

GAHC010154792024



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

Case No. : Bail Appln./2311/2024

SAHEB SAHANI
S/O SADHU SAHANI, R/O WARD NO. 11, VILL AND P.O.-SONBARSA, P.S.-
HARSHIDI, DIST- EAST CHAMPARAN, BIHAR-845422

VERSUS

UNION OF INDIA
REPRESENTED BY S.C. N.C.B.

Advocate for the Petitioner : MR T THAKURIA,

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

26.09.2024

Heard Mr. A. Tiwari, learned counsel for the accused and Mr. S.C. Keyal, Standing Counsel for the NCB.

2. This application under Section 483 of the BNSS, is preferred by accused namely, **Saheb Sahani**, who has been languishing in jail hazot since 18.06.2021,

in connection with the **NDPS Case No. 29/2021**, under Sections 8(C)/20(b)(ii) (c)/29 of the NDPS Act, arising out of NCB Crime No. 12/2021, for granting bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of a final complaint lodged by Anil Kushwaha, Intelligence Officer NCB Guwahati, on 13.12.2021.

4. The essence of allegations made in the said FIR is that acting on a tip off, on 17.06.2021, at about 21 hours, a team of NCB officials comprising of Lalkhugin Bulte; Phani Narjinary; Anil Kushwaha; Manjesh Kumar; Birender Singh; Jatin Borah; Jugal Das; and Rajveer, intercepted one Truck, bearing registration No. HR-55-K-5550 at Baihata Chariali and apprehended three persons, namely, Manish Kumar Singh; Goutam Rai; and Saheb Sahani. Then conducting search, they recovered 23 packets weighing 236.29 kgs of suspected Ganja from a special cavity found behind the cabin of the Truck and seized the same preparing seizure list, including the aforesaid Truck. During interrogation, the occupants of the vehicle made their voluntary statements and stated that the seized Ganja was supplied by one Naga of Senapati district of Manipur and receiver of the same was Sumit Singh of Bihar.

5. Mr. Tiwari, learned counsel for the accused submits that the accused was arrested on 18.06.2021, and since then he has been languishing in jail hazot for more than 3 years. Mr. Tiwari further submits that altogether 9 witnesses have been cited in the charge sheet and out of the said 9 witnesses only one witness has been examined till date. Mr. Tiwari also submits that there is no immediate prospect of conclusion of the case and as such, the right of the accused to speedy trial is violated here in this case. Mr. Tiwari also submits that the accused is ready to face the trial and will appear before the learned trial court on each and every date and therefore, it is contended to allow the petition.

5.1. Mr. Tiwari, learned counsel for the accused has referred the following case laws in support of his submission :-

- (I) **State of Meghalaya vs. Lalrintluanga Sailo and Another**, reported in **2024 Legal Eagle (SC) 646**;
- (ii) **Rabi Prakash vs. The State of Odisha**, reported in **2023 (2) MWN (CR.) 399**; and
- (iii) **Dr. Shah Faesal and Others vs. Union of India and Another**, reported in **(2020) 4 SCC 1**.

6. On the other hand Mr. Keyal, learned Standing Counsel for the NCB submits that in fact the trial was started only after splitting up of the case on 13.09.2022, and since then one witness has already been examined and another witness was present in the court, which could not be examined on that day, on account of inaugural ceremony of New Building of Rangia Lawyer's Association and on two occasions the learned Presiding Judge was absent and that there is no deliberate delay on the part of the NCB. Mr. Keyal further submits that the contraband substances recovered from the possession of the accused are of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act and unless the said requirement is satisfied with, the accused cannot be granted bail and therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned trial court.

8. It is not in dispute that the accused was arrested on 18.06.2021, and

since then he has been languishing in jail hazot for more than 3 years. It appears from the record received from the learned trial court that though the final complaint was filed on 13.12.2021, the charge was framed against the accused on 23.12.2021, and on account of absence of one accused, the case could not be proceeded with and ultimately the case of the present accused was splited up on 13.09.2022. Thereafter, on 08.05.2023, one witness has been examined and another witness had turned up on 05.01.2024. Thereafter, on 01.03.2024, another witness was present in the court, but he could not be examined on account of inaugural ceremony of new building of Rangia Lawyer's Association and since then, no witnesses have turned up.

9. It also appears from the record received from the learned trial court that steps are being taken regularly upon the witnesses. In view of the given pace of trial and examination of witnesses, it cannot be said that the right of the accused to speedy trial is violated here in this case. No doubt, some lapses are here and there. But, the delay that occasioned here in this case, to the considered opinion of this court, cannot be termed as inordinate delay to impair the right of the accused to speedy trial of the case. At best, it can be termed as systemic delay, as held by Hon'ble Supreme Court in the case of **A.R. Antulay and Others vs. R.S. Nayak and Another**, reported in **(1992) 1 SCC 225**.

10. It is also to be noted here that the quantity of contraband substances recovered from the possession of the accused are of commercial quantity, i.e. 236.29 kgs of Ganja. As such, the accused has to satisfy the twin requirement of Section 37 of the NDPS Act, that he is not guilty of the offence and that he will not commit any offence while on bail, as held by Hon'ble Supreme Court in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, in Criminal Appeal No. 952 of 2023 [Arising out of SLP (CRL.) No.2351 of 2023] and also in the case of **NCB vs.**

Mohit Agarwal, in Criminal Appeal Nos. 1001-1002 of 2022, [arising out of petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021].

11. To a pointed query of this court, as to how the accused will satisfy the twin requirement of Section 37 of the NDPS Act, Mr. Tiwari submits that he cannot satisfy the said two requirements. However, he has referred to a decision of Hon'ble Supreme Court where it has been held that the embargo of Section 37 cannot override the fundamental right to personal liberty of the accused, as guaranteed by Article 21 of the Constitution of India.

12. Thus, admittedly, the accused has failed to satisfy the twin requirement of Section 37 of the NDPS Act. It is to be noted here that in the case of **Ajay Kumar Singh @ Pappu** (supra), Hon'ble Supreme Court has held as under :-

“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.”

13. I have carefully gone through the decisions referred by Mr. Tiwari, learned counsel for the accused. There is no quarrel at the bar about the proposition of law laid down in the said cases. But, in view of the given facts and circumstances, this court is of the view that the ratio laid down in the said cases would not be applicable in all force to the facts here in this case and as such, the same would not advance the argument of Mr. Tiwari, learned counsel for the accused.

14. Under the aforementioned facts and circumstances, this court is of the view that this is not a fit case where the privilege of bail can be granted to the

accused.

15. Accordingly, the petition stands **dismissed**.

Comparing Assistant

JUDGE