



GAHC010176712020

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

**Case No. : Bail Appln./2816/2020**

AMINUL ISLAM  
S/O EFAZUDDIN AHMED @ EFAZZUDDIN AHMED, R/O VILL-530,  
MAUKHOWA, P.O.-BAHALPUR, P.S.-CHAPAR, DIST-DHUBRI, ASSAM, PIN-  
783371

VERSUS

THE UNION OF INDIA  
REPRESENTED BY THE STANDING COUNSEL, NARCOTICS CONTROL  
BUREAU, GUWAHATI ZONAL UNIT, GUWAHATI

**Advocate for the Petitioner : MR. A SAIKIA**

**Advocate for the Respondent : SC, NCB**

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : **28.04.2022**

Date of Judgment : **06.05.2022**

**JUDGMENT & ORDER**

Heard Shri A. Saikia, learned counsel for the petitioner, namely, Aminul Islam, who has



filed this application under Section 439 CrPC seeking regular bail in connection with NDPS Case No. 60/2019 arising out of NCB Crime No. 03/2019 registered under Section 8(c) and punishable under Sections 21(c) / 22(c) / 29 of NDPS Act, 1985. Also heard Shri SC Keyal, learned Standing Counsel, NCB.

2. The petitioner was arrested on 06.10.2020.
3. In terms of the order passed earlier, the scanned copy of the case records has been transmitted to this Court.
4. Shri Saikia, the learned counsel for the petitioner makes the following submissions-
  - i. The petitioner is not an FIR named accused and the FIR is primarily against Mograb Ali, Jiaur Rahman and Abdul Motleb Mir.
  - ii. The name of the petitioner was inserted as accused no. 6 only in the time of final complaint by the NCB.
  - iii. No contraband was seized from the petitioner or from his conscious possession.
  - iv. The petitioner has been arrested only on the basis of the statements made under Section 67 of the NDPS Act by co-accused Mograb Ali, Nurezzaman Islam and Gopal Sarkar.
5. Shri Saikia, the learned counsel for the petitioner submits that supplementary charge sheet was filed in this case on 18.03.2021. He submits that statements made under Section 67 of the NDPS Act cannot be treated as an evidence and therefore cannot be the basis of the arrest and detention. He further submits that co-accused Nurezzaman was enlarged on bail and therefore, on the ground of parity, the petitioner should also be released on bail.
6. Shri Saikia, the learned counsel for the petitioner submits that the petitioner has been in custody for about one year and six months and therefore, there is no requirement of any further custodial detention.
7. In support his submissions, the learned counsel has placed reliance upon the following case laws-

*i. BA No. 1636/2020 (Ashik Ahmed Mondal @ Larju Vs. the State of*



**Assam);**

**ii. BA No. 2356/2021 {Khalil Uddin Vs. Union of India (NCB)};**

**iii. BA No. 862/202 (Mazibur Rahman Mandal Vs. The State of Assam).**

8. In the case of **Ashik Ahmed Mondal (Supra)**, this Court has held that if on the basis of the materials on record the Court is satisfied that on all probabilities, the accused may not ultimately be convicted, the order of granting bail may be considered. This Court had relied upon the judgment of the Hon'ble Supreme Court in the case of **Ranjitsing Brahamjeetsing Vs. State of Maharashtra & Anr.**, reported in **(2005) AIR SCW 2215**.

9. In the case of **Khalil Uddin (Supra)**, this Court has held that no contraband article was recovered from the possession of the petitioner and he was implicated by a co-accused. However, bail was granted on the basis of the judgments in **Bharat Choudhury Vs. Union of India in Petition for Special Leave (Crl.) Appeal No. 5703/2021** and **Tofan Singh Vs. State of Tamilnadu in Criminal Appeal No. 152 of 2013**.

10. In the case of **Majibur Rahman Mandal (Supra)**, this Court came to a finding that if the pleaded fact that the person who had fled away from the place of occurrence was a passenger in the Autorikshaw driven by the petitioner and from whom the contraband was seized, can be established in the trial, he would unlikely to be convicted.

11. On the other hand, Shri SC Keyal, the learned Standing Counsel, NCB submits that the petitioner is under a duty to make out a case for grant of bail based on the facts and circumstances and the concept of precedent in criminal cases except for a point of law may not be to their degree as in civil case.

12. The learned Standing Counsel submits that the conduct of the petitioner itself raises serious doubts on his plea of innocence inasmuch as the petitioner had failed to appear to give his statement to the notices served under Section 67 of the NDPS Act and such statements were required in view of the statements of co-accused that they used to supply Codeine based cough syrup to the petitioner of Bokso Drug Agency, Dhubri and the petitioner is the main supplier of the said contraband in Chapar area. In this regard, attention of this Court has been drawn to paragraph 83 of the complaint filed. As per the prosecution, specific

role was attributed to the petitioner.

13. The learned Standing Counsel submits that that the trial is at an early stage wherein only two out of 11 nos. of witnesses have been examined and releasing the petitioner on bail at this stage may jeopardize the proceeding. The further relevant consideration is that the quantity involved is a huge one falling within commercial quantity for which a strict approach needs to be adopted while considering the bail of an accused. He further submits that offence under this Act is organized one wherein a number of persons involved and seizure / recovery from each of them may not be there.

14. The submissions made by the rival parties have been carefully considered and the scanned copy of the case records perused. It appears that the thrust of the argument made on behalf of the petitioner in support of the prayer for bail is that the arrest and detention has been made solely on the basis of a statement of the co-accused and nothing else and therefore, by relying on the cases of the Hon'ble Supreme Court, the petitioner has prayed for bail. Further, no recovery, whatsoever, has been made from the petitioner.

15. *Prima facie*, it appears that in the FIR, the petitioner has not been named and from the forwarding report one would come to learn that it is only on the basis of the statements made by co-accused that the petitioner has been arrested.

16. The offence involved in this case is one under the NDPS Act and the quantity involved is a commercial quantity. The contraband involved is also chemical manufacture drugs. To be more specific, the FIR itself reveals that the following recovery has been made-

Sl. No.	Article seized	Package Description	Quantity / Value	Where from recovered
1.	Relaxcof	Packed in 05 carton boxes	600	From Car No. AS 26/B 5506
2.	Recofex	Packet in 10 cartoons boxes	1200	.....
3.	Metamphetamine	Packet in two blue	68 gm	

	tablet	colour plastic tablets		
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17. This Court finds force in the submission of the learned Standing Counsel, NCB that offences under the NDPS Act are part of an organized crime wherein difference roles are played by different accused persons. Therefore, recovery or seizure cannot be held to be a *sine qua non* for the arrest / detention or even for conviction if there are other convincing and corroborating materials. Therefore, this Court is unable to accept the plea that since no recovery was made from the petitioner, his involvement can be ruled out.

18. What is left now is the issue of the arrest being based on the statement of the co-accused. At this stage, it is to be kept in mind that it is only the question of grant of bail which is the subject matter of the petition and this Court is not required to go to the aspect as to whether conviction on the sole testimony of a co-accused is sustainable.

19. To resolve the aforesaid issue, one may gainfully refer to the relevant provision of law, namely, Section 133 of the Indian Evidence Act, which reads as follows-

**"133. Accomplice.**

*An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."*

20. Since, the aforesaid aspect finds mention by way of an illustration, to come to a correct finding the same is also required to be consideration which is extracted hereinbelow-

**"14. Court may presume existence of certain facts.**

*The court may presume the existence of any fact which it things likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case.*

**Illustrations**

*The Court may presume-*



(a) ...

**(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars."**

21. A conjoint reading of the aforesaid provisions would lead to a conclusion that though a statement of an accomplice can be relied upon for the purpose of conviction of a co-accused, such statement is necessarily required to be corroborated with other relevant materials.

22. The above provision of law and the discussion made are in the context of coming to a finding of conviction which is at a much later stage. However, in the instant case, that stage has not even come and the trial is at a very initial stage. Further, this Court is of the view that if an arrest and detention is not permissible on the basis of a statement of a co-accused, no investigation would be possible leading to a situation of anarchy and lawlessness.

23. Further, this Court is of the view that it is a settled position of law that in a case involving the NDPS Act, though the length of detention may be a relevant factor, the same shall not be the sole factor for determining a bail application and various other factors are taken into consideration like the quantity of the contraband, nature of the substance, nature of involvement etc. In the present case, the contraband is a commercial quantity and the substance is chemically manufactured drug. Moreover, Section 37 of the NDPS Act lays down that before granting a bail, the relevant factors are that the Court should come to a satisfaction that *prima facie* the petitioner is not guilty of the offence and also the petitioner has to satisfy the Court that in case bail is granted, he is not likely to commit further offence. The aforesaid two factors do not seem to be fulfilled in the present case.

24. At this stage, it would be gainful to refer the following decisions of the Hon'ble Supreme Court.

- i. ***Satpal Singh Vs. State of Punjab*** reported in **(2018) 13 SCC 813** and
- ii. ***Union of India (NCB) Vs. Md. Nawaz Khan*** reported in **(2021) 10 SCC 100.**

25. In the case of ***Satpal Singh (Supra)***, the Hon'ble Supreme Court reiterated that the rigors of granting bail under the NDPS Act should be strictly followed and the conditions laid



down under Section 37 of the Act are to be mandatorily followed.

26. In the case of ***Md. Nawaz Khan (Supra)***, the Hon'ble Supreme Court by referring to various earlier judgments had laid down that a finding of absence of possession of contraband on the person does not necessarily absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

27. In that view of the matter and also taking into consideration the very object of the enactment, namely to curb the menace of drugs and its ill effects on the society which has the propensity to destroy the generation as a whole, this Court is of the opinion that no case for grant of bail is made out at this stage. Accordingly, the same stands rejected.

28. It is however clarified that the observation made are tentative in nature and shall not cause prejudice to either of the parties in the trial.

**JUDGE**

**Comparing Assistant**