

GAHC010082102024



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

Case No. : Bail Appln./1240/2024

RAVINDRA RAY AND ANR.
S/O BALESHWAR RAY
R/O DUMARI DAKSHINI, P.S. PATORI CHAPRA, DIST. SAMASTIPUR, BIHAR-
848506.

2: GHUTUN RAY
S/O KAMESWAR RAY
R/O DUMARI
DAKSHINI
P.S. PATORI CHAPRA
DIST. SAMASTIPUR
BIHAR- 848506

VERSUS

THE UNION OF INDIA
REP BY THE NARCOTICS CONTROL BUREAU.

Advocate for the Petitioner : MR. S A HUSSAIN

Advocate for the Respondent : SC, NCB

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

10.06.2024

Heard Mr. S. Das, learned counsel for the accused and also heard Mr. S.C.

Keyal, learned standing counsel appearing for the respondent NCB.

2. This application, under Section 439 Cr.P.C. is preferred by two accused, namely, Ravindra Ray and Ghuntun Ray, who have been languishing in jail since 17.06.2020, in connection with NDPS Case No.108/2020, under Section 8(c)/20(b)(ii)(c)/29 of the NDPS Act, arising out of NCB Crime No.10/2020, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of a complaint, lodged by one Anil Kushwaha, Intelligence Officer, Narcotics Control Bureau, Guwahati, on 10.02.2020. The essence of allegations, made in the said complaint is that acting on a tip off on 16.06.2020, at about 0715 hours, the NCB team intercepted one Truck, bearing Registration No.CG-08L-3066, at NH-37, near Priti Bhoj Dhaba, Baihata Chariali and apprehended accused Md. Kari, Ghuntun Ray and Ravindra Ray and then for security reasons, the team had taken the Truck to NCB Office, Rupkonwor Path, Chachal, VIP Road, Kamrup(M) and on checking the Truck, they have recovered 484.300 kg of Ganja in 36 packets, and seized the same in presence of witnesses, by preparing seizure list.

4. Mr. Das, learned counsel for the accused submits that this is the 3rd bail application preferred by the accused persons for grant of bail and the first application, being Bail Appln. No.1037/2023 was dismissed by a coordinate bench of this Court on 02.05.2023 and the 2nd bail application, being Bail Application No. 3009/2023, was dismissed by this Court vide order dated 18.10.2023. Mr. Das further submits that the ground for filing this bail application is that while dismissing the first application, the coordinate bench of this Court has directed the learned Trial Court to streamline the proceeding

expeditiously and also granted liberty to the accused persons to approach this Court again by filing appropriate petition and thereafter, Bail Appln. No.3009/2023 was dismissed by this Court, wherein an observation was made by this Court to take recourse of the provision of Section 309(1) Cr.P.C., but, the learned Trial Court has failed to complete the trial and therefore, the accused persons again approached this Court by filing the present bail application.

5. Mr. Das further submits that altogether 10 witnesses have been cited in the final complaint, out of which 3 witnesses have already been examined and thereafter, the accused persons have filed a petition to examine independent witnesses before the I.O. of this case is examined and the respondent side has failed to produce the witnesses and as such, the trial is getting delayed and therefore, Mr. Das contended that the accused persons may be enlarged on bail.

6. On the other hand, Mr. S.C. Keyal, learned standing counsel for the respondent NCB has vehemently opposed the petition on the ground that there is no delay or lapse on the part of the prosecution side to produce the witnesses and in fact, on the prayer being made by the accused persons to examine two independent witnesses, the said witnesses were produced before the learned Trial Court and then the learned Trial Court could not examine the witnesses as the learned counsel for the accused persons remained absent on that day. Mr. Keyal further submits that the offences are serious in nature and the contraband substances, so recovered from the possession of the accused are of commercial quantity and as such the accused have to satisfy the twin requirements of Section 37 of the NDPS Act, but, the accused persons have failed to satisfy the twin requirement. Further, referring to a decision of Hon'ble Supreme Court in **Gurwinder Singh v. State of Punjab & Anr.**, reported in **2024 0 Supreme(SC) 104**, submits that in serious cases bail must be rejected as a

rule, if the Court found prima facie case against the accused persons. Therefore, Mr. Keyal contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below and also gone through the case law in **Gurwinder Singh** (supra), referred by Mr. Keyal, learned standing counsel for the respondent NCB.

8. It is to be noted here that successive bail application is maintainable only on the ground of change of circumstance, in favour of the accused persons. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.** reported in **(2005) 2 SCC 42**. In the case in hand, the ground so assigned by the accused persons for filing this 3rd application is found to be not at all satisfactory. Though Mr. Das, learned counsel for the accused contended that on account of failing to produce the witnesses before the learned Trial Court, the accused persons approached this Court again, yet, having gone through the record of learned Court below, I find that the submission of Mr. Das is devoid of any substance. Of course, some lapses are here and there on the part of the respondent NCB in producing the witnesses before the learned Trial Court. But, the same cannot be termed as inordinate delay and at best it can be termed a systemic delay as held by Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar** (supra).

9. Further, it appears from the record that the contraband substances recovered from the possession of the accused persons are of commercial quantity and as such, the accused persons have to satisfy the twin requirement

of Section 37 of the NDPS Act. But, here in this case, from perusal of the materials placed on record and also from the submission of learned counsel for the accused persons, this Court is unable to derive satisfaction that the accused are not guilty of the offences and that they will not commit any offence while on bail. Unless these twin requirements are fulfilled the accused persons cannot be allowed to go on bail. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Union of India v. Ajay Kumar Singh @ Pappu**, [Criminal Appeal No.952 of 2023, arising out of SLP (Crl.) No.2351 of 2023, decided on 28th March, 2023], where it has been held as under:-

“in view of the above position, 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.”

10. Also, the record of the learned trial court reveals that out of 10 cited witnesses 3 witnesses have already been examined by the prosecution side. The 4th witness, though turned up on date fixed yet, he could not be examined on account of absence of the learned counsel for the accused on date fixed. And as such, the prosecution side cannot be blamed. And no prejudice is also caused to the accused persons on account of delay.

11. Under the aforesaid facts and circumstances and also considering the nature and gravity of the offence and the punishment prescribed for the same, and also considering the ratio laid down in the case of **Gurwinder Singh** (supra) so referred by Mr. Kayel, learned standing counsel for the NCB, this court is of the considered opinion that this is not a fit case where the accused can be granted the privilege of bail. Accordingly, this petition stands dismissed.

12. Mr. Das, learned counsel for the accused, in alternative, submits that since the accused persons have been languishing in jail hazot for more than 3 years, the learned Trial Court may be directed to conduct day to day trial. Given the background of the case and the length of detention of the accused persons, the suggestion so advanced by Mr. Das, appears to be not unreasonable. But, in the case of **High Court Bar Association, Allahabad v. State of U.P. & Ors.**, reported in **(2024) SCC OnLine SC 207**, Hon'ble Supreme Court has held as under:-

“(c) Constitutional Courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending; and”

13. Here in this case, no exceptional circumstance could be shown by the accused persons for issuing such a direction. Yet, having regards to the facts and circumstances on the record and as discussed herein above, specially the length of detention of the accused in jail hazoot, this Court is inclined to request the learned Court below to make an endeavour to dispose of the case as early as practicable and if feasible, to conduct day to day trial so that the length of detention can be taken care of to some extent.

14. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant