

GAHC010006692023



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

Case No. : Bail Appln./150/2023

BELLAL SK
S/O AFSAN SK
R/O WARD NO. 14, IG ROAD,
P.S. DHUBRI
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21.02.2023

Heard Mr. M. Ahmed, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, the learned Addl. P.P. for the State.

2. The petitioner, Bellal Sheikh, who is named as Bellal Sk in the

FIR and was arrested and forwarded on 29.06.2022 in connection with Dhubri P.S. Case No. 337/2022, under Section 22(c) of the NDPS Act, 1985 and being tried as Special Case No. 392/2022 before the Court of learned Special Judge, Dhubri is seeking regular bail under section 439 IPC.

3. The learned counsel for the petitioner has submitted that the petitioner is in custody for last 237 days and there is no chance of early trial of the case because as on 07.01.2023, no PW has been examined so far. It is also submitted that there was a defect in making a seizure because the weight of the suspected narcotic drugs has not been mentioned anywhere. It is also submitted that the petitioner was not in conscious possession of the narcotic drugs and no such contraband was seized from his personal possession.

4. The learned Addl. P.P. has referred to the materials available against the petitioner in the scanned copy of the case record received from the learned trial Court and has opposed the prayer for bail.

5. As per the case diary, the police had received confidential information that the petitioner was a drug peddler and operating a racket of narcotic drug in the locality and therefore, a police team had gone to the house of the petitioner on 28.06.2022, but as local residents refused to witness of search and seizure, the search and seizure was conducted in the presence of the officers and staff and 11 (eleven) nos. of codeine based Onereex cough syrup was seized from the house of the petitioner, where the petitioner and two lady members of the household were found. As per the FSL report, one seized 100 ml liquid substance was tested positive of codeine. Thus, as each 100 ml bottle contained 135.1 mg. codeine, it would fall within commercial quantity of narcotic drugs. Thus, commercial quantity of narcotic drugs was found in the

conscious possession of the petitioner in his own house.

6. On 20.12.2022, the I.O. had submitted charge-sheet no. 505/2022 dated 08.11.2022 against the petitioner before the learned Special Judge, Dhubri. As per order dated 07.01.2023, charge under Section 22(c) of NDPS Act was framed against the petitioner and charge was explained to him. It may be stated that the two ladies apprehended along with the petitioner were discharged. Therefore, the Court does not find that there has been any delay in the conduct of trial.

7. In this case involving recovery of commercial quantity of narcotic drugs from the petitioner, the Court is required to consider the twin factors contained in Section 37 of the NDPS Act, 1985. We also take note of the observations made by the Supreme Court of India in the case of *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497, to the effect that the Court is required to strike a balance between the nature of the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. It was further observed that the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on one hand and ensuring purity of the trial of the case on the other. We would also like to refer to the case of *Narcotics Control Bureau v. Mohit Aggarwal*, AIR 2022 SC 3444, wherein a 3-Judge Bench of the Supreme

Court of India had observed and held as follows:-

13. *The expression 'reasonable ground' came up for discussion in ' State of Kerala and others Vs. Rajesh and others', (2020) 12 SCC 122 and this Court has observed as below:*

"20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.' [emphasis added]

14. To sum up, the expression 'reasonable grounds' used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

8. As the materials available in the case records reveal that the petitioner was caught red-handed while keeping commercial quantity of narcotic drugs stored in his house, we are not persuaded by the submission made by

learned counsel for the petitioner that the petitioner is not guilty of the offence for which he has been charged. Rather, the Court has no material to record its satisfaction that the petitioner is not guilty of the offence or that if granted bail, he would not repeat such offence, which is the requirement of Section 37 of the NDPS Act, 1985.

9. Accordingly, the prayer for granting bail to the petitioner, Bellal Sheikh, who was arrested in connection with Dhubri P.S. Case No. 337/2022, under Section 22(c) of the NDPS Act, 1985 and tried as Special Case No. 392/2022 before the Court of the learned Special Judge, Dhubri, is rejected at this stage.

10. This application for bail is disposed of.

11. The Registry shall not issue certified/uncertified copy of any document from the scanned copy of case diary received from the learned Special Judge, Guwahati.

JUDGE

Comparing Assistant