

GAHC010273922023



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

Case No. : Bail Appln./4448/2023

AMAD UDDIN TAPADAR
FATHERS NAME- ABDUL MALIK TAPADAR
ADDRESS- JATKAPON, P.O. LALARCHAK, P.S.KARIMGNAJ
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : SWATI. B. BARUAH (TG)

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 05.01.2024

Heard Ms. S.B. Baruah, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Addl. P.P. for the State.

2) By this bail application filed under section 439 Cr.P.C., the petitioner, Amad Uddin Tapadar, who is in custody since his arrest on

12.10.2022 in connection with Karimganj PS Case No. 588/2022 is praying for bail.

3) The said case is being tried before the Court of learned Special Judge, Karimganj as Special (NDPS) Case No. 155/2022 under Sections 21(c), 25 and 29 of the NDPS Act, 1985. The learned counsel for the petitioner had submitted that the petitioner has spent 451 days in custody as on today.

4) The prayer for bail by the petitioner has been rejected by this Court twice earlier, by (i) order dated 10.02.2023, passed in Bail Appln. No. 302/2023, and (ii) order dated 14.06.2023, passed in Bail Appln. No. 1901/2023. Thus, this is the third bail application by the petitioner before this Court.

5) The learned counsel for the petitioner has submitted that as per her information, except for the petitioner, all other co-accused are on bail. It was also submitted that till date effective trial has not begun and out of 20 (twenty) prosecution witnesses listed in the charge-sheet, none of them have been examined so far. Therefore, it was submitted that there is no chance of an early trial.

6) It has been submitted on the ground that there is no sign of early trial, co-ordinate Bench of this Court has released under-trial prisoners considering the length of their detention. It was also submitted that even the Supreme Court of India had deprecated the long incarceration of under-trial prisoners for a long time.

7) It was also submitted that although the narcotic drugs was not seized from the custody of the petitioner, he has spent long custody of 451 days. It has also been submitted that the petitioner has been made an accused

only on the statement made by a co-accused. It has been also submitted that the petitioner has movable and immovable property and therefore, there is no chance of absconding. Moreover, it was submitted that the petitioner is ready and willing to abide by any condition that may be imposed on grant of bail.

8) In support of her submissions, the learned counsel for the petitioner has cited the following cases, viz., (i) *Rabi Prakash v. The State of Odisha, SLP (Crl.) No(s). 4169/2023, decided by Supreme Court of India on 13.07.2023*, (ii) *Mohd. Muslim @ Hussain v. State (NCT of Delhi), AIR 2023 SC 1648*, (iii) *Hussain Ahmed v. The State of Assam, B.A. 2979/2023, decided by this Court on 11.12.2023*, and (iv) *Abdul Latif v. The State of Assam, B.A. 2169/2023, decided by this Court on 11.12.2023*.

9) The scanned copy of the relevant pages of the LCR has been received by the Registry and placed before the Court. The learned Addl. P.P. has perused the same and has opposed the prayer for bail on the ground that a huge consignment of heroin that was seized was weighing about 9.477 kgs., and kept concealed in a truck. It was submitted that the investigation carried out in this case had revealed that the petitioner was the mastermind of the trafficking of contraband drugs. It was also submitted that the street price of the seized contraband heroin would be between Rs.60.00 to Rs.65.00 Crore. Moreover, it was submitted that unaccounted cash amount of Rs.20,00,000/- (Rupees Twenty lakh only) was seized from the house of the petitioner.

10) It was also submitted that one of the co-accused was absconding and therefore, charge-sheet could not be submitted against the said co-accused and by order dated 12.06.2023, the case was split up against the said absconding accused. Moreover, the appearance of 2 (two) of the other accused was completed only on 13.10.2023. Thereafter, charge against the accused

persons were framed by order dated 27.10.2023. Moreover, it was submitted that by order dated 14.12.2023, the summons were issued for the first time for summoning the prosecution witnesses. Hence, prayer for bail was objected to by the learned Addl. P.P.

11) As per the case record, a truck bearing registration no. AS-11-BC-7975 was intercepted on 11.10.2022 and when asked, the driver led to the recovery of suspected heroin concealed in 764 soap boxes, weighing 9.477 kg., in course of transportation of contraband narcotic drugs from Chorgulla side in Assam towards Tripura. Accordingly, the contraband narcotic drugs along with truck and other things were seized.

12) It would suffice to mention that as per the case record, the petitioner was in contact with the arrested persons and that there are materials to the effect that the petitioner was the owner and supplier of the contraband, the street price of the seized heroin is estimated to be between Rs.60.00 to Rs.65.00 Crore. Case record also reveals that during search conducted in the house of the petitioner, cash amount of Rs.20.00 lakh was recovered.

13) Although no contraband was seized from the petitioner, but as per the investigation, by using fake sim card, the petitioner was in constant touch with the driver of the vehicle that was being used for transporting the contraband heroin. As per the FSL report, the said contraband was tested positive for heroin. Case record also reveals that cash amount of Rs.20.00 lakh was seized from the house of the petitioner, which was beyond his source of income.

14) As per the charge-sheet, the petitioner is involved in trafficking narcotics illegally into the State through suppliers in the State of Mizoram and

Tripura.

15) The learned counsel for the petitioner had submitted that the chance of conviction is bleak. In the said regard, the Court is of the considered opinion that this is not an appropriate time to appreciate if there was evidence for convicting the petitioner.

16) The learned Addl. P.P. has been able to *prima facie* satisfy the Court that there are materials in the charge-sheet to suggest that the petitioner is suspected to be involved in the transportation of commercial quantity of heroin into the State.

17) *In the case of Narcotics Control Bureau v. Mohit Aggarwal, AIR 2022 SC 3444*, the case was lodged under section 8/22/29 of the NDPS Act, 1985. In the said case, a 3-Judge Bench of the Supreme Court of India had observed as follows:-

11. *It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.*

12. *The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In Collector of Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549 a decision rendered by a Three Judges Bench of this Court, it has been held thus:-*

7. *The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the*

Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [emphasis added]

13. *The expression 'reasonable ground' came up for discussion in State of Kerala & Ors. v. Rajesh and others, (2020) 12 SCC 122 and this Court has observed as below:*

13. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for." [emphasis added]

14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the

Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

* * *

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

18) It would also be relevant to quote herein below the provision of Section 436A Cr.P.C.:-

“436A. Maximum period for which an under trial prisoner can be detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

19) It has already been indicated herein before that in the present

case in hand, the splitting of the case against one absconder accused as well as delay in appearance of the co-accused in the trial has considerably delayed the stage of explanation of charges. Charges were explained to the appearing accused on 27.10.2023 and therefore, in the light of Explanation to Section 436A CrPC, period upto 27.10.2023 has become liable to be excluded. Hence, it cannot be said that there has been an inordinate delay in commencement of trial.

20) As per the case record, the petitioner was in constant touch with the driver till the truck was intercepted and 9.447 Kg. of heroin was seized, which allegedly belonged to the petitioner, and worth Rs.60-65 lakh in the street. As per the learned Addl. P.P., during that time, this particular seizure of contraband was one of the largest consignments of narcotic drug, which was seized in the State.

21) Therefore, the Court is unable to hold that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

22) In the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, it has been held that:-

“Where undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an under-trial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

23) In the present case, the petitioner is charged of committing offence punishable under sections 21(c) of the NDPS Act. Under the said provision, the punishment prescribed is not less than 10 years but which may

extend to 20 years and shall also be liable to fine which shall not be less than Rs.1.00 lakh but which may extend to Rs.2.00 lakh. Therefore, following the ratio laid down in the case of *Satender Kumar Antil (supra)*, as well as the provision of Section 436A Cr.P.C., the petitioner having been incarcerated for a period of 451 days, has not become entitled to be released on bail, notwithstanding that some other might have been released on bail.

24) In the four cases cited by the learned counsel for the petitioner, the judgment of the Supreme Court of India in the case of (i) *Satender Kumar Antil (supra)*, (ii) *Ahmadalieva Nodira (supra)*, and (iii) *Mohit Aggarwal (supra)* had not been discussed and overruled and thus, it appears that the said cases were not placed before the Bench that was deciding the case of *Mohd. Muslim, Rabi Prakash (supra)*, *Abdul Latif (supra)* and *Hussain Ahmed (supra)*. Therefore, this Court is inclined to follow the decisions referred herein before.

25) Thus, this application for bail is once again rejected.

26) Nothing contained in this order shall prejudice either side during trial.

JUDGE

Comparing Assistant