

GAHC010231692023



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

Case No. : Bail Appln./3773/2023

TUNTUN MAHATO
S/O- LATE CHENDESWARI MAHATO RESIDENT OF WARD NO -09,
LAUWALAGAN PASCHMI CHOUSA, PS- LAUWALAGAN, PS- CHOUSA,
DISTRICT- MADHEPURA, SATE- BIHAR, (INDIA) PIN - 852213

VERSUS

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

Advocate for the Petitioner : G UDDIN, P ADHIKARI, MR A K AZAD
Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

05.08.2024

1. Heard Mr. G. Uddin, learned counsel appearing for the accused petitioner as well as Mr. S. C. Keyal, learned standing counsel, NCB.
2. By filing this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Tuntun Mahato**, has prayed for grant of bail in connection with **NDPS Case No.73/2022** pending before the learned District & Additional Session Judge No.5 Kamrup (M) Guwahati **under Section 20(b)(ii)(C) and 29 of NDPS Act**

3. The brief facts of the case is that on 07.10.2021, the NCB Guwahati team seized 426.910 kg of ganja from a container truck bearing No. NL 01 AD 3773 at NH 37 near Health City Hospital, Koinadhora, Khanapara, Guwahati. Accordingly, a case was registered vide NCB Crime 28/2021 under Section 20(c)/29 of NDPS Act. Subsequently, two persons namely, Paban Kr. Singh and Nunu Babu Mahato were arrested in the instant case. Later on during investigation, two more persons were arrested namely, Akshay Lal Sahani @ Achche Lal Sahani and Gurveer Singh. During investigation and on the basis of corroborative evidences of the aforesaid arrested accused, the name of the present petitioner came out as a receiver of seized ganja. Thereafter, on receipt of the notice under Section 67 of NDPS Act, the present petitioner appeared before the Investigating Officer on 23.05.2022 for tendering his voluntary statement. As per voluntary statement of the present petitioner, in connection with seizure of commercial quantity of ganja, he was in constant contact with the arrested accused persons and then he was arrested on 23.05.2022 in connection with the alleged offence.

4. Learned counsel for the petitioner has argued that the present petitioner is a driver by profession and the co-accused Amit Kr. Mahato was known to him as both belong to the same state. But the petitioner was not aware about the fact that the said Amit Kr. was involved with trafficking of ganja. Just because of the professional conduct of the present petitioner there may be some phone conversation with the co-accused Amit Kr. Mahato. But actually the petitioner was not involved with the alleged offence directly or indirectly. It is further submitted that as per complaint, the present petitioner was not arrested at the time of incident and the suspected contraband were also not found from his possession.

5. According to learned counsel for the petitioner, the only allegation against the present petitioner is that the arrested co-accused implicated him as he was in contact with them through phone call. Though the investigating authority leveled

allegation against the present petitioner as he was the receiver of the said suspected contraband but they have failed to find any monetary transaction between the present petitioner and the arrested co-accused.

6. By relying on the judgment of Hon'ble Supreme Court in *Tofan Singh Vs State of Tamil Nadu* reported in (2021) 4 SCC 1, it was pointed out that the Hon'ble Supreme Court held that the statement of co-accused cannot be used as evidence against other accused. Moreover, in this case co-accused are not directly made any implication against the present petitioner.

7. It is further submitted that the petitioner has been detained in judicial custody for more than two years. Out of nine witnesses, only one witness was examined. The learned counsel for the petitioner submits that there is no likelihood of completion of trial within a short period. Hence, considering the length of detention, the petitioner may be enlarged on bail.

In support of his submission learned counsel has also placed reliance on the following case laws:

(i) *Md. Muslim vs State, NCB at Delhi* reported in AIR (2023) SC 164.

(ii) *BA 3548/2023 (Bayar Dev Verma @ Jakki and others vs Union of India).*

8. In response, Mr. S. C. Keyal, learned counsel, NCB has submitted that during investigation and on the basis of corroborative evidence of the arrested accused, the name of the present petitioner came out as a receiver of the commercial quantity of seized ganja. As per the voluntary statement of the present petitioner in connection with seizure of ganja, he was in constant contact with the arrested co-accused who was involved in the trafficking of seized ganja. It is further submitted that on his voluntary statement, the petitioner admitted that he was paid Rs.10,000 to 20,000 for illicit trafficking of ganja.

9. It is also the submission of learned NCB counsel that during investigation, it is prima facie established that the present petitioner and other co-accused in the instant case were consciously involved in the commission of trafficking of ganja and as such presumption under Section 35 and 54 of the NDPS Act as to the culpable mental state of the accused person can be drawn. Hence, learned counsel for the respondent/ NCB has opposed in granting bail to the petitioner.

In support of his submission, learned counsel has placed reliance on the following case laws:

- (i) *(2024) Legal Eagle (SC) 646 (State of Meghalaya vs Lalrintluanga Sailo and another).*
- (ii) *(2024) O Supreme SC 169 (High Court Bar Association Allahabad vs State of UP).*
- (iii) *BA 1012/2024 (Ashish Debbarma and others vs Union of India).*
- (iv) *BA 1065/2024 (Syed Ashik Alam vs Union of India).*

10. Having heard the learned counsel for the parties as well as on perusal of the trial court record, it reveals that the case was initiated on 07.10.2021. Thereafter, charge-sheet was submitted on 02.04.2022 but charge was framed on 17.02.2024 i.e. after almost two years. The learned NCB counsel has made explanation on the point that against one of the accused Papu Sahani, who was confined in Bihar Jail, court issued production warrant but failed to produce him in time as such there was delay in framing of charge by the court. The trial court and the NCB officials should know that if one of the accused is not available during trial, the trial court on *suo moto* or on an application filed by any of the parties can split up the case against the unattended accused and proceed with the case.

11. It is evident from reading of the status report that no recovery was made from the present petitioner. It is equally undisputed that the petitioner has been

detained in custody for more than two years. The trial court record also shows that since after filing of charge-sheet, charge was framed after two years. The explanation given by the learned NCB counsel is not at all acceptable. There is merit in the contention of the learned counsel for the petitioner that in *Ravi Prakash vs State of Orissa (2023) SCC online SC 1109* wherein the Hon'ble Supreme Court has held that in case of prolonged incarceration and where the conclusion of trial is likely to take time, the fundamental right or liberty guaranteed under Article 21 of the Constitution of India will override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

12. In view of the above and under the facts and circumstances of the case, without going into the merits of the case and expressing any opinion, this court is inclined to grant bail to the petitioner.

13. Accordingly, the petitioner, named above, shall be released on bail, on furnishing bail bond of **Rs.1,00,000/- (one lakh)** with **two suitable sureties each** of the like amount out of which one of the surety must be a government employee of Assam, to the satisfaction of learned **Special Judge No.5, Kamrup(M), Guwahati**.

The direction for bail is further subject to the following conditions that the accused-petitioner:

- (a) Shall not leave the territorial jurisdiction of the learned trial court without prior written permission from him/her till disposal of the case.
- (b) He shall surrender his passport, if any, before the trial court at the time of furnishing his bonds.
- (c) He shall co-operate with the trial and shall appear before the trial

court on each and every date fixed for hearing.

14. The learned Special Judge No.5, Kamrup (M), Guwahati, is at liberty to impose any other condition(s) as it deems fit and proper at the time of releasing the accused/petitioner on bail to procure his attendance during trial.

15. The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

16. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant