

GAHC010219402024



2024:GAU-AS:11960

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

Case No. : Bail Appln./3224/2024

PRABHA SHANKAR TIWARI
S/O SWAMI DAYAL TIWARI, R/O 551 K/252, BHILAWAN, P.O. AND P.S.-
ALAMBAGH, DIST- LUCKNOW, UTTAR PRADESH, PIN-226005

VERSUS

THE UNION OF INDIA AND ANR
REPRESENTED BY THE DEPUTY SOLICITOR GENERAL OF INDIA

2:NARCOTICS CONTROL BUREAU GUWAHATI ZONAL UNIT
VIP ROAD
RUPKONWAR PATH
CHACHAL KHANAPARA
GUWAHATI-78102

Advocate for the Petitioner : MR. S MITRA, MR S.MITRA,MR. R. RAMEEZ,MR A K BORO

Advocate for the Respondent : DY.S.G.I., SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 29.11.2024.

Heard Mr. S. Mitra, learned counsel for the accused and also heard Mr. S.C. Keyal, learned Standing Counsel, NCB, for the respondent.

2. This application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, is preferred by accused, namely, Prabha Shankar Tiwari, who has been languishing in jail since 25.09.2021, in connection with the NDPS Case No.49/2022, corresponding to NCB Crime No.25/2021, registered under Sections 8(c)/21(c)/29/35/53A/54/60/66/ 67/68/69 of the NDPS Act, pending before the Court of learned Additional Sessions Judge No. 2, Kamrup(M) at Guwahati, for grant of bail.

3. The above noted case has been registered on the basis of a complaint, lodged by one Anil Kushwaha, Intelligence Officer, NCB Guwahati.

4. The gravamen of the allegation against him is that on 05.09.2021, acting on a tip off; the complainant and other staffs of NCB having intercepted a truck, bearing Registration No. UP 32 HN 9008, at about 03.00 AM, near Madanpur Toll Plaza, Guwahati and recovered 18,989 bottles of Codeine based cough syrup, manufactured by Abbott Healthcare Pvt. Ltd. of Himachal Pradesh and apprehended accused Imran and Kamal Kumar and the present accused is involved in the same. Thereafter, on 25.09.2021, while accused Prabha Shankar Tiwari came to Guwahati, he was arrested by NCB and forwarded to jail. Thereafter, investigation was carried out and after completion of investigation, Final Complaint was lodged before the learned Court below against the accused to stand trial under Sections 21(c)/29 of the NDPS Act.

5. Mr. S. Mitra, the learned counsel for the accused, submits that having been arrested on 25.09.2021, he is behind the bars for 3 years 2 months and despite direction of this Court the learned trial Court could not complete the trial and out of 11 cited witnesses, 4 have been examined so far. Mr. Mitra submits that charge was framed against the accused on 12.04.2023, thereafter on several occasions the prosecution side had failed to produce the witnesses,

for which the accused is suffering a lot. There is glaring lapse on the part of the prosecution side in production of witnesses. Mr. Mitra further submits that there is no immediate prospect of conclusion of trial and because of prolong incarceration, his right granted under Article 21 of the Constitution of India is violated and therefore, it is contended to allow the petition. Mr. Mitra has referred following decision in support of his submission:-

(i) Ankur Chaudhury vs. State of Madhya Pradesh in Special Leave to Appeal (Cr1.) No. 4648/2024.

6. Per contra, Mr. S.C. Keyal, learned Standing Counsel for the respondent NCB, submits that there is some delay in trial, but the NCB is not alone responsible for the same, as sometimes the Presiding Judge was also absent and that trial is going on and four witnesses have already been examined. Mr. Keyal also submits that the accused is a habitual offender and another case being NDPS Case No. 47/2022, under Sections 21(c)/29 of the NDPS Act is pending against him, wherein also commercial quantity of contraband substances are involved. And given the quantity of contraband substances recovered in the cases involved in the both the cases and given the antecedent of the accused, he cannot be granted bail on this count alone. The accused has to satisfy the requirement of Section 37 of the NDPS Act and he has failed satisfy the twin requirement of said section. In support of his submission, Mr. Keyal has referred following decision:-

(i) State by Inspector of Police vs. B. Ramu reported in 2024 0 Supreme (SC) 130.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record

and also perused the scanned copy of the case record, and the status report received from the learned Court below and the case laws referred by learned Advocates of both sides.

8. It appears that the learned Court below had framed the charge against the accused on 12.04.2023. Since then more than a year elapsed and the prosecution side has been able to examine only four witnesses out of 11 cited witnesses. The Court below was also vacant for some time, and on some occasions no order was passed to summon the witnesses and on some occasions, no step was taken by the NCB to summon the witnesses.

9. In the given factual backdrop and considering the submission of Mr. Mitra, the learned counsel for the accused, this Court is of the view that the delay cannot be termed as inordinate delay, so as to violate the right to speedy trial of the accused. It is well settled that mere delay in trial pertaining to grave offences cannot be a ground to grant bail.

10. Indisputably, 18,989 bottles of Codeine based cough syrup were recovered here in this case from the truck. That being so, the accused has to satisfy the twin requirement of Section 37(1)(b)(ii) of the NDPS Act, that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials and evidence brought on record this court is unable to derived satisfaction that the accused has been able to satisfy the said requirement.

11. Though it is argued by Mr. Mitra, referring to a decision of Hon'ble Supreme Court in **Ankur Chaudhury(supra)** that conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act, yet, it appears that in the said case bail was granted to the accused on

account of not supporting the prosecution case by the punch witnesses. This is not the position in the case in hand. Four witnesses have already been examined and some vital witnesses are yet to be examined.

12. Under the given factual background discussed herein above and also considering nature and gravity of the offence and antecedent of the accused, this Court is of the view that no case for granting bail to the accused is made out.

13. In the result, the petition stands dismissed.

JUDGE

Comparing Assistant