

GAHC010071422024



2024:GAU-AS:12896

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

Case No. : Bail Appln./998/2024

RAJU DAS
S/O BABUL DAS
R/O CHAMUA GAON
P.S. DHING
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR U S BORGOHAIN,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 18.12.2024

Heard Mr. U. S. Borgohain, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 Cr.P.C. praying for grant of bail to the accused/petitioner, who has been arrested in connection with Lanka P.S. Case No. 554/2023, under Section 20(c)/29 of NDPS Act, 1985.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Borgohain, learned counsel for the petitioner, that the present accused/petitioner is innocent and he has been falsely implicated in this case. He was arrested in connection with this case on 21.12.2023 and for last 363 days, he is in custody. It is a fact that the present accused/petitioner is the driver of the vehicle, but he was not aware about carrying of any contraband in the vehicle. The alleged contrabands were recovered from the possession of the co-accused persons, which were kept in the secret chamber of the vehicle. Further he submitted that the trial has already been commenced and out of 16 numbers of witnesses, 9 numbers of witnesses are already been examined by the prosecution. But there is no probability of completion of trial within a short period. He further submitted that the accused/petitioner is a permanent resident of his addressed locality and there is no chance of absconding if he is enlarged on bail. Rather, he will regularly appear before the Court as and when the date is fixed by the Court. Accordingly, it is prayed for allow the accused/petitioner on bail.

5. Mr. Baruah, learned Additional Public Prosecutor, submitted in this regard that there are sufficient incriminating materials against the present accused/petitioner which were collected by the I.O. during investigation. The

case is of commercial quantity and the present accused/petitioner, being the driver of the vehicle, was fully aware about the carrying of contraband in the vehicle and thus he is very much involved in the alleged offence. He further submitted that the speedy trial is going on and out of 16 numbers of witnesses, already 9 numbers of witnesses are being examined, wherein the PWs- 5, 6, 8 & 9 had directly implicated the present accused/petitioner in the involvement of the alleged offence.

6. Mr. Baruah further submitted that the case being the commercial in nature, rigor of Section 37 of NDPS Act will also follow wherein the twin condition has to be satisfied that the accused is not guilty of the offence and there has to be a belief that the accused will not repeat or commit the same offence while on bail. But from the materials collected by the I.O. during investigation, there cannot be any reason to believe that the present accused/petitioner is not guilty of the alleged offence nor there can be any reasonable belief that he will not repeat similar kind of offence while on bail. He, accordingly, raised serious objection and submitted that it is not at all a fit case to grant bail to the present accused/petitioner at this stage.

7. After hearing the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the case record along with the Case Diary.

8. As per allegation, it seen that on the day of incident, an information was received from the reliable source regarding trafficking of large quantity of Ganja from Tripura to Lanka, Accordingly, the complainant, along with police

personnel, arrived at the spot and apprehended the accused persons- Hanuman singh & Pintu Uriya. On being interrogated, they revealed that a vehicle bearing Registration No. AS 01 MC 7147 is carrying 13 packets of suspected Ganja kept concealed in private chamber of the vehicle which is coming from Tripura towards Lanka. Accordingly, the said vehicle was intercepted along with the driver- Raju Das. During search, they found total 13 packets wrapped with Plastic Tape containing suspected Ganja.

9. Further, from the record, it is seen that the present accused/petitioner, along with other accused persons, were arrested on 21.12.2023 and the charge-sheet was submitted on 30.03.2024. Further, it is an admitted fact that the trial has already commenced and learned Trial Court below had already examined 9 witnesses out of 16 numbers of listed witnesses. So, considering the entire materials of the case, it also cannot be said that there was an inordinate delay. It is also an admitted fact that the case is of commercial in nature and hence, rigor of Section 37 NDPS Act will follow.

10. 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.”

11. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is 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, 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. Rather, from the materials so far collected by the I.O., it is seen that the present accused/petitioner, along with others, are involved in trafficking of Ganja.

12. In this regard, a judgment of the Hon'ble Apex Court can be relied on which was reported in **2024 0 Supreme (SC) 130 (State by the Inspector of Police Vs. B. Ramu)**, wherein it has been held that 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. Court would have to record satisfaction that there are grounds for believing that accused is not guilty of offence alleged and that he is not likely to commit any offence while on bail. Further it has been held that the Courts should be slow in granting even regular bail to the accused persons who has the criminal antecedents.

13. In **The State of Meghalaya Vs. Lalrintluanga Sailo [Special Leave to Appeal (Crl.) No(s). 16021/2023]**, wherein, in paragraph No. 8 of the judgment, it has been held that “*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.”

14. In the light of discussion made above and also considering the seriousness of the offence and the fact that there is a *prima facie* case against the present accused/ petitioner and further considering the view expressed by the Apex Court in the case laws referred to hereinabove, this Court is of the view that it is not a fit case to enlarge the accused/ petitioner on bail at this stage. More so, the delay in concluding the trial also cannot be considered as inordinate delay as it is seen that the learned Court below took all endeavor for procuring the attendance of the witnesses. Hence, the present bail application stands rejected.

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

JUDGE

Comparing Assistant