

GAHC010195852024



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

Case No. : Bail Appln./2866/2024

MANOJ KUMAR BORO
S/O LATE SATYA BORO
R/O BAREGAON
P.O. TAMULPUR
P.S. TAMULPUR
DIST. TAMULPUR/BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. M H ALI, S M MUNIR, MD A SAHAD

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 25.10.2024

Heard Md.A.Sahad, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

2. By filing this 2nd bail application under section 483 of the Bharatiya

Nagarik Suraskha Sanhita, 2023, the accused petitioner namely, **Manoj Kumar Boro** has prayed for bail in connection with **Garchuk PS Case No. 90/2024** under Section 20(b)(ii)(C) of NDPS Act.

3. The allegation in the FIR in brief is that 21.266 Kgs of suspected ganja was recovered from the possession of the petitioner.

4. The learned counsel for the accused/petitioner submits that the petitioner has been languishing in judicial custody for last seven months since his arrest on 23.03.2024. Charge sheet has already been submitted against the petitioner and charge was also framed but no witness is examined. Considering the period of detention, bail may be granted to the petitioner.

5. On the other hand, learned Additional Public Prosecutor has submitted that commercial quantity of ganja was recovered from the possession of the petitioner. No witness is examined till date in connection with this case. As commercial quantity of contraband was recovered from the possession of the petitioner, Section 37 of the NDPS Act is attracted herein this case. Considering the fact as well as the nature of the offence, bail may not be granted to the petitioner at this stage of trial.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of trial court records.

7. It appears that commercial quantity of ganja was recovered from the possession of the petitioner in connection with the case. No new ground has been shown by the petitioner to consider the second bail application by this Court.

8. [Section 37\(1\)\(b\)](#) of the NDPS Act states as under:-

"37. Offences to be cognizable and non-bailable.—(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."

9. A careful perusal of the aforesaid provision would show that power and jurisdiction of the court considering the application for grant of bail under the provisions of the [NDPS Act](#) is circumscribed by the provision of [Section 37](#) of the NDPS Act, in the case of a person accused of an offence punishable under [Section 19\(2\)](#), under [Section 24\(3\)](#), under [Section 27-A\(4\)](#) and also of offences involving commercial quantity. These limitations are in addition to those prescribed under the [CrPC](#) or any other law in force on the grant of bail. It can be considered and granted only in a case where there are reasonable grounds for believing by the court concerned that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The above-stated statutory requirements are mandatory to be complied with while releasing the accused on bail.

10. The Supreme Court in the matter of ***Union of India v. Ram Samujh and anr.*** reported in (1999) 9 SCC 429, considering the issue held that conditions imposed under **Section 37(1)(b)** of the NDPS Act are mandatory and observed as under: -

"8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail.

Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

11. The Supreme Court in the matter of ***State of M.P. v. Kajad*** reported in (2001) 7 SCC 673 has held that negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of **Section 37(1)** of the NDPS Act and for granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail.

12. Reverting to the facts of the case, it is quite vivid that in the present case, quantity of Ganja recovered from the present petitioner is more than

commercial quantity. After going through the record, having heard learned counsel for the parties and considering the materials available on record and considering the recovery of huge commercial quantity of Ganja from the present petitioner, it cannot be held that there are reasonable grounds for believing that the petitioner has not committed the said offence and he is not likely to commit any offence, if released on bail.

13. In view of the above, prayer for bail is rejected. However, learned trial court is directed to expedite the trial of the case with such effective measure.

The bail application is disposed of.

JUDGE

Comparing Assistant