

GAHC010185532023



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

Case No. : Bail Appln./3009/2023

RAVINDRA RAY AND ANR
S/O BALESHWAR RAY
R/O DUMARI DAKSHINI, P.S. PATORI CHAPRA, DIST. SAMASTIPUR, BIHAR-
848506.

2: GHUNTUN RAY
S/O KAMESWAR RAY
R/O DUMARI
KAKSHINI
P.S. PATORI CHAPRA
DIST. SAMASTIPUR
BIHAR-848506

VERSUS

THE UNION OF INDIA
REP. BY THE NARCOTICS CONTROL BUREAU.

Advocate for the Petitioner : MR. S A HUSSAIN

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

18.10.2023.

Heard Mr. S. Das, 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 two accused persons, namely, Ravindra Ray and Ghuntun Ray, who have been languishing in jail hazoot since 17.06.2020, in connection with the NDPS Case No. 108/2020, under Sections 8(C)/20(b)(ii)(C)/29 of the NDPS Act, pending before the learned Addl. Sessions Judge No.2, 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 10.02.2020.

4. The essence of allegations, made in the said complaint is that on 15.06.2020, at about 04.00 pm Sakil Ansari, a Junior Intelligence Officer has received information that on 16.06.2020, at about 07.00 am three persons namely, Md. Kari, Ghuntun Ray and Ravindra Ray will be carrying huge quantity of Ganja in a specially made cavity of the cabin of a container Truck bearing registration No. CG 08L-3066 and they will be arriving at N.H. 37 near Priti Bhoj Dhaba, Baihata Chariali. Accordingly, on 16.06.2020, at about 0715 hrs. the NCB team intercepted the Truck and apprehended accused Md. Kari, Ghuntun Ray and Ravindra Ray and then on security reason the team had taken the Truck to near NCB Office, Rupkonwor Path, Chachal, VIP Road Kamrup (M) and on checking the Truck they recovered 484.300 kg of Ganja in 36 packets, and seized the same in presence of witnesses, preparing seizure list.

5. Mr. Das, learned counsel for the accused, submits that the accused are behind the bar for last three year three months 27 days, as they were arrested on 16.06.2020. Mr. Das further submits that the case has already been charge sheeted, and only one witness has been examined so far, out of 10 witnesses cited in the charge sheet. It is the further submission of Mr. Das that he is not on merit of the case his main point is delay in conducting trial. Mr. Das pointed out that charge was framed against the accused only on 31.07.2023, though the complaint was filed on 10.12.2020 and for 842 days of delay, there is no explanation. Mr. Das, referring to a decision of Hon'ble Supreme Court in **Rabi Prakash vs. The State of Odisha (Special Leave of Appeal (Crl.) No. 4169/2023, dated 13.07.2023)** further submits that though the quantity of contraband substances so recovered from the possession of accused persons were of commercial quantity, yet, the conditional liberty available under Article 21 of the Constitution of India, must override the statutory embargo created under section 37 of the NDPS Act. Mr. Das, also referred to a decision of Hon'ble Supreme Court in **Md. Muslim @ Hussain vs. State (NCT of Delhi)** reported in **2023 SCC OnLine SC 352**, to contend that Article 21 of the Constitution of India confers a fundamental right on every individual not to be deprived of his life or personal

liberty except in accordance with the procedure established by law. Reference is also made to a decision of Hon'ble Supreme Court in **Ejike Jonas Orji vs. Narcotic Control Bureau**, reported in **2023 LiveLaw (SC) 670**, to contend that prolong incarceration of under trial prisoners violates the constitutional principles of dignity and liberty. Mr. Das also submits that the accused are ready to face trial and will appear before the court on each and every date and therefore, it is contended to allow the petition. Mr. Das also referred to some of the orders, passed by this court in Bail Applications of the cases under NDPS Act, where bail was granted considering delay, which are mentioned herein below:-

- (i) Bail Application No. 513 of 2023;
- (ii) Bail Application No. 1790 of 2022;
- (iii) Bail Application No. 1411 of 2023;
- (iv) Bail Application No. 1357 of 2023;
- (v) Bail Application No. 1682 of 2023;
- (vi) Bail Application No. 3215 of 2023;

6. On the other hand, Mr. S.C. Kayel, the learned Standing Counsel for NCB submits that 484.300 kg of Ganja was recovered from the possession of the accused persons while the same were being carried in a Truck No. CG 08 L-3066, and that the same are commercial quantity and the accused have failed to fulfill the twin requirement of section 37 of the NDPS Act, and that trial is going on and one witness has already been examined. Mr. Kayel also submits that there was some delay in framing charges against the accused persons as one of the accused, namely, Md. Kari was sent to Patna, Bihar in connection with another NDPS case pending there and that he was not produced before the court below for several months from Bihar. Mr. Kayel further submits that there was outbreak of Covid - 19 Pandemic in the year 2021 and 2022, and for this reason also the case could not proceed in required pace. Moreover, earlier the case was pending in the Court of learned Addl. Sessions Judge, No.5, and that the court was vacant for some time, and as such it cannot be said that there is considerable delay in trial so as to term it as protracted trial and therefore, Mr. Kayel has contended to dismiss the petition. Mr. Kayel also referred to a decision of this court in Bail Application No. 193 of 2023, dated 03.04.2023, in support of his submission.

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, and also the Status Report, received from the learned Court below.

8. It also appears that the Investigating Officer had lodged the Final Complaint on 10.12.2020, against six accused persons, namely Md. Kari, Ravindra Ray, Ghuntun Ray, Sukur, Narayan and Kali Ray. Out of the five accused, Sukur Narayan and Kali Ray have been shown as absconder in the Final Complaint. Further, it appears that Accused Sukur @ Aminur Islam @ Sukur Miya has been arrested on 15.03.2021. But, the other two absconder accused could not be arrested by the police due to non availability of complete address. It also appears from the Status Report, submitted by the learned court below that in the year 2020 and 2021 the proceeding of the court could not be conducted due to outbreak of Covid-19 Pandemic. Further, it appears from the Status Report that on 07.10.2022, accused Md. Kari has been sent to Bihar on the strength of Production Warrant issued by Addl. District & Sessions Judge, -XVII, Patna, in connection with Special (NDPS) Case No.7/2019, and he has not been produced before the learned court below thereafter. Thereafter, on 09.05.2023, on the prayer being made by the learned Special P.P. of NCB, case against accused Md. Kari was split up and thereafter, on 31.07.2023, charges were framed against the accused Ravindra Ray, Ghuntun Ray and Sukur @ Aminul Islam, under Section 20(b) (ii) (C)/29 of the NDPS Act, and so far one witness has been examined, out of 10 witnesses cited in the Final Complaint.

9. It is not in dispute that in the year 2020 and 2021 the courts proceeding could not be conducted properly due to Covid-19 Pandemic. So, any delay in conducting trial, during this period, cannot be attributed to any of the stakeholder of the system. Though Mr. Das, the learned counsel for the accused tried to blame the learned court below for delay of 842 days, yet, the year of 2020 and 2021 are also included in the said period, so calculated by him. But, having analysed the submission of Mr. Das in the light of status report, submitted by learned court below and a dispassionate analysis of the reasons for delay, so assigned therein, I find the submission of Mr. Das bereft of any substance. It would not be out of place to mention here that Final Complaint was submitted against six accused and out of the six, three accused have been shown as absconder in therein. One of the absconder accused, namely, Sukur @ Aminul Islam was arrested on 15.03.2021. Other two accused could not be arrested. Moreover, the case was earlier pending before the court of learned Addl. Sessions Judge, No. 5 and the said court was lying vacant on account of transfer of Presiding Judge. Over and above, accused Md. Kari was taken to Bihar in connection with another case pending against him there but, he was not been sent back from Bihar for which case against him was split up. Thus, it appears that the delay in every stage stands explained. And in the given facts and circumstances the same are found to be satisfactory.

10. 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 as such 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.

11. 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.

12. I have carefully gone through the orders passed by this court passed in the Bail Applications, mentioned herein above and referred by Mr. Das and also by Mr. Kayel to press home their 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.

13. I have also gone through the orders and judgment of Hon'ble Supreme Court in **Ravi Prakash** (supra) and **Ejike Jonas Orji** (supra) and **Mohd. Muslim @ Hussain** (supra) and I find that the facts and the facts and circumstances of those cases are quite different from the case in hand. In the case of Ravi Prakash Hon'ble Supreme Court has held that prolong incarceration, generally militate against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such situation, the conditional liberty must override the statutory embargo created under section 37(1) (b) (ii) of the NDPS Act. In the case of **Ejike Jonas Orji** (supra) Hon'ble Supreme Court has relaxed the bail condition imposed by the Allahabad High Court and held that prolong incarceration of under trial prisoners violates the constitutional principles of dignity and liberty. In the case of **Md. Muslim @ Hussain** (supra) Hon'ble Supreme Court has held that Article 21 of the Constitution of India confers a

fundamental right on every individual not to be deprived of his life or personal liberty except in accordance with the procedure established by law and ordered for releasing the accused on bail taking into account the period of detention and also taking into account the section 436A which is applicable in the cases under NDPS Act. It is to be noted here that accused in that case was behind the bar for more than seven years.

14. It is also to be mentioned here that in the case of **Union Of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, a bench of co-equal strength of Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

15. Same principle is echoed by another bench of co-equal strength of Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021, decided on 19 July, 2022. It may be noted here that these decisions are earlier in point of time, and therefore, the same also cannot be ignored altogether in view of the Doctrine of binding precedent, as held by a five Judges bench of Hon'ble Supreme Court in - **National Insurance Company Ltd. vs. Pranay Sethi & Another reported in (2017) 16 SCC 680.)**

16. 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.

17. 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.

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

Comparing Assistant

JUDGE