

GAHC010185262024



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

Case No. : Bail Appln./2714/2024

TAJ UDDIN
S/O MOBOSSIR ALI, R/O VILL- PASCHIM CHANDRAPUR, P.S.-
DHARMANAGAR, DIST- DHARMANAGAR, TRIPURA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, MR A AHMED, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 27.09.2024

Heard Mr. A. Ahmed, learned counsel for the accused. Also heard Mr. K.K. Das, learned Addl. P.P. for the State respondent.

2. This application, under Section 483 of the **Bharatiya Nagarik Suraksha Sanhita** (BNSS), 2023 is preferred by accused **Taj Uddin**, who has been languishing in jail hazoot since 06.03.2022, in connection with the **Special**

(NDPS) Case No.40/2022, arising out of Patherkandi P.S. Case No. 69/2022, under Sections 21(c)/25/29 of the NDPS Act, pending before the learned Special Judge, Karimganj, for grant of bail.

3. Be it mentioned here that the aforementioned case has been registered on the basis of an FIR lodged by S.I. Rajpratap Singha of Patherkandi P.S. on 06.03.2022.

4. The gist of allegations, in the said FIR dated 06.03.2022, is that acting on a tip off on 06.03.2022 at about 11.30 am, the informant along with staff, intercepted a vehicle bearing registration No. TR05D-0625 at NH-8 bypass and recovered 27 numbers of soap boxes containing suspected Narcotic Drugs in plastic packets concealed inside the car bumper and inside the mudguard of both sides and after weighing the same found its net weight 297 gms and seized the same in presence of witnesses and also found two persons inside the vehicle namely, Saip Uddin and Taj Uddin, both are from Tripura. Thereafter, he had handed over the seized articles along with the two accused to the Officer-in-Charge of Patherkandi Police Station.

5. Mr. Ahmed, learned counsel for the accused, has confined his argument mainly on following points:-

- (i) There is delay in trial;
- (ii) The accused was arrested on 06.03.2022;
- (iii) Charge was framed against him on 28.09.2022;
- (iv) Till date only one witness is examined out of nine cited witnesses;
- (v) Because of delayed trial right to speedy trial of the accused is violated;

(vi) That the accused is ready to face trial and will appear before the learned trial court on each and every date.

Under the aforesaid facts and circumstances, Mr. Ahmed has contended to allow the petition.

6. On the other hand, Mr. K.K. Das, the learned Addl. P.P. submits that commercial quantity of contraband substances i.e. 297 gms of suspected Heroine was recovered from the conscious possession of the accused and that the accused has to satisfy the twin requirements of Section 37 of the NDPS Act and the accused has failed to satisfy the same. Mr. Das further submits that the case is pending at the stage of evidence and already the learned trial court had examined one witness and he had implicated the present accused. Mr. Das also submits that fair opportunity is required to be given to the prosecution side to produce the witnesses and therefore, it is contended to dismiss the petition.

7. To a pointed query of this court as to how the requirements of Section 37 of the NDPS Act is to be satisfied with, Mr. Ahmed referring to a decision of Hon'ble Supreme Court in **Hasanujjaman and Ors. vs. State of West Bengal, in Special Leave to Appeal (Cr1.) No. 3221/2023**, submits that as trial could not be completed and as the accused has no criminal antecedent there is compliance of Section 37 of the NDPS Act.

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. The status report and scanned copy of the record received from the

learned trial court reveals that the case is pending for evidence and the charge was framed against him on 28.09.2022. Thereafter, one witness was examined and the said witness had implicated the present accused. It also appears that accused was arrested on 06.03.2022, and since then he has been languishing in jail hazoot.

10. Indisputably, 297 gms of suspected Heroine was recovered from the possession of the accused. The factum of aforesaid items being the commercial quantity is also disputed by the accused. Therefore, the accused has to satisfy the requirement of Section 37(1) (b) (ii) of NDPS Act. This aspect has been dealt with by a three Judges Bench of Hon'ble Supreme Court in **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], decided on 19 July, 2022 and also 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], decided on 28 March, 2023. In the said case, Hon'ble Supreme Court, while setting aside the order of granting bail by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, 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.”

11. In the instant case from the materials 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.

12. I have considered the submission of Mr. Ahmed, the learned counsel for the accused and also gone through the decision of Hon'ble Supreme Court in **Hasanujjaman (supra)**, wherein it has been held that regardless of direction of High Court, trial could not be completed and that the accused has no criminal antecedent, and there is substantial compliance of Section 37 of the NDPS Act. But, herein, it is not the case of the accused that he had no criminal antecedent. No argument is advanced on this point. Therefore, this court is of the view that the ratio laid down in the said case would not advance the argument of Mr. Ahmed.

13 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 this is not a fit case to grant the privilege of bail under Section 483 of the BNSS to the accused and therefore, the same stands dismissed.

14. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant