

GAHC010092692023



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

Case No. : Bail Appln./1577/2023

SAJAL CHAKRABORTY @JADU AND ANR
S/O KAMAL CHAKRABORTY
R/O KHEJUR BAGAN,
P.O. KATHAL BAGAN, P.S. NEW CAPITAL COMPLEX, DIST. WEST
AGARTALA,
TRIPURA-799006

2: RABINDRA RAY
S/O BHAJAN RAY
R/O KHEJUR BAGAN
GOALABASTI
AGARTALA

WEST TRIPURA-79900

VERSUS

THE UNION OF INDIA
REP. BY NCB, ZONAL UNIT GUWAHATI.

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

17.08.2023

Heard Mr. M. Biswas, learned counsel for the accused petitioners. Also heard

Mr. S.C. Keyal, learned Standing Counsel, NCB.

By this second petition under Section 439 Cr.P.C., the accused/petitioners, namely **1) Sajal Chakraborty @Jadu and 2) Rabindra Ray** have prayed for grant of bail in connection with **NDPS Case No.68/2021** pending in the Court of learned Addl. Sessions Judge No. 1, Karmrup(M) corresponding to **NCB Crime No.02/2021** under Sections **20(b)(ii)(c)/29** of the NDPS Act, 1985.

The earlier bail application of the accused petitioners being B.A. No.1988/2022 was rejected by this Court vide order, dated 28.09.2022.

The scanned copy of case record, as called for, is placed before the Court.

Mr. M. Biswas, learned counsel for the accused petitioners, submits that despite this Court by order, dated 28.09.2022, passed in B.A. No.1988/2022, directed the learned trial Court to complete evidence recording within a period of 06(six) months, there is no satisfactory progress in trial of the case, which has resulted in their prolonged undue detention. Mr. Biswas further submits that contraband ganja was not seized from the accused petitioners and the evidence so far recorded in the case indicates it. Therefore, Mr. Biswas submits that subject to any condition(s) the accused petitioners may be directed to be released on bail.

Opposing the bail application, Mr. S.C. Keyal, learned Standing Counsel for the N.C.B., submits that out of 9 (nine) listed witnesses, the N.C.B., has been able to examine 04(four) witnesses. Mr. Keyal submits that due to absconding of some accused persons, slow progress in trial of the case has taken place. Mr. Keyal, therefore, submits that in view of the bar contained in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioners may not be accepted.

The prosecution case, in brief, is that on 20.01.2021, on the basis of source information, the NCB officials intercepted a truck bearing registration No. HR-55R-8606 at Lalmati, Basistha and recovered 642.090 kg of ganja from the FIR named accused persons. Accordingly, the present case was registered.

It is noticed that the accused petitioner No.1 has been under judicial custody since 18.02.2021, that is, for 911 days vide order dated 18.02.2021, passed by the learned Sessions Judge-cum-Special Judge (NDPS Act), Kamrup (M). The accused petitioner No. 2 has been under judicial custody since 17.07.2021, that is, for 912 days vide order dated 17.07.2021, passed by the learned Addl. Sessions Judge No.1-cum-Special Judge (NDPS Act), Kamrup (M).

A perusal of the case record, it is revealed that charges under Sections 8(c) read with Sections 20(b)(ii)(c)/29 of the N.D.P.S. Act were framed vide order, dated 17.03.2022. The case record shows that only 03(three) prosecution witnesses out of 12(twelve) listed witnesses have been examined, despite this Court directed to make endeavour to complete evidence recording of material witnesses, within a period of 06(six) months as stated above. In view of Article 21 of the Constitution of India, the accused cannot be kept under detention indefinitely and as such, in the backdrop of facts and circumstances that emerge from the case record, the accused petitioners deserve release on bail.

Accordingly, it is provided that each of the accused petitioners, named above, shall be released on 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), Kamrup(M), Guwahati** subject to the following conditions-

- i) That the accused petitioners 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;

- ii) That the accused petitioners shall not directly or indirectly make any inducement, threat or promise to the remaining prosecution witnesses, who are acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court;
- iii) That the accused petitioners shall refrain from committing any offences similar to the one of which they are accused; and
- iv) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

This disposes of the bail application.

JUDGE

Comparing Assistant