

GAHC010172952024



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

Case No. : Bail Appln./2562/2024

ACHHELEL SAHANI @ AKSHAYLAL SAHANI
S/O LATE MUSHAHAR SAHANI, P/R/O VILL- MATHURAPUR, WARD NO. 9,
P.S.-TURKAULIA, DIST-EAST CHAMPARAN, BIHAR, PIN CODE-845429.
P/R/A H./NO. 70(A) NEAR SANI MANDIR, PATHAR KUCHI, P.S.-BASISTHA,
DIST- KAMRUP (M), ASSAM

VERSUS

THE NCB
REP. BY NCB

Advocate for the Petitioner : MR. N DUBEY, MS M AHMED, MS. M DAIMARY

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

21.10.2024

Heard Mr. N. Dubey, learned counsel for the accused and Mr. S.C. Keyal, Standing Counsel for the N.C.B.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Sri Achchelal Sahani @ Akshaylal Sahani, who has been languishing in jail hazot, in connection with the **N.C.B. Crime No. 28/2021**, under Section 8[c] read with Sections 20(b)(ii)(c)/29 of NDPS Act, for

granting bail.

3. It is to be noted here that the said case has been registered on the basis of one complaint lodged by one Phani Narzari of NCB, on 06.10.2022. The essence of allegation made in the complaint is that acting on a tip off he has intercepted one Truck, bearing registration No. NL-01-AD-3773, from Jorabat, Meghalaya and recovered 426.91 kg of Ganja from the possession of Paban Kumar Singh, Nanu Babu Mahatu along with one container Truck and seized the same for preparing seizure list.

4. Mr. Dubey, 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 last 1085 days. Mr. Dubey further submits that this is the second bail application and the first one, being Bail Application No. 683/2022, was dismissed by this court, vide order dated 25.11.2022, by directing the learned trial court to expedite the trial. But, despite such direction of this court, the learned trial court has failed to expedite the trial and till date, only 2 witnesses have been examined out of 8 witnesses cited in the charge sheet. Mr. Dubey also submits that on account of delay, the right of the accused to speedy trial under Article 14 of the Constitution of India is violated here in this case. Mr. Dubey also submits that nothing has been recovered from the possession of the accused and that there is no material against him and except the C.D.R., nothing is there to show the complicity of the accused with the offence alleged in the F.I.R. and that he will appear before the learned trial court on each and every date and imposing any condition he may be enlarged on bail.

5. On the other hand, Mr. Keyal, learned Standing Counsel for the NCB submits that the offences are serious in nature and that he is a habitual offender and as many as 4 cases are pending against him and if he enlarged on bail at this

stage, it will cause further delay in disposal of the case. 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 twin requirements of Section 37 of the NDPS Act and unless the said requirements are satisfied with, the accused cannot be granted bail and therefore, it is contended to dismiss the petition. Mr. Keyal referring to a decision of Hon'ble Supreme Court in the case of **The State of Meghalaya vs. Lalrintluanga Sailo and Another**, reported in **2024 0 INSC 537**, submits that an accused involved in an offence under NDPS Act, a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible.

6. 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 along with the status report received from the learned trial court.

7. It appears that the accused was arrested on 18.06.2021, and since then he has been languishing in jail hazot for last 1085 days. It also appears from the record received from the learned trial court that the charge was framed against the accused on 17.07.2024, and since then only 2 witnesses have been examined out of 8 witnesses cited in the charge sheet. The statement of the said two witnesses, examined so far, indicates that the contraband substances were recovered from the vehicle, bearing registration No. NL-01-AD-3773 (Container Truck) and the quantity were 426 kgs and that the same were Ganja. It also appears that the contraband substances recovered from the said Truck were of commercial quantity and as such, the accused has to satisfy the twin requirements 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].

8. It is also to be noted here that in the case of **Lalrintluanga Sailo (Supra)** Hon'ble Supreme Court taking note of two earlier decisions in **Collector of Customs, New Delhi vs. Ahmadalieva Nodira**, reported in **(2004) 3 SCC 549** and in **State of Kerala and Others vs. Rajesh and Others**, reported in **(2020) 12 SCC 122**, in paragraph No. 8, held as under :-

“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.”

9. 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, learned counsel for the accused submits that he cannot satisfy the said two requirements. However, he submits that strict condition may be imposed in the event of granting bail to the accused.

10. It is to be noted here that the bail objection petition filed by the NCB reveals that as many as 4 cases are pending against the accused, which are shown in the chart given below:-

Sl. No.	Name of Arresting Agency	Cr. No.	Sections Invoked	Drug Seized	Date of Arrest	Stage
1.	NCB, Zonal Unit, Guwahati	07/2021	8(c)/ 20(b)(ii) & 29 of the NDPS Act, 1985	Ganja - 1586.030 KG	23.10.2021	Under-trial
2.	NCB, Zonal Unit, Guwahati	19/2020	8(c)/ 20(b)(ii) & 29 of the NDPS Act, 1985	Ganja - 345.840 KG	08.11.2021 (Shown Arrested)	Under-trial
3.	NCB, Zonal Unit, Guwahati	23/2021	8(c)/ 20(b)(ii) & 29 of the NDPS Act, 1985	Ganja - 207.100 KG	Accused Achchelal Sahani was Shown Arrested	Under-trial
4.	NCB, Zonal Unit, Guwahati	28/2021	8(c)/ 20(b)(ii) & 29 of the NDPS Act, 1985	Ganja - 426.910 KG	Accused Achchelal Sahani was Shown Arrested	Under-trial

11. Thus, under the aforementioned facts and circumstances, this court is unable to derive its satisfaction from the materials on the record and also from the submission of Mr. Dubey, learned counsel for the accused that the accused is not guilty of the offence and that he will not commit any offence while on bail as per twin requirements of Section 37 of the NDPS Act. The chart quoted here in above reveals that the accused is a habitual offender.

12. 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.

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

14. However, the learned trial court is requested to expedite the trial.

JUDGE

Comparing Assistant