

GAHC010088442024



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

**Case No. : Bail Appln./1290/2024**

BIJAY GUPTA  
S/O BADRI GUPTA  
R/O - VILL - MANTRI PUKHURI, P.S - HEINGANG, P.O - MANTRI PUKHURI,  
DIST - IMPHAL EAST, MANIPUR

VERSUS

THE NCB  
NARCOTICS CONTROL BUREAU, REPRESENTED BY THE STANDING  
COUNSEL

**Advocate for the Petitioner : MR. N DUBEY**

**Advocate for the Respondent : SC, NCB**

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**26.06.2024**

Heard Mr. N. Dubey, learned Counsel for the petitioner. Also heard Ms. M. Deka, learned Standing counsel, NCB for the respondent.

**2.** This application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been languishing in jail *hazot* since 02.08.2023 in connection with NDPS Case No.16/2024, Ref.NCB. Crime No. 12/2023 registered under Section 8(C) *read with* Sections 21(C)/29 of NDPS Act, 1985.

**3.** The scanned copy of the LCR along with the statement of the witnesses has been received and I have perused the same.

**4.** It is submitted by Mr. Dubey, learned Counsel for the petitioner that the accused/petitioner is innocent and there is no criminal antecedent against him and also the co-accused namely Sheikhongan Haokip while recording his statement under Section 67(C) of NDPS had not mentioned the name of the present petitioner. It is contended by the petitioner that he is a driver by profession and the co-accused hired him to go to Guwahati only as a driver of the vehicle and for which he charged only Rs.10,000/- (Rupees ten thousand) as a fare of the vehicle and that apart he is no way connected in the alleged offence. He further submitted that if the present petitioner was involved in the alleged offence then, he would have demanded more money but from the statement of the co-accused, it is revealed that he took only Rs.10,000/- as a

fare of the vehicle. While, recording the statement under Section 67(C) of NDPS, the present petitioner specifically stated before the IO that the vehicle was booked by the co-accused with an assurance to give him Rs.10,000/- and as a driver his room was booked near to the other co-accused in the Goswami Lodge, but, he was not aware about the contraband kept in the vehicle.

**5.** He further submitted that the petitioner has not committed any offence of illegal trafficking of narcotics substance and he was arrested on mere suspicion. More so, he was arrested in connection with this case on 02.08.2023 and since then, he is behind the bar and hence, considering his long incarceration period also, he may be released on bail as the prolonged incarceration militates the most precious fundamental right guaranteed under Article 21 of the Constitution of India. Further he submitted that there is no scope for disposal of the case within a short period as the trial is yet to be commenced and hence, considering this aspect of the case also, the accused/petitioner may be released on bail.

**6.** In this context, Ms. Deka, learned Standing counsel, has submitted that the complaint was lodged on 25.01.2024 and the charge was framed on 23.02.2024. As per the record, the 2(two) witnesses had already been examined and the case is fixed on 09.07.2024 for further evidence. It is submitted that there is a progress in the investigation, though some more witnesses are yet to be examined by the prosecution. From the report of the IO, it is seen that the contraband was recovered from the possession of the accused/petitioner who produced all the seized articles before the IO and the voluntarily statement of the accused/petitioner also, reveals that there was a telephonic communication between the accused/petitioner and the co-accused. Further, from the C.D.R., it is clarified that the accused/petitioner was involved in the alleged offence and

had a past relation with the co-accused. Thus, it is seen that the accused/petitioner is involved in drug trafficking and hence, it is not a fit case to allow the accused/petitioner to go on bail at this stage. More so, the charge-sheet has been filed within a statutory period and the two prosecution witnesses have already been examined by the prosecution. Further, she submitted that the accused/petitioner is the one from whom the 59 soap cases containing heroin were recovered which were concealed in the wardrobe of Lodge, where he was staying along with the co-accused. Accordingly, she submitted that considering the nature and gravity of the offence, it is not at all a fit case to allow the accused/petitioner to go on bail at this stage.

**7.** After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the relevant annexures and the other documents annexed along with the petition as well as in the record, it is seen that the accused/petitioner had produced the contraband before the IO which were concealed in the wardrobe. More so, it is seen that the accused/petitioner brought the said soap cases containing suspected heroine from the car and those were concealed and kept in the wardrobe of the Lodge. Thus, it cannot be considered that he was not aware about the contraband which was brought by him along with the co-accused in the car. More so, from the statement made by the accused petitioner and the other co-accused person, it is seen that there are sufficient incriminating materials available against the accused/petitioner showing his involvement in the alleged offence.

**8.** It is a fact that the present accused/petitioner, along with other co-accused were arrested in connection with this case on the allegation of recovery of commercial quantity of the contrabands from their conscious possession and

accordingly, in the present case, rigor of Section 37 NDPS Act will follow.

**9.** For ready reference, Section 37 NDPS Act is extracted herein below:

*“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.”*

**10.** Further, from the record, it is seen that the trial has already commenced and the two witnesses were already been examined.

**11.** It is an admitted fact that the accused/petitioner is in custody since 330 days i.e for a quite a long period, but the bail cannot be granted solely on the ground of length of detention.

**12.** the Supreme Court in the case of **Kalayan Chandra Satkar Vs. Rajesh Ranjan Alias Pappu Yadav & Anr. [(2005) 2 SCC 42]** has expressed the view that the accused cannot be granted with bail solely on the ground of period of incarceration undergone by the accused. It was further held that the sole ground of delay in conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of *prima facie* case, gravity of the offence and the allegation of tampering with the witnesses by threat and inducement when on bail.

**13.** In the case of **Rajesh Ranjan [(2004) 7 SCC 528]**, the Supreme Court has held that mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to be enlarged on bail nor the fact that the trial is not likely to be concluded in the near future, either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail. It is also held that while considering the bail application, the Court must consider the nature of acquisition, the severity of the punishment in case of conviction, the nature of supporting evidence, reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant and prima facie satisfaction of the court in support of the charge.

**14.** Further, as per the view of the Apex Court, the Court should be slow in granting bail to the accused if the matter is involved with the commercial quantity. In this context, a judgment of the Apex Court, passed in the case of **State by the Inspector of Police vs. B. Ramu (Criminal Appeal No. 801 of 2024)**, can be relied on, wherein in paragraph Nos. 9, 11, 12, 14 and 15 thereof, it has been held as under:

*“9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.*

*11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.*

*12. For entertaining a prayer for bail 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.*

13. *Manifestly, a very strange approach has been adopted by the learned Single Judge in the impugned order whereby the anticipatory bail was granted to the respondent on the condition that the appellant would deposit a sum of Rs.30,000/- to the credit of the registered Tamil Nadu Advocate Clerk Association, Chennai along with various other conditions. The condition no.(a) (supra) so imposed by the High Court is totally alien to the principles governing bail jurisprudence and is nothing short of perversity.*

14. *The fact that after investigation, the charge-sheet has been filed against the respondent-accused along with other accused persons, fortifies the plea of the State counsel that the Court could not have recorded a satisfaction that the accused was prima facie not guilty of the offence alleged.*

15. *As a consequence, the impugned order is cryptic and perverse on the face of the record and cannot be sustained. Thus, the same is quashed and set aside."*

**15.** In view of the discussions made above and also considering the entire facts and circumstances of the case, nature and gravity of the offence and further considering the view expressed by the Apex Court in the case laws referred to hereinabove, this Court is of the opinion that there is a *prima facie* case against the accused/petitioner and thus, at this stage, I am of the view that it is not a fit case to enlarge the accused/petitioner on bail only considering the period of incarceration and hence, the same stands dismissed.

**16.** The bail application stands disposed of in terms above.

**JUDGE**

**Comparing Assistant**