

GAHC010097752023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 1619/2023

Ramjan Hussain,
Aged about 32 years,
Son of Chirag Miya,
Resident of Village-Chikanchara,
P.S.-Bishramganj,
District-Sepahijala, Tripura,
PIN-799103.

.....Accused/Petitioner.

-Versus-

The State of Assam, represented by
the Public Prosecutor, Assam.

.....Respondent.

Advocate for the appellant: Mr B K Mahajan

,

Advocate for the respondent: Mr D P Goswami, Addl. P.P.

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of hearing : 19.12.2023

Date of Judgment : 05.01.2024

ORDER

Heard Mr B K Mahajan, learned counsel for the petitioner, Ramjan Hussain.

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC', for short), with prayer for bail as he is in custody since 29.10.2022, in connection with Special (NDPS) Case No. 153/2022, pending in the Court of learned Special Judge, Karimganj, corresponding to GR Case No. 1929/2022, arising out of Bazaricherra PS Case No. 187/2022, under Sections 22(b)(ii)(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act', for short).

3. Heard Mr D P Goswami, learned Additional Public Prosecutor for the

State of Assam.

4. The FIR unfolds that on 17.10.2022, during regular checking (naka checking) at about 03:40 pm, a truck bearing Registration No. NL-01-Q-5050 (12 wheeler goods carrier) was approaching from Tripura side and was halted by Nabendu Das. The driver of the truck was Manik Singha and the truck was thoroughly checked. Some gunny bags were unloaded on suspicion and cannabis was found under the gunny bags. The driver Manik Singha could not give any satisfactory reply about the cannabis. After unloading all the gunny bags, 93 gunny bags containing ganja were recovered from the truck. 3243 kgs of ganja was found after weighing the gunny bags recovered from the truck. The cannabis (ganja) was seized along with the other relevant articles. During investigation, the petitioner was arrested in connection with this case on 29.10.2022 and since then, he has been behind bars. Charge sheet has already been laid against four accused persons in connection with this case under Sections 22 (b) (ii) (C)/25/29 of the NDPS Act. The petitioner is one of the accused.

5. It is contended that the seized cannabis was not recovered from the conscious possession of the present petitioner and there is every possibility

that the petitioner will be acquitted from the charges under Sections 20 (b) (ii)(C)/25/29 of the NDPS Act. The petitioner is a driver by profession and by dint of his perseverance, he has been taking care of his family. He is the sole breadwinner of his family. He has been made a scapegoat in this case.

6. It is averred that the mandatory provision under Section 42 of the NDPS Act was not scrupulously followed. A cursory glance of the forwarding report clearly reveals that the contraband or any other objectionable document has not been recovered from the conscious possession of the petitioner. No material has been collected against him. The statement of the petitioner cannot be used against him as per the law laid down in ***Tofan Singh –vs- State of Tamil Nadu***, reported in **(2013) 16 SCC 31**.

7. The petitioner has been arrested merely on the basis of telephonic contact/CDR. Further custodial detention of the petitioner does not appear to be necessary. As the co-accused have been shown as absconders, conclusion of trial appears to be a remote feature. As the accused has already been languishing in jail, the learned counsel for the petitioner has prayed for bail.

8. The learned Additional Public Prosecutor has raised serious objection stating that humongous amount of ganja was seized in connection with this

case and charge sheet has been laid against the present petitioner as he is complicit. This case is under trial at this juncture. The embargo under Section 37 of the NDPS Act comes into play at this stage. The learned Additional Public Prosecutor has prayed to reject the bail petition.

9. I have considered the submissions of the learned counsel for the petitioner, Mr B K Mahajan and the submissions of learned Additional Public Prosecutor, Mr D P Goswami.

10. I have perused the scanned copies of the LCR.

11. An additional affidavit was filed. Through the additional affidavit, the learned counsel for the petitioner has submitted that the order of the learned trial court dated 20.07.2023, reflects that as soon as the case against the other two co-accused shown as absconders has been split up and separated, charges were framed against the present petitioner and the co-accused Manik Singha. The order clearly reflects that the charge framed against the present petitioner was under Sections 25/29 of the NDPS Act and no embargo under Section 37 of the NDPS Act will restrict the petitioner's prayer for bail at this juncture. It is submitted that Sections 25 and 29 of the NDPS Act reads as:-

25. Punishment for allowing premises, etc., to be used for commission of an offence.—Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

29. Punishment for abetment and criminal conspiracy-

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which- (a) would constitute an offence if committed within India; or (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within

India.

12. The learned counsel for the petitioner has also taken this Court through Section 36 A (4) of the NDPS Act, which reads as:-

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days": Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

13. The learned counsel for the petitioner has submitted that it is manifest that Sections 25 and 29 of the NDPS Act are not covered by Section 36 A (4) of the NDPS Act, indicating that the embargo under Section 37 of NDPS Act does not lie against the present petitioner.

14. I have given my thoughtful consideration to the submissions at the Bar.

15. It can be clearly understood from the mandate under Section 25 and Section 29 of the NDPS Act that the present petitioner who was not present in truck carrying the ganja is facing trial for the offence under Section 25 and Section 29 of the NDPS Act. The punishment prescribed under Section 25 and Section 29 of the NDPS Act, clearly reveals that the offender is liable to be punished with the "punishment provided for that offence", meaning thereby, the offender is liable to be punished if proven guilty for offence under Section 20 (b)(ii)(C) of the NDPS Act.

16. The decision of Hon'ble the Supreme Court in ***Abbas Ali –Vs- State of Punjab***, reported in **(2013) 1 SCC (Cri.) 919**, is relevant to this case. It has been observed by Hon'ble the Supreme Court in ***Abbas Ali's case (supra)*** that-

2. The facts, relevant to this appeal, are: A recovery of 10 bags containing rice polish and 37 bags containing poppy husk, in accordance with the provisions of the Act, was made from three accused persons (for short "A1", "A2", and "A3", respectively). The said bags were being transported in a canter registered in the name of the appellant herein (referred to as A4 before the Trial Court). A1 to A3 were arrested at the time of recovery, however A4 was arrested later. Upon trial, A1 to

A3 were convicted by the Trial Court for the offence under Section 15 of the Act and awarded similar sentence as the appellant herein. By the judgment and order of the High Court, dated 13.05.2008, in an appeal preferred by the said three accused persons, their conviction and sentence has been confirmed by the High Court. The said three accused persons are not before us in this appeal.

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5. The aforesaid issue which we have noticed in our order, was not canvassed by the appellant either before the Trial Court or before the High Court and, therefore, we cannot permit the appellant to raise the said issue for the first time before us. Having said so, we have still looked into the disability certificate so produced by the appellant before this Court. The certificate would only show that one of the appellant's legs is amputated and, therefore, there is 60% physical disability. The factum of a person being physically disabled does not imply that he would accord his permission to the use of his vehicle for an offence punishable under the provisions of the Act and, therefore, in our opinion, the submission of the learned counsel is devoid of any merit and, thus, is liable to be rejected.

17. The conviction of the appellant, Abbas Ali was upheld by the Hon'ble

Supreme Court, who was convicted under Section 25 of the NDPS Act, to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 1 lac with default stipulation.

18. At this juncture, the evidence is not brought to the fore. The merits and demerits of this case cannot be taken into consideration at this premature stage. Charges have been framed on 27.10.2023. Trial has been procrastinated by the abscondence of the co-accused and not by the prosecution. At this point and it cannot be said that fundamental right to personal liberty has been curtailed at this juncture.

19. The petition with prayer for bail is rejected at this stage.

20. The learned trial Court is directed to dispose of the case, expeditiously.

21. Bail Application stands disposed of.

JUDGE

Comparing Assistant