

GAHC010180732024



2024:GAU-AS:12340

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

Case No. : Bail Appln./2660/2024

PREMPAL SINGH AND ANR
S/O LATE RAJVEER SINGH, R/O VILL- DAUGAVAN, P.O. AND P.S.-DIBAI,
DIST- BULANDSHAHR, UTTAR PRADESH, PIN-203393

2: RAMU @ RAMU KUSHWAHA
S/O SHRI RAJENDRA SINGH
R/O VILL- DAUGAVAN
P.O. AND P.S.-DIBAI
DIST- BULANDSHAHR
UTTAR PRADESH
PIN-20339

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE SC, NCB

Advocate for the Petitioner : MR. A PAUL,

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05.12.2024

Heard Mr. A. Paul, learned counsel for the petitioners. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. By filing this application u/s 483 of BNSS, 2023, the petitioners, namely, **Prempal Singh and Ramu @ Ramu Kushwaha**, have prayed for granting regular bail in connection with **NDPS case No. 24/2021** (corresponding to NCB Crime No. 07/2021) under Section 20(b)(ii)(C)/29 of NDPS Act, pending in the court of learned Special Judge, Kamrup, Rangia.

3. The prosecution case in brief is that on 28/03/2021 about 1586 kgs of ganja was recovered from a truck bearing No. HR-55-N-2597 at Baihata Chariali, wherein both the petitioners were found in the said truck as driver and handyman. Subsequently, the recovered items were seized and both the petitioners were arrested. Accordingly, a case was registered vide NCB Crime No. 07 of 2021.

4. Learned counsel for the petitioners has submitted that the co-accused were granted bail by this Court and the trial court as such both the accused/ petitioners are entitled to be released on bail on the same footing. The learned counsel for the petitioners also contended that both the accused/ petitioners have been detained in custody for more than 3 years and out of 13 witnesses, few witnesses have been examined till date. It transpires that the trial of the case is expected to be much long time and it would meet the ends of justice if the petitioners be enlarged on bail. It is also submitted that both the accused/ petitioners are totally innocent and no way connected with the alleged offence. They were arrested purely on suspicion. Considering the background of the case and the length of detention, the petitioners may be released on bail.

In support of his submission, learned counsel for the petitioner has placed reliance on the following case laws-

(i) Majinder Singh vs. The Union of India in BA No. 835/2024.

(ii) Mohammad Alauddin vs. The Union of India in BA No. 4159/2023.

5. In the case of Majinder Singh(supra), it was held as under-

“21) Though, Section 37 of the NDPS Act, 1985 provides for stringent provision for grant of bail, however, Section 36 (1) of the NDPS Act, 1985 also mandates the Government to constitute as many special courts as necessary for the purpose of providing speedy trial of offences under the NDPS Act, 1985. If speedy trial is not provided to an incarcerated accused, it will certainly have a negative impact on the rigours of Section 37 of the NDPS Act, 1985.

22) This Court is of considered opinion that for whatsoever reason, if delay has been caused and if it is not due to any fault of the petitioner, then to keep him under incarceration for long period on one hand and to cause the delay in culmination of the trial on the other hand would certainly be violative of his fundamental rights guaranteed under Article 21 of the Constitution of India.

23) In this regard the observations made by the Apex Court in the case of Satender Kumar Antil (Supra) are relevant and which is quoted here in below:
49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too

not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own.

6. Per contra, learned Standing counsel NCB, has vehemently opposed in granting bail to the petitioners by stating that both the petitioners were travelling in a truck from which a large quantity of ganja were recovered. On being asked, the petitioners failed to give any plausible explanation why such huge quantity of ganja was kept inside the vehicle.

7. According to the learned Standing counsel for the NCB, both the petitioners in their voluntary statements admitted that they were involved in trafficking of such ganja which was seized in the instant case. It is further submitted that the CDR analysis of both the petitioners show that they used to talk with each other prior to the date of detection. It is also pointed out that as commercial quantity of ganja was recovered from the possession of the petitioners, there is bar in granting bail u/s 37 of the NDPS Act. If bail is granted, there is possibility that accused may jump bail considering the gravity of the offence and severity of the punishment prescribed under the NDPS Act.

8. By referring the Judgment of Hon'ble Supreme Court in ***Kalyan Chandra***

Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr., reported in **(2005) 0 Supreme SC 104**, it was held by the Hon'ble Supreme Court that –

“.....it is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so....”

9. Regarding parity, learned standing counsel NCB has relied on another case law vide **(2022) 0 Supreme SC 56 [State by (NCB), Bengaluru vs.**

Pallulabid Ahmad Arimutta & Another], the Hon'ble Supreme Court has laid down that –

“.....However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding recovery of substantial commercial quantities of drugs from a rented accommodation occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A-4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB succeeds in SLP (Crl.) No. 1569/2021. The bail granted to the respondent-Mohammed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody....”

In view of the above submission, learned Standing counsel, NCB has prayed for dismissal of the bail application.

10. Having heard the learned counsel for the parties, it is not in dispute that

commercial quantity of ganja was recovered from the truck in which both the accused/ petitioners were travelling. There is no satisfactory explanation from their side why such huge quantities of ganja were carried in the said vehicle. It is true that one of the accused Allalluddin was granted bail by this Court on the ground that no any contraband item was recovered from his possession. It is settled law that in catena of decisions, Hon'ble Supreme Court reiterated that the principle of parity can be considered in granting bail but court must focus on the role attached to the accused.

11. In the case of ***Tarun Kumar vs. Assistant Director, Directorate of Enforcement***, reported in ***(2023) 0 Supreme (SC) 1162***, Hon'ble Supreme court has held as follows –

“....it may be noted that parity is not the law. While applying the principle of parity, the court is required to focus upon the role attached to the other accused persons...”

Situated thus, this Court is of the view that the petitioners are not entitled to grant bail on the ground of parity.

12. Coming to the question of prolonged incarceration, it is true that the petitioners have been detained in custody for last three years but trial is going on and three witnesses have already been examined. The trial court record shows that on 01/03/2024 one witness was present but the witness was not examined due to inaugural ceremony of new building of Rangia Lawyers Association. Thereafter, no witness was present in the case.

13. In the case of ***S.C. Legal Aid Committee Vs. Union of India***, reported in ***(1994) 6 SCC 731***, it was held that-

“.....(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

14. On consideration of the matter in its entirety, this Court is not inclined to grant bail to the accused/petitioners, at this stage of trial. Therefore, prayer for bail is rejected. However, trial court is directed to expedite the trial, to dispose of the matter early.
15. In view of the above, the bail application stands disposed of.

JUDGE

Comparing Assistant