

GAHC010078182024



AS:11659-DB

2024:GAU-

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

Case No. : W.P.(Crl.)/10/2024

PAPPU KUMAR SAHANI
S/O- RAMESH SAHANI, RESIDENT OF GRAM CHAKKI JAMALABAD, P.O.
NAKTA MADHOPUR, MUZAFFARPUR, MOTIPUR, BIHAR- 843111

VERSUS

NARCOTICS CONTROL BUREAU ANR.
REPRESENTED BY ITS DIRECTOR, GUWAHATI ZONAL UNIT, VIP ROAD,
ROOP KUNWAR PATH CHACHAL, P.O. KHANAPARA, GUWAHATI, ASSAM-
781022

2:THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTO

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the petitioner	Mr. F. Khan, Ms. M. Glory,
	Ms. Q. Kiba, Mr. U. Choudhury,
	Mr. A. Mena, Mr. P. Nath,
	Mr. R. Talukdar, Advocates.
For the respondent	Mr. S.C. Keyal, SC, NCB. Date of hearing :
Date of hearing	03.10.2024
Date of judgment & order	26/11/24

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

Heard Mr. F. Khan, learned counsel for the petitioner and also heard Mr. S.C. Keyal, learned senior standing counsel of Narcotics Control Bureau.

2) By filing this writ petitioner under Article 226 read with Article 227 of the Constitution of India, the petitioner is praying for a writ of *habeas corpus*.

3) The records reveal that In brief, the prosecution case is that on or a specific information that contraband narcotics was being transported from Meghalaya side of Jorabat and would be passing through Khanapara, Guwahati, on 07.10.2021, the NCB officers intercepted a container truck bearing registration no. NL-01-AD-3773 and found two persons, namely, Pavan Kumar Singh and Nunu Babu Mahato trafficking 426.910 kg of contraband ganja and on completion of all formalities, they were arrested and the contraband was seized. In course of investigation, two more persons including the petitioner, namely, Pappu Kumar Sahani were arrested. The final complaint was filed on 31.03.2022, stated to be within stipulated time under section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1984 (NDPS Act for short), seeking punishment of the three accused persons for commission of offences under section 8(c) of the NDPS Act and punishable under sections 20(b)(ii)(C) and 29 of the NDPS Act. Moreover a prayer was also made in the said complaint to permit further investigation of the case against the petitioner and 5 (five) others.

4) In the order dated 02.04.2022, the learned Sessions Judge,

Kamrup (M), Guwahati has recorded that the Investigation Officer of the case has submitted an offence report under section 8(C)/ 20(b)(ii) (C)/28/29/35/53A/54/60/ 61/62/63/66/67/68/69 of the NDPS against the five accused persons named therein including the petitioner, namely, Pappu Sahani @ Pappu Kumar Sahani. It may be stated that as per the said order the petitioner was not shown arrested in the offence report.

5) As per the record, upon petition bearing no. 200/2022 by the I.O., NCB, the learned Addl. Sessions Judge No.5, Kamrup (M), Guwahati, by order dated 27.04.2022, issued production warrant against the petitioner for producing him from Shaheed Khudiram Bose Central Jail, Muzaffarpur, Bihar ("SKBC Jail" for short) on 05.05.2022. As per order dated 06.05.2024, the petitioner was produced through video-conference from the said jail and he was remanded till the next date fixed. The Superintendent of the said jail had submitted a letter that all cases against the petitioner was disposed of and that the learned Court may pass order for physical production of the petitioner and accordingly, a production warrant for the petitioner on 13.05.2022, was issued and the I.O. NCB was allowed to record the statement of the petitioner after he is transmitted from jail at Muzaffarpur to Guwahati.

6) As per the documents annexed to the writ petition, several orders were passed thereafter for physical production of the petitioner from SKBC Jail, Muzaffarpur, Bihar. Thereafter, from 06.05.2022 to 04.02.2023. As per order dated 17.02.2023, the petitioner was transferred to Chapra, Saran District Jail and accordingly, next date was fixed for production of the petitioner from the said jail. Thereafter, again various orders were passed for physical production of the petitioner and ultimately as per order dated 12.07.2023, the petitioner was produced before the Court of learned Addl. Sessions Judge No.5,

Kamrup (M), Guwahati.

7) AS per order dated 16.03.2024, the learned Addl. Sessions Judge No.5, Kamrup (M), Guwahati has recorded that the said date was fixed for order on bail petition no. 328 on behalf of the petitioner. The said learned Court after perusal of the records and after considering the various orders passed held that since 12.07.2023 after production of the petitioner before the Court, the petitioner was in judicial custody and that during the investigation of the case, the accused was never arrested by any investigation agency. It may be mentioned that as per order dated 12.07.2023, the learned Trial Court had recorded that the prayer by the IO for custody of the petitioner by the NCB was rejected. Accordingly, on the basis of investigation and other corroborated evidence, the learned trial Court has recorded that the petitioner is a habitual offender of NDPS Act and is involved in many cases of NCB and that the petitioner is also involved in NDPS Case No. 7 of 2022 (NCB Crime No.19/2021) for trafficking commercial quantity of ganja. It was also recorded in the order that on 25.07.2023, the petitioner did not cooperate with the IO of the case during investigation in Central Jail, Guwahati. Accordingly, after a detailed discussion regarding the material available on record against the petitioner, it was held that the remand of petitioner on production warrant and not on custody warranty could not entitle the petitioner to bail. It was further recorded that on production of the petitioner, the NCB had moved the required prayer before the Court for shown arrest of the petitioner in the present case. However, through inadvertent oversight no order was passed by the learned predecessor. Accordingly, by the said order dated 16.03.2024, the petition no. 524A dated 02.08.2023 by which the petitioner was shown arrest was disposed of.

8) The learned counsel for the petitioner has submitted that while

rejecting the prayer for bail of the petitioner, the learned trial Court had recorded in the order dated 16.03.2024 that on 12.07.2023 and 27.07.2023, the NCB had submitted a prayer for shown arrest of the petitioner and that the petition signed by the IO on 27.07.2023 was numbered as 524A dated 02.08.2023 and accordingly, the learned trial Court had allowed the petition for shown arrest of the petitioner vide petition no. 524A dated 02.08.2022.

9) It is submitted that the order dated 16.03.2024 of the learned trial Court, thereby allowing the petition of shown arrest was wholly illegal as the petitioner was not present when the said order was passed. It is further submitted that even the IO was not present before the learned Court, who had a duty under Section 50 and 50A of the CrPC to inform the petitioner about the grounds of the h is arrest and right to bail. Moreover, no nominated person of the petitioner was informed of his arrest. It is submitted that the order dated 06.05.2022 of the learned trial Court is under challenge, on a subsequent order, being illegal are *non est* in the eye of law.

10) It is further submitted that the learned trial Court was aware of 06.05.2022 from the letter of the Superintendent of SKBC Jail, Muzaffarpur that all cases against the petitioner under the local jurisdiction of Muzaffarpur were disposed of. Therefore, no production warrant could have been issued as the petitioner was neither arrested nor in judicial custody in connection with NDPS Case No. 73/2022. Moreover, It was submitted that notwithstanding petition dated 15.03.2022 by the IO before the Court for shown arrest of the petitioner, but as no petition number was assigned for the said petition, the petitioner was not under arrest during the investigation till the order dated 16.03.2024 i.e. even after filing of the charge-sheet. Accordingly, it is submitted that the detention/ custody of the petitioner on the strength of production warrant under

Section 267 CrPC is illegal and accordingly, the detention of the petitioner is also illegal and accordingly, his illegal detention liable to be interfered with by setting aside the order dated 06.05.2022, 12.07.2023 and to allow the petitioner to go on bail. In support of his submissions, the learned counsel for the petitioner has relied on the following cases, viz., (1) *Aman Preet Singh v. Central Bureau of Investigation*, (2022) 13 SCC 764, (2) *Satendra Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51, (3) *Siddharth v. State of Uttar Pradesh and Anr.*, (2022) 1 SCC 676, (4) *Manubhai Ratilal Patel through Ushaben v. State of Gujarat and Ors.*, (2013) 1 SCC 314, and (5) *Nitin Garg v. Union of India and Ors.*, MANU/DE/8530/2023.

11) Per contra, the learned senior standing counsel for the NCB has referred to the affidavit in opposition filed in this case and has submitted that on 07.10.2021, the NCB, Guwahati Zonal Unit has seized 426.910 kg of ganja from a container truck bearing registration No. NL01-AD3773 at NH 37 at Khanapara and a case being NCB Crime No. 28/2021 was registered under Section 8c, which is punishable under Section 20(b)(ii)(C), 28 and 29 of NDPS Act. By order dated 17.02.2024, charges were framed against 6 accused persons including the petitioner. It is submitted that there are sufficient materials in the case by which it was cleared to the NCB that the petitioner was deeply involved in the trafficking of narcotics in the State.

12) It was submitted that the petitioner was physically produced by way of production warrant on 12.07.2023, but no bail application was filed for the petitioner. It was submitted that though the NCB had moved a prayer before the learned trial Court to shown arrest the petitioner, but due to inadvertent oversight no order was passed. On the said prayer notwithstanding such prayer from the NCB. However, by order dated 16.03.2024, the petitioner was shown

arrest by allowing petition no. 524A dated 02.08.2023. It has been submitted that once the bail application of the petitioner was rejected, the present petition in the nature of habeas corpus is not maintainable. It was also submitted that the petitioner is a habitual offender. In support of his submissions, the learned senior standing counsel for the NCB has relied on the following cases, viz., (1) *Kalyan Sarkar v. Rajesh Ranjan @ Pappu Yadav*, (2005) 0 Supreme (SC) 104, (2) *Union of India v. Ram Samujh & Anr.*, (1999) ACC (39) 643, (3) *Hira Singh v. Union of India & Anr.*, (2020) 20 SCC 272: (2020) 0 Supreme (SC) 320, (4) *Narcotics Control Bureau v. Kishan Lal*, (1991) 1 SCC 705: (1991) 0 Supreme (SC) 49, (5) *State of Punjab v. Rakesh Kumar*, (2019) 2 SCC 466: (2018) 0 Supreme (SC) 1202, (6) *Shri Khupliansum v. State of Meghalaya*, Bail Appln. No. 22/2023, decided on 31.07.2023, (7) *Rajesh Ranjan @ Pappu Yadav v. CBI*, (2007) 14 SCC 70: (2006) (0) Supreme(SC) 1128, (8) *NCB v. Mohit Aggarwal*, (2022) 0 Supreme(SC) 619, (9) *Union of India v. Ajay Kumar Singh @ Pappu*, (2023) 0 Supreme(SC) 285, (10) *State, by the Inspector of Police v. B. Ramu*, (2024) 0 Supreme(SC) 1300, (11) *State of Meghalaya v. Lalringlunga Sailo*, SLP (Crl.) No. 16021 of 2023, decided on 06.07.2024, (12) *The State, through CBI v. T. Gangi Reddy*, (2023) 0 Supreme(SC) 35, and (13) *Central Bureau of Investigation v. Kapil Wadhawan & Anr.*, (2024) 0 Supreme(SC) 72.

13) Considered the submissions as well as the cases cited by the learned counsel for both sides. Also considered the materials available on the record including the oral and written submissions filed by both sides and also perused the scanned copies of the Trial Court Records (TCR for short).

14) It is not in dispute that in the order dated 16.03.2024, the learned Trial Court has recorded that on 12.07.2023 and 27.07.2023, the NCB had submitted a prayer to have the petitioner "shown arrest". Moreover, as per the

Trial Court's record, the learned Trial Court had passed an order on 02.08.2023, for putting up the petition no. 524(A) for hearing and necessary orders on 09.08.2023. Vide order dated 09.08.2023, the said petition was fixed for hearing on 10.08.2023 and accordingly, the matter was heard on 10.08.2023 and matter was fixed for order on 11.08.2023. Vide order dated 11.08.2023, the matter was fixed on 14.08.2023 for further hearing, which could not be done and therefore, by order dated 14.08.2023, the further hearing was fixed on 17.08.2023. However, as the P.O. was on transfer, by order dated 17.08.2023, the case was put up before the In-Charge Addl. Sessions Judge No.5, and matter was fixed on 30.08.2023 for production. Be it mentioned that the matter was taken up on 17.08.2023 and 21.08.2023 in connection with bail application of two co-accused persons. As per order dated 30.08.2023, 14.09.2023, 27.09.2023, 12.10.2023, 19.10.2023, 04.11.2023 and 17.11.2023, the petitioner and some other co-accused were produced through video conference mode.

15) As per order dated 19.10.2023, when the matter was taken up in Court, one of the accused, namely, Paban Kumar Singh had told the Court that he was the driver of the vehicle and 4 co-accused persons including the petitioner had threatened him that they will go out on bail very soon and will beat him if he said anything against them to the Judge.

16) The scanned copy of the Trial Court's record reveals that on 31.03.2022, final complaint was submitted against 5 (five) accused including the petitioner, however referring therein that he was not arrested. The said complaint *prima facie* contains incriminating materials against the petitioner. Thereafter, a supplementary complaint against 6 (six) accused persons including the petitioner was submitted by the Investigating Officer (I.O. for short) on 16.11.2022.

17) It may also be mentioned that the petitioner had moved this Court for pre-arrest bail and this Court, however, when the matter was listed on 08.02.2023, the learned standing counsel for the NCB had informed the Court that final complaint had been submitted and therefore, by order dated 08.02.2023 the said application was closed with liberty to the petitioner to approach the jurisdictional Court and apply for bail in accordance with law. Thereafter, the petitioner had filed a pre-arrest bail application before the learned Trial Court under section 438 CrPC, which was rejected by order dated 17.03.2023.

18) As per order dated 16.03.2024, on 27.07.2023, the NCB had filed a petition for the petitioner to be "shown arrest" in the present case. However, the said petition was numbered as 524A dated 02.08.2023. Accordingly, by order dated 16.03.2023, the learned trial Court had allowed the petition for shown arrest of the petitioner vide petition no. 524A dated 02.08.2022.

19) Hence, it is seen that by the time petition no. 328 petition was filed for bail in respect of the petitioner, the prosecuting agency had already submitted final complaint dated 31.03.2022 and supplementary complaint dated 16.11.2022.

20) Under the circumstances, the question for determination that falls for consideration in this case is as follows:-

When against the petitioner, amongst others, the final complaint was submitted on 31.03.2022 and supplementary complaint was submitted on 16.11.2022, and the petitioner was formally shown arrested vide order dated 16.03.2023, is the petitioner entitled to default bail?

21) None of the 5 (five) cases of (1) *Aman Preet Singh (supra)*, (2)

Satendra Kumar Antil (supra), (3) *Siddharth (supra)*, (4) *Manubhai Ratilal Patel (supra)*, and (5) *Nitin Garg (supra)* are found to be authority on the point of determination referred above. The case of *Aman Preet Singh (supra)*, *Satendra Kumar Antil (supra)* and *Siddharth (supra)* were cited on the point that when a person is not arrested even during investigation, he would be entitled to bail. The cases of *Manubhai Ratilal Patel (supra)* and *Nitin Garg (supra)* were cited on the point that when order of Court is illegal or passed without jurisdiction, then a writ of *habeas corpus* would lie.

22) With regard to the cases of *Aman Preet Singh (supra)*, *Satendra Kumar Antil (supra)* and *Siddharth (supra)*, the distinguishable feature of the present case is that the petitioner was lodged in SKB Central Jail, Muzaffarpur, Bihar for quite a long time for some alleged crime committed with the jurisdiction of the said Courts. Despite repetitive orders from the learned Trial Court, the concerned authorities did not produce the petitioner before the learned Trial Court at Guwahati and thus, the production warrant was not executed by the concerned police authorities. Therefore, this is not a case where the NCB did not take steps for having the petitioner arrested by his production before the jurisdictional Court. Therefore, the said three cases cited by the learned counsel for the petitioner does not help the petitioner in any manner.

23) With regard to the cases of *Manubhai Ratilal Patel (supra)* and *Nitin Garg (supra)*, were cited on the point that when order of Court is illegal or passed without jurisdiction, then a writ of *habeas corpus* would lie, it would now be appropriate to examine whether the order dated 12.07.2023 and 16.03.2023, passed by the learned Trial Court is illegal. As per order dated 12.07.2023, the petitioner was produced from Chapra Jail, Bihar on the strength of production

warrant and moreover, by rejecting the prayer of NCB for taking the petitioner into custody, he was remanded to judicial custody. However, later on, by order dated 16.03.2024, the learned Trial Court had realized that petition filed by the NCB on 12.07.2023 and the subsequent petition no. 524A dated 02.08.2023, which was filed by the NCB on 27.07.2023, for "shown arrest" of the petitioner had inadvertently remained unattended and without any order being passed and thus, the said subsequent petition no. 524A dated 02.08.2023 was disposed of by ordering the petitioner as "shown arrest".

24) The non-release of the petitioner in Bihar before his production before the learned Trial Court at Guwahati, purportedly on projection of the petitioner that there was no proceeding against him in the State of Bihar is not the subject matter of enquiry of this Court as the matter is outside the territorial jurisdiction of this Court. Therefore, the order dated 12.07.2023, passed by the learned Trial Court is neither found to be illegal nor without jurisdiction. Consequently, none of the subsequent orders including order dated 16.03.2024, passed by the learned Trial Court can be said to be illegal or without jurisdiction.

25) The initial non-passing of the order by the learned Trial Court after receipt of prayer from the NCB on 12.07.2023 and on 27.07.2023 for "shown arrest" of the petitioner was nothing but an inadvertent error on part of the learned Trial Court. As per order-sheet dated 02.08.2023, the prayer made by the NCB by petition no. 524A was registered on 02.08.2023. The said petition no. 524A dated 02.08.2023, was heard, allowed and disposed of by order dated 16.03.2024. Nonetheless, the said issue regarding non-disposal of petition no. 524A dated 02.08.2023, had come to notice of the learned Trial Court while disposing the petitioner's petition no. 328 for bail. It is reiterated at the cost of repetition that by the time petition no. 328 petition was filed for bail in respect

of the petitioner, the NCB, i.e. the prosecuting agency had already submitted final complaint dated 31.03.2022 and supplementary complaint dated 16.11.2022. Therefore, rejection of prayer for bail by order dated 16.03.2024 and allowing "shown arrest" of the petitioner on the strength of petition no. 524A dated 02.08.2023 is found to be within the parameters of law and cannot be held to be unlawful or illegal in any view of the matter.

26) Therefore, the cases of *Manubhai Ratilal Patel (supra)* and *Nitin Garg (supra)*, cited by the learned counsel for the petitioner would have no application under the unique facts of this case.

27) Thus, upon holding that the orders dated 12.07.2023 and 16.03.2024, both passed by the learned Trial Court is not illegal or without jurisdiction, the Court is inclined to hold that as the final complaint against the petitioner was submitted on 31.03.2022, which was followed by filing of a supplementary complaint on 16.11.2022, and moreover, on the strength of petition no. 524A dated 02.08.2023, the petitioner was formally shown arrested vide order dated 16.03.2023, the Court is of the considered opinion that the petitioner is not entitled to default bail in this case. The point of determination as formulated in paragraph 20 above, is answered accordingly.

28) Admittedly, in this case, the investigating was carried out by the NCB without being able to secure the arrest of the petitioner as he was in jail in the State of Bihar. The complaint filed on 31.03.2022 and supplementary complaint dated 16.11.2022, *prima facie* discloses that there were materials against the petitioner.

29) In this regard, we find support from the decision of the Supreme Court of India in the case of *Kapil Wadhawan & Anr. (supra)*, wherein the

Supreme Court of India has held that once challan (i.e. complaint in this NDPS case) has been filed, the question of grant of bail has to be considered and decided only with reference to merits of the case under the provisions relating to bail to the accused after filing of such challan (i.e. complaint in this NDPS case).

30) The Court is further inclined to hold that the realization by the learned Trial Court about the inadvertent mistake of not passing orders on prayers/ petitions filed by the NCB on 12.07.2023 and on 27.07.2023 for "shown arrest" of the petitioner does not vitiate the proceeding of NDPS Case No. 73/2022. Similarly, the registration of the petition submitted by NCB on 27.07.2023 as petition no. 524A dated 02.08.2023 also does not vitiate the proceedings of NDPS Case No. 73/2022. In this regard, we may refer to the provisions of section 461 CrPC. Thus, it cannot be said that the petitioner has suffered any prejudice for the said inadvertent mistake on part of the learned Trial Court.

31) In light of the discussion above, the Court is inclined to hold that as the petitioner has been held in judicial custody on the strength of lawful orders dated 12.07.2023 and 06.03.2024, passed by the learned Trial Court in NDPS Case No. 73/2022, arising out of NCB Crime No. 28/2021, the writ petition in the nature of habeas corpus is not maintainable. In this regard, we find that the decision of the Supreme Court of India in the case of *Manubhai Ratilal Patel (supra)*, cited by the learned counsel for the petitioner, is the authority on the point. Accordingly, this writ petition stands dismissed.

32) The dismissal of this writ petition in the nature of *habeas corpus*, shall not preclude the petitioner to apply for bail in accordance with law. Resultantly, the prayer for bail, made in this writ petition, cannot be taken up in

view of the alternative remedy available to the petitioner under appropriate provisions of law.

33) The Registry shall send a copy of this order to the learned Court of Additional Sessions Judge No.5, Kamrup (M), Guwahati to make it a part of the record of NDPS Case No. 73/2022, arising out of NCB Crime No. 28/2021.

JUDGE

JUDGE

Comparing Assistant