Guwahati carrying a huge quantity of Methamphetamine tablets (Yaba tablets). It was also informed that they will be reaching National Highway No. 37 near Basistha Chariali, at about 8pm and will deliver the said consignment to some persons namely, Manoranjan Das, Ravi Ahmed Barbhuiya and Sadik Hussain Rajbarbhiya (the present petitioner), who were going there in a Maruti vehicle bearing Registration No. AS11M8582. After receipt of the said information, a search team was constituted and the said team proceeded to the place of occurrence and intercepted the said vehicle and recovered 5.15 kg of Methamphetamine tablets from the possession of Ravi Ahmed Barbhuiya and KSH Gautam Singh, who were inside the vehicle. The other accused persons who boarded the said vehicle were also arrested. All the accused persons were arrested on 22.02.2020. Thereafter, on 18.08.2020 charges were framed by the Trial Court under 22(c)/29 of the NDPS Act, 1985 against the present petitioner and the other accused persons and though there are 11(eleven) listed witnesses in the compliant petition, till now only 6(six) witnesses have been examined and the present petitioner is languishing behind the bars for more than last 4 years 2 months 8 days.

4. Learned counsel for the petitioner has submitted that the petitioner has been detained behind the bars since last 4 years 2 months 8 days and only 6 witnesses out of total number of 11 witnesses have been examined. It is also submitted that the trial is unlikely to culminate soon and hence, on the ground of prolong incarceration of the present petitioner, the prayer for bail has been made.

5. Learned counsel for the petitioner has cited ruling of the Apex Court in "**Thana Singh Vs Central Bureau of Narcotics reported in (2013) 2 SCC 590,**" wherein the Apex Court emphasized in conducting day to day trial in all pending cases.

6. Learned counsel for the petitioner has cited ruling of the Apex Court in "**Hussain & Anr. Vs. Union of India reported in (2017) 5 SCC 702,**" wherein the Apex Court had observed that in Sessions cases the trial should normally be concluded within a period of two years.

7. Learned counsel for the petitioner has submitted that though the present case is a case under NDPS Act, 1985, the detention of the petitioner for more than 3 years 10 months is long enough to override the embargo of Section 37 of the NDPS Act, 1985. In support of the said submission, the learned counsel for the petitioner has also cited the ruling of the Hon'ble Apex Court in "**Tapas Mondal Vs. The State of West Bengal & Ors**" [Order dated 14.09.2023 in Special leave appeal (Criminal) No. 8464/2023], wherein the petitioner was granted bail for incarceration of almost two years in spite of the fact that he was charged under the offence for possessing commercial quantity of contraband.

8. Similarly, learned counsel for the petitioner has also cited a ruling of Hon'ble Apex Court in "**Man Mandal and Another Vs. The State of**

West Bengal & Ors” [Order dated 14.09.2023 in Special leave appeal (Criminal) No. 8656/2023], wherein also the petitioner was granted bail on the ground that almost two years the trial was not completed and though the petitioner was charged for an offence under section 21(c) of the NDPS Act, 1985.

9. Learned counsel for the petitioner has submitted that though the embargo of Section 37 of the NDPS Act, 1985 is mandatory in nature, however, in view of the observations made by the Supreme Court in a number of cases, in case of inordinate delay in trial, the embargo is lifted and it gives way to the right of the accused under Article 21 of the Constitution of India.

10. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that as the quantity of contraband seized in the case is of commercial nature and due to the embargo of Section 37 of the NDPS Act, 1985, the petitioner may not be released on bail.

11. Learned Standing Counsel, NCB has also furnished a compilation of dates of NDPS Case No. 50/2020 pending before the Court of learned Additional Sessions Judge No. 3, Kamrup(M) and to show that the prosecution side was not at fault for the delay which has been caused in the culmination of the trial and the next date of the case is fixed on 18.01.2024 for evidence of the prosecution witnesses.

12. I have considered the submissions made by learned counsel for both the sides and has perused the materials available on record including the scanned copy of the case record of NDPS Case No. 50/2020.

13. It appears from record that since the date of arrest for the

present petitioner i.e., 22.02.2020 the petitioner has been detained behind the bars it appears from record that since the date of arrest, i.e. 22.02.2020, the petitioner has been detained behind the bars and though the charges were framed on 11.11.2021, however, till now, only 6(six) out of 11(eleven) listed witnesses have been examined and the trial has not yet been completed in spite of the fact that the petitioner has been detained behind the bars for more than 4 years 2 months 8 days.

14. It also appears that the delay in disposal of the trial may not be attributed to any fault on the part of the present petitioner as he was detained behind the bars throughout the trial from the date of his arrest.

15. Hon'ble Supreme Court of India in "***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***" reported in 2023 SCC Online SC 352 has ***observed that*** "grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985".

16. The Hon'ble Apex Court in "***Rabi Prakesh Vs. State of Orissa***" reported in 2023 live law (SC) 533, wherein it has been observed by the Hon'ble Apex Court that "***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, 1985.***"

18. In view of the above observations made by Hon'ble Apex Court, this Court is of the considered opinion that if under the facts and circumstances of the case, this Court comes to a finding that there is undue delay in completion of the trial and that the incarceration of

petitioner is long enough, he would be entitled to get bail on the ground of such prolonged incarceration as in such case of prolonged incarceration, the right to life and personal liberty guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.

19. It is also pertinent to mention herein that the Hon'ble Supreme Court of India had granted bail to an accused facing charges for possession of commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), wherein the accused was detained behind bars for one year and six months.

20. In "***Nitesh Adhikari Vs. State of West Bengal*** " (Order dated 04.05.2022 in SLP Criminal No. 5769/2022), Hon'ble Apex Court granted bail to the accused facing accusation under Section 21(c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

21. Similarly in "***Md. Salman Hanif Shaikh Vs. State of Gujarat***" (Order dated 22.08.2022 in SLA Criminal No. 5530/2022), the petitioner was granted bail by the Apex Court on the ground of prolonged incarceration of two years.

22. In the instant case also, the present petitioner has been detained behind the bars for more 4 years 2 months 8 days and the trial is yet to culminate and in view of the facts and circumstances of this case as well as considering the observations made by the Apex Court in the rulings cited hereinabove, wherein, it has dealt with the question of long incarceration of similarly situated petitioners who were before the Apex

Court, this Court is of the considered opinion that in the instant case also, the facts and circumstances are such that the long incarceration of the present petitioner outweighs the embargo of Section 37 of the NDPS, Act 1985 and the petitioner is therefore entitled to get bail on the ground of prolonged incarceration only

23. Learned counsel for the petitioner has also submitted that in the meanwhile, one another co-accused, namely, Sadik Hussain Rajbarbhuiya, who is similarly situated to that of the present petitioner was allowed to go on bail solely in the ground of prolonged incarceration by this court by order dated 10.01.2024, passed in bail application No.3158/2023 .

24. This court is of considered opinion that for reasons mentioned herein before, the petitioner, namely, Manoranjan Das is also entitled to get bail in the instant case and, therefore, he is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of like amount (one of whom should be a government servant and residing within the State of Assam) subject to the satisfaction of the learned Sessions Judge, Kamrup, Metro with the following conditions:

i. That the petitioner shall cooperate in the trial of NDPS Case No. 50/2020, which is pending in the Court of learned Special Judge, Kamrup, Metro;

ii. That the petitioner shall appear before the Trial Court as and when so required by the learned Trial Court;

iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present

petitioner;

iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card, Driving License, PAN card, mobile number, and other contact details before the Trial Court;

v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the Trial Court; and

vi. That the petitioner shall not commit any similar offence while on bail.

25. With above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant