

GAHC010106532024



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

Case No. : Bail Appln./1605/2024

DEBAJIT SAHA AND ANR.
S/O NITISH CHANDRA SAHA
R/O BIRDDHYANAGAR, P.O. RANI BAZA, P.S. RANI BAZAR, DIST. WEST
TRIPURA, TRIPURA-799035

2: BISWAJIT SARMA
S/O LATE BRAMHA DEB SHARMA
R/O SIDDHI ASHRAM
P.O. SIDDHI ASHRAM
P.S. AMTOLI
DIST. WEST TRIPURA-799001

VERSUS

UNION OF INIDA
REPRESENTED BY SC, NCB ZONAL UNIT GUWAHATI

Advocate for the Petitioner : MR. M BISWAS, MS. A K CHOPHI, J SINGPHO, S K DAS

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

09.08.2024

Heard Mr. M. Biswas, learned counsel appearing for the accused petitioners

as well as Ms. M. Deka, learned standing counsel, NCB.

By filing this petition under Section 439 Cr.P.C., the accused-petitioners, namely, **Debajit Saha and Biswajit Sarma**, have prayed for grant of bail in connection with **NDPS Case No.189/2022 corresponding to NCB Crime No. 04/2022** under Sections **20(b)(ii)(c)/25/27A/29 of NDPS Act**.

The fact of the case leading to this bail application is that the petitioners have been arrayed as accused persons in connection with NCB Crime No.04 of 2022 alleging that they were involved in trafficking of commercial quantity of ganja. They were arrested when they appeared on receipt of notices under Section 67 of NDPS Act. The main accused one Kumar Sunar, who was the driver of the alleged truck bearing No. NL 01 AF 3380 was arrested by the NCB on the allegation that they received an information from reliable source that the said Kumar Sunar would carry huge quantity of ganja in his vehicle. On the basis of that information, the NCB team intercepted the said truck near metro hospital Khanapara, Guwahati and thereafter, during search 405.270 kgs of ganja was recovered.

It is submitted by the learned counsel for the petitioner that the investigating officer received the information that the petitioners were staying at Ashiana Lodge, Six Mile, Guwahati and they were the suppliers of the seized ganja. On getting the information, the NCB team visited the said lodge, served notices under Section 67 of the NDPS Act and during interrogation, they admitted that they were involved in trafficking of said seized ganja which were seized from truck No. NL 01 AF 3380. According to the learned counsel for the petitioners, apart from this there is no other materials against the petitioners. Learned counsel for the petitioner has pointed out that in the case of *Tofan Singh vs State of Tamil Nadu (2021) 4 SCC 1*, the Hon'ble Supreme Court has held that the statement made under Section 67 of the NDPS Act is not an admissible piece of evidence.

It is further submitted that the petitioners have been in judicial custody for more than two years. Out of total 10 witnesses, only 3 witnesses have been examined. If the trial would continue at this pace, then there is no likelihood of completion of trial at an early date. Though the earlier bail application filed by the petitioners was rejected with a direction to the trial court to complete the trial within a period of three months w.e.f. 01.10.2023 but recording of the evidence of the witnesses still remain inconclusive. Accordingly, the learned counsel for the petitioner prays that as the petitioners have been languishing in custody for long time, they may be enlarged on bail.

Learned counsel has referred the following case laws in support of his submission:

- (i) *Crl. A. No. 2790/2024 (Sk. Javed Iqbal @ Asgfaq Ansari @ javed Ansari vs State of Uttar Pradesh).*
- (ii) *BA 538/2024 (Javaid Iqbal @ Javid Iqbal vs Union of India).*
- (iii) *Ravi Prakash vs State of Orissa reported in (2021) Livelaw SC 533.*
- (iv) *Md. Salman Hanif Sheikh vs State of Gujrat reported in Special Leave to Appeal (Crl. No. 5530/2023) and some others.*

In response, Ms. M. Deka, learned standing counsel, NCB has submitted that commercial quantity of ganja was recovered from a seized truck bearing NL 01 AF 3380 which was used for trafficking of the seized contraband in the instant case and the said vehicle belongs to one of the accused petitioner, Debajit Saha. It is further submitted that one relative of the petitioner No.2 Biswajit Sarma received an amount of Rs.8,00,000/- as payment for the seized ganja.

According to learned NCB counsel, being the owner of the seized truck, it can be rightly assumed that the petitioner No.1 was well aware of the contraband

being kept in his truck. Learned counsel has referred one case law on the point vide *Union of India vs Om Prakash Yadav* (Crl. A. No. 2027/2024), the Hon'ble Supreme Court has observed as follows:

“Having regard to such a huge quantity being carried in the truck, it is not believable that the respondents were not aware about the contents of the consignments being carried in the truck. The respondents having prima facie failed to satisfy us that they were not guilty of the alleged offences.”

Further submission of learned standing counsel NCB is that even though no narcotic substances were recovered from the possession of the petitioner, however, there are sufficient materials available against them regarding their involvement in trafficking of the said ganja in the instant case.

Learned counsel has relied on another case laws vide *Leela Dhar @ Leelu vs the State NCT Delhi* in BA No. 4088/2021 and 4059/2021 has observed as follows:

“ it also needs to be shown by the petitioners that the prosecution has not been able to establish any connection between the subject offence and the bank accounts, wherein the alleged proceeds for procuring the contraband allegedly stand deposited. Merely because there is no recovery from the possession of the concerned petitioner, it cannot be assumed at the stage of bail that the petiitoenr is not guilty of the said offence, if there is other incriminating evidence connecting the petitioner with the offence.”

The last limb of argument of the learned NCB counsel is that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on behalf of the accused petitioners cannot be accepted.

Having heard the learned counsel for the parties and on perusal of the trial court record, the admitted position is that no any contraband items were recovered from the possession of the present petitioners. It is also not in dispute that the petitioner No.1 is the owner of the vehicle bearing No.NL 01 AF 3380 from which commercial quantity of ganja was recovered. There is no explanation from the side

of the petitioner No.1 that why such large quantity of ganja was kept in his vehicle.

On perusal of the trial court record, it reveals that the case was first initiated on 25.02.2022 and charge-sheet has been submitted on 24.08.2022 and charge was framed on 07.11.2022. Out of ten witnesses, six witnesses have already been examined. Ms. Deka, learned standing counsel, NCB assures this Court that within two or three months the NCB would complete the trial. Under such backdrop, the bail prayer of the petitioners may not be considered.

It is true that there was some delay in proceeding of trial but it was not delayed only for the negligence or lackadaisical attitude of the prosecution but also for the accused. It appears from the record that on 02.03.2024, PW-4 was though examined but not cross-examined due to non appearance of the counsel of the petitioner No.1. On 26.04.2024, the said witness again came from Gaziabad but he was not examined as the learned counsel for the petitioner No.1 took adjournment.

In view of the above discussions as well as the legal mandates vide *Om Prakash Yadav (supra)* and *Leela Dhar @ Leelu (supra)*, this Court is not inclined to grant bail to the petitioners at this stage of trial. However, the trial court is directed to take initiative to dispose of the matter early.

Accordingly, the bail application stands rejected.

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

JUDGE

Comparing Assistant