

GAHC010206142024



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

Case No. : Bail Appln./3055/2024

ADRISH KHAN
S/O MUNSHI KHAN, R/O GALI NO.8, WRAD NO.9, KAMAKHANI MOHOLLA,
JAWANTGADH TEHSIL, LADNUN, DISTRICT- NAGOUR, RAJASTHAN-
341306.
THROUGH PARIOKAR RUKSANA BANO @ RUKSANA BANO,
W/O ADRISH KHAN, AGED ABOUT 32 YEARS, R/O GALI NO. 8, WARD NO. 9,
JASWANT GARH, NAGOUR, RAJASTHAN-341304

VERSUS

UNION OF INDIA,
NARCOTICS DRUGS BUREAU, THROUGH INTELLIGENCE OFFICER, NEW
DESIGNATION -INSPECTOR (VIP ROAD, RUPKONWAR PATH, CHACHAL,
KHANAPARA, GUWAHATI, ASSAM, PIN-781022.

Advocate for the Petitioner : MR. Y S MANNAN, MS R BEGAM,MR. T HUSSAIN

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

03.12.2024

Heard Mr. Y. S. Mannan, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This is the second bail application filed under Section 439 Cr.P.C., seeking bail by the petitioner, namely, **Adrish Khan**, in connection with **NDPS Case No.**

193/2023 (NCB Guwahati Crime No. 09/2023) registered under Section **8(c)/20(b)/(ii)(C)/25/28/29/35/54 of NDPS Act**, pending in the court of learned Special Judge (NDPS), Guwahati.

3. The brief fact of the case is that on 30/05/2023 at about 4:00 PM, the NCB officials received an information from a reliable source that one person namely, Parma Ram Bishnoi, resident of Rajasthan, is trafficking huge quantity of ganja from Agartala, Tripura to West Bengal in a truck bearing registration no. RJ11GA6154. Accordingly, the said truck was intercepted by the NCB team. On being searched, flowering top of Cannabis (ganja) in compressed form was found. Small amount of ganja was tested with drug detection kit available with the team. It gave positive test for ganja and accordingly the alleged contraband were seized. Total weight was found to be 2126.660 Kg. On being asked, the person found in the vehicle i.e., Parma Ram Bishnoi, admitted that he was consciously involved in the trafficking of ganja for monetary benefits. Thereafter, he was arrested.

4. Subsequently, the present petitioner, who is the owner of the said truck was arrested by NCB on 01/11/2023.

5. It was urged by learned counsel for the petitioner that the petitioner was not arrayed as an accused in the FIR, as he was not present on the spot, when the contraband was seized from the accused no.1, Parma Ram Bishnoi. The petitioner was only named in the charge-sheet on the basis of the statement given by one Liyakat Ali u/s 67 of the NDPS Act, registered owner of the truck who alleged that he sold the said truck to the present petitioner.

6. It is also the submission of learned counsel for the petitioner that one Liyakat Ali is the owner of the truck bearing No. RJ 11 GA 6154. A notice under

Section 67(C) of NDPS Act was issued to Liyakat Ali and he appeared before the IO and gave his statement wherein he stated that he executed a sale agreement on 15.12.2022 with the present petitioner for the purpose of selling the said truck. But subsequently, since the present petitioner did not fulfill the sale agreement, Liyakat Ali sold the said truck to one Emon Roy by executing a sale agreement dated 28.02.2023 and Emon Roy paid Rs. 5,00,000/- to Liyakat Ali.

7. It is further submitted that the petitioner was arrested on wrong notion that he was the owner of the vehicle. The petitioner was never in possession of the truck after February, 2023. Though a sale agreement for the vehicle was executed between the petitioner and Liyakat Ali but the said vehicle was taken away by Liyakat Ali for nonpayment of the amount agreed between the parties. The incident occurred on 30.05.2023 which is three months after the truck was taken away by Liyakat Ali and sold to Emon Roy. As such there cannot be any connection of the petitioner with the present incident.

8. According to learned counsel for the petitioner, a letter was sent to Jodhpur Journal Unit for verification of sale agreement between Liyakat Ali and the present petitioner as well as the sale agreement of Liyakat Ali with Emon Roy. Both the agreements were verified from the concerned notary and found to be authentic. Therefore, it can be construed that though the truck was sold to the present petitioner on 15.12.2022 but the said truck was subsequently sold to Emon Roy after taking possession of the vehicle by Liyakat Ali. Learned counsel for the petitioner prays that considering the fact that the petitioner was not the owner of the vehicle when the vehicle was detected with the contraband items as well as the length of detention, the petitioner may be enlarged on bail.

9. In response to the submission of learned counsel for the petitioner, learned

standing counsel, NCB, Mr. Kayal has vehemently opposed in granting bail to the petitioner. It is submitted that the petitioner was in contact with one Amrit, resident of Cooch Bihar, West Bengal, who happens to be the receiver of alleged ganja and at his behest the petitioner had purchased the seized truck from Liyakat Ali and handed over the said truck to one Roopak of Agartala for trafficking ganja that was seized in this case. It is further stated that Roopak had given Rs. 1 Lac in advance and the said amount Roopak had deposited in the SBI branch, Nagpur which is in the name of Irfan Khan, younger brother of the present petitioner.

10. Further, the learned counsel for the NCB submitted that to enquire the matter regarding ownership of the alleged vehicle, a letter was sent to NCB, Jodhpur Zonal Unit for verification of Sale Agreement between Liyakat Ali and Adrish Khan and it was found authentic by the concerned authority.

11. It is also submitted that in the instant case, facts connected with trafficking of seized ganja was established by the NCB. Accused, Adrish Khan entered into a criminal conspiracy with Amit @ Amrit, resident of Cooch Bihar through telephonic communication. In the said criminal conspiracy, it was decided that Adrish Khan would provide a truck to Amit who would use it for trafficking Ganja. In pursuance of the said criminal conspiracy, Adrish Khan purchased a truck bearing Registration No. RJ 11 GA 6154 and after purchasing the said truck, Adrish Khan himself took the said truck to Cooch Bihar, West Bengal where he met Amrit who directed him to take the said truck to Agartala and there he handed over the truck to one Roopak for trafficking of Ganja. In return, Adrish Khan was to get Rs. 3 lakh per month for six months. It is also alleged that on 18.05.2023, 38 packets of ganja were loaded in the alleged truck in Tripura by Roopak and his associates Manish. On 19.05.2023 the said

truck was parked by the accused Parma Ram Bishnoi in the interstate truck terminus, Tripura. Then after loading latex rubber thread in the said truck in Agartala, the accused on 26.05.2023 departed from Guwahti and 84 packets of ganja were loaded in the said truck which were concealed under the cartoons of latex rubber thread.

12. According to the learned counsel for the NCB, in the instant case 2126.660 kg Ganja was seized which is of commercial quantity and there is a bar raised by Section 37 of NDPS Act, 1985 in granting bail. As the seized quantity is commercial in nature and if bail is granted, there is a possibility that the accused may jump bail considering the gravity of the offence and severity of the punishment prescribed in the NDPS Act and may try to tamper with the evidence.

The learned counsel for the NCB, cited the judgment of the Hon'ble Supreme Court in Union of India vs Ajay Kumar Singh @ Pappu (SLP CrI. No. 2351 of 2023).

13. It is also contended that the commercial quantity of ganja was recovered from the seized truck which were kept concealed inside the secret chamber of the said truck; and it is not possible to build such secret chamber without the knowledge of the owner of the truck. It transpires that the petitioner along with the other co-accused had conspired for trafficking of such ganja for monetary benefit.

14. Having heard the learned counsel for the parties and on perusal of the trial court record, the admitted fact is that the recovered contraband is 2126 kgs of ganja which is of commercial quantity. Therefore, grant of bail is hit by Section 37 of the NDPS Act. Though the learned counsel for the petitioner has

submitted that the present petitioner is not the registered owner of the vehicle, but the said fact is not proved by furnishing any documents that subsequently, the alleged vehicle was sold to Emon Roy by the earlier seller of the vehicle Liyakat Ali. Though learned counsel for the petitioner submitted that both the sale agreements were sent for verification to Jodhpur Zonal Unit but according to NCB only the sale agreement between the petitioner and Liyakat Ali was sent for verification to Jodhpur Zonal Unit which was found authentic. Hence, the petitioner has failed to prove the subsequent sale of the alleged vehicle to Emon Roy by Liyakat Ali.

15. The facts of the case show that the petitioner is the registered owner of the vehicle which was carrying a huge quantity of ganja, it cannot, therefore, be said that the petitioner is not in conscious possession of the contraband in question. The statement of the petitioner that he was alleged to be the owner of the vehicle and was not aware that such quantity of ganja was being transported in the vehicle, cannot be accepted at this stage.

16. From the facts and circumstances of the case, I am not able to hold that there are reasonable grounds to believe that the petitioner is not guilty of the offences alleged against him, even if I were to hold that the absence of criminal antecedents would indicate that the second condition in Section 37 of the NDPS Act can be said to be satisfied in the facts of this case. Since it is settled law that both the conditions in Section 37 of the NDPS Act must be cumulatively satisfied, this Court is not inclined to grant bail to the petitioner.

17. Accordingly, the bail petition of the petitioner stands rejected.

18. However, trial court is directed to expedite the trial of the case.

19. It is made clear that the observation made in this order are only for the

purpose of considering the entitlement of the petitioner for bail and shall not prejudice the petitioner in the trial of the case.

20. Accordingly, the bail application stands disposed of.

JUDGE

Comparing Assistant