

GAHC010083962024



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

Case No. : Bail Appln./1242/2024

AMAD UDDIN TAPADAR,
S/O ABDUL MALIK TAPADAR,
R/O JATKAPON, P.O. LALARCHAK
P.S. KARIMGANJ,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. B C DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28-05-2024

Heard Mr. B.C. Das, learned senior counsel, assisted by Mr. S.H. Rahman, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Addl. P.P. for the State.

2) By this bail application filed under section 439 Cr.P.C., the petitioner, Amad Uddin Tapadar, who is in custody since his arrest on

12.10.2022 in connection with Karimganj PS Case No. 588/2022 is praying for default bail.

3) The said Karimganj PS Case No. 588/2022 is being tried before the Court of learned Special Judge, Karimganj as Special (NDPS) Case No. 155/2022 under Sections 21(c), 25 and 29 of the NDPS Act, 1985.

4) The learned senior counsel for the petitioner had submitted that the petitioner has spent 581 days in custody as on 15.05.2024, the date when the matter was heard.

5) In this application, the petitioner has disclosed that the following previous application for bail were rejected by this Court, viz., (i) B.A. No. 302/2023, disposed of by order dated 10.02.2023; (ii) B.A. No. 1901/2023, disposed of by order dated 14.06.2023; and (iii) B.A. No. 444/2023, disposed of by order dated 05.01.2024. It is thus projected that this is the fourth bail application of the petitioner before this Court.

Point-wise discussion on plea taken by the learned senior counsel for the petitioner:

6) No chance of an early conclusion of trial is the first point urged by the learned senior counsel.

a. The learned senior counsel for the petitioner had submitted that as per his instruction, except for the petitioner, all other co-accused are on bail. It was also submitted that till date effective trial has not begun and out of 20 (twenty) prosecution witnesses listed in the charge-sheet, none of them have been examined so far. Therefore, it was submitted that there is no chance of an early trial.

b. In respect of the plea that there is no sign of early trial, as the order-

sheet of the learned Trial Court prior to 01.01.2024 was available in the record of B.A. No. 4448/2023, this Court by order dated 02.05.2024, had called for scanned copy of order-sheet after 01.01.2024. Accordingly, the learned Trial Court has sent the scanned copy of order-sheet on and from 11.01.2024. On a perusal of the same, it is seen as follows:-

i. The scanned copy of the TCR reveals that one of the co-accused was absconding and therefore, charge-sheet could not be submitted against the said co-accused. Therefore, by order dated 12.06.2023, the case was split up against the said absconding accused.

ii. The appearance of 2(two) accused was completed only on 13.10.2023. Thereafter, charge against the accused persons was framed by order dated 27.10.2023.

iii. On 11.01.2024, the PWs were absent and therefore, by order passed on 11.01.2024, the learned Trial Court had fixed the case for evidence on the following dates, viz., 05.02.24, 06.02.24, 07.02.24, 08.02.24 and 09.02.2024.

iv. On 05.02.2024, not only the PWs were absent, but adjournment petition no. 333/5 and 332/4 were filed by the learned defence counsel and accordingly, the case was adjourned.

v. On 06.02.2024, the PWs were absent and the case was adjourned.

vi. On 07.02.2024, 2 (two) PWs were present but on adjournment petition no. 369/17 filed by the learned defence counsel, the case was adjourned and case was re-fixed on

21.02.2024.

vii. On 08.02.2024, again the learned defence counsel had prayed for adjournment which was allowed and therefore, one PW who was present could not be examined.

viii. The learned Court allowed the said PW to go back and as he was exempted from appearing until summoned.

ix. On 09.02.2024, PWs were absent and summons to 2 (two) PWs were returned without proper service.

x. On 21.02.2024, 1 (one) PW was examined, cross-examined and discharged and the case was fixed for production of accused on 06.03.2024 and for evidence, the case was fixed on 18.03.2024 and 19.03.2024.

xi. On 18.03.2024, 2 (two) PWs were present, but the prosecution side had prayed for an adjournment by filing petition no. 41/1 and the PWs were allowed to go on PR Bond.

xii. On 19.03.2024, 2 (two) PWs (PW-2 and PW-3) were examined, cross-examined and discharged and the case was fixed for production of accused and for evidence on 02.04.2024, 03.04.2024 and 04.04.2024.

xiii. On 02.04.2024, 1 (one) PW was examined as PW-4. He was cross-examined and discharged.

xiv. On 03.04.2024, PWs were absent.

xv. On 04.04.2024, 2 (two) PWs were present. But on adjournment petition no. 67/17 filed on behalf of the accused no.1, the said PWs could not be examined and were allowed to go back. The case was fixed on 18.04.2024 and 19.04.2024 for evidence.

xvi. On 18.04.2024, the PWs were absent.

xvii. On 19.04.2024, the PWs were absent. Hence, the case was fixed on 03.05.2024 for production of accused and on 17.05.2024 and 18.05.2024 for further evidence.

c. Thus, during trial, not only the PWs were intermittently absent, but the accused persons had also contributed to the delay in examination of PWs because of the herein before referred adjournments taken by them. Therefore, the accused persons have also contributed to the delay in progress of the trial.

7) No contraband narcotic drug was seized from the custody of the petitioner is the second point urged by the learned senior counsel for the petitioner.

a. In this regard, it was submitted that the petitioner was made an accused only on the basis of the statement made by a co-accused.

b. In this regard, the Court is of the considered opinion that the merit of the trial cannot be examined by the Court at the stage of consideration of bail.

8) There is no chance that the petitioner would abscond was the third point urged by the learned senior counsel for the petitioner.

a. It was submitted that the petitioner has movable and immovable property.

b. Moreover, it was submitted that the petitioner is ready and willing to provide any security and is also ready and willing to abide by any condition that may be imposed on grant of bail.

- c. Hence, it was submitted that there is no chance of absconding.
- d. In this regard, the Court has taken note of the said submissions, and this point raised by the learned senior counsel for the petitioner shall be addressed at the last.

9) The grant of default bail to the petitioner is the fourth point urged by the learned senior counsel for the petitioner.

- a. It was submitted that the Final Form/Charge-sheet no. 130 dated 06.04.2024, submitted by the I.O. in connection with Karimganj P.S. Case No. 538/2022. It was further submitted that in the Charge-sheet, it was stated by the I.O. that FSL expert opinion of the petitioner which was sent in marked document D29 is yet to be received. Therefore, investigation into this instant case shall continue for collection of further report and evidences and a report under section 173(8) CrPC shall be submitted with SCD.
- b. Accordingly, it was submitted that the I.O. had submitted a part charge-sheet against the petitioner only to prevent the petitioner to get bail.
- c. In support of the submissions that in this case, default bail is required to be granted to the petitioner, the learned senior counsel for the petitioner has relied on the case of (i) *Sanjay Dutt v. State, through CBI, Bombay, (1994) 5 SCC 401*, (ii) *Uday Mohalal Acharya v. State of Maharashtra, (2001) 5 SCC 453*, (iii) *Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67*, (iv) *Ashok Munilal Jain v. Asst. Director, Directorate of Enforcement, (2018) 16 SCC 158*, (v) *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC*

485, (vi) *Satender Kumar Antil v. Central Bureau of Investigation & Anr.*, (2022) 10 SCC 51, and (vii) *Ritu Chhabaria v. Union of India*, 2023 SCC OnLine SC 502: (2023) 0 Supreme(SC) 416.

d. Relying on above, it was submitted that the Supreme Court of India, in the case of *Ritu Chhabaria (supra)*, amongst others, had laid down as follows:-

I. Without completing the investigation of a case, a charge-sheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the CrPC.

II. Such a charge-sheet, if filed by an investigating authority without first completing the investigation, would not extinguish the right to default bail under Section 167(2) CrPC.

III. The trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail.

e. In this regard, the learned Addl. P.P. has opposed the prayer for bail.

f. The scanned copy of the relevant pages of the TCR was called for in connection with B.A. No. 4448/2023. The record of the said B.A. 4448/2023, has been called for perusal. Moreover, as stated hereinbefore, the scanned copy of order-sheet after 01.01.2024, which was called for, has been placed before this Court.

g. The charge-sheet submitted against the petitioner and others disclose that a huge consignment of heroin weighing about 9.477 kgs. was kept concealed in a truck bearing registration no. AS-11- BC-7975 and the said truck was intercepted on 11.10.2022. The driver led to the

recovery of suspected heroin hidden in 764 soap boxes, weighing 9,477 kgs., in the course of transportation of contraband narcotic drugs from Choggulla side in Assam towards Tripura. Accordingly, the contraband narcotic drugs, along with truck and other things were seized.

- h. As per the charge-sheet, the investigation carried out so far suggests that the petitioner was the owner, supplier and mastermind of the trafficking of contraband drugs, which has a street value between Rs.60.00 to Rs.65.00 Crore.
- i. Investigation also reveals that unaccounted cash amount of Rs.20,00,000/-(Rupees Twenty lakh only) was seized from the house of the petitioner, which was beyond his known source of income.
- j. Investigation also reveals that by using fake SIM card, the petitioner was in constant touch with the driver of the vehicle through which the contraband heroin was transported.
- k. As per the FSL report, the said contraband was tested positive for heroin.
- l. As per the charge-sheet, the petitioner is involved in trafficking narcotics illegally into the State through suppliers in the State of Mizoram and Tripura.
- m. The I.O. has stated in the charge-sheet to the effect that FSL expert opinion of the arrested accused Amad Uddin Tapadar (petitioner) which was sent in marked document D29 is yet to be received. Therefore, investigation into this instant case shall continue for collection of further report and evidences and a report u/s. 173(8) CrPC shall be submitted with SCD.

- n. On a perusal of the case diary, it is surprising to see that in the column titled "Particulars of documents cited/relied upon" of the charge-sheet, vide document D-29, "FSL forwarding of seized mobile phone belonging to the petitioner vide MR No. 313/2022" is entered. The document marked as "D- 31" is stated to be "FSL report received of MR No. 313/2022".
- o. Thus, it appears that although one FSL report is received, but yet, it is mentioned in the charge-sheet that FSL report is awaited.
- p. Be that as it may, even in the absence of the FSL report of the mobile vide D-29, yet the charge-sheet reveals sufficient materials against the petitioner to proceed against him independently of the FSL report.
- q. The seizure of a huge quantity of 9,477 kg. smuggling narcotic drugs and psychotropic substance from the truck having street value between Rs.60.00 Rs.65 Crore, which allegedly belonged to the petitioner, coupled with recovery of unaccounted money of Rs.20.00 lakh, is sufficient material to proceed in the trial against the petitioner, notwithstanding whether or not the FSL report of the mobile reveals any incriminating material against the petitioner.
- r. Hence, in this case, it cannot be held that the charge-sheet filed against the petitioner was incomplete as the prosecution can still proceed on the basis of materials available on record.
- s. In view of the discussions above, the cases of (i) *Sanjay Dutt (supra)*, (ii) *Uday Mohanlal Acharya (supra)*, (iii) *Rakesh Kumar Paul (supra)*, (iv) *Ashok Munilal Jain (supra)*, (v) *M. Ravindran (supra)*, (vi) *Satender Kumar Antil (supra)*, and (vii) *Ritu Chhabaria (supra)*, cited by the

learned senior counsel for the petitioner on the point that if the charge-sheet is not filed within time, the accused becomes entitled to default bail, would not help the petitioner in this case in hand.

10) The fourth point urged by the learned senior counsel for the petitioner is that the chance of conviction is bleak. In the said regard, the Court is of the considered opinion that this is not an appropriate stage to examine if there is sufficient evidence for convicting the petitioner.

11) Therefore, the learned Addl. P.P. has been able to *prima facie* satisfy the Court that independent of the FSL report which is awaited by the I.O., there are other sufficient materials in the charge-sheet to suggest that the petitioner is suspected to be involved in the transportation of commercial quantity of heroin into the State.

12) In the case of *Narcotics Control Bureau v. Mohit Aggarwal*, AIR 2022 SC 3444, the case was filed under section 8/22/29 of the NDPS Act, 1985. In the said case, a 3-Judge Bench of the Supreme Court of India had observed as follows:-

11. It is evident from a plain reading of the non- obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offense under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub- section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is

that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offense. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offense while on bail.

12. The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In Collector of Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549 a decision rendered by a Three Judges Bench of this Court, it has been held thus:-

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offense and that he is not likely to commit any offense while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offense. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offense. [emphasis added]

13. The expression 'reasonable ground came up for discussion in State of Kerala & Ors. v. Rajesh and others, (2020) 12 SCC 122 and this Court has observed as below:

13. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offense. The reasonable belief contemplated in the provision requires existence of

such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offense. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for." [emphasis added]

14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offense. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offense while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offenses that he has been charged with and he is unlikely to commit an offense under the Act while on bail.

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17. Even de hors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favor of the respondent and concluding that there were grounds to justify that he was not guilty of such an offense under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at

this stage.

13) It would also be relevant to quote herein below the provision of Section 436A Cr.P.C.:-

"436A. Maximum period for which an under trial prisoner can be detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offense under any law (not being an offense for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offense under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period

longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offense under that law.

Explanation. In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

14) In the discussions made herein before, the Court has held that the case against one absconder accused was split up. Moreover, there was delay in appearance of the co-accused in the trial has considerably delayed the stage of explanation and/or framing of charges. Charges were explained to the appearing accused on 27.10.2023. Hence, as per explanation to Section 436A CrPC, the period upto 27.10.2023 is liable to be excluded. Moreover, the accused have also contributed to adjournment of the case during examination of PWs. Accordingly, it cannot be held that there has been an inordinate delay in commencement of trial.

15) As per the submissions of the learned Addl. P.P., during that time, this particular seizure of contraband was one of the largest in the State.

16) Therefore, the Court is unable to hold that there are grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

17) In the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, it has been held that:-

"Where undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an under-trial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount."

18) In the present case, the petitioner is charged of committing offense punishable under sections 21(c) of the NDPS Act. Under the said provision, the punishment prescribed is not less than 10 years but which may extend to 20 years and shall also be liable to fine which shall not be less than Rs.1.00 lakh but which may extend to Rs.2.00 lakh. The petitioner has been incarcerated for a period of 581 days as on 15.05.2024, the date when this matter was heard. Therefore, following the ratio laid down in the case of *Satender Kumar Antil (supra)*, as well as the provision of Section 436A Cr.P.C., the petitioner has not become entitled to be released on bail, notwithstanding that some other accused persons have been released on bail.

19) Thus, this application for bail is rejected.

20) Nothing contained in this order shall prejudice either side during trial.

21) Before leaving with the records, as it is noted on a perusal of the scanned copy of the charge-sheet that the FSL report of Document D-29 appears to be available at D-31. Therefore, this is a fit case for bring the matter to the notice of the Director General of Police, Assam, with a hope that the said authority would have the matter examined in the administrative side through his office to find out that when FSL reports as mentioned in charge-sheet as D-31, why the I.O. had mentioned in the charge-sheet that *"The FSL expert opinion of the arrested accused Amad Uddin Tapadar which was sent in marked document D29 is yet to be received. Therefore, investigation into this instant case shall continue for collection of further report and evidences and a report u/s. 173(8) CrPC shall be submitted with SCD."*

JUDGE

Comparing Assistant