

**HIGH COURT OF TRIPURA
AGARTALA**

BA No.67 of 2024

Sri Bijoy Paul

---Appellant(s)

Versus

The State of Tripura

----Respondent(s)

For Appellant(s)	:	Mr. B. N. Majumder, Sr. Adv. Mr. R. Saha, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

05/11/2024

Learned Senior Counsel Mr. B. N. Majumder assisted by Mr. R. Saha, Learned counsel is present for the accused petitioner in custody. Learned P.P. Mr. Raju Datta is also present for the State-respondent.

This bail application is filed under Section 439 of Cr.P.C. for releasing the accused person in custody on bail in connection with Sidhai P.S. Case No.2024 SDI 34 dated 10.06.2024 under Section 22(c)/25/29 of the NDPS Act, 1985.

In course of hearing Learned Senior counsel appearing for the accused person in custody first of all drawn the attention of the court the contents of the FIR and submitted that no contraband items were seized from the possession of the accused and furthermore Learned Senior counsel drawn the attention of this court that the alleged land from where the alleged contraband was seized belongs to some other person. He also referred the search memo annexed with the bail application wherein it was clearly mentioned that the search was made inside the dwelling hut of Sri Bimal Paul of Gopalnagar, P.S. Sidhai and its surrounding and ring well within his campus. But prosecution up to this stage failed to produce any documentary evidence to show

that the present accused person in custody is the possessor of the said land wherein the alleged contravened item was seized.

In support of his contention Learned Senior Counsel Mr. B. N. Majumder relied upon a citation of the Hon'ble Apex court in **Bhola Singh vs. State of Punjab** reported in **2011 AIR SCW 1954** wherein in para nos. 8 & 9 Hon'ble the Apex Court observed as under:

"8. We have considered the arguments advanced by the learned counsel. We see that Section 25 of the Act would not be applicable in the present case as there is no evidence to indicate that Bhola Singh the appellant had either knowingly permitted the use of the vehicle for any improper purpose. The sine qua non for the applicability of Section 25 of the Act is thus not made out. The High Court has however drawn a presumption against the appellant under Section 35 of the Act. This provision is reproduced below:

"35. Presumption of culpable mental state:- (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation:-In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact. (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.:

9. While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in Noor Aga vs. State of Punjab and Anr. (2008) 16 SCC 417 while upholding the constitutional validity of Section 35 observed that as this Section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come in to play. Applying the facts of the present case to the cited one, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting Narcotics still lay on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidence which the prosecution seeks to rely on is the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana while registering the offending truck cannot by any stretch of imagination fasten him, with the knowledge of its misuse by the driver and others. We accordingly allow the appeal, set aside the judgments of the Courts below and order the appellant's acquittal. His bail bonds shall stand discharged."

Learned Senior counsel also referred the provisions of Section 35 of NDPS Act and referring the same Learned Senior counsel further drawn the attention of the court that from the contents of the prosecution there is no evidence on record at this stage which shows culpable mental state of the accused in committing the offence and finally he urged for releasing the accused on bail in any condition.

On the other hand, Learned P.P. Mr. Raju Datta appearing for the State first of all drawn the attention of this court that earlier this present accused petitioner filed one bail application to this High court which was finally withdrawn by him and as such this present petition is not maintainable and by this time the accused petitioner could not show any grounds by the second bail application to draw an adverse inference against the prosecution and referring the case diary Learned P.P. further drawn the attention of the court that there is sufficient materials showing implication of the accused with the alleged crime and he urged for dismissal of the bail application and urged for further detention of the accused in custody and submitted that the judgment relied upon by the accused-petitioner is not applicable at this stage of investigation and in support of his contention Learned P.P. relied upon few judgments. Hon'ble Supreme Court of India in **State by the Inspector of Police vs. B. Ramu** reported in **[2024] 2 S.C.R. 357** wherein in para Nos.9 to 12 Hon'ble the Apex Court observed as under:

"9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (ganja), multiple

times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act."

He further referred another citation of the Hon'ble Supreme Court of India in **State of Meghalaya vs. Lalrintluanga Sailo and Another** reported in **2024 SCC Online SC 1751** wherein para Nos.7 & 8 Hon'ble the Supreme court observed as under:

"7. In the decision in **State of Kerala and Ors. v. Rajesh and Ors. (2020) 12 SCC 122**, after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii), 2 (2020) 12 SCC 122 NDPS Act. Further it was held that in case one of the two conditions thereunder is not satisfied the ban for granting bail would operate.

8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications."

Learned P.P. also referred another citation of the Hon'ble Supreme Court in **Union of India vs. Rattan Mallik alias Habul** reported in **(2009) 2 SCC 624** wherein in para No.9 Hon'ble the Apex Court observed as under:

"9. The broad principles which should weigh with the Court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a (2000) 8 SCC 437 special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application."

Learned P.P. further referred another citation of the Hon'ble Supreme Court in **Union of India vs. Md. Nawaz Khan reported in (2021) 10 SCC 100** in para-20 Hon'ble the Apex court observed as under:

"28. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in Union of India v. Rattan Mallik¹⁹, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the 'possession' of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

29. In line with the decision of this Court in Rattan Mallik (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

30. With regard to the statement under Section 67 of the NDPS Act, the High Court has placed abundant reliance on the inclusion of Mohd. Arif Khan's name in place of the respondent's name in the endorsement of translation on the statement of the respondent. In Tofan Singh (supra), a three judge Bench of this Court held that a statement under Section 67 of the NDPS Act is inadmissible. The ASG (2009) 2 SCC 624 submitted that independent of the statement, there are valid reasons to deny bail on the basis of the material which has emerged at this stage."

I have heard both the sides at length and perused the relevant prosecution papers including the CD produced by the I.O. through Learned P.P.

In this case the prosecution was set into motion on the basis of an FIR laid by one S.I. of police of Sidhai Police Station namely Mr. N. Halam to O.C. Sidhai Police Station, Mohanpur, West Tripura alleging inter alia that on 09.06.2024 at about 20 05 hours ASI Jagjit Singh of 42 BSF Mohanpur BOP appeared at PS and reported that he had an information from his reliable secret source that one Sri Bimal Paul and his son Ajoy Paul of Gopalnagar under Sidhai PS were storing YABA tablet inside their house premises with intent to sell those contraband items to the local youths. Immediately after receipt of information he brought the matter to the knowledge of O.C. Sidhai P.S. and the matter was noted in GD

vide Sidhai PS GDE No.33 dated 09.06.2024 and as per order of O.C. PS at 2010 hrs he along with staffs accompanied by BSR Officer and other woman BSF personnel left for PS with the weighing machine, clipboard and NDPS investigation kit to verify the matter in Gopalnagar area near India-Bangladesh border in reference to Sidhai PS GDE No.34 dated 09.06.2024 and on arrival to the P.O. they could able to identify the accused with the help of secret source. In the meantime Assistant Commandant of 42 BN BSF appeared to the P.O. and after seeing the police personnel the accused attempted to flee away from the spot but somehow they managed to detain him and on being asked he disclosed his name as Bimal Paul. Then he searched for local independent witnesses at spot but no one came forward as independent witnesses during the search. Thereafter obtaining search authorization from Assistant Commandant he conducted search at about 2030 hours in the house of the accused in presence of BSF & Police personnel and in course of search they found one bundle wrapped with brown colour cello tape containing 1000 nos, pinkish colour YABA tablets marked as Exbt.A and another bundle wrapped with brown colour cello tape containing 1000 nos. pinkish colour YABA tablets marked as Exbt.B from the ring well of Sri Bimal Paul of Gopalnagar P.S. within his house premises and total counted to be 2000 nos. of YABA tablets. Accordingly being asked he could not give any satisfactory reply and after weight he found 182 grams of YABA tablets without weight of brown colour cello taps. Thereafter he seized the said recovered items and mobile phones in presence of witnesses and Assistant Commandant and arrested the accused Bimal Paul and another accused Ajoy Paul by this time was found absconding. Hence he laid the FIR. Accordingly on the basis of the

written information this present case was registered and the accused was produced before the Learned court below on 10.06.2024 and since then he is in custody.

The investigation of the case is in progress. The I.O. by this time has proceeded with the investigation and recorded the statement of the witnesses and arranged for sending the seized materials to the Forensic Laboratory for report.

From the relevant prosecution papers at this stage there is no material placed before this court to presume that the accused person has not committed any offence and furthermore on perusal of the citations as referred by Learned P.P. for the state-respondent at this stage this court does not find any scope to release the accused on bail. Hence the bail application filed on behalf of the accused in custody stands rejected being devoid of merit. It is observed that the CD is not maintained properly by the I.O. in pursuance of the direction of the High Court. So the I.O. be asked to maintain the CD properly in pursuance of the direction of the High Court in letter and spirit and to take necessary steps to expedite the investigation properly and submit the report to the court in time. The accused has to remain J/C as before.

Return back the CD to I.O. along with a copy of this order through Learned P.P. and also return back the LCR to the Learned court below along with a copy of this order.

This petition is thus disposed of.

JUDGE

**MOUMITA
DATTA**

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