

GAHC010206242023



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

**Case No. : Bail Appln./3413/2023**

NARUTTAM DAS @ BALTU  
S/O NANI GOPAL  
R/O TOWN- LANKA, WARD O. 4,  
P.S. LANKA, DIST. HOJAI, ASSAM (INDIA), 782441

VERSUS

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

**Advocate for the Petitioner : MR S AHMED**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**11.10.2023**

Heard Mr. S. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam.

This application is filed by the petitioner, namely, Naruttam Das @ Baltu who is praying for bail in connection with NDPS 11(H)/2023 arising out of Hojai P.S. Case No.416/2022 registered under Section 20(C), 29 of the Narcotic Drugs and Psychotropic Substance (NDPS) Act, 1985. The petitioner was arrested on 19.09.2022 in connection said case. Pursuant to the investigation conducted the charge-sheet was filed and the matter is presently pending trial before the Court of the Sessions judge, Hojai as NDPS 11(H)/2023. The petitioner is in detention since his date of arrest which is 19.09.2022. Although the trial has commenced, many witnesses are yet to be examined and therefore, the petitioner has prayed for enlarging him on bail considering the period of detention.

Learned counsel for the petitioner submits that by an FIR dated 19.09.2022 lodged by the informant who was a Sub Inspector under the Hojai Police Station, wherein it was alleged that the suspected contraband *Ganja* was seized from some persons including the petitioner during the search conducted at the Hojai Railway station. The contraband narcotics items were recovered from a group of persons including the petitioner from the Dibrugarh LTT Express train at Hojai Railway Station. As many as 6 persons including the petitioner were arrested. It was alleged that 14 bundles of suspected Ganja were recovered, the total weight of which was 45 kilos. Subsequently, the seized contraband goods were sent for FSL examination. Learned counsel for the

petitioner submits that the petitioner was merely a passenger in the train and no contraband items were seized from him. He is a daily wage earner and because of his detention only on the ground of suspicion his family is suffering from immense hardship as he is the only bread earner of his family.

This Court by earlier order dated 25.09.2023 had called for the scanned copy of the LCR from the Trial Court. The scanned copy of the LCR as called for has been received and placed along with the record before this Court today.

Learned counsel for the parties have been heard and the bail petition along with the scanned copy of the LCR has been carefully perused.

Upon perusal of the LCR it is seen that the trial has commenced and as many as 4 prosecution witnesses have been examined so far. From the perusal of the deposition of the scientific officer of the department of Forensic Science, it is seen that the test of the contraband narcotics seized has given a positive test for Cannabis (Ganja).

One of the prosecution witnesses, namely, Samarjit Dey PW3, who was one of the seizure witnesses, has turned hostile. The complainant has also been examined. In his deposition he has submitted that out of 14 bundles in total recovered and seized, 5 bundles of suspected Cannabis (Ganja) were recovered from the possession of one Haradhan Debnath and Naruttom Das@ Baltu, who

is the petitioner before this Court. From the data available in the CIS, which is also available before the Court, it is seen that the next date in the matter is fixed on 18.10.2023.

Upon due consideration of the submissions made by the learned counsel for the parties and upon careful perusal of the materials available before the Court, it is seen that for grant of bail the consistent view of the Apex Court is that the conditions mentioned under Section 37 of the NDPS Act, 1985 is *prima facie* required to be satisfied. Section 37 of the NDPS Act reads as under:

*37. Offences to be cognizable and non-bailable – (1)*  
*Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974)---*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for [offences under Section 19 or Section 34 or Section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless*

*--*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

*(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail*

*(2) The limitations on granting of bail specified in clause-(b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail].*

In a recent judgment passed by the Apex Court in Union of India vs. Nawaz Khan reported in (2021) 10 SCC 100. The Apex Court upon consideration of its earlier judgments held that the test which the High Court and this Court (Apex Court) are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed any offence and whether he is likely to commit an offence while on bail. The Apex Court held that in view of 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.

In the present case the ground urged by the learned counsel for the petitioner is that there was no recovery made from the petitioner. However,

perusal of the scanned copy of the LCR available before the Court reveals that in the deposition of P.W.4, who is the complainant, is that 5 numbers of bundles of suspected contraband items had been recovered from the possession of 2 (two) persons, namely, Haradhan Debnath and Naruttom Das@ Baltu the petitioner herein. In his cross-examination his statements made in evidence-in-chief remained unshaken.

Under such circumstances, *prima facie* it does not appear that the contention of the learned counsel for the petitioner that no recovery was made from the petitioner can be accepted. The trial has already commenced and as discussed above 4 (four) prosecution witnesses have been examined and as per the CIS data available the next date in the matter is fixed on 18.10.2023. The mandate of Section 37 of the NDPS Act is that the Court must be satisfied that both conditions under Section 37 (1)(B)(ii) are fulfilled by the petitioner in order to grant bail to the petitioner under NDPS Act. As discussed above, at this stage of trial, upon perusal of the LCR, since, *prima facie* it is not possible to take a view that the petitioner is not guilty of the offences alleged, the prescription under Section 37 of the NDPS is not satisfied. From the materials available on record at this stage of trial, it is also not possible to take a *prima facie* view that there are reasonable grounds to believe that the petitioner is not guilty of the offences alleged or that he is not likely to commit any offence while on bail.

That apart the next date fixed before the trial Court is 18.10.2023

Considering above aspects in the matter, this Court is of the view that the prayer for bail of the petitioner at this stage of trial cannot be granted and accordingly, the same is rejected.

The bail petition stands dismissed.

**JUDGE**

**Comparing Assistant**