

GAHC010008672024



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

Case No. : Bail Appln./177/2024

RAJIB ROY
S/O HARINAR ROY
R/O BHRAMPUR,P.O. MOHANPUR
P.S. RAGHOPUR, VAISHALI, PIN-844508
DIST. VAISHALI, BIHAR

VERSUS

UNION OF INDIA
REP.B Y THE STANDING COUNSEL NARCOTICS CONTROL BUREAU
GUWAHATI ZONAL UNIT, GUWAHATI.

Advocate for the Petitioner : MR. A DUTTA

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 02.05.2024

Heard Mr. A Dutta, learned counsel for the petitioner and Mr. S.C.Keyal, Standing Counsel, NCB for the respondent.

2. By filing this application under Section 439 Cr.P.C, the petitioner, namely, **Rajib Roy** has prayed for bail in connection with NDPS Case No. 20/2023 under Sections 20(b) (ii)

(C)/29 of the NDPS Act (NCB Crime No. 23/2023) pending in the court of learned District and Sessions Judge (Spl, Judge), Kamrup, Amingaon.

3. The brief fact of the case is that pursuant to a secret information received by the NCB officials that one person would cross Madhanpur Toll plaza, Kamrup, Assam and moved towards Rangia in truck bearing No. NL-01AB-4248 and the said unknown person was trafficking large quantity of ganja which was concealed in the said truck, the said truck was intercepted by the NCB team on 29.11.2022. One person was found inside the truck and on being searched, 195.710 kg of suspected ganja was recovered from the secret chamber of the said truck. Accordingly, the driver was apprehended and the contraband was seized.

4. The learned counsel for the petitioner has submitted that the petitioner was arrested on 30.11.2022 and since then he has been detained in custody. No any contraband item was recovered from his possession. He is not the owner of the vehicle from which alleged ganja was recovered. He was arrested purely on suspicion. Further, the petitioner was neither a carrier nor dealing with drug business. The petitioner in his statements before the NCB officials categorically stated that he was not at all aware about the transportation of ganja to the said truck.

5. According to learned counsel for the petitioner, the case is at the trial stage but the trial is going on very slowly. Out of 16 witnesses only 3 witnesses were examined within two years. There is no scope for early disposal of the case. A speedy trial is one of the dimensions of the fundamental right to life under Article 21 of the Constitution of India.

6. It is also submitted by the learned counsel for the petitioner that the petitioner was arrested only on the statement of co-accused. By referring the judgment of *Tofan Singh –vs- State of Tamilnadu*, reported in (2021) Vol 4 SCC 1, learned counsel has submitted that a confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under the NDPS Act.

7. The learned counsel therefore prays to release the petitioner on bail.

8. In response, learned Standing Counsel for the NCB submits that the accused was arrested on 29.11.2022. The offence report was submitted on 26.05.2023. Charge was framed on 22.09.2023 and thereafter 3 witnesses were examined. As such, there was no

procedural delay in the trial.

9. The learned Standing Counsel, NCB has pointed out that the present petitioner and two other persons are owners of the seized ganja and they were following the said truck from a safe distance in a Maruti vehicle bearing No. BR-01-DE-0636. The driver of the truck and the petitioner on being asked also admitted that the petitioner is very much involved in the alleged offence. Learned Standing counsel, NCB therefore, vehemently opposed in granting bail to the petitioner.

10. In support of his submission, learned counsel has relied on the following case laws:

- 1. Union of India –vs- Ratan Malik @ Habul vide Criminal Appeal No. 137/2009.*
- 2. NCB –vs- Mohit Agarwal in Criminal Appeal No. 1001-1002/2022.*
- 3. Union of India through NCB Lucknow –vs- Nawaz Khan in Criminal Appeal No. 1043/2021.*

11. Section 37 of the NDPS Act regulates the grant of bail in cases involved in offences under the NDPS Act. It is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

12. In the case in hand, the quantity of ganja recovered is admittedly of commercial quantity. Out of 16 witnesses only 3 witnesses were examined before the trial court. At this stage it cannot be said that the prosecution has failed to prove any case against the petitioner for his involvement in the alleged offence.

13. In the case of Mohit Agarwal (supra), it was observed that –“ in our opinion, the narrow parameters of bail available under Section 37 of the NDPS Act have not been satisfied in the facts of the instant case. At this stage it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him. The length of period of custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not

considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

14. Considering the entire facts of the case, this Court is not inclined to grant bail to the petitioner. Hence, the prayer for bail is rejected. However, the learned trial court is directed to expedite the matter by fixing the case on day to day basis.

The bail application stands disposed of.

JUDGE

Comparing Assistant