

GAHC010277422023



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

Case No. : Bail Appln./4473/2023

PRAMOD YADAV @ TINKU
S/O- LT. PANNA YADAV, R/O- VILLAGE- SARAI CHOTU, POST OFFICE-
MUGALSARAI, P.S- MUGALSARAI, P.S- MUGALSARAI, DISTRICT-
CHANDAULI, STATE- UTTAR PRADESH, PIN CORD- 232101.

VERSUS

THE NARCOTICS CONTROL BUREAU
GUWAHATI ZONAL UNIT, GUWAHATI.

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 24-05-2024

1. Heard Mr. P Kataki, learned counsel for the petitioner and Mr. S.C. Keyal, learned standing counsel, NCB.
2. The present application under section 439 Cr.P.C is filed seeking release of the petitioner, namely, ***Pramod Yadav @ Tinku*** on bail

who is in custody pending trial in connection with NDPS Case No.28/2023 under sections 8(c)/21(c)/29 of the NDPS Act, 1985 arising out of NCB Crime 1/2023.

3. Mr. S.C. Keyal learned standing counsel NCB has filed a written objection objecting the prayer of bail.

4. The petitioner was arrested on 04.02.2023 and in the meantime three witnesses out of 8 witnesses have been examined.

5. Mr. P Katakia learned counsel for the petitioner referring to the final complaint (offence report) submitted by the NCB in connection with recovery and seizure of 6438 bottles of codeine based phensydyll cough syrup from a truck bearing registration No.TR-01-AU 1771 from the conscious possession of one Ranjit Singh which were kept in concealed manner in a specially made cavity in the truck, submits that admittedly, nothing has been recovered from the possession of the petitioner and the petitioner has been arrayed as an accused only on the basis of voluntary statement recorded by the co-accused and the voluntary statement recorded by the petitioner.

6. Relying on the judgment of the hon'ble Apex Court in the case of **Toofan Singh Vs. State of Tamil Nadu** reported in **(2021) 4 SCC 1**, contends that on the basis of such voluntary statement, a petitioner cannot be convicted. He further contends that though the NCB had relied on certain CDR involving two phone numbers, which is alleged to be used by the petitioner, however, such CDR has not been relied by the prosecution, while submitting the charge sheet.

7. Per contra, Mr. S.C. Keyal submits that the petitioner is an accomplice to the prima accused from whose possession the contraband has been recovered and all the co accused had disclosed involvement of the petitioner.

8. Relying on the decision of a coordinate bench in the case of ***Aminul Islam Vs. Union of India*** reported in **(2022) 0 Supreme (Gau) 321**, Mr. SC Keyal contends that in terms of section 133 of the Evidence Act, an accomplice shall be a competent witness against an co accused person and therefore, conviction cannot be illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice. Therefore only on the ground that the petitioner is charge sheeted on the basis of the statement of accomplice, a bail cannot be granted.

9. I have given my anxious considerations to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record including the Final Complaint (Offence Report) and the testimony of the witnesses so far recorded.

10. In the case of ***Toofan Singh*** (supra), the Hon'ble Apex Court had laid down a proposition of law that a statement recorded under section 67 of the NDPS Act cannot be a sole ground for conviction of an accused inasmuch as it is an inadmissible evidence. Subsequently, the hon'ble Apex court in the case of ***State Vs. Pallulabid Ahamad Arimutta*** reported in **2022 12 SCC 633** held that the value of confessional statement recorded under section 67 of the NDPS Act, shall remain inadmissible even at the stage of consideration of the bail.

11. The coordinate bench in *Aminul Islam* (supra) referring to section 133 of the Indian Evidence Act, held that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice. It was further held that the statement of an accomplice can be relied upon for the purpose of conviction of an accused, such statement is necessarily required to be corroborated with other relevant materials.

12. There is no quarrel on the aforesaid proposition of law,

however, in Toofan Singh (supra), it is laid down that a disclosure statement made under section 67 of the NDPS Act is not an admissible evidence. When a statement recorded under section 67 of the NDPS act itself is held to be an inadmissible evidence, the statement of such co accused recorded under section 67 of the NDPS Act cannot be treated as an evidence of accomplice. As defined under section 133 of the NI Act. Thus when such statement of an accomplice is not even inadmissible, the same cannot be used against an accused in terms of section 133 of the Evidence Act.

13. Further in the case of Pallulabid Ahamed Arimutta (supra), the hon'ble Apex Court in no unambiguous terms held that the principle laid down in the case of Toofan Singh (supra) is also applicable at the stage of consideration of bail under the NDPS Act.

14. Now coming to the case in hand, from the Offence Report, it is seen that relying on the voluntary statement of the prime accused Ranjit Singh from whom allegedly, the narcotics were recovered, the accused is being treated as accomplice.

15. As per the offence report, the arrested accused Ranjit Singh had disclosed in his voluntary statement that the present petitioner provided the truck to him for trafficking the narcotics. According to the NCB, the present petitioner in his voluntary statement admitted that he was involved in trafficking the alleged Codeine based Phensedyl cough syrup for monetary benefit and accordingly he has been paid Rs.1,00,000 by one Mithun Ghosh through Ranjit Singh for trafficking the said narcotics. In this regard, to bring home the charges against the petitioner, the NCB in its final complaint had relied on certain CDR or two mobile phone numbers during the period from 01.10.2022 to 01.01.2023 used by the petitioner and it was found that he called Ranjit Singh for 108 times and 11 times respectively.

16. However, the CDR is not being relied upon by the NCB and the material against the petitioner is only the voluntary statement of the co accused as well as the voluntary statement of the petitioner.

17. That being the position, in view of the ratio laid down in the case of ***Pallulabid Ahmed Arimutta*** (supra) that a confessional statement recorded under section 67 of the NDPS Act, 1985 will remain inadmissible even at the stage of bail, this court is of the view that on the basis of the aforesaid material, it will hardly be possible to convict the petitioner under the offences alleged, more particularly, when the CDR is not relied on by the prosecution. Therefore, this court is of the view that the petitioner has been able to satisfy the rigor of section 37 of the NDPS Act.

18. In view of the peculiar facts and circumstances of the case, the petitioner namely ***Sri Pramod Yadav @ Tinku***, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) each with two suitable local solvent sureties of like amount to the satisfaction of the learned District and Session Judge, Kamrup, Amingaon, in connection with aforementioned case. The bail granted to the petitioners shall be subject to following conditions:-

- (a) The petitioner shall not leave the territorial jurisdiction of learned District & Sessions Judge, Kamrup, Amingaon, without prior written permission from him;
- (b) The petitioner shall not hamper and tamper with the evidence of the case;
- (c) The petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such

facts to the Court or to any police officer.

(d) The petitioner shall surrender their passport, if any (if not already surrendered) before the learned District & Sessions Judge, Kamrup, Amingaon.

(e) The petitioner shall not try to contact any of the witnesses by any mode including telephone, social media etc.

(f) The petitioner shall furnish the present residential address with proof to the learned trial Court below and shall not change the said residence without prior permission of the learned trial Court.

(g) The petitioner shall appear before the learned trial Court below on each and every date of appearance during trial.

19. While parting with the record, it is made clear that the observations made in this bail petition is only for the purpose of determination of the present application and the same should not influence the learned trial court in determining the allegation made against the petitioner during the trial.

JUDGE

Comparing Assistant