

GAHC010291972023



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

Case No. : Bail Appln./4672/2023

JHALMAN SINGH @ SONY
S/O- LATE NAZAR SINGH, R/O- VILL- TOOSA, TEHSIL RAJKOT, VPO
TOOSA, P.S- SUDHAR TOSSEY, LUDHIANA, PUNJAB, PIN- 141105

VERSUS

UNION OF INDIA
REP. BY THE SC, NCB GUWAHATI ZONAL UNIT, GUWAHATI

Advocate for the Petitioner : MR. U CHOUDHURY

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 07.03.2024

Heard Mr. U. Choudhury, learned counsel for the accused-petitioner as well as Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Jhalman Singh @ Sony**, in connection with

Special (NDPS) Case No. 23/2021(arising out of NCB Crime Case No. 16/2020), registered under Section 21(c)/29 of NDPS Act, 1985, pending in the court of Special Judge, Kamrup, Amingaon.

3. The case of the petitioner is that he was found in a truck bearing Regd No. PB-13-AW-9785 which was carrying 19984 bottles of phensedyl codeine based cough syrup. The said truck was coming from Rangia side towards Guwahati and the truck was intercepted by NCB officials at Madanpur toll gate, NH-37 on 09.12.2020 at around 4.50 p.m. One Jora Singh was driving the truck and on being instructed by NCB Officials, he crossed the Madanpur toll plaza and parked near an adjacent place. Thereafter, NCB officials searched the vehicle and 200 cartoons of codeine based phensedyl cough syrup were recovered. Accordingly, the present petitioner and the driver Jora Singh were arrested.

4. It has been submitted by the learned counsel for the accused/petitioner that the petitioner was arrested on 09.12.2020 and since then he is languishing in jail. On 09.04.2023, the mother of the petitioner expired and to attend her last rites, the petitioner preferred an interim bail application before the learned trial court which was allowed by the trial court for a period of four weeks and directed him to appear before the court on 09.06.2023. Accordingly, the petitioner appeared before the learned trial court and he was sent to jail again.

5. It is also submitted by learned counsel for the accused/petitioner that in the charge-sheet, some of the accused showing as absconder. On 02.11.2023, on a prayer made by NCB, the learned trial court split up the instant case against the absconder accused and fixed the case for framing of charge. Thereafter, on 30.11.2023, after almost a period of three years, charge was framed against the present petitioner and the co-accused.

6. It is also the submission of learned counsel for the accused/petitioner that out 12 witnesses, the prosecution, till today, has failed to examine any witness in the case. According to the learned counsel for the accused/petitioner, it is the trite law that reasonable, fair and just procedure in a criminal trial is a constitutional obligation on the part of the State and a speedy trial is also one of the dimensions of the fundamental right to life under Article 21 of Constitution of India and as such, the accused/petitioner prays to release him on bail in any condition.

7. The learned counsel for the accused/petitioner also has contended that no any alleged contraband was recovered from the conscious possession of the present accused/petitioner. The petitioner was arrested on the statement given by the co-accused. It is further pointed out that the statements recorded under Section 67 of NDPS Act are not admissible evidence even at the stage of bail hearing. It is further submitted that the accused/petitioner is not the owner or driver or helper of the alleged vehicle from which the narcotic substance was recovered on the date of interception. According to learned counsel for the petitioner, there is no other cogent material to suggest that he had committed any offence and in the event of enlargement of bail, he would be committed the offence under NDPS Act. As such, learned counsel for the accused/petitioner prays to release the petitioner on bail.

8. In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws-

(i) Dheeraj Kumar Shukla vs. The State of Uttar Pradesh, reported in CR MBA No. 45253/2021.

(ii) Rabi Prakash vs. The State of Odisha, reported in 2023 LiveLaw(SC)

533.

(iii) Asab Uddin vs. The State of Assam, vide Bail Application No. 1995/2023.

9. Per contra, learned Standing counsel, NCB submits that commercial quantity of narcotic substance i.e. 19984 bottle of phensedyl codeine based cough syrup were recovered from the truck which was intercepted by the NCB officials. The present petitioner i.e. Jhalman Singh @ Sony was the driver of the alleged truck bearing Regd. No. PB-13AW-9785. The accused/petitioner also confessed in his voluntary statement under Section 67 NDPS Act about his conscious involvement in the trafficking of the codeine based cough syrup phensedyl.

10. It is also submitted that the accused/petitioner has closed contact with the owner of the vehicle Kripal Singh and driver, Jora Singh and supplier of alleged codeine based cough syrup to one Soab.

11. The learned Standing counsel, NCB also submits that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. According to the learned Standing counsel, NCB, under the facts and circumstances of the case, it reveals that the accused/petitioner is very much involved in the alleged offence i.e. guilty of illicit trafficking of seized drugs. Hence, bail may not be considered at this stage of trial.

12. In support of his submission, the learned Standing counsel, NCB has placed reliance on the following case laws-

(i) Gurwinder Singh vs. State of Punjab & Anr. reported in 2024 0 Supreme(SC) 104.

(ii) State by the Inspector of Police vs. B. Ramu, reported in 2024 0 Supreme (SC) 130.

(iii) Bail Application No. 3343/2023, Atikur Rahman @ Atiqur Rahamn @ Atikur Rahaman vs. The Union of India.

(iv) Bail Application No. 3765/2023, Baiju Thakur vs. Union of India.

13. I have considered the submissions made by the learned counsel for the parties. I have perused the scanned copy of the trial court record.

14. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27 A and also for offences involved in commercial quantity, he/she shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release and in case the Public Prosecutor opposes the application, the Court must be satisfied that there is reasonable ground for believing that the person is not guilty for the alleged offence and he is not likely to commit any offence while on bail. These limitations are in addition to those prescribed under Cr.P.C. or any other law enforced on the ground of bail.

15. In the case of State of Kerala vs. Rajesh, reported in 2020 (12) SCC 122, the Hon'ble Supreme Court followed the principles of law laid down in Ram Samuj's case (supra) and clearly held that Section 37 of the NDPS Act commences with non-obstante clause and the conditions enumerated in Section 37(1)(b) have to be complied before admitting the accused on bail of the aforesaid offence under the Act in case of commercial quantity. In the said case, the meaning of 'reasonable grounds' was explained and the same are extracted as below:

“The scheme of Section 37 reveals that the exercise of power to grant bail

is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose an application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offences. If either of these two conditions is not satisfied, the ban for granting bail operates.

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 Cr.P.C., 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."

16. Reverting back to the present case, 19984 bottles of Phensedyl Cough Syrup were recovered from the truck of the present petitioner, which is undisputedly of more than commercial quantity. After going through the trial court record, having heard the learned counsel for the parties, considering the materials available on record and considering the recovery of huge commercial quantity of

psychotropic substances from the truck of the present petitioner, it cannot be held that there are reasonable ground for believing that the accused petitioner has not committed the said offence and he is not likely to commit any offence, if released on bail.

17. It appears from the trial court record that the accused/petitioner was arrested on 09.12.2020. It also appears from the order sheet that the court was not functioning properly due to Covid-19 pandemic in the year 2020-2021. As per offence report, one accused Soab was shown as absconder. The case has been pending for trial due to non-appearance of the absconding accused. Subsequently, on 02.11.2023, the case was split up and next date was fixed on 16.11.2023 for framing of charge. Accordingly, charge was framed on 30.11.2023. Thereafter, though the case was fixed for evidence but the NCB has failed to produce any witness. It is evident that out of 12 witnesses, none of the witness has been examined in the case.

19. Admittedly, large quantity of psychotropic substance was recovered from the alleged truck bearing Regd. No. PB-13-AW-9785 in which the present petitioner was travelling.

20. In view of the above discussion, this Court is of the considered view that the petitioner, above named, is not entitled to be released on bail as accusation is of commercial quantity and the provisions of Section 37(1)(b)(ii) of NDPS act are not satisfied. Under the facts and circumstances of the present case, it cannot be held that there are reasonable grounds for believing that the petitioner had not committed the said offence and he is not likely to commit any offence, if released on bail.

21. Accordingly, the bail application of the petitioner stands rejected.

22. However, learned trial court is directed to take initiative to dispose of the matter early if possible by fixing day to day hearing.
23. The petitioner is at liberty to approach before the learned trial court regarding bail in the subsequent stages of trial.
24. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant