

GAHC010233122023



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

Case No. : Bail Appln./3716/2023

AJAY KUMAR SINGH
S/O LATE BASHISHT SINGH
R/O VILL- NARAYANPUR, P.O. NASRATPUR
PS. SANDESH
DIST. BHOJPUR, BIHAR
PIN-802164
TEMPORARY ADDRESS- MONGNUNG BASTI
KHAT KHATI, DIST. KARBI ANGLONG, ASSAM-782480

VERSUS

UNION OF INDIA
REP. BY THE NARCOTICS CONTROL BUREAU

Advocate for the Petitioner : MR S DEKA

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

29.02.2024

Heard Mr. S. Deka, learned counsel appearing for the accused petitioner as well as Mr. S. C. Keyal, learned standing counsel NCB.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Ajay Kumar**

Singh, has prayed for grant of bail in connection with **NDPS P.S. Case No.24/2021** under Sections **8(c) R/W Section 20(b)(ii)(c)/25/28/29/35/54 of NDPS Act.**

FIR reveals the allegation that after receiving information from a reliable source on 28.03.2022 between 1 am to 5 am two persons were coming in a truck bearing No. HR55N2597 from Mangaldoi side and passing through Baihata Chariali, Kamrup and moved towards Rangia side. The NCB personal had stopped and intercepted the said container truck at around 1.30 am and thereafter the truck was thoroughly searched by the NCB team and recovered 152 packets of suspected ganja from the cavity behind the cabin of the container truck. Accordingly a case was registered vide NCB Crime case No. 7/2021 under Section 8(c) R/W Section 20(b)(ii)(c)/25/28/29/35/54 of the NDPS Act. Subsequently, the accused petitioner was arrested.

The learned counsel for the petitioner submits that the petitioner is the victim of circumstances. He has no knowledge about the seizure of illegal contraband from the possession of the co-accused persons. During investigation, no any incriminating material recovered by the Arresting Authority from the possession of the accused petitioner in connection with this case. The accused petitioner was arrested on the basis of the statement of co-accused and CDR analysis which is not sufficient to implicate a person in a case as an accused as per judgment of apex court in *Tofan Singh vs State of Tamil Nadu* reported in (2012) 4 SCC 1.

It is further submitted that in the case of *Tofan Singh* (supra) it was observed by the Hon'ble Supreme Court that it is simply a statement which is not admissible before the court and on such statement the Court cannot convict a person. Learned counsel for the petitioner further submits that considering the said judgment, this Court also observed that the statement of co-accused recorded under Section 67 of the NDPS Act is unreliable for the purpose of conviction in *Ratna Ram and Another vs State of Assam* reported in, 2022 (4) GLT 424.

It is also the submission of the learned counsel for the petitioner that the petitioner has been detained in custody for more than two years without committing any such offence. Only two witnesses have been examined in last

two years and the said witnesses did not implicate the accused petitioner in any way regarding his involvement in the instant case. Accordingly, learned counsel for the petitioner prays that the accused petitioner may be enlarged on bail considering the period of detention.

In support of his submission learned counsel has referred the following case laws (i) Shariful Islam @ Sarif vs State of West Bengal reported in CRM (NDPS No. 299/2022) (ii) Special Leave to Appeal (Crl). No. 5703/2021 Bharat Choudhury Vs Union of India (iii) Rabi Prakash Vs State of Odisha reported in 2023 LiveLaw (SC) 533.

In response, Mr. S. C. Keyal, learned standing counsel NCB submits that large quantity of ganja was recovered from the alleged truck. As per the final complaint, the petitioner was involved in trafficking narcotic illegally into the State. It is further submitted that the trial is going on and out of 11 witnesses, 2 witnesses were examined. Though summons was regularly issued to the witnesses but they did not turn up and this is not the fault on the part of the prosecution to complete the trial early and prayed for dismissal of the bail application.

It is further submitted that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. In support of his submission learned counsel for the NCB has placed reliance on the following case laws (i) *Union of India through NCB, Lucknow Vs. Md. Nawaz Khan, reported in 2021 Legal Eagle (SC) 538* (ii) *BA 7/2024 (Md. Raquibuddin Vs Union of India)* (iii) *BA 3765/2023 (Baiju Thakur Vs Union of India)* and (iv) *Gurwinder Singh Vs State of Punjab and another, reported in 2024 Legal Eagle (SC)107*.

I have considered the submission of the learned counsel for the parties. Perused the scanned copies of Trial Court Record.

As per offence report as well as the seizure list, the commercial quantity of ganja was recovered from the possession of co-accused *Ramu Kuchwaha and Prempal Singh* who were travelling on the container truck bearing No. HR55N2597. Admittedly no any contraband was recovered from the possession of the present petitioner in connection with this case. The petitioner was arrested on the basis of the statement made by the accused Ramu and Preampal. As per the case of *Bharat Choudhury* (supra) Hon'ble Supreme Court has held as follows:

“In the absence of any psychotropic substance found from the conscious possession of A4, we are of the opinion that mere reliance on the statement made by A1 to A3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so when such a reliance runs contrary to the ruling in *Tufan Singh* (supra). The impugned order qua A-4 is accordingly quashed and set aside

It also appears from the record that out of 11 witnesses only 2 witnesses have been examined. The last witness i.e PW-2 was examined on 7.08.2023. For last six months prosecution has failed to examine any witness. The accused petitioner has been detained in custody since 30.03.2021 i. e. more than two years and the conclusion of the trial will take some more time.

In view of the legal proposition of law as laid down by the Hon'ble Supreme Court in the case of *Bharat Choudhury* (supra), this Court is of the opinion that the petitioner deserves to be released on bail.

Accordingly, the petitioner, named above, shall be released on bail, on furnishing bail bond of **Rs.1.00,000/-** with **two suitable sureties** of the like amount

out of which one of the sureties should be of Government employee, to the satisfaction of learned Additional Sessions/Special Judge, Rangia, Kamrup.

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

(a) shall not leave the territorial jurisdiction of learned Additional Sessions/Special Judge, Rangia, Kamrup without prior written permission from him/her;

(b) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

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

JUDGE

Comparing Assistant