

GAHC010241272023



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

Case No. : Bail Appln./3904/2023

LALROHLU HMAR @ LALRUHLU HMAR AND ANR
S/O LALTLANTHANG HMAR,
RESIDENT OF VILLAGE GAMNOM VENG, BIDNA PART III, SUB DIVISION
TENGNOUNPAL, PO AND PS MOREH, DIST TENGNOUNPAL, MANIPUR

2: S. THANGKHANLAL HAOKIP
S/O LHUNKHOMANG HAOKIP
RESIDENT OF VILLAGE NEW LEIKAT
SUB DIV. TENGNOUNPAL
PO AND PS MOREH
DIST TENGNOUNPAL
MANIPUR

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY DIRECTORATE OF REVENUE INTELLIGENCE

Advocate for the Petitioner : MR A BASUMATARY, MR. N J DUTTA, MR N AHMED

Advocate for the Respondent : SC, DRI,

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

10.09.2024

Heard Mr N J Dutta, learned counsel for the petitioners, 1) Lalrohlu Hmar @
Lalruhlu Hmar and 2) S. Thangkhanlal Haokip, who have filed this application under

Section 439 CrPC, with prayer for prayer for bail as they are behind bars since 22.11.2022, in connection with NDPS Case No. 59 of 2023, arising out of DRI Case No. 19/CL/ NDPS/HEROIN/DRI/GZU/2022-23, dated 22/11/2022, under Sections 8(c)/22/23/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS, for short).

2. Heard Ms M Deka, learned counsel appearing on behalf of learned Standing Counsel, DRI, Mr S C Keyal.

3. It is submitted on behalf of the petitioners that the petitioners have been behind bars for more than 2 ½ years since 22.11.2022. 10 witnesses are enlisted in the charge sheet and despite the prolonged incarceration of the petitioners, only one witness out of 10 witnesses have been examined.

4. Learned counsel for the petitioners laid stress in his argument that as Section 52-A of the NDPS Act was not complied with, the petitioners are entitled to bail. The Case Diary as well as the offence report reveals that 60 soap cases were recovered and samples were drawn from only one box. How could the investigating team assume that samples of one box will be similar to the samples of the other boxes.

5. Learned counsel for the petitioners has relied on the decision of Hon'ble the Supreme Court in *Nitish Adhikari @ Bapan –Vs- The State of West Bengal*, in connection with Special Leave to Appeal (Criminal) No. 5679/2022, wherein vide order dated 01.08.2022, the Hon'ble Supreme Court granted bail to the appellant, Nitish

Adhikari @ Bapan, who was behind bars for 1 year 7 months, observing that the appellant was behind bars for a prolonged period and trial is at the preliminary stage.

6. In the instant case, the present petitioners have been behind bars for 1 year 9 months.

7. The petitioners have also relied on the decision of a Division Bench of this Court in *Pinak Sankar Basu –Vs- The State of Assam and Another*, in connection with Criminal Appeal (Jail) No. 84/2020, wherein vide order dated 19.07.2024, it has been observed that-

“39. It is a well settled proposition that if a manner of doing a particular act is prescribed, then the act must be done in that manner and in no other manner. The Notification no. G.S.R.38[E] dated 16.01.2015 mandated preparation and certification of the inventory in a particular manner and in a prescribed format. Absence of any certification by the Magistrate of the inventory in the prescribed manner stands in clear violation of the statutorily prescribed mode.

40. As per the Notification no. S.O.527[E] dated 16.07.1996 issued in exercise of the powers conferred by clauses [viii] and [xxiia] of Section 2 of the NDPS Act, 1985, a quantity of Cannabis [Ganja] equal to or above 20 kg is commercial quantity. Section 20 of the NDPS Act, 1985 has prescribed for punishment in relation to cannabis plant and cannabis. As per Section 20[b][ii][C], if the quantity involves is commercial quantity, the convict is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Since the offences under the NDPS Act, 1985 are serious in nature and prescribe stringent punishment, compliance with statutory prescriptions and procedures shall also have to be strict and

scrutiny is also stringent. The statute mandates that the prosecution must prove strict compliance. If there is any kind of doubt, the benefit shall have to be given to the accused.”

8. The learned counsel Ms M Deka has submitted that on 31.08.2023, the witnesses were present, but the witnesses were not examined. Thereafter, 5 or 6 dates were fixed for evidence and on 19.07.2024, two witnesses were present, but only one witness was examined. The learned counsel for the respondent has relied on the decision of Hon’ble the Supreme Court in *State of Meghalaya –Vs- Lalrintluanga Sailo and Another*, reported in **2024 0 INSC 537** wherein it has been held and observed that-

“7. In the decision in State of Kerala and Ors. v. Rajesh and Others; (2020) 12 SCC 122, after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii), NDPS Act. Further it was held that in case one of the two conditions thereunder is not satisfied the ban for granting bail would operate.

8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications.”

9. The respondent has also relied on the decision of this Court, in ***Vinod Bijarnia. – Vs- The Union of India***, wherein vide order dated 20.05.2024, passed in Bail Application No. 1105/2024, it has been observed that-

“15. In view of decision of Hon’ble Supreme Court in Union of India vs. Ajay Kumar Singh @ Pappu, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, reiterated that the accused involving in commercial quantity of contraband substance has to satisfy the twin requirement of section 37 of NDPS Act before granting bail in the following words:-

“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.”

10. It is further submitted on behalf of the respondent that the appellant is a history sheeter and he is not entitled to bail. There is every likelihood that the appellant will repeat the offence.

11. I have scrutinized the Trial Court Record.

12. The order dated 23.11.2022, passed by the learned CJM, reveals that the inventory, seizure list under Section 42/43 of the NDPS Act, photographs, panchnama and notice under Section 50 of the CrPC, has been perused by the learned CJM. Learned Special Judicial Magistrate was entrusted to draw the samples of the seized drug and to certify the correctness of the inventory. The order dated 01.12.2022, reflects that the Special Judicial Magistrate First Class was present during the drawing of the samples.

13. At this juncture, this Court is hesitant to get into the details how the samples were drawn. The intricacies of the evidence are to be dealt with by the trial Court. The charge sheet has been laid and charges have been framed against the petitioners for possession of 792.35 grams of heroin.

14. It is true that trial has been dragging on a leaden feet, but at the same time, at this juncture, it cannot be decided conclusively that Section 52-A of the NDPS Act has not been complied with. At this juncture, it cannot be conclusively decided that there is every scope of acquittal. The petitioners' conduct has also procrastinated the trial. A balance has to be struck while dealing with the bail application.

15. Considering the submissions at the Bar, at this juncture, I am hesitant to allow the bail petition.

16. Petition is rejected at this stage of trial. The learned trial Court is directed to expedite the trial for the speedy disposal of this case.

JUDGE

Comparing Assistant