

GAHC010016742023



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

Case No. : Crl.Pet./101/2023

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

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-781022

Advocate for the Petitioner : MR. S MITRA

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

23.03.2023

Heard Mr. S. Mitra, learned counsel for the petitioner and Mr. S.C. Keyal,
learned Standing Counsel, NCB.

2. This petition under section 482 of the Cr.P.C. is preferred by the petitioner, Sri Prabha Shankar Tiwari for recalling the order dated 21.12.2022, passed by this court in BA No. 3012/2022.

3. It is to be noted here that this court was pleased to dismiss the aforesaid BA No. 3012/2022, filed by the petitioner, vide order dated 21.12.2022.

4. Mr. Mitra, learned counsel for the petitioner submits that the petitioner has preferred an application being BA No. 3012/2022, for granting bail in NDPS Case No. 47/2022, under sections 8[C]/21[C]/29/35/35A/53A/54/ 60/66/67/68 and 69 of the NDPS Act, corresponding to NCB Crime No. 24/2021. Mr. Mitra further submits that the petitioner also preferred another bail application being BA No. 2096/2022, in NDPS Case No. 49/2022, under sections 8[C]/21[b][c]/29 of the NDPS Act, corresponding to NCB Crime No. 25/2022, and while dismissing the bail application No. 3012/2022, this court had mentioned the Case No. as 49/2022, under sections under sections 8[C]/21[b][c]/29 of the NDPS Act and also this court was pleased to observe that the said petition was second bail application preferred by the petitioner. Mr. Mitra also submits that both the cases are different and the sections are also different and some mistake has been committed while mentioning the case number and the sections and also in assigning the ground for rejection. Referring to a judgment of the Hon'ble Supreme Court in the case of **R. Rajeshwari vs. H.N. Jagadish**, reported in **2008 4 SCC 82**, Mr. Mitra submits that this court has the power under section 482 of the Cr.P.C. to recall such an order and the bar of section 362 of the Cr.P.C. will not stand in the way of recalling the order as the mistake is apparent

on the face of the record. Therefore, Mr. Mitra contended to recall the order dated 21.12.2022, passed in BA No. 3012/2022 and to list the same for hearing and to decide the same on merit.

5. Per contra, Mr. Keyal, learned Standing Counsel, NCB also fairly submits that some mistakes have been committed while mentioning the case number and also in mentioning the sections of law and also the grounds for rejection in the order dated 21.12.2022, in BA No. 3012/2022. Mr. Keyal further submits that instead of filing this petition under section 482 of the Cr.P.C. the accused could have preferred another bail application as there is no bar in preferring such application before this court.

6. In response to the same Mr. Mitra submits that in that case the observation made by this court that the application was second bail application would remain and it would cause prejudice to the petitioner.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the order dated 21.12.2022, in BA No. 3012/2022 and also the order dated 18.11.2022, in BA No. 2096/2022 and the case law referred by Mr. Mitra, the learned counsel for the petitioner.

8. And I find substance in the submission of Mr. Mitra, the learned counsel for the petitioner. Apparently some mistakes appear to have been crept in while passing the order dated 21.12.2022, in BA No. 3012/2022. The petitioner is an

accused in NDPS Case No. 49/2022, besides being an accused in NDPS Case No.47/2022. His bail application in the NDPS Case No. 49/2022 was dismissed by this court after perusing the record of the learned court below, vide order dated 18.11.2022, in BA No. 2096/2022. Subsequent to the same, the petitioner has preferred an application for bail in NDPS Case No.47/2022, being BA No. 3012 of 2022. And after hearing the parties, the same was rejected vide order dated 21.12.2022. It is to be noted here that at the time of hearing of the said petition Mr. S.C. Kayel, the learned Standing Counsel for NCB submitted that in the earlier petition this court has considered all aspects and no fresh ground is assigned to entertain this petition. Further, it appears that in the said order it was observed by this court that "this is a second bail application and the accused has failed to assign any cogent reason or any change of circumstance in his favour for entertaining the same." But, in fact, the said bail application was filed in NDPS Case No. 47/2022, not in NDPS Case No.49/2022. Thus, apparently an inadvertent error has crept in that order which prejudiced the petitioner. And as such the mistake, so committed is required to be corrected by recalling the said order which caused prejudice to the petitioner.

9. Now, what left to be seen is whether this court has the power to recall the order dated 21.12.2022, in BA No. 3012/2022, passed in NDPS Case No. 49/2022. It is to be noted here that in the case of **Indian Bank vs. M/S Satyam Fibres [India] Pvt. Ltd.** dated 09.08.1996, referring to a decision in *Smith v. East Elloe Rural District Council*, (1956) AC 736, Hon'ble Supreme Court has held that where the court is misled by a party or a court itself commit a mistake which prejudice a party, the court has the inherent power to recall its order. Similar observation is also made by Hon'ble Supreme Court in the case of

R. Rejeshwari [Supra], so referred by Mr. Mitra the learned counsel for the petitioner.

10. In view of the legal proposition, that can be crystallized from the discussion made herein above, and also having considered the submissions of learned counsel for both the parties and perusing the documents placed on record, I find sufficient merit in this petition and therefore, I am inclined to allow this petition. Accordingly, the petition stands allowed and the order dated 21.12.2022, in BA No. 3012/2022 stands recalled.

11. As the order dated 21.12.2022, in BA No. 3012/2022, stands recalled, now the registry shall list the BA No. 3012/2022, for hearing on 31.03.2023.

JUDGE

Comparing Assistant