

GAHC010096682023



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

Case No. : Bail Appln./1603/2023

NAYAN CHANDRA KURI AND ANR
S/O KANU BUSHAN KURI
R/O WARD NO. 7,
BIPIN PAUL ROAD,
CHORAKURI
P.S. KARIMGANJ,
DIST. KARIMGANJ, ASSAM

2: BIDHAN KURI
S/O LATE MUKUL KURI
R/O WARD NO. 7

BIPIN PAUL ROAD

CHORAKURI
P.S. KARIMGANJ

DIST. KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 17.05.2023

Heard Mr. H.R.A. Choudhury, learned senior counsel, assisted by Mr. J.M. Sulaiman, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Addl. P.P. for the State.

2. The petitioners, namely, (1) Nayan Chandra Kuri, and (2) Bidhan Kuri, who were arrested on 26.06.2022 and forwarded on 27.06.2022 in connection with Karimganj P.S. Case No. 406/2022 under sections 21(c), 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short), have prayed for regular bail under section 439 Cr.P.C. The said case is being tried by the learned Special Judge, Karimganj as Special (NDPS) Case No. 99/2022.

3. The learned senior counsel for the petitioners has submitted that the petitioners have been in custody for about 325 days and there is no chance of an early trial because although cognizance of offence was taken by order dated 01.12.2022, charges were framed against the accused persons by order dated 03.03.2023. It has been submitted by the learned senior counsel for the petitioners that none of the listed witnesses have been examined till 26.04.2023.

4. The learned senior counsel for the petitioners has submitted that actually the contraband articles were not seized from their possession. The petitioners were waiting for vehicle in the stand and that time, the police arrived at the spot, seized the contraband and on finding suspected heroin weighing

about 122 grams, they wanted the petitioners to become witnesses to the seizure, but as they refused, there was an altercation and the petitioners were arrested by falsely showing them as occupants of the car. Accordingly, it was submitted that the petitioners were illegally framed in the case.

5. In support of the prayer for bail, reliance has been placed on the case of (i) *Mohd. Muslim @ Hussain v. State (NCT of Delhi)*, 2023 LiveLaw (SC) 260, (ii) *Chitta Biswas @ Subhas v. The State of West Bengal*, CrI. Appeal No. 245/2020, decided by Supreme Court of India on 02.02.2020, (iii) *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, (iv) *Nitish Adhikary @ Bapan v. State of West Bengal*, Petition for SLP (CrI.) No. 5769/2022, decided by Supreme Court of India on 01.08.2022, (v) *Shariful Islam @ Sarif v. The State of West Bengal*, CLP (CrI.) 4173/2022, decided by Supreme Court of India on 04.08.2022.

6. The scanned copy of the case records was previously called for in connection with B.A. No. 2503/2022. The learned Addl. PP has perused the same and has opposed this application for bail on the ground that commercial quantity of drugs was seized from the petitioners, for which the rigours of Section 37 of the NDPS Act, 1984 would apply.

7. In this case, during search conducted on 26.06.2022, the following contraband articles were seized from the possession of the petitioners, viz., (i) 10 numbers of soap cases (red and green), each containing suspected orange coloured powdery substance (heroin). Weight of each packet was 12 gm, 13 gm, 12 gm, 13 gm, 12 gm, 12 gm, 12 gm, 12 gm, 11 gm, and 13 gm. Respectively being total weight of 122 grams. (ii) 3 numbers of blue colour

packets, each containing 200 approx. numbers of orange colour suspected tablets (i.e. 600 tablets), weighing 60 grams. The said tablets were found to be methamphetamine tablets. Therefore, while heroin was of intermediate quantity, the seized methamphetamine tablets is commercial quantity and thus, the petitioners were found to be in conscious possession of commercial quantity of contraband narcotic substance.

8. It would also be relevant to quote the provision of Section 436A Cr.P.C., which is as follows:-

“436A. *Maximum period for which an under trial prisoner can be detained.*- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

9. It would also be appropriate to refer to the decision of the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, wherein it is provided that “Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less

than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount."

10. In the present case, the petitioner is charged of committing offence punishable under sections 21(c), 22(b) and 29 of the NDPS Act. For committing offence under Section 21(c), the prescribed punishment is rigorous imprisonment for a term not less than 10 (ten) years but which may extend to 20 (twenty) years and shall also be liable to fine which shall not be less than Rs.1.00 lakh but which may extend to Rs.2.00 lakh. For committing offence under Section 22(b), the prescribed punishment is rigorous imprisonment for a term upto 10 (ten) years and shall also be liable to fine which extend to Rs.1.00 lakh. For committing offence under Section 29, the punishment would be as prescribed for the offence.

11. Therefore, following the ratio laid down in the case of *Satender Kumar Antil (supra)*, as well as the provision of Section 436A Cr.P.C., the petitioners having been incarcerated for a period of 325 days, have not become entitled to be released on bail.

12. Moreover, as commercial quantity of contraband drugs were seized from the conscious possession of the petitioners, the Court is unable to record its satisfaction that there are reasonable grounds for believing that the petitioners are not guilty of the offence and that they are not likely to commit similar offence while on bail.

13. In the case of *Chitta Biswas @ Subhas (supra)*, the appellant was apprehended with 46 bottles of phensydryl cough syrup, however, as the appellant was in custody since 21.07.2018, the Supreme Court of India had

granted bail to the appellant by order dated 07.02.2020, i.e. after 566 days. In the case of *Nitish Adhikary @ Bapan (supra)*, the appellant was arrested on 17.10.2020 and he was enlarged on bail by the Supreme Court of India by order dated 04.05.2022, i.e. after 564 days (about 1 year 7 months). In the case of *Shariful Islam @ Sarif (supra)*, the appellant was arrested on 27.01.2021 and was granted bail by the Supreme Court of India by order dated 22.03.2022, i.e. after 419 days.

14. The Supreme Court of India has the power, authority and jurisdiction to not record its satisfaction as required under Section 37 of the NDPS Act, which is obviously not vested with this Court. Therefore, this Court cannot overlook the requirement of recording its satisfaction as required under Section 37(1)(b)(ii) of the NDPS Act. In this regard, the said view finds support from the decision of the Supreme Court of India in the case of *Union of India through Narcotic Control Bureau v. Md. Nawaz Khan, (2021) 0 Supreme(SC) 508: 2021 STPL 10056 SC*, where the Supreme Court of India had observed as follows (extracted from STPL):-

18. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are:

- (i) The Prosecutor must be given an opportunity to oppose the application for bail; and
- (ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

19. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-Judge Bench of this Court in *Union of India v. Shiv Shanker Kesari (2007) 7 SCC 798*, held that:

“7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the

offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

[See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar (1987) 4 SCC 497 and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. (1989) 1 SCC 532.]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. [See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd., (2003) 6 SCC 315.]

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

(emphasis supplied)

20. *Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed."*

30. *The following circumstances are crucial to assessing whether the High Court*

has correctly evaluated the application for bail, having regard to the provisions of Section 37:

- (i) The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;*
- (ii) The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him;*
- (iii) The quantity of contraband found in the vehicle is of a commercial quantity; and*
- (iv) The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.*

31. *The impugned order of the High Court, apart from observing that no contraband was found from the personal search of the respondent has ignored the above circumstances. The High Court has merely observed that:*

“10. In view of the above, the twin conditions contained under Section 37(1) (b) of the NDPS Act stand satisfied. This Court is of the view that if there is reasonable ground, the applicant is entitled to be released on bail.”

32. *The High Court has clearly overlooked crucial requirements and glossed over the circumstances which were material to the issue as to whether a case for the grant of bail was established. In failing to do so, the order of the High Court becomes unsustainable. Moreover, it has emerged, during the course of the hearing that after the respondent was enlarged on bail he has consistently remained away from the criminal trial resulting in the issuance of a non-bailable warrant against him. The High Court ought to have given due weight to the seriousness and gravity of the crime which it has failed to do.*

33. *For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 1 October 2020 in Bail No. 7379 of 2019.*

34. *The application for bail filed by the respondent shall stand dismissed. The respondent shall accordingly surrender forthwith.”*

15. In the case of *Mohd. Muslim @ Hussain (supra)*, the appellant was arrested on 28.09.2015 for commission of offence punishable under Section 20, 25 and 29 of the NDPS Act. As per the observations of the Supreme Court of India, no recovery of contraband was made from him but those were seized from others. Under such factual matrix, the appellant was enlarged on bail by order passed on 28.03.2023, which is after about 7 years 10 months.

16. It may be mentioned that as per news appearing in the Hindustan Times news portal on 13.05.2023, drugs worth Rs.1,430 Crore were seized and 9,309 drug traffickers were arrested since May, 2021, purportedly disclosed by the Director General of Police of the State of Assam on twitter. We do not vouch for the correctness of the data disclosed in the news portal, nonetheless, the news highlights the enormous proportion of drugs which is being trafficked into and/or through Assam. Therefore, the Court is inclined to follow the decision of the Supreme Court of India in the case of *Satender Kumar Antil (supra)* as quoted herein before and *Nawaz Khan (supra)* and therefore, prayer for bail to the petitioners is refused at this stage.

17. This application for bail is rejected.

18. Nothing contained in this order shall prejudice either side during trial.

JUDGE

Comparing Assistant