

GAHC010192742024



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

Case No. : Bail Appln./2856/2024

RAJIB ROY
S/O HARINAR ROY
RESIDENT OF BAHRAMPUR, PO MOHANPUR, PS RAGHOPUR, VAISHALI,
BIHAR, 844508

VERSUS

UNION OF INDIA
REP BY SC NCB

Advocate for the Petitioner : MR. A DUTTA,
Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

12.12.2024

Heard Mr. A. Dutta, learned counsel for the petitioner. Also heard Ms. M. Deka, learned counsel appearing for NCB.

2. By this second bail application u/s 483 of BNSS, 2023 the petitioner, namely, **Rajib Roy** has prayed for granting regular bail in connection with **NDPS Case No. 20/2023 u/s 20(b)(ii)(C)/29 of NDPS Act**, pending in the court of learned Sessions Judge/Special Judge, Kamrup, Amingaon.

3. The brief fact of the case is that pursuant to a secret information received

by the NCB officials that one person would cross Madhanpur Toll plaza, Kamrup, Assam and moved towards Rangia in a truck bearing No. NL-01AB-4248 and the said unknown person was trafficking large quantity of ganja which was concealed in the said truck. Accordingly, the said truck was intercepted by the NCB team on 29.11.2022. One person was found inside the truck and on being searched, 195.710 kg of suspected ganja was recovered from the secret chamber of the said truck. Accordingly, the driver was apprehended and the contraband was seized.

4. It is submitted by learned counsel for the petitioner that the petitioner is innocent and has vehemently denied his involvement in the instant case. The petitioner has committed no offence as alleged by NCB. The ganja was recovered from the container of a truck bearing registration No. NL 01 AB 4248 does not belong to the petitioner. Moreover, the petitioner was not having any knowledge about the contraband alleged to have been found in the said truck.

5. Learned counsel for the petitioner also contended that the petitioner co-operated with the NCB during his custody and all along denied his involvement in the instant case. The petitioner was arrested without any rhyme and reason, merely on the statement of the co-accused while the statement before the NCB is inadmissible; apart from this weak evidence no other evidence were collected by the NCB against the petitioner. Hence, there is no reasonable ground to believe that the petitioner is guilty for the alleged offence. It is also added that there was neither any physical possession nor constructive possession of the present petitioner on the contraband items and the investigation of the NCB is very mechanical and casual.

6. According to learned counsel for the petitioner, the petitioner has been

languishing in judicial custody for last two years since his arrest on 30.11.2022. As such, considering the accusation spelt out against the petitioner as well as the length of detention, the petitioner may be enlarged on bail.

Learned counsel for the petitioner has placed reliance on the following case laws:

- (i) BA 4440/2023 (Nurul Islam vs State of Assam).
- (ii) BA No. 729/2024 (Puja Dutta vs Union of India.).
- (iii) BA No. 12/2004 (Sahir Nawaz vs State of Assam).
- (iv) BA No. 3620/2023 (Arun Kumar Azad vs Narcotics Control Bureau).
- (v) Special Leave to Appeal (criminal). No. 5703/2021 (Bhar Chaudhury vs Union of India).
- (vi) BA No. 1312/2018 (Dalip Singh @ Langda vs NCT of Dehli).
- (vii) Special Leave to Appeal (Crl.) No. 4169/2023 (rabi Prakash vs state of Odisha).
- (viii) BLAPL No. 9629/2021 (Kishore Bira vs State of Odisha).
- (ix) Special Leave Petition No. 915/2023 (Mohd Muslim @ Hussain vs State (NCT of Delhi).

7. Per contra, learned counsel representing the NCB has vehemently opposed in granting bail to the petitioner by stating that the petitioner and two other persons are the owners of the seized ganja and they followed the alleged truck from a safe distance in a maruti vehicle bearing No. BR 01 DE 0636. The driver

of the truck and the petitioner on being asked also admitted that the petitioner is very much involved in the alleged trafficking of ganja.

8. It is also submitted by the learned counsel for the NCB that CDR analysis and transaction of amount to the savings account of the petitioner reflects that the petitioner is involved in the instant case.

The learned counsel for the NCB has relied on the following judgments:

(i) State of Kerala vs Rajesh (arising out of SLP Criminal No. 73097312/2019).

(ii) Union of India vs Ratan Mallik (SLP CrI. No. 2057/2008).

(iii) NCB vs Nawaj Khan (SLP CrI. No. 1771/2021).

(iv) High Court Bar Association, Allahabad vs State of U.P. & Ors. (2024) O Supreme (SC) 169.

(v) The state of Meghalaya vs Lalrintuanga Sailo & Anr.

(Special Leave to Appeal (CrI.) No. 16021/2023.

(vi) Union of India vs Ajay Kumar Singh @ Pappu (2023) O Supreme (SC) 285.

(vii) Gurwinder Singh vs State of Pubjab (Criminal Appeal No. 704/2024).

(vii) BA No. 2311/2024 Saheb Sahani vs Union of India.

(viii) BA No. 1381/2024 Ramesh G vs union of India.

9. In this case, the quantity of contraband is commercial and the same is 195.710 kg of ganja. Therefore the rigor of [Section 37](#) of the NDPS Act would squarely apply. [Section 37](#) of the NDPS Act provides as under:

"37. Offences to be cognizable and nonbailable.-- (1) Notwithstanding anything contained in the [Code of Criminal Procedure, 1973 \(2 of 1974\)](#),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under [section 19](#) or [section 24](#) or [section 27A](#) and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the [Code of Criminal Procedure, 1973 \(2 of 1974\)](#) or any other law for the time being in force on granting of bail."

10. On a perusal of [Section 37\(1\)\(a\)\(i\)](#), when the Public Prosecutor opposes bail application of a person involved in a crime, where commercial quantity of the contraband was seized, the Court can grant bail only after satisfying two conditions: viz; (1) There are 'reasonable grounds' for believing that the accused is not guilty of such offences and (2) he will not commit any offence while on bail.

11. The Apex Court considered the meaning of 'reasonable grounds' in the decision reported in ([2007](#)) 7 SCC798, [Union of India v. Shiv Shankar Kesari](#) and held that the expression 'reasonable grounds' means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

12. It was further held that the Court while considering the application for bail with reference to [S.37](#) of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

13. While considering the rider under [Section 37](#) of the NDPS Act, the same principles have been reiterated, in the decisions reported in [Superintendent, Narcotics Central Bureau v. R.Paulsamy](#) [2000 KHC 1549: AIR 2000 SC 3661: (2000) 9 SCC 549: 2001 SCC (Cri) 648: 2001 [CriLJ 117](#)], [Customs, New Delhi v. Ahmadalieva Nodira](#) [2004 KHC 505: AIR 2004 SC 3022:2004(3) SCC 549: 2004 SCC (Cri) 834: 2004 (110) DLT 300: 2004 CriLJ 1810: 2004 ([166](#)) [ELT 302](#)], [Union of India v. Abdulla](#) [2004 KHC 1992: 2004(13) SCC 504: 2005 CriLJ 3115: 2005 [All LJ 2334](#)], [N.R.Mon v. Md.Nasimuddin](#) [2008 KHC 6547: 2008(6) SCC 721: 2008(2) KLD 316: 2008(2) KLT 1022: 2008(9) SCALE 334: AIR 2008 SC 2576:2008 CriLJ 3491: 2008(3) SCC (Cri) 29], [Union of India v. Rattan Malik](#) [2009 KHC 4151: 2009(2) SCC 624: 2009(2) KLT SN 83: 2009 (1) SCC (Cri) 831:2009 CriLJ 3042: 2009 (4) ALL LJ 627: 2009([2](#)) [SCALE 51](#)], [Union of India v. Niyazuddin](#) [2017 KHC 4465: AIR 2017 SC 3932: 2018 ([13](#)) [SCC 738](#)], [State of Kerala v. Rajesh](#) [2020(1) KHC 557: AIR 2020 SC 721: 2020(1) KLJ 664: 2020(2) KLT SN1 : ILR 2020(1), Ker.848]. Latest decision on this point is [2023 Cri.LJ 799], [Union of India v. Jitendra Giri](#).

14. On a plain reading of [Section 37\(1\) \(b\)](#) and [37\(1\)\(b\)\(ii\)](#) of the [NDPS Act](#), within the ambit of the Settled law, it has to be understood that two ingredients

shall be read conjunctively and not disjunctively. Therefore, satisfaction of both conditions are sine qua non for granting bail to an accused who alleged to have been committed the offences under [Section 19](#) or [Section 24](#) or [Section 27A](#) and also for the offences involving commercial quantity as provided under [Section 37\(1\)\(b\)](#) of the NDPS Act. Unless [Section 37](#) is not amended by the legislature in cases specifically referred under [Section 37\(1\)\(b\)](#) of the NDPS Act, the Court could not grant bail without recording satisfaction of the above twin ingredients.

15. It is well settled by Hon'ble Supreme Court in catena of decisions that subsequent bail application is maintainable only when there is change of circumstance in favour of the accused. Reference in this context can be made to a decision in [State of T.N. vs. S.A. Raja](#) reported in (2005) 8 SCC 380. Here in this case, admittedly, and except the length of detention, no change of circumstances has taken place in favour of the accused and the learned Addl. P.P. has rightly pointed out at the time of hearing.

16. In the case of NCB vs. Mohit Agarwal, reported in [2022] 0 Supreme (SC) 619, a three Judges Bench of Hon'ble Supreme Court has held that:

“ the length of period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not consideration that can be treated as persuasive ground for granting relief to the accused under [section 37](#) of the NDPS Act”.

17. That being so, the length of detention, to the considered opinion of this court, can neither be a change of circumstance in favour of the accused nor be it a ground of releasing the accused on bail.

18. Admittedly, the quantity of contraband substance recovered from the

possession of the accused are of commercial quantity and as such, the embargo under [Section 37](#) of the NDPS Act will definitely come into play here in this case. Moreover, from the materials placed on record and also from the case record as well as from the submission of the learned counsel for the accused, this Court is unable to derive its satisfaction that the accused/petitioner is not guilty of the offence and that he will not commit similar offence while on bail.

19. In view of the above discussion and under the facts and circumstances of the case, this Court is not inclined to grant bail to the petitioner.

20. Hence, prayer for bail is rejected.

21. Accordingly, the bail application stands dispose of.

JUDGE

Comparing Assistant