

GAHC010225592024



2024:GAU-AS:11288

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

Case No. : Bail Appln./3288/2024

IKBAL HUSSAIN BARBHUIYA @ RIPON
S/O JAKIR HUSSAIN BARBHUIYA @ MONA, VILL- NISCHINTAPUR PT-II,
P.O.-MONACHERRA, P.S. AND DIST- HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA, S. M. ZINNA,MS A BEGUM,MS S R
MAZARBHUIYA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 20.11.2024

Heard Mr. A. M. Barbhuiya, learned counsel for the petitioner. Also heard
Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

2. This is an application under section 483 of BNSS, 2023 praying for grant of bail to the accused/petitioner, who is languishing in jail hazot in connection with Special (NDPS) Case No. 02/2023, arising out of Hailakandi P.S. Case No. 42/2023, under Section 22(c)/29 of NDPS Act, 1985, corresponding to G.R. Case No. 258/2023.

3. It is submitted by Mr. Barbhuiya, learned counsel for the petitioner, that the present accused/petitioner is innocent and he is no way involved in the alleged offence. He is the driver of the vehicle (auto rickshaw) and nothing has been recovered from his possession. On the day of incident, while he was driving his vehicle, the other 2 (two) main accused persons, namely, Jahid Hussain Barbhuiya & Yuvraj Pandey, boarded on the vehicle as passengers carrying narcotic drugs without his knowledge. Further, during the entire investigation of the case, he has never been interrogated by the police and he has been charge-sheeted in this case only on the basis of the statement made by the said two accused persons. More so, the other 2 (two) said accused persons have already been released on bail by the learned Special Judge, Hailakandi. Further he submitted that the accused/petitioner was arrested on 01.07.2024 and since then, he has been behind the bar for more than 4 (four) months and accordingly, he prayed that the accused/petitioner may be released on bail.

4. In support of his submission, Mr. Barbhuiya also relied on a decision of Hon'ble Supreme Court rendered in **The State of Haryana Vs. Samarth Kumar [2022 Livelaw (SC) 622]**, wherein the Hon'ble Supreme Court has expressed the view that the advantage of decision in **Tofan Singh Vs. State**

of Tamil Nadu [(2021) 4 SCC 1] may also be taken at the time of disposing the regular bail application or at the time of final hearing.

5. He further relied on a decision of this Court passed in **Bail Appln. No. 3887/2023, dated 01.12.2023**, wherein also, the co-ordinate Bench of this Court had granted bail to the petitioner considering the ratio laid down in case of **State Vs. Pallulabid Ahamed Arimutta & Ors. [(2022) 12 SCC 633]** that the confessional statement recorded under section 67 of the NDPS Act, 1985 will remain inadmissible in the trial of an offence under the NDPS Act and therefore, such statement more particularly on the basis of the confessional statement/voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence.

6. Mr. Barbhuiya further submitted that the accused is behind the bar for last more than 4 (four) months and the co-accused persons from whom the contraband was recovered have already been released on bail and hence, considering all these aspect of the case, the petitioner may be released on bail. He further submitted that the statement of the complainant is also annexed with the petition wherein he did not bring any allegation against the present petitioner. Rather he brought the allegation against the other 2 (two) co-accused persons from whose possession the contraband, which is of commercial quantity, was alleged to have been recovered. Accordingly, it is submitted that the bail petition for the present petitioner may be considered and he will appear before the learned Trial Court below in each and every date fixed by the learned Trial Court below and will contest the case. He being the permanent resident of his addressed locality, there is no chance of absconding and he is ready to

furnish the appropriate bailor before the Court.

7. In this context, Mr. Baruah, learned Additional Public Prosecutor, submitted that during investigation, sufficient incriminating materials have been found against the present accused/petitioner and on the basis of which, the Charge-Sheet was filed against him and the same is also reflected in the Charge-Sheet showing the present accused/petitioner as an absconder as during the investigation, he could not be arrested in spite of several attempts being made by the Investigating Agency. The learned Additional Public Prosecutor further submitted that the charges were also framed against the present accused/petitioner and the case is at the stage of evidence. Accordingly, he submitted that there is every probability of disposal of the case within a reasonable period of time and the present accused/petitioner, being the main culprit, may hamper or tamper the evidence and accordingly, he raised objection and submitted that it is not at all a fit case to consider the bail application for the present accused/petitioner at this stage.

8. After hearing the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the case record as well as the Case Diary.

9. On perusal of the record, it is seen that the present accused/petitioner could not be arrested during investigation as he was absconding and hence, the Charge-sheet has to be laid against him showing him as an absconder. However, subsequently, he got arrested in connection with this case on the strength of NBWA issued by the learned Special Judge and presently he is behind the bar

for last 4 (four) months. The statement of the complainant, which is annexed along with the petition, also reveals that the 2 (two) co-accused persons were chased by the Naka Checking Team and the contraband was also alleged to have been recovered from their possession. As per the complainant, after the arrest of the other 2 (two) co-accused persons, they were brought before the police station and accordingly he lodged the F.I.R. It is a fact that he did not mention anything about the present petitioner in his statement recorded under Section 161 Cr.P.C. as he was not associated with the subsequent investigation of this case wherein the involvement of the present accused/petitioner was established. Accordingly, it is the admitted position that at the time of arrest of the other 2 (two) co-accused persons, the involvement of the present accused/petitioner was not found and during investigation also, he could not be arrested/interrogated as he was absconding and evading police arrest. Thus, the reasonable question also arises as to why the petitioner was absconding and evading police arrest if he was no way connected in the alleged offence. More so, there are sufficient incriminating materials collected against the present accused/petitioner during the investigation and on the basis of which, the Charge-Sheet was filed. Thus, at this stage, it could not be said that the Charge-Sheet was filed against the present petitioner only on the basis of statement made by the co-accused persons.

10. As the case involves the commercial quantity, the rigor of Section 37 of the NDPS Act will follow. For ready reference, Section 37(1) of NDPS Act is extracted hereinbelow:

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

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(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.”

11. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is no reasonable ground for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials available in the case record as well as the Case Diary, there cannot be any reasons to believe that the accused/petitioner is not guilty of such offence or he is not likely to commit any offence while on bail as per Section 37 (1) (b) of NDPS Act.

12. In the case of **State by the Inspector of Police vs. B. Ramu [2024 0 Supreme (SC) 130]**, the Hon'ble Supreme Court in paragraph Nos. 9, 11, 12, 14 & 15 of the judgment, has held as under:

“9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.

13. Manifestly, a very strange approach has been adopted by the learned Single

Judge in the impugned order whereby the anticipatory bail was granted to the respondent on the condition that the appellant would deposit a sum of Rs.30,000/- to the credit of the registered Tamil Nadu Advocate Clerk Association, Chennai along with various other conditions. The condition no.(a) (supra) so imposed by the High Court is totally alien to the principles governing bail jurisprudence and is nothing short of perversity.

14. The fact that after investigation, the charge-sheet has been filed against the respondent-accused along with other accused persons, fortifies the plea of the State counsel that the Court could not have recorded a satisfaction that the accused was prima facie not guilty of the offence alleged.

15. As a consequence, the impugned order is cryptic and perverse on the face of the record and cannot be sustained. Thus, the same is quashed and set aside."

13. In view of above and also considering the materials available on record as well as the nature of offence and the punishment prescribed for the same, I am of the view that this is not a fit case where the accused/petitioner can be granted with the privilege of bail at this stage and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant