

GAHC010095272023



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

Case No. : Bail Appln./1664/2023

SYED ASHIK ALAM
S/O SYED KHAIRUL HUSSAIN @ KHAIRUL HUSSAIN
R/O VILL- BARANGBARI, P.S. KAMALPUR
DIST. KAMRUP, ASSAM, PIN-781382

VERSUS

UNION OF INDIA
RE. BY SC, NCB

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

16.10.2023.

1. Heard Ms. S. Nargis, learned counsel for the accused. Also heard Mr. S. Kayel, learned Standing Counsel for the NCB respondent.
2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by three accused Syed Ashik Alam who have been languishing in jail since 08.02.2021, in connection with the NDPS Case No.27/2021, under Section 20(b) (ii) (C)/29 of the NDPS Act, pending before the learned Addl. Sessions Judge No.3, Kamrup (M) Guwahati, for grant of bail.
3. It is to be noted here that the aforementioned case has been registered on the basis of a complaint lodged by one Anil Kushwaha, Intelligence Officer, NCB, Guwahati on 10.06.2021.

4. The essence of allegations, made in the said complaint is that on 12.12.2020, at about 1630 hrs. Shri Pankaj Kumar Chauhan has received information that on 13.12.2020, in between 09.00 pm to 11.00 pm, four persons namely, Pradip Dey, Liton Das, Swapan Malakar and Ajoy Saha will come in a Truck, bearing registration No. TR-01 AG 1871 and TR 01 AJ 1537, respectively, from Shillong side and passing through Jorabat and Health City Hospital, NH-37 and they will be carrying 1500 to 3000 kg Ganja in the said Trucks. Accordingly, on 13.12.2020, at about 21.45 pm the NCB team had intercepted both the Truck and apprehended accused Pradip Dey and Liton Das from one of the Truck and Swapan Malakar and Ajay Saha from another Truck and on checking both the Trucks they have recovered 1354.310 kg of Ganja from Truck No. TR-01 AG 1871 and also recovered 1489.480 kg of Ganja from Truck No. TR 01 AJ 1537 and seized the same in presence of witnesses, preparing seizure list.

5. Ms. Nargis, learned counsel for the accused, submits that the accused is behind the bar for last two year, seven months, 36 days, as he arrested on 13.12.2020. Ms. Nargis further submits that the case has already been charge sheeted, and as many as 4 witnesses have been examined so far, out of 11 witnesses cited in the charge sheet. It is the further submission of Ms. Nargis that the nothing has been found from the possession of the present accused and that he is local person and he is ready to face trial and will appear before the learned court below on each and every date and therefore, it is contended to allow the petition.

6. On the other hand, Mr. S.C. Kayel, the learned Standing Counsel for NCB submits that 1354.310 kg of Ganja was recovered from Truck No. TR-01 AG 1871 and 1489.480 kg of Ganja was recovered from the Truck No. TR 01 AJ 1537, and the same were of commercial quantity and the accused has failed to fulfill the twin requirement of section 37 of the NDPS Act, and that trial is going on but, for the last two and half months there is no presiding Officer in the court of learned Addl. Sessions Judge, No.3, and that the trial is not getting delayed on account of the prosecution side and therefore, Mr. Kayel has contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the case record, received from the learned Court below.

8. It is to be noted here that learned Advocates of both the parties have referred to some of the orders of this court in bail applications and also one order of Hon'ble Supreme Court in **Imran vs.**

State of Gujarat, Special leave of Appeal (Crl.) No(s) 9495/2023, to press home their respective arguments. But, having gone through the same carefully this court is unable to read the same as precedent as no law is laid down in the said bail orders. A judicial decision is available as precedent only when it contains principle, which forms an authoritative element termed as *ratio decidendi*. The doctrine of precedent is a principle of following previous decisions of the Court within its well-defined limits, it significantly declares that cases must be decided in same way when the material facts are the same as it becomes '*ratio decidendi*', But, in contradistinction to a binding precedent, some of the '*obiter dictum*' made by the Court in the judgment have persuasive value and they do not have any binding force. It is also to be noted here that the facts and circumstances of the case in hand is quite different from the facts and circumstances of the cases in which those bail orders were passed.

9. In the case in hand the I.O., on completed investigation, had filed Final Complaint against the present accused and five others and the learned Court below had framed charge against the accused under Section 20(b) (ii) (C)/29 of the NDPS Act, and also examined as many as 4 witnesses, out of 11 witnesses cited in the Final Complaint.

10. It is a fact that nothing has been recovered from the possession of the accused. But, from the materials placed on record it appears that the accused was the consignee of seized 2483.79 kg of Ganja and one Bittu of Sal Bagan, Tripura was the consignor of the same and there are materials also to show that he received Ganja from the other co-accused on earlier occasion also. Further, it appears that before apprehension of other accused, the present accused was in regular touch with Swapan Malakar on 12.12.2020 and on 13.12.2020.

11. It is not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused persons are of commercial quantity. And since the quantity of the contraband substance recovered from the possession of the accused is of commercial quantity, the accused persons have to satisfy the twin conditions of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

12. But, from the materials on record, specially from the scanned copy of the record received from the learned court below also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is

not guilty of the offence and that he is not likely to commit any offence, while on bail.

13. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the Cr.P.C. to the accused and therefore, the same stands dismissed.

14. However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, preferably within a period of three months from today, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

15. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant