

GAHC010222862023



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

Case No. : Bail Appln./3515/2023

GULAB KR. SAH
S/O RAJESH SAH
R/O WARD NO. 16,
VILL- KHUTIYA
P.S. MANSI
DIST. KHAGARIA
STATE- BIHAR
PIN-851214
PH. 9577726468

VERSUS

UNION OF INDIA
REP. BY THE STANDING COUNSEL, NCB

Advocate for the Petitioner : MR K THAKUR

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 18.10.2023

Heard Mr. K. Thakur, learned counsel for the accused-petitioner as well as
Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Gulab Kr. Sah**, in connection with **NDPS Case No. 110/2021(arising out of NCB Crime No. 04/2021)**, registered under **Section 8(C) r/w Section 20(b)(ii)(C)/29 of NDPS Act.**

3 It has been submitted by the learned counsel for the accused/petitioner that the accused-petitioner has been languishing in judicial custody for more than 2 years 7 months. It is further submitted that charge was framed on 17.03.2022 but prosecution has only examined three witnesses. As a result of which, the petitioner has suffered a long period in judicial custody as under trial prisoner which is a pure violation of fundamental right guaranteed under Article 21 of Constitution of India.

4. It is further submitted that the petitioner is no way connected with the instant case. On the alleged date of incident, the petitioner was waiting for transportation at Sonapur to his native place but due to Covid-19, it was very difficult for the petitioner to have any kind of transportation. After some time, the alleged truck arrived at the said place and it was going to Chattisgarh and having no other option, the petitioner got into the truck and he had no knowledge that the truck was carrying the alleged contraband. As the petitioner has no knowledge about the alleged contraband and nowhere involved in the alleged incident and also considering the length of detention, the petitioner may be enlarged on bail.

5. In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws-

(i) Rabi Prakash v. The State of Odisha, reported in 2023 LiveLaw (SC) 533.

(ii) Mohd. Muslim @ Hussain v. State (NCT of Delhi), reported in
2023 0 AIR(SC) 1648.

6. On the other hand, Mr. Keyal, learned Standing counsel, NCB has submitted that about 719.91 kg of ganja was recovered from the conscious possession of the present petitioner who was travelling on the alleged truck. As statement given by the present petitioner before the NCB, he was involved in the trafficking of ganja for monetary benefits and he was directed by one Mithilesh Kumar to sit beside the driver in the said truck at Sonapur, Silchar. That Mithilesh Kumar paid Rs.10,000/- for carrying the said ganja from Silchar to Bihar .

7. Learned counsel pointed out by referring the judgment of this Court reported in 2023 0 Supreme(GAU) 70 that so far as the case referred by the learned counsel for the petitioner are concerned, in the case of Mohd. Muslim @ Hussain(supra), the Hon'ble Supreme Court laid down the primary importance on the right to speedy trial and in the said case, the appellant was found to be in custody for seven long years as an under trial. The Hon'ble Supreme Court had also taken into consideration the provisions of Section 436A which is not applicable for the period in custody. Therefore, considering the nature of offence, bail prayer of the petitioner may not be considered at this stage.

8. I have considered the submissions made by the learned counsel for the

parties.

9. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. As the commercial quantity of ganja was kept secretly in the inbuilt carrier/pocket which transpires that it was built for the purpose of carrying ganja/contraband. It is true that only three witnesses were examined by the prosecution side. However, it also appears that commercial quantity of ganja was kept concealed in the truck. The petitioner was found present along with the driver of the said truck. The petitioner has not given any explanation why he was travelling in the said truck. On being asked, subsequently, the petitioner disclosed that he was asked to deliver the ganja to Bihar which was carrying through the said truck from Silchar.

10. In view of the observation made by the Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in **(2016) 9 SCC 443**, the Hon'ble Supreme Court has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual

liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

11. On consideration of the matter in its entirety, this Court is of the view that this is not a fit case for grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**.

12. However, the learned Special Judge is directed to expedite the matter for examining the witnesses as early as possible and endeavor is to be made to dispose of the matter within two months from the date of receipt of the order.

JUDGE

Comparing Assistant