

GAHC010068142024



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

Case No. : Bail Appln./1018/2024

MD. SAMIR AND ANR.
S/O LATE SNAUAI
R/O VILL- SORA
P.S. KAKCHING
DIST. KAKCHING MANIPUR

2: MD. MANAOBI
S/O MD. AJAMAN
R/O VILL- THOUBAL MOIJNG
P.S. THOUBAL
DIST. THOUBAL
MANIPUR

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR N J DAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 16.07.2024

Heard Mr. N. J. Das, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 *read with* Section 37 of the Narcotic Drugs and Psychotropic Substance Act, 1985 for grant of bail to the accused/petitioners, who have been arrested in connection with NDPS Case No. 20/2023 (arising out of Khatkhathi P.S. Case No. 105/2022).

3. Scanned copy of the case record along with the Case Diary has been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Das, learned counsel for the petitioners, that both the accused/petitioners are innocent and they have not committed any such offence as alleged in the F.I.R. They are neither the driver nor the owner or a co-passenger of the alleged vehicle/truck wherefrom the Yaba tablets were alleged to have been recovered. They were standing on NH-39 to board on a bus for Guwahati when they were apprehended by the police personnel as they were standing near to the vehicle in the market area of Khatkhathi. Further he submitted that the accused/petitioners have no criminal antecedent and they have been falsely implicated in this case and they were arrested in connection

with this case merely on suspicion. Both the accused/petitioners are the permanent resident of their addressed locality and hence, there is no chance of absconding. More so, they are the sole earner of their family members having their minor children and hence, considering all these aspect of the case, viz-a-viz the period of detention undergone by the accused/petitioner, they should be enlarged on bail. He further submitted that both the accused/petitioners were arrested in connection with this case on 09.12.2022 and since then, they are behind the bar. Mr. Das further submitted that during investigation, the Investigating Agency also did not comply with the provision of Sections 42 & 43 of the NDPS Act. He further submitted that as per the F.I.R., the recovery was made from 2 (two) trucks and accordingly, the seizure list was also prepared. But, as per the P.W.-1, the independent witness, the recovery was made only from 1 (one) truck and that apart, as per the P.W.-1, he has not seen or could recognize the accused persons who were apprehended by police from the place of occurrence. Thus, the P.W.-1 already demolished the case of the prosecution. However, the P.W.-2 is yet to be cross-examined by the prosecution. Mr. Das further submitted that the accused/petitioners are languishing in jail hajot for more than 1 (one) year and 6 months, but till date, the prosecution could only able to examine 2 (two) numbers of witnesses and hence, considering the period of incarceration, they may be enlarged on bail.

5. In support of his case, Mr. Das, learned counsel for the petitioner, further relied on a decision of co-ordinate Bench of this Court passed in Bail Appln. No. 3774/2023, dated 18.01.2023, and also relied on a decision of Apex Court passed in the case of **Shariful Islam @ Sarif Vs. the State of West Bengal [Special leave to Appeal (Crl.) No. 4173/2022]**, wherein also, the Apex Court had granted bail considering the period of incarceration of 1 (one) year 6

(six) months and also with the observation that there is no likelihood of completion of trial in near future. Mr. Das also submitted that in the case of **Rabi Prakash Vs. State of Orissa**, reported in **2023 live law (SC) 533**, the Apex Court has held that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. Accordingly, Mr. Das has submitted that considering the period of incarceration, the present accused/petitioners are also entitled for bail. He further submitted that both the accused/petitioners, being the permanent resident of their addressed locality, there is no chance of absconding, rather they will regularly appear before the learned Trial Court below and face the trial.

6. In this context, Mr. Sharma, learned Additional Public Prosecutor, has submitted that the Charge-Sheet of this case was filed on 23.03.2023 and the charges were accordingly framed on 20.03.2024 and there was a delay in framing the charge due to absence of one of the co-accused. He further submitted that the fair trial is going on and out of 6 (six) numbers of witnesses, 2 (two) witnesses are already been examined and 2 (two) more independent witnesses are yet to be examined by the prosecution. He also submitted that there is no such inordinate delay in the proceeding and it can be expected for the completion of trial within a short period. More so, he submitted that it is a case of commercial quantity wherein the Charge-Sheet has been laid after finding a *prima facie* case against both the accused/petitioners and hence, rigor of Section 37 NDPS Act will follow in the present case. Accordingly, Mr. Sharma raised objection in granting bail to the accused/ petitioners at this stage.

7. After hearing the submissions made by the learned counsels for both sides, I have perused the scanned copy of the case record and the annexures filed along with the petition.

8. As per the allegation, the commercial quantity of contrabands were recovered from the conscious possession of both the accused/petitioners and after investigation of this case, the police filed Charge-Sheet against the present 2 (two) accused/petitioners, along with others, under Section 21(c), 22(c) & 29 of the NDPS Act. It is the case of the prosecution that on the basis of the specific information that huge quantity of suspected narcotic substance will come in a truck from Manipur heading towards Assam and accordingly, the police team from Khatkhathi Police Station made Naka checking and intercepted the vehicle coming from Dimapur side, wherefrom huge quantity of suspected heroine and 3 Kgs of Yaba tablets were recovered from the said vehicle, which were suspected to be Methamphetamine tablets. It is a fact that the accused/petitioners were arrested in connection with this case on 09.12.2022 and since then, they are in custody. From the evidence of the 2 (two) witnesses, it is also seen that both the witnesses brought some incriminating evidence against the accused/petitioners. However, it is a fact that P.W.-1 could not recognize the accused/petitioners on dock. But the P.W.-2, who was the Investigating Officer, had elaborately stated as to how he conducted the operation, however the P.W.-2 is yet to be cross-examined by the defence. More so, it is a case of commercial quantity and hence, the rigor of Section 37 NDPS Act will follow.

9. For ready reference, Section 37 NDPS Act is extracted hereinbelow:

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(b) No person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

10. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is no reasonable ground for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials available in the case record as well as the evidences of the witnesses, there cannot be any reasons to believe that the accused/petitioner is not guilty of such offence or he is not likely to commit any offence while on bail as per Section 37 (1) (b) of NDPS Act.

11. In the case of **Rabi Prakash Vs. State of Orissa (supra)**, the Apex Court has observed that *"the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."* Further, in the case of **Mohd Muslim @ Hussain Vs. State of (NCT of Delhi)**, it has been observed by the Apex court that grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985.

12. But, here in the instant case, it is not the case that the trial has not yet been commenced and moreover, the prosecution already examined 2 (two) witnesses out of 6 (six) numbers of witnesses immediately after framing of the charges and the case is at the stage of evidence. It is an admitted fact that the accused/petitioners are behind the bar for more than 1 (one) year and 6 (six) months, but in the same time, the case is also proceeding expeditiously and only due to non-appearance of the co-accused, the proceeding was delayed for some period. However, it can be expected that the trial may be concluded within a short period as 2 (two) witnesses are already been examined out of 6 (six) numbers of witnesses of the prosecution case.

13. The Apex Court in the case of **State by the Inspector of Police vs. B. Ramu (Criminal Appeal No. 801 of 2024)**, has observed that the Court should be slow in granting bail to the accused if the matter is involved with the commercial quantity and in paragraph Nos. 9, 11, 12, 14 & 15 of the judgment, it has been held 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.

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.

13. Manifestly, a very strange approach has been adopted by the learned Single

Judge in the impugned order whereby the anticipatory bail was granted to the respondent on the condition that the appellant would deposit a sum of Rs.30,000/- to the credit of the registered Tamil Nadu Advocate Clerk Association, Chennai along with various other conditions. The condition no.(a) (supra) so imposed by the High Court is totally alien to the principles governing bail jurisprudence and is nothing short of perversity.

14. The fact that after investigation, the charge-sheet has been filed against the respondent-accused along with other accused persons, fortifies the plea of the State counsel that the Court could not have recorded a satisfaction that the accused was prima facie not guilty of the offence alleged.

15. As a consequence, the impugned order is cryptic and perverse on the face of the record and cannot be sustained. Thus, the same is quashed and set aside."

14. In the case of **Prahlad Singh Bhati Vs. NCT, Delhi reported in (2001) 4 SCC 280**, the Supreme Court has culled out the principles, which the courts has to consider at the time of granting or refusing bail as under:-

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

15. In view of the discussions made above and also considering the entire facts and circumstances of the case, nature and gravity of the offence and further considering the view expressed by the Apex Court in the case laws

referred to hereinabove, this Court is of the opinion that there is a *prima facie* case against the accused/petitioners and in the same time, the trial is also proceeded fairly and it cannot be said that there is an undue delay in the proceedings. More, it can be expected that the trial may be concluded within a short period. Accordingly, this Court is of the view that this is not a fit case to enlarge the accused/petitioner on bail only considering the period of incarceration and hence, the same stands dismissed. However, the learned Special Judge (NDPS), Karbi Anglong, is hereby directed to dispose of the matter preferably within 6 (six) months from today.

16. The bail application stands disposed of in terms above.

JUDGE

Comparing Assistant