

GAHC010202142024



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

Case No. : Bail Appln./2969/2024

SUJEET KUMAR @ SUJIT KUMAR
S/O MAHESH RAY, R/O KASBEAHAR, WARD NO. 09, P.S.-TAJPUR,
SAMISTIPUR, PIN-848130, BIHAR

VERSUS

UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, NARCOTIC CONTROL
BUREAU (NCB)

Advocate for the Petitioner : MR. M BISWAS, A GHOSAL, MS. A K CHOPHI, J SINGPHO

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 29-11-2024

Heard Mr. M. Biswas, 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 the Bhartiya Nagarik Surakshya Sanhita, is preferred by the accused, namely, **Shri Sujeet Kumar @ Sujit**

Kumar, who has been languishing in jail hajoot, in connection with **NDPS Case No. 08 of 2021**, arising out of NCB Crime No.12/2020, under Section **20(b)(ii)(c)/29 NDPS Act**, pending before the court of learned Special Judge, NDPS, Kamrup, Amingaon since 11.08.2020, for grant of bail.

3. It is to be noted here that aforementioned case has been registered on the basis of a complaint lodged by one Kaushik Sarkar, Intelligence office, Guwahati Zonal Unit of Narcotic Control Bureau (NCB), on 03.02.2021, to the effect that acting on a tip off, he has intercepted one Truck, bearing registration No. NL 01 AE 1397, near Tolaram Bafna Civil Hospital, Kamrup, Amingaon and recovered 707.050 kg of Ganja from three persons namely, Tarun Kumar, Pramod Ray and Sujeet Kumar @ Sujit Kumar and seized the same by preparing seizure list.

4. The respondent NCB has filed objection petition. It is stated that 707.050 kg of Ganja were recovered from the conscious possession of accused Sujeet Kumar and two others and that their CDR reveals their nexus with illegal business of Ganja. Therefore, it is contended to dismiss the petition.

5. Mr. M. Biswas, the learned counsel for the accused submits that-this bail application is preferred mainly on two grounds. Firstly, Mr. Biswas submits that the accused is behind the bar for 04 years 03 months and 10 days and that while dismissing the bail application of one of the co-accused, namely, Baiju Thakur, this court was pleased to direct the learned court below to complete trial at the earliest possible time and if necessary, to take recourse to provision of Section 309(1) Cr.P.C., but, inspite of such direction the learned court below has failed to complete trial and examined only three witnesses, out of 8 cited witnesses, cited in the charge sheet. Secondly, Mr. Biswas submits that one of the co-accused namely, Baiju Thakur has already been granted bail by Hon'ble Supreme Court and on the ground of parity also the accused is entitled to bail.

Mr. Biswas, also submits that the accused is a khalashi of the vehicle where from contraband substances were recovered and since the kingpin of the offence has already been granted bail by the Hon'ble Supreme Court, he is also entitled to bail on the same ground. Therefore, it is contended to allow this petition. Mr. Biswas, has referred following case laws, to contend that in those cases considering the period of detention, bail was granted to the accused persons.

- (i) Shariful Islam @ Sarif vs. The State of West Bengal; Petition for Special Leave to Appeal (Crl.) 4173/2022;
- (ii) Dheeraj Kumar Shukla vs. The State of Uttar Pradesh; Petition(s) for Special Leave to Appeal (Crl.) 6690/2022;
- (iii) Anjan Nath vs. The State of Assam; B.A. No. 2022/2023
- (iv) Anjan Nath vs. The State of Assam; Petition(s) for Special Leave to Appeal (Crl.) 9860/2023;
- (iv) Chitta Biswas @ Subhas vs. The State of West Bengal; Criminal Appeal No(s). 245/2020
- (v) Nitish Adikari @ Bapan vs. The State of West Bengal; Petition(s) for Special Leave to Appeal (Crl.) 5769/2022;
- (vi) Mohammad Salman Hanif Shaikh vs. The State of Gujarat; Petition(s) for Special Leave to Appeal (Crl.) 5530/2022;
- (vii) Harish Mia @ Harij Mia vs. The State of Assam; in B.A. No. 2475/2023;
- (viii) Abu Sufian vs. The State of Assam; in B.A. No. 1128/2023
- (ix) Bayar Debbarma @ Jakki and Anr. vs. Union of India in B.A. No. 3548/2023
- (x) Rabi Prakash vs. The State of Odisha; Petition(s) for Special Leave to Appeal (Crl.) 4169/2023;
- (xi) Lamabamayum Brojen Singh vs. Union of India; in B.A. No. 3779/2023
- (xii) Md. Senaul Sk. @ Sanaul Sekh @ Sanaul Sekh & 2 Others vs. Union of India; in B.A. No. 3406/2023
- (xiii) Birendra Kumar vs. Union of India, in B.A No. 3830/2023;
- (xiv) Sanjay Kr. Shah vs. Union of India B.A. No. 3881/2023;

- (xv) Indra Kumar Bhattarai @ Indram Kr. Bhattaroy vs. The Union of India B.A. No. 3964/2023
- (xvi) Saddik Hussain Rajbarbhuyan vs. The Union of India B.A. No. 3158/2023
- (xvii) Krishna Biswas vs. The Union of India, B.A. No. 4605/2023
- (xviii) Amal Das -Vs- The State of Assam
- (xix) Majinder Singh -Vs- The Union of India, Bail Appln./835/2024
- (xx) Bishal Debbarma -Vs- Union of India, Bail Appln./600/2024
- (xxi) Monoranjana Das -VS- Union of The India, Bail Appln./443/2024
- (xxii) Lalanu Sekh -Vs- The Union of India & Ors.
- (xxiii) Baiju Thakur -Vs- Union of India
- (xxiv) Javaid Iqbal @ Javid Iqbal -Vs- The Union of India
- (xxv) Panchlal Singh -Vs- The Union of India
- (xxvi) Narahari Chetry -Vs- The Union of India
- (xxvii) Ajoy Sasni -Vs- The Union of India
- (xxviii) Paramjit Singh -Vs- The Union of India
- (xxix) Rajveer Singh -Vs- The Union of India
- (xxx) Sheikh Javed Iqbal @ Asfaq Ansari @Javed Ansari -Vs- State of Uttar Pradesh
- (xxxi) Narcotics Control Bureau vs. Mohit Aggarwal, reported in (2022) 18 SCC 374

6. On the other hand, Mr. S.C. Keyal, learned Standing Counsel, NCB, submits that all total 707.050 kg of Ganja were recovered from the conscious possession of accused Sujeet Kumar and two others and their nexus with illegal business of Ganja is established from the CDR and that there is no delay of trial on the part of the respondent NCB. Further submission of Mr. Keyal is that the accused has failed to satisfy the requirement of Section 37 of the NDPS Act and it is well settled that when commercial quantity of contraband substances were recovered from the possession of the accused, they shall not be granted bail. It is, therefore, contended to dismiss the petition. In support of his submission, Mr. Keyal has referred following decisions:-

- (i) **State by (NCB) Bangaluru vs. Pallulabid Ahmed Arimutta &**

Anr. reported in 2022 0 Supreme (SC) 56.

(ii) State of Meghalaya vs. Lalrintluanga Sailo & Anr.
reported in 2024 0 INSC 537;

(iii) Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Papu Yadav & Anr. reported in (2005) 2 SCC 42

7. 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 and the case laws referred by learned Advocates of both sides.

8. The record of the learned court below indicates that in order to expedite the trial, recourse to the provision of Section 309(1) Cr.P.C., has not been taken by the learned court below. Consequently, only three witnesses could be examined till date. The record also indicates that there is lapse on the part of the accused persons also, as on some dates when the witnesses turned up the same could not be examined on account of absence of the counsel for the accused. Further, it appears that on most of the dates the prosecution side could not produce the witnesses despite direction of the learned court below. The record of the learned court below also indicates that the NCB has failed to take steps to issue summon to the prosecution witnesses.

9. Thus, the delay is attributable to all the stakeholder of the system. Under such circumstances, this court is unable to agree with the submission of Mr. Biswas that right to speedy trial of the accused is violated and he cannot be allowed to reap the benefit of delayed trial.

10. It appears that since 11.08.2020, the accused is languishing in jail hazoot. However, when the nature and gravity of the offence allegedly committed by the

present accused involving commercial quantity of the contraband substances, and its impact upon the society as well as collective interest, and when that same are balanced against the individual interest of the accused, the delay cannot be a persuasive ground for granting bail. See- **NCB vs. Mohit Agarwal**, reported in **[2022] 0 Supreme (SC) 619**.

11. Moreover, no effort has been made by the accused in satisfying the twin requirements of Section 37 of the NDPS Act, that he is not guilty of the offence and that he will not commit any such offence while on bail. 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. It is also well settled that liberal approach in the matter of bail, under the NDPS Act is indeed uncalled for. [See- **Mohit Agarwal** (supra)],

12. The other ground heralded before this court is parity. It is fact that one of the co-accused namely, Baiju Thakur has been granted bail by the Hon'ble Supreme Court. It is well settled by Hon'ble Supreme Court in catena of decisions that the principle of parity can be considered while granting bail to co-accused. However, it is also well settled that the principle can be applied considering totality of the circumstances. While applying the principle of parity, court must focus on the role of the accused. In deciding parity the role attached to the accused, their position in relation to the incident and to the victim is of utmost importance. See **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Another** reported in **(2021) 6 SCC 230**. In the case of

Tarun Kumar vs. Assistant Director of Enforcement in Criminal Appeal

No. .../2023[SLP (CRL0 No. 9431/2023, it has been held 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.

13. It is not in dispute that 707.050 kg of Ganja were recovered from one Truck, bearing registration No. NL 01 AE 1397, near Tolaram Bafna Civil Hospital, Kamrup, Amingaon from the present accused along with co-accused Tarun Kumar and Pramod Ray. On the other hand, co-accused Baiju Thakur, who was granted bail by Hon'ble Supreme Court in Criminal Appeal No. 2603 of 2024, was the owner of the said Truck. He was not present at the time of recovery of the 707.050 kg of Ganja. Because of recovery of the 707.050 kg of Ganja from the conscious possession of the present accused, his case stands on different footing from that of accused Baiju Thakur. And keeping in mind the dictum in **Ramesh Bhavan Rathod** (supra), this court is unable to agree with the submission of Mr. Biswas, the learned counsel for the accused. On the other hand, I find substance in the submission of Mr. Keyal, the learned standing counsel for the respondent NCB and the ratio laid down in the case referred by him also supported his contentions.

14. Under, the aforementioned facts and circumstances and also considering the nature and gravity of the charges and on account of failing to satisfy the twin requirements of Section 37 of the NDPS Act, this court is of the view that no case of granting bail to the present accused is made out.

15. I have gone through the decisions referred by Mr. Biswas. There is no quarrel at the bar about the proposition laid down therein. However, I find that the facts and circumstances concerning those cases are different from the facts and circumstances of the present case. Therefore, detail discussion of the same

is found to be not necessary herein this case.

16. In the result, the instant petition stands dismissed. In view of the exposition of law, concerning the right to speedy trial being a fundamental right, as guaranteed under Article 21 of the Constitution of India, and the issue regarding violation thereof, we hope and trust that the learned trial court will made an endeavour to conclude trial as soon as practicable, without being influenced by any of the observation made herein above, as the same is made only for the purpose of disposing this bail application.

17. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant