

GAHC010209042022



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

Case No. : Bail Appln./2663/2022

AJAY JAISWAL
S/O RAMESH JAISWAL
R/O HOUSE NO. 779/B, MOHALLA CHAUDHARIA, KATLA RAM LEELA
MAIDAN, WARD NO. 5, P.O. AND P.S. SADAR, DIST. HASIR, STATE-
HARYANA.

VERSUS

NARCOTICS CONTROL BUREAU
REP. BY SC, NCB

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : SC, NCB

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10-01-2023

Heard Mr. M. A. Choudhury, learned counsel for the petitioner also heard Mr. S. C. Keyal, learned Counsel for the respondent Narcotic Control Bureau (NCB).

Petitioner, namely, Ajay Jaiswal has filed this application under Section 439 CrPC seeking bail in connection with NDPS Case No. 79/2019 arising out of NCB Crime Case No. 04/2019 registered under Sections 8(c) punishable under Sections 20(b)(ii)(c) and 29 of the NDPS Act,

1985. The petitioner was arrested on 24.07.2019 at Mokama, Patna, Bihar, thereafter, he was brought to Guwahati on transit and since then he is in custody.

As per the FIR of the case, on specific information, a truck bearing registration No.HR-39-D-1186 was intercepted on 23.04.2019 by the NCB personnel at NH-37 near Health City Hospital at Khanapara, Guwahati and recovered 64 numbers of packets containing 654 kgs of Ganza (Canabis) from a specially made cavity behind the driver's cabin sealed with steel/iron sheet with a small covered hole in the floor of the truck. As it was not possible to open the said specially made cavity in the said vehicle being sealed with steel/iron sheet, the said cavity was cut open with a steel cutter. Two persons who were in the said vehicle namely, Ram Singh and Sukhender Singh were arrested and on their voluntary statements, the prosecution came to know that the said contraband Ganza was carried from the State of Tripura as per the direction of the petitioner, who is the owner of the said seized vehicle.

The NCB after enquiring the matter submitted charge-sheet in the said NDPS Case No. 79/2019 against the accused petitioner and 6 other persons. The learned Special Judge by its order dated 04.03.2020, passed in said NDPS Case No. 79/2019 rejected the bail prayer of the petitioner and thereafter, the petitioner has preferred this bail application.

From the offence report/charge-sheet filed in the case by the NCB which is placed before the Court, it is seen that the petitioner used to carry the contraband Ganza procuring it from various parts of the North East, mostly, Tripura and other and carries the same through Assam in his vehicles and supplies it to the purchasers in the State of Bihar and other places of the Country. The charge-sheet reveals that the accused petitioner is very much involved in the illegal transportation and trafficking of contraband articles through his own carriers and supplies the same to the different customers in various destinations outside the State of Assam.

The Forensic Report dated 30.04.2019 with regard to the seized/recovered articles from the said truck with registration No. HR-39-D-1186 that was intercepted by the NCB personnel on 23.04.2019, noted above, specified that those seized articles gave positive tests for Canabis (Ganza).

Petitioner stated that after framing of charge in the case against the petitioner, during

the 3½ years of period from his arrest, evidence of only 3 prosecution witnesses have been recorded. It is also stated that no such contraband goods were recovered from the possession of the petitioner, but he has only been arrested merely on the statements of the co-accused, but there is no such material to connect the petitioner with his involvement in the offence. Petitioner further stated that the Zimma of the vehicle involved in the case has already been handed over to its original owner.

The petitioner stated that as he has already spent more than 3½ years in custody on being arrested in said NDPS Case No. 79/2019 and since the conclusion of trial will take time, therefore, he should be released immediately on bail, if so required, by specifying certain conditions, that may be imposed by the Court while considering his bail.

In that regard, the petitioner placed copies of the orders of the Hon'ble Supreme Court — dated 04.08.2022, passed in Special Leave to Appeal (Crl.) No. 4173/2022 (Shariful Islam @ Sarif Vs. The State of West Bengal), dated 05.08.2022 passed in Crl. Appeal No. 1169/2022 (Gopal Krishna Patra @ Gopalrusma Vs. Union of India) and dated 22.08.2022 passed in Special Leave to Appeal (Crl.) No. 5530/2022 (Mohammad Salman Hanif Sheikh Vs. The State of Gujarat), where the Hon'ble Apex Court considered the bail of the petitioners considering their period of detention in custody finding that the trial of the case will take time though the relevant High Courts rejected bail of those petitioners being involved in cases punishable under Narcotic Drugs and Psychotropic Substances Act, 1985.

On the other hand, Mr. Keyal, learned Counsel appearing for the respondent NCB submitted that the petitioner is the kingpin with regard to transportation and supply of such narcotic substances. In that regard, Mr. Keyal placed the offence report of the case and showed the Call Detail Records of the relevant Mobile Numbers used by the petitioner with the other accused persons of the case including the accused persons arrested in the case as well as the absconder accused persons of the case, which clearly indicates the involvement of the petitioner in the case.

Mr. Keyal also submitted that though Notice under Section 67 (C) of the NDPS (Amendment) Act, 1985 was served on the relevant address of the petitioner at Hisar in the State of Haryana directing him to appear in the case before the concerned NCB Officer,

Guwahati Zone; but he fled away from the said place and after a great effort he was apprehended at Mokama, Patna, Bihar.

Mr. Keyal also stated that it is the petitioner who not only bought the vehicle from its original owner one Mr. Vikash Kumar (to whom the Zimma of the vehicle involved in the case has now been handed over by the Trial Court) and also engaged the arrested accused persons Ram Singh and Sukhender Singh, directing them further to receive said huge quantity of narcotic goods, seized in the case, from the State of Tripura and to deliver it in a relevant place in the State of Bihar.

It is stated that because of the Pandemic Covid-19 the Trial Court earlier could not frame the charge and proceed with the trial, but after such lifting of the SOP by the State Government with regard to said Covid, the Trial Court have already recorded the evidences of 3 witnesses out of 12 such prosecution witnesses.

Mr. Keyal also relied on the order dated 21.10.2022, of the Hon'ble Supreme Court in Crl. Appeal No(s). 1841-1842/2022 (Union of India (NCB) etc., Vs. Khalil Uddin etc.,) whereby the Hon'ble Supreme Court upheld the appeal of the NCB and set aside the bail granted to the accused arrested in a case under the NDPS Act, 1985 as amended, punishable under Section 21 (C) read with Section 29 of the said Act of 1985, considering the seizure and recovery of large quantity of contraband goods.

The charge sheet of the case placed before the Court reveals sufficient incriminating materials against the petitioner. It is seen that the arrested accused persons Ram Singh and Sukhender Singh who brought the truck involved in the case bearing registration No.HR-39-D-1186 from the State of Tripura that was intercepted on 23.04.2019 by the NCB personnel at NH-37 near Health City Hospital at Khanapara, Guwahati, where 654 kgs of Ganza (Canabis) had been recovered from a specially made cavity behind the driver's cabin sealed with steel/iron sheet with a small covered hole in the floor of the truck and the said truck was purchased by the petitioner and employed those two arrested accused persons and further, the CDR of the Mobiles of the petitioner reveals his connection with the arrested as well as the absconder accused persons of the case indicates petitioner's involvement and/or connection with the accused persons of the case.

Considering the fact that the evidence of 9 other prosecution witnesses are yet to be recorded in the trial and his such involvement in the case, noted above, the Court is of the opinion that his detention in custody since 24.07.2019 cannot be regarded as a fit case to grant bail to the petitioner in said NDPS Case No. 79/2019, which is presently pending in trial before the Court of learned Additional Sessions Judge No.2, Kamrup (Metro), Guwahati at this stage.

Accordingly, this bail application of the petitioner stands rejected.

JUDGE

Comparing Assistant