

GAHC010248242023



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

Case No. : Bail Appln./3985/2023

HARPAL SINGH
SON OF LATE INDER SINGH, RESIDENT OF WARD NO.2, SIMBAL CAMP,
NEAR POWER HOUSE, JAMMU, JAMMU AND KASHMIR

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE NARCOTICS CONTROL BUREAU (NCB),
GUWAHATI

Advocate for the Petitioner : MR. U K BARMAN

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

01.03.2024

Heard Mr. H. Ali, learned counsel appearing for the accused petitioners as well as Mr. S. C. Keyal, learned standing counsel, NCB.

By filing this petition under Section 439 Cr.P.C., the accused-petitioner, namely **Harpal Singh**, has prayed for grant of bail in connection with **NDPS Case No. 40/2020 under Section 20(b)(ii)(C)/29 of NDPS Act.**

The case of the petitioner is that acting on specific information, the NCB officials

intercepted a truck bearing No. JK 02BS 8837 on 11.01.2020 at NH 37, opposite to Audi Showroom, Guwahati. After thorough search of the said truck, large quantity of ganja was recovered. Accordingly the petitioner and other co-accused who were found in the said truck, were arrested.

It is submitted by the learned counsel for the petitioner that after receipt of the offence report, the case was not proceeding due to non appearance of the absconding co-accused as such the petitioner preferred a bail application before this Court which was rejected and directed the learned trial court to split up the case against the absconding accused persons and proceed with the case. Accordingly, the trial court split up the case vide order dated 06.07.2022 and proceed with the case against the petitioner and two other arrested co-accused. Subsequently, charge was framed on 17.08.2022 and out of 9 witnesses only 4 witnesses were examined. Learned counsel for the petitioner further submitted that it will take some more time to examine the rest of the witnesses and prays to release the accused petitioner on bail.

It is also the submission of the learned counsel for the petitioner that on plain reading of the seizure list and the offence report reveal that the samples from the allegedly seized ganja were drawn at the spot and the same were not drawn in presence of any Magistrate which is required under Section 52(A) of the NDPS Act. Learned counsel for the petitioner has further stated that in view of the mandate of the Hon'ble Apex court in the case of *Union of India vs Mohan Lal* reported in 216 (3) SCC 379, it is abundantly clear that sample must be drawn under the direct supervision of the Magistrate which is not done in the instant case and it was also confirmed by the PW-2 in his deposition.

Learned counsel for the petitioner also contended that there is serious doubt in compliance of Section 42 of the NDPS Act. According to learned counsel for the petitioner, it is apparent that there are reasonable grounds to believe that accused petitioner may ultimately be acquitted of the alleged offences. It is further submitted that there is no previous criminal antecedents which suggest that in the event of enlargement of bail, the petitioner shall commit any offence under the NDPS Act.

In support of his submission learned counsel has placed reliance on the following case laws: (i) 2023 STPL 9353 SC (Simarnjit Singh Vs State of Punjab) (ii) 2023 STPL 13019 Gauhati (Mandel Lalthlangama Durpui Vs State of Assam) (iii) BA 4040/2023 (Zorammawia Vs State of Assam) (iv) 2023 STPL 9178 SC (Rabi Prakash Vs State of Odisha).

On the other hand, Mr. S. C. Keyal, learned standing counsel, NCB submits that commercial quantity of ganja was recovered from the possession of the accused petitioner. It is true that the trial was delayed but it was due to Covid-19 pandemic which was prevailing in the year 2020-21.

It is further submitted that the offences are serious in nature and the trial is going on and if the accused petitioner is enlarged on bail at this stage it will cause further delay in disposal of this case as because the petitioner hails from another State.

In support of his submission learned standing counsel, NCB has cited the following case laws: (i) BA 7/2024 (Mohammad Raquibuddin Vs Union of India) (ii) BA 2758/2023 (Huirem Rajen Meitei vs Union of India) (iii) SLP CrI. No. 8137/2022 (State by the Inspector of Police vs B Ramu).

I have considered the submission of the learned counsel for both the parties. I have also perused the scanned copy of the trial court record. It appears that the accused petitioner was arrested on 11.01.2020 and since then he has been languishing in jail hajat. But the Court was not functioning properly due to Covid-19 pandemic in the year 2020-2021. Accordingly, charge-sheet was submitted on 04.07.2020 showing two accused as absconder. As the absconder accused has not been produced before the court, the case against the present petitioner and other two accused were split up and charge was framed on 17.08.2022. Thereafter, summons were issued to the witnesses and out of 9 witnesses, 4 witnesses have already been examined.

The stand that the accused is in custody for sufficient time is not legal ground to overcome the rigors of Section 37 of the NDPS Act at this stage. The grounds taken in the bail application do not shift the burden placed by the legislature on the accused under Section 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by

the stringent conditions placed in the statute by the legislature under Section 37 of the NDPS Act. Thus, the petitioner has failed to make out a case for bail at this stage.

Learned counsel for the petitioner submits that the investigator conducted search and seizure by violating the provision of Section 42 of the NDPS Act.

Whether the investigator complied with the mandatory provision of Section 42 and Section 52(A) of the NDPS Act is a question of fact to be adjudicated in the trial. However, before this Court treats the compliances as illegal, the prosecution needs an opportunity to prove that they had complied with the mandatory provisions as per law. Such a stage will come only during the trial. In the case in hand, as it appears that out of 9 witnesses, only 4 witnesses have been examined and as such it cannot be said at this stage that the prosecution has failed to prove the fact that the mandatory provision of Section 42 or 52(A) has not been complied with.

Under the facts and circumstances of the case, bail petition is rejected at this stage.

However, learned trial court is directed to expedite the matter and take initiative to dispose of the matter early, if possible, by fixing day to day hearing.

The bail application is disposed of.

JUDGE

Comparing Assistant