

GAHC010249142022



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

Case No. : Bail Appln./3338/2022

UDIP DUTTA
S/O LATE MAHENDRA DUTTA
R/O VILL- DANGDHARA KARATIPAR
P.S. TITABAR PIN-785630
DIST. JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 02-01-2023

Heard Ms. D. Borgohain, learned counsel for the accused and also heard Ms. S.H. Borah, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 Cr.P.C. is preferred by accused Uddip Dutta, who has been languishing in jail hajot in connection with Special Case No.81 of 2021, arising out of Khatkhati P.S. Case No. 69 of 2021, under Section 20(b)(ii)(c)/23(c)/27A/29 of NDPS Act, pending before the court of learned

Special Judge, Karbi Anglong, Diphu, since 14.04.2021, for grant of bail.

3. The said case has been registered on the basis of an FIR lodged by S.I. Mridul Rudra Paul of Khatkhathi Police Station, on 13.04.2021, to the effect that on the same day, acting on a tip off, he has intercepted one Truck, bearing registration No. AS01 FC 3711, on NH -39, near SBI Khatkhathi, and recovered 600 kg of suspected Ganja from the said Truck and found one Ranjit Singh as driver and one Abdul Mutalib as co-driver. Based upon their statements, he has apprehended one Uddip Dutta, who was waiting for receiving the said consignment of Ganja at Silonijan, near Garampani Reserve, on being identified by the accused driver.

4. Ms. D. Borgohain, the learned counsel for the accused submits that the case has already been charge sheeted and the accused has been charged under Section 20(b)(ii)(c)/23(c)/27A/29 of NDPS Act, along with other co-accused, and the accused pleaded not guilty to the charge. Ms. Borgohain further submits that the accused has been languishing in jail hazoot since 14.04.2021, for last 615 days and that nothing has been recovered from his possession and except the statement of the co-accused there is no material against the accused and that he is ready to face trial and that out of fifteen witnesses cited in the charge sheet, seven have already been examined and they failed to reveal complicity of the accused with the offence charged and therefore, it is contended to allow the petition.

5. Per contra, Ms. S.H. Borah, learned Additional Public Prosecutor has vehemently opposed the petition and submits that there is material to show complicity of the accused with the offence alleged. Ms. Borah further submits that though nothing has been recovered from the possession of the accused, yet, there is materials to show that he had financed the co-accused and there

is CDR to show the same, and that the quantity of drugs recovered and seized is of commercial quantity, and the embargo under section 37 of the NDPS Act will be applicable here and the accused has failed to satisfy the two requirements of the said section, and therefore, it is contended to dismiss this petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. There is no dispute that the accused was arrested on 14.04.2021, and since then he has been languishing in jail hajat for more than 615 days. But, Hon'ble Supreme Court, in the case of **NCB vs. Mohit Agarwal**, reported in **[2022] 0 Supreme (SC) 619**, has made it clear that the length of period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves are not consideration that can be treated as persuasive ground for granting relief to the accused under section 37 of the NDPS Act.

8. It is also not in dispute that 600 kg of Ganja was recovered from the Truck No. AS01 FC 3711, driven by accused Ranjit Singh and Abdul Mutalib. It is a fact that nothing has been recovered from the possession of accused Uddip Dutta, and Ms. Borgohain, learned counsel for the accused, has rightly pointed this out. But, the consignment of Ganja, seized from the Truck was meant for him and he was apprehended when he was waiting to receive the consignment at Garampani, near Silonijan. There is CDR of the accused persons, collected by the Investigating Officer, and the same also reveals his frequent connection with the driver Ranjit Singh and absconding accused Mamu, besides the statement of co-accused Ranjit Singh, which reveals that the present accused having

connivance with one Mamu (since absconding) has imported the seized consignment of Ganja from neighbouring country and that he financed for the same. In his own statement also the accused admitted having associated with the business of Ganja with Mamu and financing the same.

9. There is also no dispute that the contraband substances, so recovered from the possession of the co-accused are of commercial quantity. And as such the embargo under section 37 of the NDPS Act will be applicable herein this case. Though Ms. Borgohain, learned counsel for the accused, referring to the evidence of the prosecution witnesses, examined till date, submitted that the same are not at all sufficient to show complicity of the accused with the offence charged, yet, the same left this court unimpressed. This court cannot evaluate the evidence/materials on record to find out the guilt of the accused. In the case of **Mohit Agarwal** (supra) Hon'ble Supreme Court has explained the same in paragraph No. 15 as under:-

“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. While keeping the aforesaid principles in mind, an exercise is carried out to find out the availability of reasonable ground for believing that the accused is not guilty of the offences that he has been charged with, by examining the materials on the record of the learned court below, for the limited

purpose of releasing him on bail, and to ascertain that he is unlikely to commit an offence under the Act while on bail, this Court is unable to derive its satisfaction that there exist any reasonable ground to show that the accused is not guilty of the offence and that he is unlikely to commit such offence while on bail. Apart from statement of co-accused and his own statement, there is CDR to show frequent connection between him and the accused driver Ranjit Singh and Mamu, which clearly indicates complicity of the accused with the offence charged. This being the factual scenario, this court is left unimpressed by the submission of the learned counsel for the accused.

11. In view of the above, and also in view of the embargo under Section 37 of the NDPS Act, this Court is of the considered view that it is not a fit case where the privilege of bail can be extended to the accused. It well settled by Hon'ble Supreme Court in the case of **Mohit Agarwal** (supra), that liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

12. Accordingly, the instant petition stands dismissed. However, the learned court below is directed to expedite the trial and complete the same at the earliest possible time, without being influenced by any of the observation made herein above, as the same is made only for the purpose of disposing of this bail application, not on merit of the case, and if necessary, recourse has to be taken to the provision of section 309(1) Cr.P.C.

JUDGE

Comparing Assistant