

GAHC010251442024



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

Case No. : Bail Appln./3644/2024

DEBAJIT SAHA AND ANR.
S/O NITISH CHANDRA SAHA
R/O BIRDDHYANAGAR, P.O. RANI BAZAR,
P.S. RANI BAZAR,
DIST. WEST TRIOURA, TRIPURA-799035.

2: BISWAJIT SARMA
S/O LATE BRAHMA DEB SHARA
R/O SIDDHI ASHRAM P.O. SIDDHI ASHRAM
P.S. AMTOLI
DIST. WEST TRIPURA-799001

VERSUS

UNION OF INDIA
REP BY SC, NCB, GUWAHATI

Advocate for the Petitioner : MR. M BISWAS, A GHOSAL, J SINGPHO, S K DAS
Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

20.12.2024

Heard Mr. M. Biswas, learned counsel appearing for the accused petitioners as well as Ms. M. Deka, learned counsel representing NCB.

2. By this fourth bail petition under Section 439 Cr.P.C., the accused-petitioners, namely, **Debajit Saha and Biswajit Sarma**, have prayed for grant of bail in connection with **NDPS Case No.189/2022** pending in the court of learned Additional Sessions Judge (FTC) No.3, Kamrup (M) corresponding to **NCB Crime No. 04/2022** under Sections **20(b)(ii)(c)/25/27A and 29 of NDPS Act**.

3. It is submitted by the learned counsel for the petitioners that the petitioner No.1 filed a bail application before this Court being BA No. 1804/2022 and the same was rejected vide order dated 25.08.2022. However, since the trial was prolonging, the petitioner Nos.1 and 2 along with another co-accused approached this Court vide BA No. 1724/2023 and this Court vide order dated 16.10.2023 though rejected the prayer for bail but directed the trial court to complete the trial within three months i.e. 01.11.2023. In spite of such direction, the trial did not proceed much and as such the petitioners approached this court for grant of bail vide BA No. 1605/2024. During the course of argument of BA No. 1605/2024, it was submitted on behalf of the NCB that they would complete the trial within two/three months. Considering the submissions made on behalf of the NCB, this Court while recording the submissions rejected the prayer of bail vide order dated 09.08.2024.

4. It is also the submission of learned counsel for the petitioners that during such period of four months from the date of rejection order, not even a single witness was examined. Therefore, the submissions made during hearing of BA No. 1605/2024 that to complete the trial within two/ three months is nothing but a blatant attempt to prolong the detention of the petitioners. It is also pointed out that time and again the NCB has faulted the directions of this Court and also failed to adhere to the time period within which they were supposed to complete the trial as per their own submissions before this Court.

5. According to learned counsel for the petitioners, the accused petitioners

were arrested on 04.03.2022 i.e. they have been languishing in judicial custody for last two years nine months seven days. Out of ten witnesses, five witnesses have been examined. The alleged contraband was not recovered from the possession of the petitioners. Admittedly the contraband items were recovered from the driver of the alleged vehicle i.e. one Kumar Sonar. Considering the length of detention as well as the accusation made against the petitioners, they may be enlarged on bail.

In support of his submission, learned counsel for the petitioner has relied on the following case laws:

- (1) Sariful Islam @ Sarif vs State of West Bengal in connection with Special Leave to Appeal (Crl.) No. 4173/2022.
- (2) Anjan Nath vs State of Assam vide Special Leave to Appeal (Crl.) No.9860/2023.
- (3) Chitya Biswas @ Subhas vs the State of West Bengal vide Criminal Appeal No. 245/2020.
- (4) Nitish Adhikary @ Bapan vs State of West Bengal in connection with Special Leave to Appeal (Crl.) No. 5769/2022.
- (5) Md. Salman Hanif Sk vs State of Gujrat in connection with Special Leave to Appeal (Crl.) No. 5530/2022 and some others.

It is to be noted that in all such bail applications, the bail was granted to the accused for prolonged incarceration.

6. In response, Ms. Deka, learned counsel representing NCB, has submitted that commercial quantity of ganja was recovered from a false cavity on the roof top cabin of the container truck bearing No. NL 01 AF 3380 which belongs to the petitioner No.1, Debojit Saha. During investigation, it has come to the light that the said vehicle was purchased with the help of petitioner No.2 and another suspect

Amit for the purpose of trafficking of ganja. It is further submitted that DTO, Kohima, Nagaland has verified that the aforesaid truck belongs to the accused petitioner No.1, Debojit Saha. Under such backdrop, the learned NCB counsel has prayed for dismissal of the bail application.

Learned NCB counsel has referred the following cases:

- (1) (2005) 1 Supreme 285 (Kalyan Ch. Sarkar vs Rajesh Ranjan @ Papu Yadav and another).
- (2) (2024) O Supreme SC 169 (High Court Bar Association, Allahabad vs State of UP and others).
- (3) (2024) O Supreme SC 1106 (X vs state of Rajasthan).
- (4) (2024) O Supreme SC 104 (Gurwinder Singh vs State of Pubjab and another).

7. Having heard the learned counsel for the parties, it is an admitted fact that the petitioners have been languishing in judicial custody for more than two years and the NCB has failed to complete the trial within such stipulated period. It is true that earlier the trial court was directed to expedite the trial and dispose of the matter at the earliest, however, the NCB has failed to do so. Now, the question comes whether prolonged incarceration could be only the ground for granting bail to the petitioners.

8. Though the NCB has stated that the petitioner No.1 is the owner of the vehicle from which the contraband item was recovered which was not denied by the petitioner side. It is also to be noted that the DTO, Kohima has verified the fact that the alleged vehicle bearing No. NL 01 AF 3380 belongs to the petitioner No.1. It is also true that in some cases bail was granted to the accused considering the length of detention. But subsequently it is reported that taking advantage of

release on bail, they did not appear before the trial court as a result of which, the prosecution as well as the trial court has failed to complete the trial in time.

9. In this case, the quantity of contraband is commercial and the same is 405.270 kg of ganja. Therefore the rigor of [Section 37](#) of the NDPS Act would squarely apply. [Section 37](#) of the NDPS Act provides as under:

"37. Offences to be cognizable and nonbailable.-- (1) Notwithstanding anything contained in the [Code of Criminal Procedure](#), 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the [Code of Criminal Procedure](#), 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

10. On a perusal of [Section 37\(1\)\(a\)\(i\)](#), when the Public Prosecutor opposes bail application of a person involved in a crime, where commercial quantity of the contraband was seized, the Court can grant bail only after satisfying two conditions: viz; (1) There are 'reasonable grounds' for believing that the accused is not guilty of such offences and (2) he will not commit any offence while on bail.

11. The Apex Court considered the meaning of 'reasonable grounds' in the decision reported in ([2007](#)) 7 SCC798, [Union of India v. Shiv Shankar Kesari](#) and held

that the expression 'reasonable grounds' means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

12. It was further held that the Court while considering the application for bail with reference to [S.37](#) of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

13. While considering the rider under [Section 37](#) of the NDPS Act, the same principles have been reiterated, in the decisions reported in [Superintendent, Narcotics Central Bureau v. R.Paulsamy](#) [2000 KHC 1549: AIR 2000 SC 3661: (2000) 9 SCC 549: 2001 SCC (Cri) 648: 2001 [CriLJ 117](#)], [Customs, New Delhi v. Ahmadalieva Nodira](#) [2004 KHC 505: AIR 2004 SC 3022:2004(3) SCC 549: 2004 SCC (Cri) 834: 2004 (110) DLT 300: 2004 CriLJ 1810: 2004 (166) [ELT 302](#)], [Union of India v. Abdulla](#) [2004 KHC 1992: 2004(13) SCC 504: 2005 CriLJ 3115: 2005 [All LJ 2334](#)], [N.R.Mon v. Md.Nasimuddin](#) [2008 KHC 6547: 2008(6) SCC 721: 2008(2) KLD 316: 2008(2) KLT 1022: 2008(9) SCALE 334: AIR 2008 SC 2576:2008 CriLJ 3491: 2008(3) SCC (Cri) 29], [Union of India v. Rattan Malik](#) [2009 KHC 4151: 2009(2) SCC 624: 2009(2) KLT SN 83: 2009 (1) SCC (Cri) 831:2009 CriLJ 3042: 2009 (4) ALL LJ 627: 2009(2) [SCALE 51](#)], [Union of India v. Niyazuddin](#) [2017 KHC 4465: AIR 2017 SC

3932: 2018 (13) SCC 738], [State of Kerala v. Rajesh](#) [2020(1) KHC 557: AIR 2020 SC 721: 2020(1) KLJ 664: 2020(2) KLT SN1 : ILR 2020(1), Ker.848]. Latest decision on this point is [2023 Cri.LJ 799], [Union of India v. Jitendra Giri](#).

14. On a plain reading of [Section 37\(1\) \(b\)](#) and [37\(1\)\(b\)\(ii\)](#) of the [NDPS Act](#), within the ambit of the Settled law, it has to be understood that two ingredients shall be read conjunctively and not disjunctively. Therefore, satisfaction of both conditions are sine qua non for granting bail to an accused who alleged to have been committed the offences under [Section 19](#) or [Section 24](#) or [Section 27A](#) and also for the offences involving commercial quantity as provided under [Section 37\(1\)\(b\)](#) of the NDPS Act. Unless [Section 37](#) is not amended by the legislature in cases specifically referred under [Section 37\(1\)\(b\)](#) of the NDPS Act, the Court could not grant bail without recording satisfaction of the above twin ingredients.

15. It is well settled by Hon'ble Supreme Court in catena of decisions that subsequent bail application is maintainable only when there is change of circumstance in favour of the accused. Reference in this context can be made to a decision in [State of T.N. vs. S.A. Raja](#) reported in (2005) 8 SCC 380. Here in this case, admittedly, and except the length of detention, no change of circumstances has taken place in favour of the accused and the learned Addl. P.P. has rightly pointed out at the time of hearing.

16. In the case of [NCB vs. Mohit Agarwal](#), reported in [2022] 0 Supreme (SC) 619, a three Judges Bench of Hon'ble Supreme Court has held that:

“ the length of period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not consideration that can be treated as persuasive ground for granting relief to the accused under [section 37](#) of the NDPS Act”.

17. That being so, the length of detention, to the considered opinion of this court, can neither be a change of circumstance in favour of the accused nor be it a ground of releasing the accused on bail.

18. Admittedly, the petitioner No.1 is the owner of the vehicle and the contraband item was concealed under the roof top and which may not be possible without the consent of the owner of the vehicle.

As this case relates to recovery of commercial quantity of ganja and as such, the embargo under [Section 37](#) of the NDPS Act will definitely come into play here in this case. Moreover, from the materials placed on record and also from the trial court record as well as from the submission of the learned counsel for the accused petitioners, this Court is unable to derive its satisfaction that the accused/petitioners are not guilty of the offence and that they will not commit similar offence while on bail.

19. In view of the above discussion and under the facts and circumstances of the case, this Court is not inclined to grant bail to the petitioners.

20. Hence, prayer for bail is rejected.

21. Accordingly, the bail application stands dispose of.

JUDGE

Comparing Assistant