

GAHC010011722023



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

Case No. : Bail Appln./219/2023

ANOWAR HUSSAIN
S/O LT. ABDUL KARIM
PERMANENT RESIDENT OF VILL- KAKRIPARA PT.I,
P.O. KAKRIPARA
P.S. MANKACHAR
DIST. SOUTH SALMARA- MANKACHAR, ASSAM, PIN-783131

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.02.2023

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. Bankim Sarma, the learned Addl. P.P. for the State.

2. The petitioner, Anowar Hussain, who was arrested on

21.06.2022 and forwarded on 22.06.2022 in connection with Panbazar P.S. Case No. 163/2022, under Section 21(c) of the NDPS Act, 1985, 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 240 days and there is no chance of early trial of the case. It is also submitted that no contraband drugs was recovered from the petitioner and therefore, the petitioner has been apprehended only on suspicion and/or because of statement made by a co-accused, which is otherwise not admissible in trial. In support of his submission, the learned counsel for the petitioner has placed reliance on the cases of (i) *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Anr.*, (2005) 5 SCC 294; and (ii) *Khalil Uddin v. Union of India (NCB)*, (2022) 3 GLT 839.

4. The learned Addl. P.P. has opposed the prayer for bail.

5. As per the case diary, on 21.06.2022, an FIR was lodged in Panbazar PS on the basis of information received at 6.30 am that two vehicles with consignment of drugs was coming from Jorabat area to Panbazar area. Accordingly, in a checking of vehicles was conducted in the Panbazar locality. During such checking, two following vehicles, i.e. Scorpio, bearing registration number AS-01-DV-1033 and one Tata Harrier vehicle without number plate were intercepted. From the Tata Harrier vehicle, in 14 packets, 133 blue colour small packets were found with each packet containing 200 numbers of orange colour 'WY' tablets. Thus total 26,600 (twenty six thousand six hundred) WY tablets (i.e. methamphetamine) were recovered. The said tablets are banned narcotic and psychotropic substance and it is of commercial quantity. Three accused who were travelling in Tata harrier vehicle and two accused persons including the

petitioner travelling in Scorpio vehicle were apprehended and on the next day, they were remanded on 22.06.2022.

6. The Part Final Report/Charge-sheet No. 75/2022 dated 31.08.2022 was submitted against the petitioner and 4 (four) other co-accused on 03.09.2022. In the charge-sheet, it has been mentioned to the effect that investigation is being carried out only in respect of owner of the Tata Harrier vehicle, and that the investigation in respect of the 5 (five) accused persons was complete. Therefore, there is no doubt that final form/ charge-sheet was submitted against the petitioner. Nonetheless, it is not in dispute that under the provision of section 173(8) Cr.P.C. the investigating agency/ police is empowered to direct further investigation.

7. The learned counsel for the petitioner had cited the case of *Khalil Uddin (supra)*. We need not deal with the said case because the said judgment has since been set aside by the Supreme Court of India in the case of *Union of India (NCB) v. Khalil Uddin, (2022) 3 Supreme (SC) 1247 [Crl. Appeal nos. 1841-1842 of 2022, SLP (Crl.) Nos. 5505-5506 of 2022, decided on 21.10.2022]*.

8. The learned counsel for the petitioner has placed reliance on para 44 to 46 in the case of *Ranjitsing Brahmajeetsing Sharma (supra)*. The said paragraphs are quoted below:-

44. *The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be*

the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. *It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.*

46. *The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.*

9. In the said context, it would be worthwhile mentioning that as per the FIR dated 21.06.2022, on specific information that two vehicles carrying narcotics were about to enter Panbazar area of Guwahati and therefore, police had started checking vehicles on road and two vehicles, i.e. AS-01-DV-1033 (Scorpio) and Tata Harrier vehicle without number plate were intercepted and during search, 26,600 WY (World is yours) tablet, which as per the FSL report, was tested positive for "methamphetamine", which is a contraband narcotic drug, was recovered from Tata Harrier vehicle.

10. There are materials on record in the case diary indicating that

both the vehicles were travelling together and the occupants of both vehicle including the petitioner are involved in the racket of smuggling commercial quantity of contraband narcotic drugs, which has a huge market value. From the statement of the arrested 5 (five) accused persons, *prima facie*, it appears that they were all travelling together.

11. On considering the case of *Ranjitsing Brahmajeetsing Sharma (supra)*, it is clear that while granting bail, the Court is required to consider the twin requirement of Section 37 of the NDPS Act, 1985. Moreover, in view of the observations made by a 3-Judge Bench of the Supreme Court of India in the case of *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497, 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 the 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.

16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in *Tofan Singh (supra)*, wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the appellant- NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was

the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with each other.

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

12. Thus, appreciation of the evidence to find out whether or not the accusation is sustainable should be left to the trial Court and such examination is not envisaged at the stage of deciding a bail application.

13. In this case, a huge quantity of 26,600 contraband methamphetamine tablets was seized from one of the two vehicles travelling together. Thus, when two vehicles are travelling together, merely because no contraband was seized from one vehicle would not entitle the petitioner for bail as he was travelling in such vehicle. The 5 (five) accused persons including the petitioner were apprehended together. Hence, 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.

14. Accordingly, the prayer for granting bail to the petitioner, Anowar Hussain, who was arrested in connection with Panbazar P.S. Case No. 163/2022, under Section 21(c) of the NDPS Act, 1985 is refused at this stage.

15. This application for bail is disposed of.

16. The Registry shall not issue certified/uncertified copy of any document from the scanned copy of case diary received from the learned Additional Sessions Judge No.3 (FTC), Kamrup (Metropolitan), Guwahati.

JUDGE

Comparing Assistant