

GAHC010241772022



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

**Case No. : Bail Appln./3231/2022**

SRIKANT SINGH AND ANR  
S/O LATE RAM BARESH SINGH  
R/O VILL- HANSARA BAZAR  
P.O. AND P.S. DOOMDOOMA,  
DIST. TINSUKIA, ASSAM

2: SRI RAJESH KUMAR SINGH  
S/O SRI MUKTESWAR SINGH  
R/O VILL  
HANSARA  
P.O. AND P.S. DOOMDOOMA  
DIST. TINSUKIA  
ASSA

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. N HASAN**

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

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 04.04.2023**

Heard Mr. N. Hasan, learned counsel for the petitioners. Also heard Mr. R.J. Baruah, the learned Addl. P.P. for the State.

2. The petitioner, namely, (1) Srikant Singh and (2) Rajesh Kumar Singh, who were arrested on 27.07.2022 in connection with Guwahati GRPS Case No. 106/2022 under sections 21(c)/ 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), is seeking regular bail under section 439 IPC.

3. The learned counsel for the petitioners has submitted that the petitioners are in custody for last 219 days as on 02.03.2023. It is submitted that the place of seizure of drugs is shown as Coach No. S-11 of Rajdhani Express, whereas there is no such coach numbering for the said train. It is also submitted that the seizure witnesses had stated that at the time of seizing the contraband, the petitioners were sleeping in their berth and the bag from which the contraband drugs was seized was below the seat of petitioner no.2 and therefore, it has been submitted that the petitioners were not in conscious possession of the said contraband. It is also submitted that the search and seizure of contraband was vitiated by non-compliance of the provision of section 50 of the NDPS Act and moreover, the seizure was not made in the presence of a Gazetted Officer or a Magistrate. Hence, it is submitted that there is remote chances of any conviction. It is submitted that although charge-sheet no. 82 dated 30.11.2022 was submitted in this case, but as on 07.01.2023, charges has not yet been framed by the learned trial Court and therefore, there is no sign of an early trial.

4. The learned Addl. P.P. has perused the scanned copy of the charge-sheet and the case record as received from the learned Special Judge-cum- Addl. Sessions Judge No.2, Kamrup (M), Guwahati Court and has opposed the prayer for bail on the ground that there are sufficient materials against the

petitioners in the case diary.

5. The case diary reveals that the petitioners were caught red-handed while transporting contraband morphine. The petitioners were carrying 350 gm. morphine, aggregating 700 gm. As per the FIR, forwarding report and statement of witnesses recorded under section 161 CrPC, the seizure of contraband narcotic drugs was made in coach no. S-11, seat no. 10 and 11. In the aforesaid context, it is observed from the order dated 16.11.2022 passed by the learned Special Judge, Kamrup (M), Guwahati that the learned counsel for the petitioners had produced a copy of e-ticket to show that the petitioners were travelling in coach no. B-12, seat no. 7 and 8.

6. Be that as it may, whether or not there is coach no. S-11 in Rajdhani Express or not or whether or not the petitioners were arrested with conscious possession of the contraband drugs would be a subject matter of decision in trial. In this case, the FIR reveals that the petitioners were arrested red-handed while transporting 350 gms. contraband morphine each, which is about 700 gms., which is of commercial quantity.

7. In the case of *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497, the Supreme Court of India had observed that the Court is required to strike a balance between the nature of the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a *prima facie* satisfaction of the Court in support of the charge against the accused. It was further observed that the Court considering an application for

bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.

8. We would also like to refer to the case of *Narcotics Control Bureau v. Mohit Aggarwal*, AIR 2022 SC 3444, wherein a 3-Judge Bench of the Supreme Court of India had observed and held as follows:-

**13.** *The expression 'reasonable ground' came up for discussion in ' State of Kerala and others Vs. Rajesh and others', (2020) 12 SCC 122 and this Court has observed as below:*

*”20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.’ [emphasis added]*

*14. To sum up, the expression 'reasonable grounds' used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.*

*15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has*

*committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.*

16. *Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the appellant- NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with each other.*

17. *Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.*

9. Thus, in light of the observations of the Supreme Court of India, the Court is of the considered opinion that the appreciation of the evidence to find out whether or not the accusation is sustainable should be left to the trial Court and such examination is not envisaged at the stage of deciding a bail application. In this regard, the Supreme Court of India in the case of *Mohit Aggarwal (supra)* has observed and held as under:-

**14.** *To sum up, the expression 'reasonable grounds' used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.*

**15.** *We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail."*

10. Therefore, at the stage of consideration of prayer for bail, the Court is not inclined to examine the nature of material which appears from the statement of witnesses recorded under Section 161 CrPC and form an opinion as to whether the materials available would lead to an acquittal. In the said regard, the Court is unable to opine that the petitioners, who were caught red-handed while transporting drugs is not guilty of the offence. Thus, as

commercial quantity of psychotropic substance was recovered from the possession of the petitioners, it cannot be said that the petitioners are not guilty of the offence or that if released on bail, the petitioners would not repeat the offence, which is the essential requirement of the provision of section 37(b)(ii) of the NDPS Act, 1985.

11. Accordingly, the prayer of the petitioners, Srikant Singh and Rajesh Kumar Singh for bail in connection with Guwahati GRPS Case No. 106/2022 under sections 21(c)/ 29 of the NDPS Act is refused at this stage.

12. Registry shall not issue copy (certified/un-certified) of any part of the scanned case diary.

**JUDGE**

**Comparing Assistant**