

**HIGH COURT OF TRIPURA
AGARTALA
B.A.No.01 of 2023
Ranjan Dutta Choudhury**

.....Applicant(s)

Versus

State of Tripura

.....Respondent(s)

For Applicant(s)	:	Mr. P.K. Biswas, Sr. Adv. Mr. P. Majumder, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

27.01.2023

Heard Mr. P.K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the applicant as well as Mr. R. Datta, learned P.P. appearing for the State.

2. The present bail application has been filed seeking bail in respect of the accused person who has been arrested in connection with GRPS 09/2022 since 19.12.2022 on surrender for the last 17 days. The Special Judge, Court No.4, West Tripura, Agartala dated 19.12.2022 being GRPS 09/2022 has passed the following order :

"None of the referred cases deal with any penal provision of NDPS Act which is a Special Act having separate mandate of law standing in a different footing. Section 37 of NDPS Act is an exception to general provision of granting bail, which can be considered as a bar in granting bail in connection with NDPS cases involving commercial quantity of contraband articles in which prima facie material exists against the accused. From the record as well as prayer of the I.O. which was filed to show the accused being arrested, prima facie material has been found against the present accused and so the bail petition is rejected."

Aggrieved by the said order the present bail application has been filed.

3. During the course of argument, Mr. P.K. Biswas, learned senior counsel appearing for the applicant has contended that it is not known to the applicant as to how many cases have been registered against him and though he was directly not involved and he was not shown as accused only on the statement of the co-accused repeatedly as and when the bail was granted in one case and in another matter he was taken into custody. The applicant has not been served with any FIR and thus, the applicant is not aware with regard to the number of cases against him.

4. Learned senior counsel has further contended that the respondent is expressly arbitrary and also violates Article 21 of the Constitution of India affecting the life and liberty of the citizen.

5. Mr. R. Datta, learned P.P. appearing for the State has contended that the applicant is a habitual offender and a leader of organized racket of illegal trade of contraband items and involved in three NDPS cases.

6. According to learned P.P. in one particular case the accused person has stated that his spouse and daughter is unwell and hospitalized and relying on the statement made by the counsel, the court below has granted bail and also insisted that necessary medical documents has to be proved and needs to be filed before the court. In spite of giving an opportunity, no documents have been placed before this court in this regard. The prosecution has also taken steps for filing cancellation of bail application bringing into the

notice that the accused persons is an habitual offender and he is not entitled for granting any bail and prayed to cancel the same.

Heard both sides.

7. It is relevant to extract the information regarding the cases registered against the accused person herein :

"(i) Agartala GRPS Case No 2022/GRP/007 dated 26.04.2022 U/s 21(C)/29 of NDPS Act. In this case, 9312 bottles of Phensedyl and Eskuf Syrup were seized on 26.04.2022 which are commercial in quantity. Accused person was arrested in this case on 30.07.2022.

(ii) Agartala GRPS Case No. 2022/GRP/009 dated 30.04.2022 U/s 21(C)/29 of NDPS Act. In this case, 30,080 bottles of Eskuf Cough Syrup were seized which are commercial in quantity. Accused person has surrendered in connection with this case before the Ld. Spl. Judge, Court No.4, Agartala on 19.12.2022. He is in Judicial Custody in this case.

(iii) Agartala GRPS Case No. 2021/GRP/008 dated 27.09.2021 U/s 21(C)/29 of NDPS Act. In this case 620 bottles of Eskuf Syrup were seized which are commercial in quantity. Ld. Spl. Court was pleased to show him arrested in connection with the above noted case on 13.01.2023 based on the prayer of the I/O."

8. Now while considering the above crime and the request of the accused person for granting bail it becomes necessary for considering Section 37 of NDPS Act which reads as under :

37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition

to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

There is no reason for interference with the prosecution for granting any bail to the applicant in the light of Section 37 of NDPS Act.

9. In order to buttress his submission, learned P.P. has referred on a decision of the apex court in **State of Kerela and Others versus Rajesh and Others** reported in **(2020) 12 SCC 122** where the apex court has categorically stated that there is no alternative except the consideration of the twin conditions as prescribed under Section 37 of the NDPS Act. The relevant paras reads as under :

"4. On an application filed for postarrest bail by accused respondent(A5), learned Additional Sessions Judge while noticing the mandate of Section 37(1)(b)(i) and (ii) of the NDPS Act observed that there was a prima facie material to presume that the accused committed the offence punishable under Section 20(b)(ii)(c) and Section 29 of the NDPS Act and rejected the application for post arrest bail vide order dated 21st February, 2019 which came to be challenged at the instance of the accused respondent filing bail application before the High Court.

5. The Learned Judge of the High Court without even noticing Section 37 of the NDPS Act and taking note of the fact that other accused persons in Crime No. 14/2018(A1 to A4) since have been released on bail, granted him post-arrest bail under the order impugned dated 10.05. 2019 which is a subject matter of appeal before us.

Facts of Crime No. 19/2018

6. The accused respondents in Crime No. 19/2018 are registered at excise circle office, Thiruvananthapuram alleging commission of the offence punishable under Section 20(b)(ii)(c) of the NDPS Act. It may be noticed that A5 in Crime No. 14/2018 is A1(Shajimon) in Crime No. 19/2018 and other accused, i.e. Rajesh is A3. The case of prosecution is that on 25.10.2018 at about 5.45 PM at Aristo

Junction, Thiruvananthapuram, accused respondent (ShajimonA1) along with two other persons including A3(Rajesh) were found to be in possession of 1.800 kg of hashish oil. They were arrested on 25.10.2018 for offence punishable under Section 20(b)(ii)(c) of the NDPS Act. After investigation, charge sheet was filed on 17.04.2019. Both the accused respondents(A1 and A3) filed their respective postarrest bail application before the Sessions Judge, Thiruvananthapuram which came to be dismissed after assigning cogent reasons under Order dated 21st February, 2019 and both of them preferred their bail application before the High Court. The High Court vide its order dated 10.05.2019 granted bail to A1 and A3 in Crime No. 19/2018 and observed that both the accused have completed 195 days in judicial custody and their further detention is not necessary as nothing remains to be investigated against them. Although Section 37 of NDPS Act has been referred to by the learned Single Judge in the impugned order not for the purpose of showing its compliance, but to justify due application of mind in taking decision to grant post arrest bail under Order dated 10.05.2019."

10. Learned senior counsel further submits that negation of bail is the rule, and its grant is an exception under Section 37(1)(b)(ii) of the NDPS Act. For granting bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he has been charged, and further he is not likely to commit any offence while on bail.

11. Learned senior counsel further submits that the conditions for granting bail, specified in Section 37(1)(b)(ii) are in addition to the limitations provided under the CrPC, or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the NDPS Act is uncalled for. In support of his submission, learned senior counsel has placed reliance on the judgment of the threeJudge Bench of this Court reported in Satpal Singh Vs. State of Punjab 2018(13) SCC 813.

17. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which

is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and nonbailable. It reads thus: "37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

(emphasis supplied)

10. Though repeatedly the cases have been registered and the prosecution is linking the applicant with the above offences, it is a case for the counsel for the applicant that he is not directly not involved in the case and he is an employer and upon the statement of the court the case has been registered and he has been apprehended.

11. In view of the seriousness of the above cases as noted above, there is a huge quantity of Eskuf Cough Syrup identified by the State of Tripura that the Syrups made of Narcotic drugs are causing health hazard to the local citizens and it has become an illicit transaction and smuggling of narcotic drugs from Tripura to Bangladesh. It is a premature stage to say that whether the applicant out of innocent is involved in the said crime or not. However, since

the investigation is in progress, and in view of the seriousness of crime of huge quantity of Eskuf Cough Syrup and in view of unauthorized sale of that syrup in the local market, this court is of the opinion that it is not the right time to grant bail to the applicant and accordingly, he is not entitled to.

12. Since with regard to the contentions made by Mr. Biswas, learned senior counsel appearing for the applicant that without furnishing any information about the cases registered against the accused person, how he can be arrested repeatedly, the learned P.P. upon instruction has reported before this court that in respect of all the cases wherever the accused person is involved, the relevant information has been provided to him and it is open for him to take steps in accordance with law.

In view of the same, this court feels that no further directions be issued. Hence, the bail application stands dismissed.

CHIEF JUSTICE(ACTING)

