

GAHC010085842023



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

Case No. : Bail Appln./1458/2023

LAL BADSHA BANIA @ LALU @ LADU
S/O- LATE SABED ALI BANIA, R/O- GORAIMARI, P.S. AND DIST.-
BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

15.05.2023

Heard Ms. S.K. Nargis, learned counsel for the accused and also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State respondent.

02. This application under Section 439 Cr.P.C. is preferred by the accused Lal Badshah Bania @ Lalu @ Ladu, who has been languishing in jail hajot in connection with NDPS Case No. 6 of 2021, arising out of Dhaligaon P.S. Case

No. 150 of 2021, under Section 17(c)/29 NDPS Act, pending before the court of learned Special Judge, NDPS Act at Chirang, since 05.09.2021, for grant of bail.

03. It is to be mentioned here that the said case has been registered on the basis of an FIR lodged by S.I. Jhagdish Doley of Dhaligaon Police Station, on 12.06.2021, to the effect that on the same day, at about 12-30 pm, at Chapaguri point, acting on a tip off, he has intercepted one Toyota Innova vehicle, bearing registration No. PB-10CW-5400, and apprehended two persons, namely, Mandeep Singh and Narinder Pal Sing and recovered 5.171 kg and 0.058 kg of suspected opium paste from his possession and seized the same preparing seizure list in presence of witnesses. The allegation against the petitioner is that he along with accused Bijoy Agarwal used to sell contraband substances to the Truck Drivers at his Dhaba, located at Goimari and he has been operating inter-state drug trafficking with Bijoy Agarwal, Narinder Pal Singh and Mandeep Singh.

04. Ms. S.K. Nargis, the learned counsel for the accused submits that this is the second bail application and the first one, being **Bail Appln. No. 3513/2022**, was rejected by this court vide order dated 19.01.2023. Ms. Nargis further submits that the case has already been charge sheeted under Section 17(C)/29 of the NDPS Act, along with other co-accused, and the accused pleaded not guilty to the charges framed against him, and the learned court below, has examined as many as 16 witnesses out of 23 witnesses cited in charge sheet. Ms. Nargis further submits that the accused has been languishing in jail hazoot since 05.09.2021, and that nothing has been recovered from his possession and that 16 witnesses examined by the prosecution side till date, none has whispered any word against the accused Lal Badshah Bania to show his complicity with the offence charged. It is the further submission of Ms. Nargis that while dismissing

the earlier bail application vide order dated 19.01.2023, this court has directed the learned court below to complete the trial within three months and said three months already elapsed and there is no immediate prospect of completion of trial and therefore, it is contended to allow the petition. Ms. Nargis also referred one case law of Hon'ble Supreme Court in **Mohd. Muslim vs. State (NCT of Delhi)** reported in **MANU/SC/0320/2023**, to bolster her submission.

05. Per contra, R.J Baruah, learned Additional Public Prosecutor has vehemently opposed the petition and submits that though 16 witnesses have already been examined by the prosecution side, yet, there remains to examine some more witnesses and cross-examination of the informant is yet to be completed and it is premature to hold at this stage that the accused is not guilty. Mr. Baruah further submits that the co-accused have implicated him and other facts and circumstances available in the case diary, also do not justify his release at this stage. Mr. Baruah also submits that the quantity of drugs recovered and seized herein this case are of commercial quantity and as such the embargo under section 37 of the NDPS Act is attracted and the accused has failed to satisfy the two requirements of the said section, from the materials placed on record and therefore, it is contended to dismiss this petition.

06. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the status report and scanned copy of the record received from the learned court below.

07. It is not in dispute that no contraband substance was recovered and seized from the possession of the present accused. It is also not in dispute that the contraband substance was recovered and seized from the possession of co-accused Mandeep Sing and Narinder Pal Singh, vide seizure list, dated

05.09.2021, and the same is of commercial quantity. Therefore, the accused has to satisfy from the materials on the record that he is not guilty of the offence and that he will not commit such offence while on bail. "

08. It is, however, well settled that this court cannot evaluate the evidence/materials on record to find out the guilt of the accused. In the case of **NCB vs. Mohit Agarwal [2022] 0 Supreme (SC) 619**, while dealing with the issue, Hon'ble Supreme Court has held in paragraph No. 15 as under:-

"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."

09. And while interpreting the conditions, under section 37 of the NDPS Act, Hon'ble Supreme Court, in the case of **Mohd. Muslim (supra)**, referred by Ms. Nargis, has held that

"19. A plain and literal interpretation of the conditions under [Section 37](#) (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under [Section 37](#) can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under [Section 37](#) of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e.,

that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in **Union of India v. Rattan Malik**¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by **Section 37** of the Act, given the imperative of **Section 436A** which is applicable to offences under the **NDPS Act** too (ref. **Satender Kumar Antil supra**). Having **19 (2009) 2 SCC 624** regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

10. Here in this case, the status report, which has been received from the learned court below, reveals that out of 13 cited witnesses in the charge sheet, 16 witnesses have been examined so far. Still, 7 more witnesses are remained to be examined and from the pace of the trial, this court failed to derive any satisfaction that there is immediate prospect of conclusion of trial. It is to be noted here that the accused has been languishing in jail hazoot since 05.09.2021.

11. However, bearing in mind the aforesaid principle, while an endeavour is made, to find out availability of reasonable grounds for believing that the accused is not guilty of the offences he has been charged with, and that he is unlikely to commit an offence under the Act while on bail, this court is unable to record its concurrence with the submission of Mr. Baruah, the learned Addl. Public Prosecutor, Assam. Having weighed the evidence of 16 prosecution witnesses and other facts and circumstances on the record and also the case diary, for the limited purpose of releasing the accused on bail, this court is of the view that a prima-facie case is made out for granting bail to the accused.

12. Accordingly, the instant petition stands allowed. It is provided that on furnishing a bond of Rs. 1,00,000/- with one surety of like amount, to the satisfaction of the learned Special Judge, NDPS, Chirang, the accused be enlarged on bail. It is further provided that the learned Court below will be

entitled to impose any condition on bail, so to ensure his presence in the Court during trial.

JUDGE

Comparing Assistant