

GAHC010053532023



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

**Case No. : Bail Appln./929/2023**

MD. ASRAFUL ISLAM LASKAR @ ASRAFUL ISLAM  
S/O ABDUL MALIK LASKAR  
R/O GATE NO. 3,  
P.S. KHATKHATI  
DIST. KARBI ANGLONG, ASSAM  
PERMANENT ADDRESS-  
R/O VILL- SIRAJDIPUR, P.S. KARIMGANJ  
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. S MUNIR**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 17-03-2023**

Heard Mr. S. Munir, learned Counsel for the petitioner as well as Mr. R.R. Kaushik, learned Addl. P.P., Assam appearing for the State respondent.

2. By this second petition under Section 439 Cr.P.C., the petitioner, namely Md. Asraful Islam Laskar @ Asraful Islam, who was arrested on 06.08.2021, has prayed for grant of bail in connection with NDPS Case No. 10/2022, arising out of Diphu P.S. Case No. 211/2021, pending for trial in the Court of learned Special Judge (NDPS), Karbi Anglong, Diphu under Sections 21(c)/29/24 of the NDPS Act, 1985. By order dated 27.01.2023, passed in B.A. No. 3385/2022, the previous bail application of the petitioner was dismissed.

3. The learned counsel for the petitioner has submitted that till date 10 out of 14 prosecution witnesses have been examined and only 4 witnesses including the I.O. remain to be examined. It is submitted that not a single witnesses examined so far have implicated the petitioner of committing any offence whatsoever. It is further submitted that the petitioner was implicated by one of the co-accused, who has stated that the petitioner had paid him a sum of Rs.10,000/- and promised to pay him a further sum of Rs.20,000/- if the narcotic drugs was delivered at a particular place. It is also submitted that no drugs was recovered and/or seized from the possession of the petitioner. Referring to the principle laid down in the case of *Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1*, it is submitted that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. It is also submitted that such a statement of the co-accused is hit by Section 25 of the Evidence Act and as such, cannot legally be relied on.

4. On the prayer made by the learned counsel for the petitioner, the record of B.A. No. 3385/2022 (since disposed of) together with the scanned

copy of the case record and case diary available therein had been called for from the Registry. The learned Addl. P.P. has gone through the same and has opposed the prayer for bail.

5. The learned Addl. P.P. submits that the case record reveals that the investigating officer is yet to be examined in the case and a mere fact that no incriminating evidence has come during trial against the petitioner, it cannot safely be said that there is absolutely no evidence against him. It is also submitted that in view of the bar contained in Section 37 of the NDPS Act, the accused person ought not to be allowed to go on bail without completion of trial in the case.

6. On a perusal of the scanned copy of the case record, it appears that 532 grams of heroin was recovered from the secret chamber made manually in the fuel tank of a black coloured Scorpio vehicle bearing registration No. AS17-D-0007, kept in 41 soap cases. However, the petitioner was apparently not in the vehicle and the recovery of drugs was not made from him. However, from the statement made by the co-accused, it appears that the petitioner was deeply involved in the transportation of illegal narcotic drugs and that not only he has paid money to the arrested accused, but also got the seized vehicle repaired and got the secret chamber made in the fuel tank.

7. Upon perusal of the scanned copy of the case record, it is seen that charge sheet was received by the learned Special Judge on 24.01.2022. Charges under Sections 21(c)/23(c)/29 of the NDPS Act were framed on 07.04.2022. As on date, 10 prosecution witnesses have so far been examined. There are 4 more prosecution witnesses including the investigating officer to be

examined in the case.

8. Till now there is no direct evidence of recovery of commercial quantity of contraband suspected to be heroin from the exclusive and conscious possession of the petitioner. However, it is yet to be seen whether offence within the scope and meaning of abatement and criminal conspiracy under Section 29 of the NDPS Act, 1985 has been committed by the petitioner.

9. In the case of *Narcotics Control Bureau v. Mohit Aggarwal*, AIR 2022 SC 3444, the case was lodged under section 8/22/29 of the NDPS Act, 1985. In the said case, a 3- Judge Bench of the Supreme Court of India had observed and held as follows:-

**11.** *It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.*

**12.** *The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In Collector of Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549 a decision rendered by a Three Judges Bench of this Court, it has been held thus:-*

*'7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not*

*guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. 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.'*  
[emphasis added]

**13.** The expression 'reasonable ground' came up for discussion in *State of Kerala and others v. 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.*

10. There is no quarrel with the ratio laid down in the case of *Tofan Singh (supra)*, as followed in the case of *Mohit Aggarwal (supra)*. However, the case diary reveals that as against the petitioner, the present case has been

investigated in the angle of (i) abatement, (ii) conspiracy, and (iii) international drug smuggling through State of Nagaland, State of Manipur and State of Mizoram through Myanmar. However, the materials in the case diary do not indicate that the petitioner was previously arrested in any similar offence and moreover, no contraband has been recovered from his conscious possession. Out of the 10 (ten) witness examined so far, the counsel for the petitioner has declined to cross examine 3 (three). From the evidence so far, it is yet to be seen whether the offence was committed pursuant to (i) abatement, and (ii) conspiracy, and whether the petitioner is involved in any manner with the international drug smuggling through State of Nagaland, State of Manipur and State of Mizoram through Myanmar. From the case diary, except from the statement of the co-accused, the learned Addl. P.P. has not been able to show from statement of remaining 3 (three) witnesses under section 161 CrPC that there is direct evidence of involvement of the petitioner in this case.

11. Therefore, for this limited purpose of considering the prayer for bail, the Court is of a *prima facie* view that there are reasonable grounds for believing that the petitioner is not guilty of such offence. Moreover, as the petitioner has been in custody since 06.08.2021, and majority of the witnesses have been examined, there is no likelihood that the petitioner would hamper the smooth trial or commit similar offence, while on bail. However, it is clarified that the aforesaid view is expressed in light of the provisions of Section 37 of the NDPS Act, 1985 and the same shall not be construed as the opinion of the Court on the merit of the trial and therefore, none of the observations made in this order shall influence the learned trial Court during trial.

12. Thus, on consideration of the evidence recorded so far during

trial and materials available in the case diary in so far it relates to the not yet examined prosecution witnesses, the Court is inclined to release the petitioner, namely, Md. Asraful Islam Laskar @ Asraful Islam, in connection with NDPS Case No. 10/2022, arising out of Diphu P.S. Case No. 211/2021, pending for trial in the Court of learned Special Judge (NDPS), Karbi Anglong, Diphu under Sections 21(c)/23(c)/29 on his furnishing bail of Rs.1,00,000/- (Rupees One lakh only) with two sureties of like amount to the satisfaction of the learned Special Judge (NDPS Act), Karbi Anglong Diphu, subject to the following conditions –

- a. That the petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;
- b. That the petitioner shall not directly or indirectly make any inducement, threat or promise to the remaining prosecution witnesses so as to dissuade them from disclosing such facts to the Police Officer or the Court;
- c. That the petitioner shall refrain from committing any similar offences in future;
- d. That the bail bonds submitted by the accused petitioner shall be supported by Voter Identity Card/Passport/Adhaar card, and/or any other proof of identity so as to ascertain his permanent address to the satisfaction of the learned trial Court. The learned trial Court after verification of any of the aforesaid documents relating to permanent address to its satisfaction shall return the same on retaining a scanned copy thereof.

13. In case of any breach of the above conditions, it would be open

to the learned trial Court to order cancellation of the bail and issue NBWA to secure the presence of the petitioner till the conclusion of trial.

14. This application stands disposed of.

15. The records of B.A. No. 3385/2022 (disposed of) along with the scanned copy of the case records be sent back to the Registry.

**JUDGE**

**Comparing Assistant**