

GAHC010213602024



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

Case No. : Bail Appln./3130/2024

MAHENDRA SINGH
S/O SANTRAM, R/O VILL AND P.O.-ABHEDEPUR, P.S.- SIRSAKALA, TEHSIL-
KALPI, DIST- JALAUN, UTTAR PRADESH-285130

VERSUS

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

Advocate for the Petitioner : MR. M HUSSAIN, MR. A Z AHMED

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 04.11.2024

Heard Mr. A.Z. Ahmed, learned counsel for the accused and Mr. S.C. Keyal, Standing Counsel for the NCB.

2. This application, under Section 483 of the BNSS, is preferred by accused, namely, **Mahendra Singh**, who has been languishing in jail hazot since 01.04.2021,

in connection with **NDPS Case No. 46/2021**, pending before the learned Special Judge, Kamrup, Amingaon, arising out of NCB Crime No. 08/2021, under Sections 22(c)/29 of the NDPS Act, for grant of bail.

3. The gravamen of allegation against the present accused is that acting on a tip off on 29.03.2021, at about 16.20 hrs. Shri Anil Kushwaha, Intelligence Officer, NCB, Guwahati Zone, with a team of NCB official intercepted one Truck, bearing registration No. UP-22-T-8859, near Narayana Hospital, which was coming from Rangia side towards Agartala, Tripura and apprehended two persons, namely, Ayodhya Prasad and Mahendra Singh. On checking the Truck they recovered 9975 bottles of Phensedyl, Codine based cough syrup and seized the same in presence of witnesses, preparing seizure list. Thereafter, investigation was carried out and on completion of the same Offence Report was submitted against the present accused before the learned Special Judge, Kamrup, Amingaon

4. The respondent NCB has filed an objection petition stating that involvement of the present accused stands proved from every sdies and that 9975 bottles of Phensedyl, Codine based cough syrup was recovered from the conscious possession of Ayodhya Prasad and Mahendra Singh, who were in the aforesaid Truck, wherein the present accused was working as a Khalasi/helper and accompanied Ayodhya Prasad from Mahsena, Gujarat and that the present accused played an active role in loading and transporting of the seized articles and he received Rs. 10,000/- for the same and he was in continuous touch with the supplier Sohaib @ Rahul.

5. Mr. Ahmed, learned counsel for the accused submits that this is the second bail application and the first one, being Bail Application No. 1579/2024, was rejected by this court, vide order dated 29.08.2024. Mr. Ahmed further submits that the ground for filing this second bail application is parity, as one of the co-accused of this case namely, Vinod Bijarnia was granted bail by the Hon'ble Supreme Court in Criminal Appeal No. 3991/2024 [@ SLP (CRL.) No. 8264/2024] and that the present accused

also stands in the same footing, even the present accused has been languishing in jail hazot for more than 7 months than accused Vinod Bijarnia who was in jail hazot for about 3 years. Mr. Ahmed further submits that the present accused has been languishing in jail hazot for more than 3 years. Mr. Ahmed also submits that because of his long incarceration his right to speedy trial stands violated and that the accused is ready to face the trial and will appear before the learned trial court on each and every date and therefore, it is contended to allow the petition.

6. On the other hand Mr. Keyal, learned Standing Counsel for the NCB submits that the offences under NDPS Act are very serious and are different from other ordinary criminal offences and in the cases under NDPS Act the society is affected at large. Mr. Keyal further submits that the present accused not stands in the same footing of accused Vinod Bijarnia, who has already been granted bail by Hon'ble Supreme Court, inasmuch as the contraband substances were not recovered from the conscious possession of him. Mr. Keyal further submits that 9975 bottles of Phensedyl, Codine based cough syrup was recovered from the conscious possession of the present accused, who was in the aforesaid Truck and the said consignment is of commercial quantity and as such, the accused has to satisfy the twin requirements of Section 37 of the NDPS Act and unless the said requirements are satisfied with, the accused cannot be granted bail. Mr. Keyal also referring to a decision of three Judges bench of Hon'ble Supreme Court in the case of **State (by NCB) Bengaluru vs. Pallulabid Ahmed Arimutta and Another**, reported in **(2022) 12 SCC 633** submits that the principle of parity cannot be applied to the present accused, as from his conscious possession commercial quantity of contraband substances were recovered. Therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned trial court.

8. It is not in dispute that the accused has been languishing in jail for more than 3 years. It appears that one of the co-accused of this case namely, Vinod Bijarnia was granted bail by Hon'ble Supreme Court and the present accused is behind the bar more than three years. Further it appears that trial is going on.

9. It is not in dispute that 9975 bottles of Phensedyl, Codine based cough syrup was recovered from the conscious possession of the present accused, who was in the aforesaid Truck and was working as Khalasi/helper and the said article is of commercial quantity and as such, the accused has to satisfy 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 offence while on bail, as held by Hon'ble Supreme Court in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, in Criminal Appeal No. 952 of 2023 [Arising out of SLP (CRL.) No.2351 of 2023] and unless the said requirements are satisfied with, the accused cannot be granted bail.

10. Admittedly, no argument is advanced by Mr. Ahmed, learned counsel for the accused on this point. It is to be noted here that in the case of **Ajay Kumar Singh @ Pappu** (supra), Hon'ble Supreme Court has held as under :-

“In view of the above provisions, it is implicit 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.”

11. It is to be noted here that while dealing with the issue of parity, Hon'ble Supreme Court in the case of **Pallulabid Ahmed (Supra)** in paragraph No. 11 has held as under:-

“We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in

conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner NCB succeeds in SLP (Cr1.) No. 1569 of 2021. The bail granted to the respondent - Mohmmmed Afzal (A - 2) is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody.”

12. It is well settled that in catena of decision of Hon'ble Supreme Court that the principle of parity can be considered while granting bail to co-accused. However, in applying the same the court has to consider the totality of the circumstances. While applying the principle of parity, court must focus on the role of the accused and the reasons cannot be the usage of similar weapons of the accused, which was granted bail. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. (see) **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Another**, reported in **(2021) 6 SCC 230**.

13. Again in the case of **Tarun Kumar vs. Assistant Director, Directorate of Enforcement**, in Criminal Appeal No. .../2023 [@ SLP (CRL.) No. 9431/2023], Hon'ble Supreme Court has held as under:-

“It may be noted 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....”

14. In view of the aforesaid proposition of law laid down in the aforementioned case, this court left unimpressed with the submission of Mr. Ahmed, learned counsel for the accused that on the ground of parity the bail can be granted to the present accused. The case of the present accused stands on a different footing from that of accused Vinod Bijarnia in view of recovery of commercial quantity of contraband substance from the conscious possession of the present accused.

15. Mr. Ahmed has also tried to convince this court that as the accused has been languishing in jail hazot for more than 3 years, his fundamental right i.e. the right to speedy trial is violated. But, in order to derive the benefit of violation of his right to speedy, the accused has to establish how and in what manner the right is violated. But, the learned counsel for the accused failed to satisfy this court that the delay, which occurred in the present case, is an inordinate delay and that someone else is responsible for the same.

16. Under the aforementioned facts and circumstances, and balance the individual liberty of the accused with that of collective interest of the society/public, this court is of the view that this is not a fit case where the privilege of bail can be granted to the accused.

17. Accordingly, the petition stands **dismissed**.

JUDGE

Comparing Assistant