

GAHC010191102024



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

Case No. : Bail Appln./2781/2024

HAMIR ALI
S/O LT. ABDUL HAKIM
R/O VILL- KOIRIGAON,
P.O. AND P.S. SARUPATHAR
DIST. GOLAGHAT, ASSAM

VERSUS

UNION OF INDIA
REPRESENTED BY THE SC, NCB

Advocate for the Petitioner : MS. S K NARGIS, MR F H LASKAR (2),MS N SULTANA,MS S BEGUM

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 29-11-2024

Heard Ms. S.K. Nargis, learned counsel, for the accused and also heard Mr. S.C. Keyal, learned Standing Counsel for the Union of India (NCB).

2. This application, under Section 483 of Bharatiya Nagarik Surakshya

Sanhita, 2023, is preferred by accused **Hamir Ali**, who has been languishing in jail hajot in connection with **NDPS Case No. 01 of 2022**, arising out of **NCB Crime No. 16/2021**, under Sections **8(c)** read with **22 (c)/29 NDPS Act**, pending before the court of learned Additional District & Sessions Judge No.5, Kamrup(M), Guwahati, since 13.07.2021, for grant of bail.

3. The above noted case was registered on the basis of a complaint lodged by one C.S.K. Singh, Intelligence Officer, Guwahati Zonal Unit of Narcotic Control Bureau (NCB), on 05.01.2022.

4. The essence of the allegation against the accused is that acting on a tip off, Shri Anil Kushwaha, Intelligence Officer, has conducted search at the office of Shree Maruti Courier Services Pvt. Ltd, on 03.07.2021 and recovered one consignment, bearing **Shipment No. 21032100017728**, which was destined to Dimapur and the consignee was one Raj Enterprises, Dimapur and the consignor was one Rinku of Varanasi. Then having checked the same, he found 17.780 kg of SPS-PHEN+ capsules and 90 stripes of Nitrosun 10 Tablet therein and seized the same by preparing seizure list in presence of witnesses. Thereafter, the complainant has sent one dummy parcel to identify and intercept the receivers of the consignment. Then on 12.07.2021, he has apprehended one Smti. Hotoli and one Hamir Ali, while they have arrived at the Office of Shree Maruti Courier Services Pvt. Ltd, Dimapur, Golaghat Road, Nagaland and received the dummy parcel. Thereafter, he arrested them and forwarded to judicial custody.

4. Ms. Nargis, the learned counsel for the accused submits that the accused was arrested on 13.07.2021, and since then he has been languishing in jail hazoot for last 03 years 04 months and 08 days. It is the further submission of Ms. Nargis that except the dummy parcel nothing has been recovered from the

possession of accused. Further, Ms. Nargis submits that the accused was arrested only on the basis of statement of the co-accused which is not at all admissible. And she further submits that though the trial has already begin, yet, the prosecution side has examined only two witnesses out of 10 cited witnesses in the Final Complaint. And as such there is no immediate chance of completion of trial. Therefore, it is contended to allow this petition. Ms. Nargis, has referred following decisions in support of her submission.

(i) State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and Anr., reported in (2022) 12 SCC 633

(ii) Krishna Biswas vs. Union of India, in Bail Appln./4605/2023

(iii) Puja Dutta vs. Union of India, in Bail Appln./729/2024

5. Per contra, Mr. S.C. Keyal, learned Standing Counsel, NCB, has vehemently opposed the petition and submits that sufficient materials have been collected against the accused by the investigating agency and the seized contraband substance was meant for the Raj Enterprises, Dimapur and while the accused came to receive the same, he was arrested along with co-accused and the CDR analysis of his mobile shows that there was frequent communication between the accused persons with that of the supplier. Besides, the quantity of contraband substances which were recovered and seized was of commercial quantity and the requirement of Section 37 NDPS Act, remained unsatisfied for which the privilege of bail cannot be extended to him and therefore, it is contended to dismiss the petition.

6. Having heard the submission 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 record received from the learned court below.

7. Indisputably, the accused herein this case was arrested on 13.07.2021, and since then he has been languishing in jail hajat for last 03 years 04 months and 08 days. Further, it appears that trial has already begun and out of 10 witnesses cited in the complaint, two have been examined. There is nothing on the record of the learned Trial Court to demonstrate that considerable delay has occasioned in the trial so as to impair the right to speedy trial of the accused.

8. Besides, the contraband substances, so recovered and seized, herein this case, are of commercial quantity. That being so, there is a requirement of satisfying the twin condition of Section 37 of the NDPS Act. And having examined the materials available on the record of the learned court below, for the limited purpose of releasing him on bail, this Court is unable to derive its satisfaction that there exist any reasonable ground to show that the accused is not guilty of the offence and that he is unlikely to commit such offence while on bail.

9. It is well settled 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. See- **Union Of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023.

10. It is also well settled that liberal approach in the matter of bail, under the

NDPS Act is indeed uncalled for. (See- **NCB vs. Mohit Agarwal**, reported in **[2022] 0 Supreme (SC) 619**). I have gone through the decisions referred by Ms. Nargis and I find that the same would not advance her argument.

11. In the result, I find this bail application devoid of merit and accordingly, the same stands **dismissed**. It is desirable that the learned court below shall make an endeavour to expedite the trial and conclude the same as soon as practicable, without being influenced by any of the observation made herein above.

JUDGE

Comparing Assistant