

GAHC010218942023



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

Case No. : Bail Appln./3472/2023

PRATEEK AGARWAL
S/O SR KAMAL AGARWAL
R/O AGARTHA HOUSE,
MALKI KHAR MALKI
P.S. LAITUMKHRAH, SHILLONG
DIST. EAST KHASI HILLS, MEGHALAYA.

VERSUS

THE UNION OF INDIA
REP. BY THE SPECIAL PP, NARCOTICS CONTROL BUREAU (NCB)

Advocate for the Petitioner : MR. S BORA

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

03.10.2023.

Heard Mr. Z. Kamar, learned senior counsel, assisted by Mr. S. Bora, learned counsel for the accused and also heard Mr. S.C. Kayel, learned Standing Counsel for the respondent -NCB.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, **Prateek Agarwal**, who has

been languishing in jail hazot, in connection with the **NCB Guwahati Crime No. 16/2022**, under Sections 8[c]/22[b]/29 of the NDPS Act, arising out of Panbazar P.S. Case No. 55/2022, under Sections 120B/468/471 of the IPC read with Section 22(b) of the NDPS Act read with Sections 3/4 of the Passport Entry into India Act, read with Rule 6 of Passport Entry into India Rules, since 13.09.2023, for granting bail.

3. The aforementioned case has been registered on the basis of an FIR, lodged by SI Rustam Raj Brahma of Panbazar Police Station on, 12.02.2022.

4. The essence of allegation made in the FIR dated 12.02.2022, is that acting on a tip off he, along with staff and GRPS personnel, apprehended two persons, namely Ifaneal Charles Okuaji and Emmanuel Enuma Dike, both are Nigerian national, at Guwahati Railway Station exit point, at about 8.25 pm and recovered 16.40 gm of Cocaine Powder and also recovered some Indian currency and Nigerian currency, with Passport and PAN Card and Adhar Card and mobile handsets with sim cards.

5. Mr. Kamar, learned senior counsel for the accused submits that the accused was arrested on 12.09.2023, and since then, he has been languishing in jail hajot. Mr. Kamar further submits that the quantity of contraband substance recovered from the co-accused are of intermediate quantity and except the own statement of the accused, recorded under section 67 of the NDPS Act and also statement of the co-accused, there is no material what so ever, to show his complicity with the offence alleged and nothing has been recovered from his possession. Referring to decision of Hon'ble Supreme Court in **Tofan Sing vs. State of Tamil Nadu**, reported in **(2021) 4 SCC 1** and

also to a subsequent decision in **The State of Haryana vs. Samrath Kumar, in Criminal Appeal No. 1006 of 2022**, arising out of **Special Leave petition (Crl.) No. 6683 of 2021**, Mr. Kamar submits that statement of co-accused is no longer admissible against other accused. Mr. Kamar further submits that nothing has been recovered from the possession of present accused. And the two Nigerian nationals, from whose possessions the contraband substances were recovered, were granted default bail by the learned trial court and that the accused has been co-operating with the investigating agency and therefore Mr. Kamar has contended to allow the petition.

6. On the other hand, Mr. S.C. Kayel, learned Standing Counsel for the NCB, has produced the case diary before this Court and vehemently opposed the petition on the following grounds :-

- (i) That, there are sufficient materials to show complicity of the accused with the offence alleged;
- (ii) That, though nothing has been recovered from the possession of the present accused, yet, there is statement of the co-accused besides his own statement recorded under section 67 of the NDPS Act.
- (iii) That, the contraband substances, so recovered from their possession, was meant for the present accused;
- (iv) That, the contraband substances, so recovered from the possession of co-accused are Cocaine and that two accused hails from Nigeria and there is international link in importing the same to India and investigation in that angle is being carried out.

(v) That, as investigation is going on and releasing the accused on bail will hamper the investigation;

Under the aforementioned facts and circumstances, Mr. Kayel has contended to dismiss the petition.

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 case diary produced by Mr. Kayel, learned Standing Counsel, NCB.

8. It appears that the accused was arrested in NCB F. Case No. 07/NCB/GZU/Cocaine/16/2022, arising out of Panbazar P.S. Case No.55/2022, under Section 120B/468/471IPC read with section 22(b) of the NDPS Act read with section 3/4 of the Passport Entry into India Act, read with Rule 6 of Passport Entry into India Rules on 12.09.2023 and since then he has been languishing in jail hazoot. Initially the case was registered as Panbazar P.S. and later on, it was handed over to the NCB, seeing involvement of foreign nationals and its international link and its ramification.

9. Indisputably, nothing has been recovered from the possession of the present accused. He was arrested on the basis of statement of co-accused, besides, his own statement. And admittedly also, statement of co-accused is no longer admissible, in view of decisions of Hon'ble Supreme Court in the case of **Tofan Singh** (supra) and **Samrath Kumar** (supra). Same is the position in case of the statement under section 67 of the NDPS Act. Mr. Kamar, the learned counsel for the accused has rightly pointed this out during argument.

10. Further it appears from the case diary that the investigation, so far the present accused is concerned, is almost completed and he had appeared on several occasions before the IO and his statement was also recorded. He has been languishing in jail hazoot for last 21 days and his further custodial detention, in the interest of investigation, seems to be unwarranted herein this case.

11. Though Mr. Keyal, learned Standing Counsel, NCB submits that there is an international link in importing the contraband substance to India and as such, the said link has to be inquired into, yet, it appears that the case was registered long back and the IO got sufficient time for investigation to that angle. Moreover, the present accused is the local resident and as such, there is no scope for jumping bail.

12. Under the aforementioned facts and circumstances and also considering the fact that some of the co-accused have already been enlarged on bail, this Court is inclined to extend the privilege of bail to the accused.

13. Accordingly, it is provided that the accused, namely, **Prateek Agarwal**, who has been languishing in jail hazot, in connection with the **NCB Guwahati Crime No. 16/2022**, under Sections 8[c]/22[b]/29 of the NDPS Act, arising out of Panbazar P.S. Case No. 55/2022, under Sections 120B/468/471 of the IPC read with Section 22(b) of the NDPS Act read with Sections 3/4 of the Passport Entry into India Act, read with Rule 6 of Passport Entry into India Rules, be released on bail on his executing a bond of Rs. 50,000/- and on furnishing two surety of like amount to the satisfaction of the

learned **Special Judge NDPS Act, Kamrup [M] at Guwahati**. The above privilege is however subject to following conditions:-

- (i) He shall appear before the IO as and when directed;
- (ii) he shall not indulge in committing similar offences;
- (iii) he shall not try to influence the witnesses;

14. In terms of above this bail application stands disposed of.

15. The case diary be returned.

JUDGE

Comparing Assistant