

GAHC010070542024



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

Case No. : Bail Appln./1012/2024

ASHISH DEBBARMA AND ANR
S/O GIRIBALA DEBBARMA
R/O PURBA CHANDPUR BAIRAGIPARA PO CHACHUBAZAAR PS SIDHAI
MOHANPUR DISTRICT WEST TRIPURA
TRIPURA- 799211

2: MITHUN DEBBARMA
S/O UTTAM DEBBARAM
R/O VILL- CHANDDAPUR
235 CHACHUPURA
GRAM CHANDPUR
P.O. CHACHU
BAZAAR

WEST TRIPURA
PIN-799211
TRIPURA

VERSUS

UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, NARCOTIC CONTROL
BUREAU (NCB)

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : SC, NCB

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners :	Mr. M. Biswas, Advocate.
For the Respondent :	Mr. S.C. Keyal, Advocate representing NCB.
Date of Hearing :	31.05.2024.
Date of Judgment :	25.07.2025.

JUDGMENT AND ORDER (CAV)

Heard Mr. M. Biswas, learned counsel appearing for the petitioners. Also heard Mr. S.C. Keyal, learned counsel representing the NCB.

2. This is an application under Section 439 of the CrPC praying for granting bail to the petitioners who are facing trial in connection with NDPS Case No.146/2022 corresponding to NCB Crime No.30 of 2021 under Section 20(b)(ii)(C) & 29 of the NDPS Act, 1985.

3. On 27.12.2021, commercial quantity of ganja was recovered from the possession of two persons namely, Rakesh Kumar and Shambhu Debbarma. During investigation, some other persons including the present two petitioners were arrested. After conclusion of investigation, the *charge sheet* was filed against the petitioners and now they are facing trial.

4. On 03.06.2023, charge was framed by the trial court and till 04.04.2024, 4(four) witnesses were examined out of 11(eleven) cited witnesses.

5. The petitioners contended that the narcotic drugs were recovered from Rakesh Kumar and Shambhu Debbarma. According to the petitioners, they did not have any knowledge that the Truck bearing Registration No. BR-06-GD-7105 in which they were travelling was also carrying narcotic drugs.

6. The petitioners claimed that they were arraigned in this case only on the basis of statements made under Section 67 of the NDPS Act by co-accused, which is not admissible in evidence.

7. I have considered the submissions made by the learned counsels of both sides.
8. Regarding consideration of a bail application in an NDPS Case, the Hon'ble Supreme Court in *State of Kerala v. Rajesh*, (2020) 12 SCC 122 has held as under:

“18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In *Union of India v. Ram Samujh* [*Union of India v. Ram Samujh*, (1999) 9 SCC 429 : 1999 SCC (Cri) 1522] , it has been elaborated as under:

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. State (UT of Goa)* [*Durand Didier v. State (UT of Goa)*, (1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)

‘24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.’

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

- (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and
- (ii) that he is not likely to commit any offence while on bail

are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”

9. Reverting to the case in hand, the fact that the petitioners were arraigned in this case only on the basis of a statement under Section 67 of the NDPS Act by co-accused, is yet to be proved before the trial court. This Court is of the opinion that the petitioners are at liberty to prove their case that they are unnecessarily arraigned in this case.

10. The petitioners were arrested on 29.12.2021. The offence alleged against the petitioners prescribes imprisonment up to 20 years. Considering these two facts, the incarceration cannot be termed as prolonged incarceration.

For the aforesaid reasons, the bail application of the petitioners is rejected and disposed of accordingly.

JUDGE

Comparing Assistant