

GAHC010103692023



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

Case No. : Bail Appln./1724/2023

DEBOJIT SAHA AND 2 ORS
S/O NITISH CHANDRA SAHA
R/O VILL- BRIDHYANAGAR
P.O. RANIRBAZAAR-799035
P.S. RANIRBAZAAR,
DIST. WEST TRIPURA.

2: SRI SANKAR DEBNATH
S/O TARANI KANTA DEBNATH
R/O VILL- NOAGAON

KEPRANPARA
P.O. RANIRBAZAAR-799035
P.S. RANIRBAZAAR
DIST. WEST TRIPURA.

3: SRI BISWAJIT SARMA
S/O LATE BRAHMA DEB SARMA
R/O VILL- SIDDHI ASHRAM
P.O. SIDDHI ASHRAM- 799003
P.S. AMTALI
DIST. WEST TRIPURA

VERSUS

UNION OF INDIA
REP. BY NARCOTIC CONTROL BUREAU (NCB), THROUGH INTELLIGENCE
OFFICER, GUWAHATI ZONAL UNIT.

Advocate for the Petitioner : MR. R J DAS

Advocate for the Respondent : SC, NCB

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

16.10.2023

Heard Mr. R. C. Das, learned counsel appearing for the accused petitioners as well as Mr. S. C. Keyal, learned standing counsel, NCB.

By this second petition under Section 439 Cr.P.C., the accused petitioners, namely **1. Debojit Saha 2. Sankar Debnath and 3. Biswajit Sarma** have prayed for grant of bail in connection with **N.D.P.S. Case No.189/2022** with reference to NCB Crime No.4 of 2022 under Section **20(b)(ii)(C)/29** of the N.D.P.S. Act.

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

Mr. R. C. Das, learned counsel appearing for the accused petitioners, submits that the accused petitioners are languishing in judicial detention for 591 days since 05.03.2022, since they appeared before the NCB in terms of notice issued to them under Section 67 of the NDPS Act. Mr. Das submits that although the learned Special Judge (N.D.P.S. Act) No.3, Kamrup (M) at Guwahati framed charges on 07.11.2022 under Sections 20(b)(ii)(c)/29 of the N.D.P.S. Act only 01(one) prosecution witness out of 10(ten) listed witnesses was examined on 28.04.2023 for non-appearance of the witnesses. According to Mr. Das, learned counsel, the accused persons have been compelled to face prolonged trial on mere suspicion that they were involved in trafficking of seized ganja, which was recovered from a truck, without any iota of evidence. Therefore, Mr. Das submits that the accused petitioners may be directed to be released on bail subject to any condition.

Opposing the bail application Mr. S. C. Keyal, learned Standing counsel for the N.C.B *inter alia* submits with reference to affidavit-in-opposition that the learned trial court has been lying vacant since 11.08.2023 and as such, no prosecution witness could be summoned for evidence. According to Mr. Keyal, on the next dates the prosecution witnesses will be present for their depositions and that there is abundance of incriminating materials collected during investigation against the accused petitioners, which will be proved during trial. Therefore, Mr. Keyal submits that this case having been involved seizure of huge quantity of ganja and

sufficiency of *prima facie* evidence as well as in view of the bar in Section 37 of the N.D.P.S. Act, their bail application may not be accepted.

The case relates to recovery and seizure of 405.270 Kgs of dried flowering tops, that is, ganja (cannabis) from a truck bearing Registration No. NL01AF3380.

This court passed an order, dated 26.06.2023, which is extracted herein below (relevant parts)-

“4. Mr. B.N. Majumdar, learned Sr. Counsel appearing for the petitioners, submits that the accused petitioners are languishing in judicial custody for last 479 days on a false accusation of having transported commercial quantity of ganja amounting to 405.370 kg in a container truck. Mr. Majumdar further submits that on receipt of notice under Section 67 of the N.D.P.S. Act, they appeared before the investigating officer of the NCB. It has been submitted that the charges were framed against the accused persons on 22.02.2023 but, no prosecution witnesses has so far been examined till date although the accused petitioners have been regularly produced before the learned trial Court. Mr. Majumdar also submits that as per the Complaint, the accused petitioners were arrested from a lodge located at Six-mile, Guwahati, on a frivolous accusation of being the suppliers of the ganja seized from a container truck. According to Mr. Majumdar, learned Sr. Counsel, as per Section 36A(1)(d) of the N.D.P.S. Act, an officer of Central Government or State Government can file a complaint, if he/she is authorized by either of the said governments, but in the instant case, the Investigating Intelligence Officer was not such authorized officer in terms of the aforesaid provision and therefore, cannot represent the N.C.B. It has been emphatically submitted by Mr. Majumdar, that no contraband ganja was recovered and seized from their exclusive and conscious possession. It is also the submission of Mr. Majumdar that the accused petitioners are arrested in connection with the case based on the statements of the co-accused persons which is not permissible as per the mandate of Tofan Singh’s case. Mr. Majumdar, has relied on the judgments of the Hon’ble Apex Court rendered in (1) Tofan Singh –Vs- The State of Tamil Nadu, reported in AIR 2020 SC 5592; (2) Ragini Dwivedi @Gini @Rags –Vs- State of Karnataka, reported in 2021 STPL 368 SC; (3) Ajay Singha & Anr. –Vs- The State of West Bengal, in Special Leave to Appeal (Crl.) No.4722/2020; (4) Mohd. Muslim @Hussain –Vs- State (NCT of Delhi), reported in 2023 LiveLaw (SC) 260; (5) NCB –Vs- Mohit Aggarwal, reported in 2022 SCC OnLine SC 891; (6) Order, dated 10.04.2023, passed by this Court in Bail Appln. No. 513/2023 and (7) Order, dated 11.04.2023, passed by this Court in Bail Appln. No. 1970/2022.

5. Per contra, Mr. S.C. Keyal, learned Standing Counsel, N.C.B., submits that in the instant case, the learned trial Court has framed the charges under Sections 20(b)(ii)

(c)/29 of the N.D.P.S. Act against the accused petitioners by order, dated 07.11.2022 and only one prosecution witness was examined on 28.04.2023. Mr. Keyal has read out the implicating prima facie evidence collected during investigation against the accused petitioners. It has been submitted that Mohd. Muslim @Hussain's case was on a different footing, which cannot be applied to the facts and circumstances of the instant case and that coercive steps have been initiated by the N.C.B. to compel the appearance of the prosecution witnesses for their deposition before the learned trial Court."

It is noticed that the accused persons have been in judicial custody for 591 days since 05.03.2022

A perusal of the case record reveals that charges under Section 22(b)(ii)(c)/29 of the N.D.P.S. Act were framed against the accused petitioners on 07.11.2022 and thereafter, only one prosecution witness was examined on 28.04.2023. There is a list of 10 (ten) prosecution witnesses. Thereafter, there is no further progress in trial of the case due to the post of Presiding Officer lying vacant and it is expected that new incumbent may likely to assume the charge on 01.11.2023 as informed by the Registrar (Vigilance). The accused persons are residents of West Tripura.

It is pertinent to be noted that there is bar in Section 37 of the N.D.P.S. Act in granting bail in matters involving commercial quantity, but in view of the mandate of Article 21 of the Constitution no accused can be detained indefinitely.

Therefore, the learned trial court is directed to make an endeavor to complete trial of the case within a period of three months w.e.f. 01.11.2023, if deemed appropriate notifying in advance the schedule of hearing.

With the above direction, this bail application stands disposed of.

JUDGE

Comparing Assistant