

GAHC010270522023



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

Case No. : Bail Appln./4458/2023

SWARN SINGH
S/O LATE HARBHAJAN SINGH
R/O HOUSE NO. 45/A, SECTOR-1, MODEL TOWN, JAMMU CITY,
P.S. GANGYAL
DIST. JAMMU, JAMMU AND KASHMIR-180010

VERSUS

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

Advocate for the Petitioner : MR. U K BARMAN

Advocate for the Respondent : SC, NCB

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

15.03.2024

Heard Mr. H. Ali, learned counsel for the accused and also heard Mr. S.C. Keyal, learned standing counsel, appearing for the respondent NCB.

2. This second bail application, under Section 439 of Cr.P.C., is preferred by accused,

namely, Swarn Singh, who has been languishing in jail hazot since 11.06.2021, in connection with NDPS Case No.208/2021, corresponding to NCB Crime No.11/2021, registered under section 20(b)(ii)(C)/29/35 of the NDPS Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of a complaint lodged by one Manish Modi, Intelligence Officer, NCB Guwahati. The essence of allegation made in the aforesaid complaint is that acting on a tip off, the complainant and his staff have intercepted one vehicle, bearing Registration No.JK-02AQ-8385, on 11.06.2022, at about 2045 hrs. near Metro Hospital, Guwahati and recovered 44 packets of Ganja, weighing 224.150 kg and arrested accused, namely, Swarn Singh. Then investigation was carried out and the same culminated in submission of final complaint before the Court of learned Sessions Judge, Kamrup(M), Guwahati, against the present accused and four others, to stand trial under Section 20(b)(ii)(C)/29/35/54/60/61/66/68 of the NDPS Act.

4. Mr. Ali, learned counsel for the accused submits that this is the second bail application preferred by the accused and the first one being Bail Appln. No.1272/2022, was dismissed by this Court vide order dated 21.11.2022. Mr. Ali further submits that this petition is filed on the ground of delay in completion of trial. Referring to the order dated 21.11.2022, Mr. Ali submits that while dismissing the first bail application, this Court was pleased to direct the learned Trial Court to complete trial within earliest possible time and by resorting to Section 309(1) Cr.P.C. But, the learned Trial Court, even after elapse of more than a year had failed to complete the trial. Mr. Ali further submits that the accused was arrested on 13.06.2021 and since then he has been languishing in jail hazot for more than 1005 days. Mr. Ali further submits that though charge was framed on 03.03.2023, yet no witnesses could be examined by the respondent side. Mr. Ali further pointed out that there was delay even at the stage of taking cognizance. It is the further submission of Mr. Ali that the accused is innocent and nothing has been recovered from his possession and he will appear before the learned Court below on each and every date and therefore, it is contended to allow this petition.

5. Whereas, Mr. S.C. Keyal, learned standing counsel for the respondent NCB submits that there is delay in trial and the same is not attributable to the respondent side. Taking this Court through the scanned copy of the record of the learned Court below, Mr. Keyal submits that for more than six months there was no Presiding Officer in the learned Court below and that the respondent side had taken steps to summon the witnesses and there was no lapse on the part of the respondent. Referring to a decision of the Hon'ble Supreme Court in **Gurwinder Singh v. State of Punjab, in Criminal Appeal No.704 of 2024 @ Special Leave Petition (Criminal) No.10047 of 2023, dated 07.02.2024**, Mr. Keyal submits that mere delay in trial pertaining to grave offences cannot be used as ground to grant bail. Mr. Keyal further submits that the accused also failed to satisfy the two conditions of Section 37 of the NDPS Act as the quantity of contraband substance recovered from the possession of the accused is commercial quantity. Mr. Keyal therefore, vehemently opposed the petition and contended to dismiss the same.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the case record of the learned Court below and also carefully gone through the case laws referred by Mr. S.C. Keyal.

7. From a careful perusal of the record of the learned Court below, I find that the accused was arrested on 12.06.2021, and he has been languishing in jail hazot for more than 1005 days. Charges against him were framed on 03.03.2023 and till date not a single witness has been examined before the learned Court below. Though this Court, while rejecting the earlier bail application, vide order dated 21.11.2022, was pleased to direct the learned Trial Court to complete the trial within earlier possible time and by resorting to Section 309(1) Cr.P.C., yet, the learned Trial Court even after elapse of more than a year had failed to complete the trial. Moreover, the learned Trial Court has also not taken recourse to Section 309(1) Cr.P.C.

8. It also appears that for a considerable period there was no Presiding Officer in the learned Court below also. Therefore, straightway, the delay in trial cannot be attributed to

the respondent side also. Moreover, mere delay in trial pertaining to grave offences cannot be used as ground to grant bail, as held in the case of **Gurwinder Singh** (supra).

9. It appears from the scanned copy of the record that the complainant has recovered 224.150 kg of Ganja from the Truck No.JK-02AQ-8385, being driven by the accused, near Metro Hospital, Guwahati. Indisputably, the quantity of contraband substance, allegedly recovered from the possession of the present accused is of commercial quantity. Therefore, the accused has to satisfy the twin requirements of Section 37 of the NDPS Act. But, from the material placed on record and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit any offence while on bail. No such attempt was even made to satisfy the said requirement.

10. It is also to be mentioned here that in the case of **Union of India v. Ajay Kumar Singh @ Pappu**, Criminal Appeal No.952 of 2023 [Arising out of SLP (Crl.) No.2351 of 2023], decided on 28th March, 2023, Hon'ble Supreme Court while setting aside the order of granting bail by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

"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."

11. Same principle is echoed by Hon'ble Supreme Court in the case of **NCB v. Mohit Agarwal** [Criminal Appeal Nos.1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Crl.) No.6128-29 of 2021], decided on 19th July, 2022.

12. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same and further considering the ratio laid down in the case of **Gurwinder Singh** (supra), this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the Cr.P.C. to the accused and therefore, the same stands dismissed.

13. However, the learned Court below is directed to conduct day to day trial and to complete the same as early as practicable, without being influenced by any of the observations made herein above.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant