



GAHC010124342023



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

Case No. : Bail Appln./2022/2023

ANJAN NATH
S/O SRI RABINDRA NATH
R/O VILL- DEFALALA, P.O. AND P.S.
PATHARKANDI, DIST. KARIMGANJ, ASSAM, PIN-788724

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioner : Shri Sishir Dutta, Advocate
Shri Sidhant Dutta, Advocate.

Advocates for the respondent : Shri M.P. Goswami, learned Addl. PP. Assam.

Date of hearing : 19.07.2023

Date of judgment : 19.07.2023



Heard Shri Sishir Dutta, learned Senior Counsel assisted by Shri Sidhant Dutta, learned counsel for the applicant, namely, Shri Anjan Nath, who has filed this bail application under Section 439 of the Cr.PC praying for bail in connection with Nilambazar PS No. 432/2021 (GR No.3617/2021) under Sections 22(C)/25/29 of the Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985.

- 2.** The applicant was arrested on 15.03.2022.
- 3.** Pursuant to the order of this Court, the scanned copies of the case records have been obtained.
- 4.** Shri Dutta, the learned Senior Counsel, at the outset, has submitted that on earlier three occasions, the bail applications of the petitioner have been rejected by this Court. However, he submits that there are certain factors which were not placed before this Court in the proper perspective which he would like to highlight in the present case.
- 5.** Attention of this Court have been drawn to the Forwarding Report dated 15.03.2022 concerning the arrest of the petitioner which contains the grounds of arrest. The same reflects that the petitioner had confessed his guilt; he is a drug dealer; there was sufficient mobile phone linkage with other drug peddlers as per CDR (Call Detail Reports).
- 6.** Reference has thereafter been made to the Forwarding Report dated 23.03.2022 of co-accused Philip Kumar Dey which reflects the grounds of arrest that the present accused had confessed his guilt and implicated Philip Kumar



Dey to be involved in the smuggling of drug like cigarette, betel nut (Burmese) and were communicating over mobile phone which was substantiated by CDR analysis and such communication has been suspected to be drug related conversation. Recovery of four cartons of foreign cigarettes was also made from the said accused Philip Kumar Dey.

7. Reference thereafter have been made to the seizure list dated 14.03.2022 annexed as Annexure-11 to the application, as per which, the only item recovered from the petitioner was one android mobile (OPPO).

8. The submission made on behalf of the petitioner is that the present petitioner is nowhere connected with any drug related offence and even as per the statement alleged to have been made by him before the Police, he is indulging in smuggling in foreign cigarettes and Burmese betel nut.

9. It is submitted that in the meantime, the other co-accused Philip Kumar Dey has been released on bail including the main accused Abdul Fatah. He submits that the arrest / detention of the petitioner is on certain presumption and even the CDR analysis has not been done to rope in the petitioner. It is submitted that the petitioner has completed about 525 days in custody as he was arrested on 15.03.2022.

10. The learned Senior Counsel has placed reliance upon a judgment of the Hon'ble Supreme Court reported in **(2005) 5 SCC 294 [Ranjitsing Brahmajeetsing vs. State of Maharashtra & Anr.]**. The said case pertains to the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) and it is



submitted that the provision for bail is similar to Section 37 of the NDPS Act.

In the said case, it has been laid down that the restrictions imposed on the power of the Court to grant bail should not be pushed too far. It may however be mentioned that the petitioner in the said case was a former Commissioner of Police and the case related to the Stamp Paper scam popularly known as Telgi Case.

11. The learned Senior Counsel has also placed before this Court an order dated 30.04.2021 in a bunch of cases, the lead case being Bail Appn./126/2021 wherein the prayers for bail were allowed.

12. *Per contra*, Shri MP Goswami, learned Addl. Public Prosecutor, Assam has submitted that conscious possession of the contraband is not a *sine qua non* and constructive possession is itself sufficient to implicate an accused. He has referred to the statement of the petitioner made under Section 161 of the CrPC from which it would be evident about the involvement in drug trafficking.

13. Drawing the attention of this Court to the Section 37 of the NDPS Act, the learned Addl. Public Prosecutor submits that the quantity of the contraband is a huge commercial quantity of 2,59,000 of Yaba tablets and unless the conditions embodied in the said Section are fulfilled, bail cannot be granted. He further submits that there is no concept of parity while considering a bail application as each case has to be tested on the strength of the *prima facie* materials present.

14. In support of his submission, the learned Addl. Public Prosecutor has relied upon the following decisions.

(i) ***Narcotics Control Bureau vs. Mohit Aggarwal reported in [2022] 0 AIR(SC) 3444.***

(ii) ***Union of India vs. Ram Samujh [1999 Supp. (2) SCR 76].***

15. In the case of ***Mohit Aggarwal*** (supra), the Hon'ble Supreme Court has laid down that Section 37 starts with a *non obstante* clause and conditions imposed in sub-section 2 which are in the form of certain restrictions are to be followed before granting of bail to a person accused of having committed an offence under the NDPS Act. It has been specifically held that such restrictions are to be applied over and above the limitations imposed under section 439 of the CRPC. As regards the expression "reasonable grounds" appearing in Section 37 (1) (b), the Hon'ble Supreme Court has laid down as follows.

"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."

16. In the case of ***Ram Samujh*** (supra), the Hon'ble Supreme Court has discussed the gravity and seriousness of the problem of drugs which is a menace to the society. The relevant paragraphs are extracted here in below:

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case,

accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and / or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didien v. Chief Secretary, Union Territory of Goa. [1990] 1 SCC 95 as under:

“With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psycotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.”

8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit while on bail.”

17. This Court while considering the prayer of bail of the petitioner on the

previous occasions had opined that the length of detention may be a relevant factor for taking into consideration for grant of bail but in an offence under the NDPS Act, the same cannot be the sole factor and many other factors, namely, nature of the contraband, the quantity and the nature of accusation / involvement of the applicant would have to be taken into consideration. This Court also cannot ignore the objective and purpose of the enactment which is to curb the menace of drugs in the society.

18. The Hon'ble Supreme Court in the case of **Mohit Aggarwal** (supra) which had also involved contraband in the form of tablets and syrup had made the following observations in the context of Section 37 of the Act.

“10. The provisions of [Section 37](#) of the NDPS Act read as follows:

“[37. Offences to be cognizable and non-bailable.–(1) Notwithstanding anything contained in [the Code](#) of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under [section 19](#) or [section 24](#) or [section 27A](#) and also for offences involving commercial quantity] shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under [the Code](#) of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

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 Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 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."

19. This Court is of the opinion that the conditions imposed by Section 37 of the NDPS Act before granting a bail do not appear to have been fulfilled in the present case.

20. The learned Senior Counsel had strenuously argued regarding the lack of materials against the petitioner and therefore his arrest and detention has been submitted to be unjustified.

21. On a perusal of the scanned copy of the case records, it cannot be said that there are no materials at all against the petitioner. His complicity with the main accused, seizure of his mobile phone from which CDR has established his connection, seizure of the motorcycle of the co-accused from the place of occurrence etc. are sufficient to justify the arrest and detention. The said opinion of this Court is after considering the gravity and seriousness of the offence wherein there is a huge haul of 2,59,000 of Yaba tablets. Apart from the same being a commercial quantity, the target of such chemicals drugs is the new generation by which the entire nation has been put to peril. This Court also finds force in the submission of the learned Addl. PP, that there is no concept of parity in considering the prayer for bail.



22. In view of the above, the bail application stands dismissed. However, it is clarified that the observations made in this order are *prima facie* in nature and shall not, in any way influence the trial. It is needless to state that the learned Special Judge would make an endeavour for expeditious conclusion of the trial.

JUDGE

Comparing Assistant