

**HIGH COURT OF TRIPURA
AGARTALA
BA No.84 of 2024**

Smt. Rina Bhowmik
Wife of Ranjit Bhowmik,
Ghilatali, Boxonagar, P.O. Kalamchowra,
P.S. Kalamchowra,
Sepahijala Tripura, 799 102, aged about 49 years,
for and on behalf of accused

Raju Bhowmik,
Son of Late Ranjit Bhowmik,
Ghilatali, Boxonagar, P.O. Kalamchowra,
P.S. Kalamchowra,
Sepahijala Tripura, 799 102, aged about 30 years

---Appellant(s)

Versus

Non-Applicant
The State of Tripura

----Respondent(s)

For Appellant(s)	:	Mr. S. Mahajan, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. R. Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

17/12/2024

This application under Section 439 of Cr.P.C. is filed for releasing of the accused Raju Bhowmik on bail who is lodging in custody in connection with GRP PS Case No.14/2023 under Section 20(b)(ii)(c)/29 of NDPS Act.

Heard Learned Counsel Mr. S. Mahajan appearing on behalf of the accused in custody and also heard Mr. R. Datta, Learned P.P. along with Mr. R. Saha, Learned Addl. P.P. appearing on behalf of the State-respondent.

As per earlier order of the court Learned P.P. has produced the CD today and also we have received the LCR.

Taking part in the hearing Learned counsel for the accused in custody first of all drawn the attention of the court that in this case the contraband item of lesser quantity than commercial quantity was recovered from the possession of the accused in

custody and there was total non-compliance of the provisions of Section 41 and 42 of NDPS Act. So Learned counsel considering the period of detention of the accused in custody urged for releasing the accused on bail in any condition. Learned Counsel also referred one citation of the Hon'ble Delhi High Court in connection with **Bail Application No.3148/2021** dated 28.02.2024 and referring the same citation Learned counsel drawn the attention of the court that in that case the contraband item was segregated and the accused was granted bail. Learned counsel further submitted that initially in this case the accused in custody was released on interim bail by the Learned Court below by the order dated 22.03.2023 and he was on interim bail till 06.06.2024, but on 07.06.2024 his bail application was cancelled and the accused was taken into custody and since then he is lodging in jail. Learned counsel further submitted that without any basis in absence of materials on record Learned court below has rejected the bail application. So Learned counsel relying upon the judgment of Delhi High Court urged for releasing the accused in custody on bail in any condition.

On the other hand, Learned P.P. appearing on behalf of the State-respondent first of all drawn the attention of the court that initially the interim bail was granted to the accused in custody on the ground of illness of his wife which continued for a certain period. But later on, the I.O. submitted chargesheet showing his implication with the alleged crime and the case is at the stage of recording evidence. So at this stage Learned P.P. strongly opposed the bail application and submitted that if the accused is released on bail then there is every chance of escaping of the accused and the trial will be vitiated. Learned P.P. further submitted that the submission as made by the Learned Counsel for the accused in

custody cannot be accepted at this stage as the said submission is applicable in respect of trial of the case but not in respect of hearing of bail application. So Learned P.P. urged for rejection of the bail application of the accused in custody.

Heard both the sides.

Considered.

In this case the FIR was set into motion on the basis of a Suo-moto complaint laid by one SI Pankaj Kr. Das of Agartala GRPS to OC, Agartala GRPS, West Tripura alleging inter alia that on 23.02.2023 he received one secret information that few individuals will go by Agartala-Tripura Sundari Express train carrying contraband items. Accordingly the fact was entered in GD and the matter was reported to the superior authority and the SP(GRP) and thereafter the complainant along with OC and other staff and Deputy SP(GRP) along with other PS and RPF officer proceeded to Agartala rail station to conduct search in connection with the above mentioned information. On arrival at Agartala rail station they deployed the officer and staff in front of railway main gate and parcel gate and at about 1420 hours they found two persons were entering into the platform together through railway parcel gate suspiciously carrying their shoulder bags with them. Seeing their suspicious movements they detained them and being asked they stated their name as Raju Bhowmik and Jayanta Shil and on asking they agreed their bodies and bags to have searched. Accordingly the informant issued them notices under Section 50 of NDPS Act individually for checking of their bodies and bags and obtained their signatures and prepared pre-search memos and the detainees also checked their body and clothing in presence of witnesses and the Deputy SP, GRP and later on he searched their bodies and bags and recovered total 12 packets of

suspected dry Ganja from their bags. On search, Raju Bhowmik possessed seven packets inside the black colour shoulder bag and Jayanta Shil was found possessing total five packets inside his black colour shoulder bag wrapped with brown colour adhesive tapes and after search of both of them they recovered two nos. of mobile phones out of which one smart phone, one key pad mobile and Indian currency Rs.1380/-. Accordingly they arranged for weighing of the above noted suspected dry ganja from railway parcel office and found total 21 kgs of suspected dry ganja inside their two bags. After that the informant arrested them and seized the alams and laid the FIR and in course of investigation the accused on custody was produced under arrest before the court.

It is the admitted position that initially the accused on interim bail by the Learned Court below on the ground of illness of his wife and later on his bail application was rejected and he was taken into custody on 07.06.2024 and since then he was lodging in custody.

I have heard both the sides at length, produced the FIR and other relevant prosecution papers including the case diary. Also I have perused the citation referred by the Learned counsel appearing for the accused-petitioner of Delhi High Court. On perusal of the said citation of Hon'ble Delhi High Court it appears that in the said case bail was considered by the Hon'ble High Court on perusal of the evidence on record. But here in the case at hand recording of evidence is not yet been commenced and process has been issued for recording evidence of witnesses. So the said citation as referred by the Learned counsel for the accused in custody cannot be applied in this case.

On the other hand, Learned P.P. appearing on behalf of the State-respondent drawn the attention of the court by referring few

citations. In **Union of India vs. Md. Nawaz Khan** reported in **(2021) 10 SCC 100** Hon'ble the Apex Court in para Nos.32 and 33 observed as under:

"32. Further, it was held that the issue of whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact. The decision in Karnail Singh (supra) was recently followed by this Court in Boota Singh v. State of Haryana: (2021) 19 SCC 606.

33. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial."

Referring the same Learned P.P. submitted that the submission as raised by the Learned counsel for the accused in custody cannot be accepted at this stage rather the same can be raised in course of trial.

He also referred another citation of the Hon'ble Supreme Court that in **Rizwan Khan vs. State of Chhattisgarh** reported in **(2020) 9 SCC 627** wherein in para Nos.12 and 14 Hon'ble the Apex court observed as under:

"12. It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such nonexamination is not necessarily fatal to the prosecution case [see Pardeep Kumar]:(2018) 13 SCC 808.

14. Applying the law laid down by this Court on the evidence of police officials/police witnesses to the facts of the case in hand, referred to hereinabove, we are of the opinion as the police witnesses are found to be reliable and trustworthy, no error has been committed by both the courts below in convicting the accused relying upon the deposition of the police officials."

Referring the same Learned P.P. drawn the attention of the court even if it is found that the independent witnesses did not support the case of the police officials in that case also there is no scope to disbelieve the prosecution story if during trial evidence

reveals against the accused in custody showing implication with the alleged crime.

Learned P.P. also referred another citation of the coordinate Bench of this High Court in **State of Tripura vs. Mahabul Alam and Ors.** reported in **2023 SCC OnLine Tri 777** wherein in para No.17 this High Court observed as under:

"17. From the aforesaid enunciations of law on the subject, it is abundantly clear, that the Courts while considering the application for bail must strictly adhere to the two conditions embodied in Section 37 of the NDPS Act, and must record its reason of satisfaction that there are substantial probable causes for believing that the accused is not guilty of committing such offence and that there is no likelihood of repetition of committing such offence by the accused while on bail. It is re-iterated that while considering the bail application filed by the accused arrested under the penal provisions of the NDPS Act, learned Special Judges should be confined within the limits embodied in Section 37 of the NDPS Act. Procedural violations, if any, shall be taken into consideration during the course of trial, and not at the stage of consideration of bail application."

Referring the same Learned P.P. further drawn the attention of the court that if any procedural violation occurs with the case the same may be taken into consideration during the course of trial not during the stage of consideration of the bail application and finally Learned P.P. urged for dismissal of the bail application.

On perusal of the relevant prosecution papers as well as the CD and after hearing the submission of the Learned Counsels of both the sides and also after going through the provision of Section-37 NDPS Act, at this stage I find no scope to segregate the contraband items alleged to be recovered from the possession of the accused in custody to be of lesser quantity than commercial quantity. Moreover, from the record of the Learned court below it appears that the case is at the stage of recording of evidence. So for the sake of justice and also for fair trial of the case at this stage I find no 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. The accused has to remain in JC as before. On perusal of the case record it appears that the case was at the stage of recording evidence of witnesses of the prosecution. So Learned court below be asked to take immediate steps for recording evidence of the witnesses of the prosecution at an earliest convenience on the ground that the accused persons are lodging in jail.

With this observation the bail application is disposed of.

Send down the LCR along with a copy of this order and also returned back the CD to the I.O. through Learned P.P. along with a copy of this order.

JUDGE



**MOUMITA
DATTA**

Digitally signed by
MOUMITA DATTA
Date: 2024.12.18
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