

GAHC010109092024



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

Case No. : Bail Appln./1579/2024

MAHENDRA SINGH
S/O SANTRAM
R/O VILL AND P.O. ABHEDEPUR, P.S. SIRSAKALA, TEHSIL- KALPI, DIST.
JALAUN, UTTAR PRADESH- 285130

VERSUS

THE UNION OF INDIA
REPRESENTED BY STANDING COUNSEL, NARCOTIC CONTROL BUREAU.

Advocate for the Petitioner : MR. M HUSSAIN, MR. A Z AHMED

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

29.08.2024.

Heard Mr. A.Z. Ahmed, learned counsel for the accused. Also heard Mr. S.C. Keyal, learned Standing Counsel for the respondent NCB.

2. This second bail application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused **Mahendra Singh**, who was arrested and languishing in jail hazoot since 01.04.2021, in connection with the

Special NDPS Case No. 46/2021, under Sections 21(c)/29 of the NDPS Act, pending before the learned Special Judge, Kamrup Amingaon, for grant of bail.

3. Notably, aforementioned case has been registered on the basis of a complaint lodged by one Kausik Sarkar, Intelligence Officer, NCB, Guwahati on 22.09.2021.

4. The essence of allegations, so made in the said complaint dated 22.09.2021 is that acting on a tip off on 29.03.2021, at about 16.20 hrs. Shri Anil Kushwaha, Intelligence Officer, NCB, Guwahati Zone, with a team of NCB official intercepted one Truck, bearing registration No. UP-22-T-8859, near Narayana Hospital, which was coming from Rangia side towards Agartala, Tripura and apprehended two persons, namely, Ayodhya Prasad and Mahendra Singh and on checking the Truck they recovered 9975 bottles of Phensedyl, Codine based cough syrup, and seized the same in presence of witnesses, preparing seizure list. Thereafter, investigation was carried out and on completion of the same, Offence Report was submitted against the present accused before the learned trial court.

5. The respondent NCB has also filed written objection in granting bail to the accused. It is stated that 9975 bottles of Codine based cough syrup (Phensedyl) was recovered from the conscious possession of the present accused and one Ayodhya Prasad from a Truck bearing registration No. UP 22T 8859. It is also stated that he played an active role in the illegal business for a sum of Rs. 10,000/ and that already three witnesses have been examined and another witness was present in the court who could not be examined due to absence of the counsel for the accused. And therefore it is contended to dismiss the petition.

6. Mr. Ahmed, learned counsel for the accused, submits that the accused was arrested on 01.04.2021 and since then he has been languishing in jail hazoot for more than three years and five months. Mr. Ahmed further submits that the learned trial court has examined four witnesses so far, out of 8 witnesses cited in the Final Complaint. Furthermore, Mr. Ahmed submits that the prosecution side has failed to complete examination of witnesses even after getting sufficient time and the trial is protracted and as such his right to speedy trial stands violated and that he will face trial and therefore, it is contended to allow the petition. Mr. Ahmed also referred to a decision of this court in BA No. 190/2024 in support of his submission.

7. Whereas, Mr. S.C. Keyal, the learned Standing Counsel for NCB submits that the quantity of contraband substances recovered from the possession of the accused is of commercial quantity and that the accused failed to satisfy the twin requirements of Section 37 of the NDPS Act. Mr. Keyal further submits that already four witnesses have been examined herein this case and examination of remaining witnesses will be completed soon and the witnesses already examined had implicated the accused with the charges and therefore, it is contended to dismiss the same.

8. Having heard the submissions 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 case record, and also the Status Report, received from the learned Court below.

9. Indisputably, the accused was arrested on 01.04.2021 and since then he has been languishing in jail hazoot. It also appears from the scanned copy of the record of the learned trial court that already four witnesses have been examined out of 8 cited witnesses. The trial is in progress.

10. Even for the sake of argument if it is conceded that there is delay in conclusion of trial, yet, on this count alone bail cannot be granted to the accused without satisfying other requirements. It is worth mentioning in this context that a three Judges Bench of Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan**, reported in **(2005) 2 SCC 42**, has held that solely on the ground of delay of conclusion of trial, without taking into consideration the allegation made by the prosecution in regard to the existence of prima facie case, gravity of offence, and the allegation of tampering with the witness by threat and inducement when on bail, the accused could not be enlarged on bail.

11. It is not in dispute that the contraband substances, so recovered from the possession of the accused persons are of commercial quantity, and as such the accused persons have to satisfy the twin conditions of Section 37 of the NDPS Act that there is reasonable ground to believe that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

12. But, when a question was put to Mr. Ahmed, the learned counsel for the petitioner that how he would satisfy the requirement of Section 37 of the NDPS Act, Mr. Ahmed submits that except contending the delay in trial he has no materials to satisfy the twin requirements. While considering the materials placed on record, specially from the scanned copy of the record received from the learned court below and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail.

13. It is well settled in the case of **Union of India vs. Ajay Kumar**

Singh @ Pappu, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, wherein Hon'ble Supreme Court has reiterated that the accused involving in commercial quantity of contraband substance has to satisfy the twin requirement of Section 37 of NDPS Act before granting bail in the following words:-

“In view of the above provisions, 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.”

14. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same this Court is of the opinion that no case for granting bail is made out. Accordingly, the petition stands dismissed.

Comparing Assistant

JUDGE