

GAHC010138102024



2024:GAU-AS:10062

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

Case No. : Bail Appln./2007/2024

UTTAM CHAKRABORTY
S/O LATE ANIL CHAKRABORTY,
R/O 366 KUMUD THAKUR LANE, KALYANI DHALESWAR, VTC-
DHALESWAR, P.O.- DHALESWAR, P.S.- EAST AGARTALA, SUB- DIV.
AGARTALA SADAR, DIST.- WEST TRIPURA, TRIPURA- 799007.

VERSUS

UNION OF INDIA
REP. BY NARCOTIC CONTROL BUREAU (NCB).

Advocate for the Petitioner : N CHAUDHURY, MR. A BORPUZARI, MR A DEKA

Advocate for the Respondent : SC, NCB,

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

03.10.2024

Heard Mr N Choudhury, learned counsel for the petitioner, Shri Uttam Chakraborty, who has filed this application under Section 483 of the BNSS, 2023 with prayer for bail, as he is behind bars since 21.05.2022, in connection with NDPS Case No. 249/2022, with reference to NCB Crime No. 13/2022, registered under Sections 20(b)(ii)(c)/29 of the NDPS Act, 1985.

2. Also heard Mr S C Keyal, learned Standing Counsel appearing on behalf of the respondent/NCB.
3. It is submitted on behalf of the petitioner that he has been behind bars for 866 days. The cross-examination of PW-3, who is the seizure witness clearly reveals that, apart from recording the name of the accused no other procedures were performed at the place of occurrence.
4. It is further submitted that the petitioner is the sole bread winner of the family. His elder daughter has passed her Class-X Examination, but she is unable to get enrolled in a college due to financial constraints as the petitioner is behind bars. 11 witnesses are enlisted and only 4 witnesses out of 11 witnesses have been examined so far. The possibility of the trial to be concluded expeditiously, appears to be remote and bleak. This infringes the petitioner's precious right to liberty.
5. It is further submitted that due to the lapse in the seizure procedure, there is every possibility that the petitioner may be acquitted.
6. The objection against the petition submitted by the respondent/NCB, clearly reveals that the petitioner was arrested based on his confessional statement and the supplier of seized drugs was Ranjan Ray of Agartala and the receiver was Madho Ray of Guwahati, but neither Ranjan Ray nor Madho Ray have been arraigned as accused in this case.
7. The learned counsel for the petitioner has relied on the decision of the Hon'ble the Supreme Court in ***Rabi Prakash –Vs- the State of Odisha***; reported in **2023 0 Supreme**

(SC) 707, wherein it has been observed that-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

8. On the contrary, learned Standing Counsel Mr S C Keyal, for the respondent/NCB, has raised serious objection against the petition stating that the Court or the prosecution is not responsible for procrastination of the trial, as the petitioner prayed for adjournment on two dates, which protracted this case. It cannot be decided conclusively at this juncture that the petitioner may be acquitted, because the petitioner was found alone in the truck, which was seized in connection with this case and 645.880 kilos of ganja was recovered from the truck.

9. It is further submitted that on 4 dates, the Court was lying vacant, which also resulted in the delay of the proceeding.

10. The voluntary statement of Sahid Miah was recorded at NCB Office on 01.09.2022, under Section 67 of the NDPS Act, which clearly reflects that the truck bearing Registration No. TR01AJ 1521, was handed over to the petitioner with

agreement, which was found to be true and genuine.

11. The learned counsel for the respondent/NCB has relied on the decision of Hon'ble the Supreme Court in *The State of Meghalaya –Vs- Lalrintluanga Sailo and Another*; wherein vide order dated 16.07.2024, in connection with Special Leave to Appeal (Crl.) No. 16021/2023, it has been observed that-

“5. There cannot be any doubt with respect to the position that in cases involving commercial quantity of narcotic drugs or psychotropic substances, while considering the application of bail, the Court is bound to ensure the satisfaction of conditions under Section 37(1)(b)(ii) of the NDPS Act. The said provision reads thus: -

“37(1)(b)(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.”

6. While considering the cases under NDPS Act, one cannot be oblivious of the objects and reasons for bringing the said enactment after repealing the then existing laws relating to the Narcotic drugs. The object and reasons given in the acts itself reads thus: -

“An act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.”

In the decision in Collector of Customs, New Delhi v. Ahmadalieva Nodira; (2004) 3 SCC 549, the three judge bench of this Court considered the provisions under Section 37(1)(b) as also 37(1)(b)(ii) of the NDPS Act, 1 (2004) 3 SCC 549 with regard to the expression “reasonable grounds” used therein.

This Court held that it means something more than the prima facie grounds and that it contemplates substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates the twin conditions under Section 37(1)(b)(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail it was held therein that they are cumulative and not alternative. Satisfaction of existence of those twin conditions had to be based on the 'reasonable grounds', as referred above.

7. In the decision in State of Kerala and Ors. v. Rajesh and Ors., (2020) 12 SCC 122, after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii), 2 (2020) 12 SCC 122 NDPS Act. Further it was held that in case one of the two conditions thereunder is not satisfied the ban for granting bail would operate.

8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications."

12. I have considered the submissions at the Bar with circumspection.
13. I have also scrutinized the Trial Court Record as well as the Case Diary.

14. This case is not similar to the case of *Rabi Prakash's case (supra)* as in the case of Rabi Prakash, only 1 out of 19 witnesses were examined at the time when he was granted bail and he was behind bars for more than 3 ½ years. In the instant case, 4 out of 11 witnesses have already been examined. The delay in the trial cannot be attributed solely to the prosecution and the Court, as the petitioner had also taken adjournment on two dates, when witnesses were present. The merits of the evidence is not considered at this juncture, as the trial is still under progress and as 7 witnesses are yet to be examined. The rigour of Section 37 of the NDPS Act, acts an embargo against the bail petition.

15. Considering all aspects, at this juncture, I am not inclined to grant bail to the petitioner. Petition with prayer for bail stands rejected at this stage. However, the petitioner is at liberty to apply for bail, if trial is procrastinated any further by the prosecution or by the Court. The learned trial Court is directed to expedite the trial for a speedy disposal of the case.

JUDGE

Comparing Assistant