

GAHC010222762024



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

Case No. : Bail Appln./3246/2024

MOTIAR RAHMAN
S/O- AMIR ALI SEIKH @ AMIR ALI,
R/O- VILLAGE- BAUSERKUTI,
P.O- KHERBARI, P.S- AGOMONI, DIST- DHUBRI, ASSAM

VERSUS

UNION OF INDIA
REP. BY THE STANDING COUNSEL, NARCOTICS CONTROL BUREAU,
GUWAHATI ZONAL UNIT, GUWAHATI, ASSAM

Advocate for the Petitioner : ATIULLAH HAWARI, A R MONDAL, MR. S ISLAM, MR. K N CHOUDHURY

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 21.11.2024

Heard Mr. K.N. Choudhury, learned Senior counsel assisted by Mr. S. Islam, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned

Standing counsel, NCB.

2. By filing this application u/s 483 BNSS, 2023, the petitioner namely **Motiar Rahman**, has prayed for regular bail in connection with NDPS Case No. 300/2024 u/s 22(C) and 29 of NDPS Act (corresponding to NCB Crime Case No. 02/2024) pending in the court of learned Special Judge, Kamrup(M), Guwahati.

3. Learned Senior counsel has submitted that on the basis of incomplete charge sheet the trial court took cognizance of the case. The prosecution has submitted some additional documents which are without compliance of statutory provision of seeking permission of the court to extend the time period of completion of investigation based on the report of the public prosecutor and the same cannot be carried out by merely adverting to a prayer for the same in the charge sheet. Moreover, a supplementary charge sheet under Section 173(8) of Cr.PC can only be filed in the event of any further information procured. It is further pointed out that only on the strength of FSL/report of the examiner, the court can ascertain that whether the alleged seized substance was narcotic substance under the NDPS Act. Though the charge sheet was submitted within 180 days, without chemical examination report, however, it is beyond the contemplation of the proviso to Section 36A(4) of the NDPS Act. According to learned Senior counsel for the petitioner, as the prosecution has not filed the FSL report with the charge sheet, the petitioner is entitled for default bail.

4. It is further contented by learned Senior counsel that the alleged contraband was recovered from one co-accused Debashish Paul. During inquiry, he disclosed that he was going to hand over the alleged contraband to

the present petitioner and one Sahidul. On the basis of the statement of co-accused Debashish Paul, the present petitioner was arrested. By referring the judgment of Tofan Singh vs. State of Tamil Nadu, reported in 2021 v. 4 SCC 1, learned Senior counsel has pointed out that Hon'ble Supreme Court has held in the said case that a confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act.

5. It is further submitted that the accused/petitioner has been languishing in judicial custody for last eight months since his arrest on 05.03.2024. The trial has not yet been commenced. The accused/petitioner is a local person having movable and immovable properties as such, there is no chance of his absconding. It is also submitted that there is no any criminal antecedent against the petitioner and he has no way involved in the instant case. Considering the nature of offence as alleged against the petitioner, further custodial detention of the petitioner may not be required in the present case. Hence, the learned senior counsel for the petitioner has prayed to release the petitioner on bail.

In support of his submission, learned Senior counsel for the petitioner has placed reliance on the following case laws-

- (i) Mohd. Arbaz & Ors. vs. State of NCT of Delhi, reported in Special Leave to Appeal (Crl.) No (S). 8164-8166/2021.
- (ii) Nurezzaman Islam @ Nurajjaman vs. The State of Assam in BA No. 1464/2019.
- (iii) Hussain Ahmed Khan vs. The State of Assam in BA No. 3487/2023.

(iv) H. Lalmalsawma vs. The State of Assam in BA No. 975/2020.

6. In response, Mr. Keyal, learned Standing counsel, NCB has vehemently opposed in granting bail to the petitioner. He has contended that it is true that the alleged contraband was recovered from the possession of co-accused Debashish Paul. From the statement of said Debashish Paul, it reveals that he boarded in Vivek Exp. at Dimapur Railway Station along with the consignment of 3.389 kg of Methamphetamine Tablets and the present petitioner along with one Sahidul were asked to collect the said consignment from said Debashish Paul at Cooch Bihar. The present petitioner also during investigation admitted that he is also involved in trafficking of narcotic drugs to earn money. According to learned Standing counsel, NCB, during investigation, it also reveals that around Rs.48,000/- was transferred to the bank account of the petitioner in connection with the alleged transportation of drugs. As commercial quantity of narcotic drugs were recovered in connection with this case, the embargo of Section 37 of NDPS Act is attracted herein this case.

7. It is further submitted by learned Standing counsel, NCB that the point raised by the learned Senior counsel regarding submission of charge sheet without the FSL report, the matter is pending before the Hon'ble Supreme Court in connection with case of Hanif Ansari Vs. State (Govt. of NCT of Delhi) reported in Special Leave to Appeal (Crl.) No(s). 15293/2023. Hence, learned Standing counsel, NCB prays for dismissal of the bail application.

In support of his submission, learned Standing counsel, NCB has relied on the following case laws-

(i) Hanif Ansari vs. State (Govt. of NCT of Delhi), reported in

Special Leave to Appeal (Crl.) No(s). 15293/2023.

(ii) Amad Uddin Tapadar vs. The State of Assam in BA No. 1242/2024.

(iii) Adrish Khan vs. Union of India in BA No. 962/2024.

8. Having heard the learned counsel for the parties and on perusal of the trial court record and the case diary, it is an admitted fact that charge sheet has been laid without FSL report but it appears from the record that when the contraband was recovered, the field test was done by the NCB team with the help of drug detection kit and the contraband was found to be positive test of Methamphetamine. Accordingly, the contraband was seized and the co-accused was arrested. The case is at the trial stage and charge has not yet been framed as one of the accused is absconding and NBWA was issued against him.

9. The Hon'ble Apex Court in ***CBI vs. Kapil Wadhawan and another*** reported in ***2024 SCC Online SC 66*** referring to various earlier judgments held that once charge sheet has been filed against the accused within prescribed time, the accused cannot claim his statutory right of default bail under Section 167(2) of Cr.P.C. on the ground that investigation against other accused was pending. It would be apposite to extract the following relevant paragraphs:

“23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet is filed, the said right ceases. It may be noted that the right

of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender.”

10. In the case of ***K. Veeraswami vs. Union of India and others***, reported in ***(1991) 3 SCC 655***, wherein it was held that statutory requirement of report u/s 173 (2) of Cr.P.C. would be complied with, if various details prescribed therein are included in the report. The report under Section 173 Cr.P.C., is an intimation to the Court that upon investigation into the cognizable offence, Investigating Officer has been able to procure sufficient evidence for the Court to inquire into the offence and necessary information is being sent to the Court. It is not necessary that all details of the offence must be stated. Though ordinarily all documents relied upon by the prosecution should accompany the Charge Sheet, nonetheless, if for some reasons, all documents are not filed, that reason by itself would not invalidate or vitiate the Charge Sheet, as the Court takes cognizance of the offence and not the offender. Once, from the material produced along with Charge Sheet, Court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether further investigation in terms of Section 173(8) Cr.P.C. is pending or not. Pendency of further investigation for production of some documents not available at the time of filing of the Charge Sheet would neither vitiate the Charge Sheet nor

entitle the accused to seek default bail on that ground, as a matter of right.

11. In ***Sanjay Kumar Pundeer v. State of NCT of Delhi***, reported in **2023 SCC OnLine Del 5696**, it was held that Charge Sheet is filed upon completion of investigation after Investigating Officer has found sufficient evidence to prosecute the accused for offences under which the FIR has been registered while any other scientific examination report is only corroborative in nature to the material collected by the IO and filed with the Charge Sheet.

12. In the aforesaid cases, more or less the opinions of the Courts are same. Even though expert report did not accompany charge sheet, it cannot be said it is incomplete charge sheet. Once a charge sheet is filed within stipulated time, the question of default bail does not arise. It cannot be held that the additional documents cannot be produced subsequently. There is no specific provision due to which no additional documents can be produced. When the charge sheet is submitted without report of expert well within the period of 60/90/180 days, merely because the report of experts were not filed along with it, the same cannot be the ground to release the accused on bail under Section 167(2) of Cr.PC.

13. Coming to the question of inadmissible evidence under Section 67 of NDPS Act, as it appears that trial has not yet commenced as such, the NCB did not get the opportunity to place before the trial court on the point in issue which could be proved only during trial. Apart from that as commercial quantity of narcotic drugs were recovered in connection with the alleged offence and the petitioner was supposed to be the receiver of the said contraband as such, at this stage, without examining any witness, it cannot be said that he is not guilty of any offence or there is no likelihood of the petitioner committing any

further similar offence if he is released on bail.

14. In view of the above, prayer of bail is rejected at this stage and disposed of accordingly.

JUDGE

Comparing Assistant