



GAHC010204262023

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

Case No. : Bail Appln./3325/2023

BABLU PANDEY
S/O BRAMAHNAND PANDEY
R/O VILL- MUKTAPUR GHAT,
ROOM NO. 297, BHATPARA ELAKA, P.S. KANKINARA, DIST. 24 NORTH
PARAGANAS, WEST BENGAL.

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 L.R. Mazumder, Advocate

Advocates for respondent : Ms. A. Begum, Addl. Public Prosecutor.

Date(s) of hearing : 16.11.2023

Date of judgment : 16.11.2023

Heard Shri L.R. Mazumder, learned Counsel for the petitioner, namely, Bablu Pandey, who has filed this bail application under Section 439 of the Cr.P.C. praying for bail in connection with Bazaricherra P.S. Case No. 154/2021 under Section 21 (C) of NDPS Act. The petitioner was arrested on 23.08.2021.

2. This Court has been informed that the prayer for bail were rejected by this Court on two occasions vide orders dated 18.04.2022 and 12.08.2022.

3. Shri Mazumder, the learned counsel for the petitioner has submitted that the investigation is over and the charge sheet has been submitted and the petitioner is in custody for about 836 days and therefore, his prayer for bail may be considered.

4. On the other hand, Ms. A. Begum, learned Addl. Public Prosecutor, Assam has strenuously opposed the prayer for bail.

5. The materials on record including the scanned copies of the case records of Special NDPS Case No. 80/2021 have been carefully perused.

6. It reveals that a huge cache of contraband, namely, Codeine Phosphate Syrup was seized. The cache amounted to 40,000 bottles of 100 ml each in 250 cartons. The seizure was made from a vehicle (a red colour truck) bearing registration No. WB 11 F 0650 of which the petitioner was the driver. The FIR itself states that the petitioner had revealed that the consignment was loaded at Guwahati and was going towards Agartala. The contraband was hidden in the truck which was loaded with fruits (Naspati).

7. The FSL report dated 06.09.2021 reveals positive test for Codeine and the amount was found to be 165.93 mg.

8. This Court in the earlier order dated 12.08.2022 had discussed the

provisions of Section 37 of the NDPS Act and had observed that the said Section starts with a *non-obstante* clause and overrides all provisions of the Cr.PC. Further, Section 37(2) makes it clear that the limitations on grant of bail are in addition to the limitations in the Cr.PC or any other law for the time being in force.

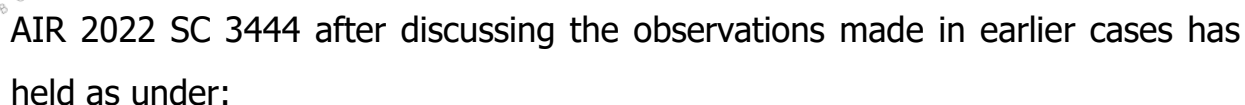
9. On an analysis of Section 37 with regard to bail, it can be seen that the NDPS Act being a special enactment which has an inbuilt mechanism with regard to bail has introduced two statutory restrictions before grant of bail apart from giving an opportunity to the Public Prosecutor which are as follows:

- (i) There has to be *prima facie* satisfaction regarding existence of reasonable grounds that the accused is not guilty and
- (ii) The accused is not likely to commit any offence while on bail.

As noted above, the aforesaid conditions are in addition to the limitations under the Cr.PC or any other law relating to bail.

10. Thus, it is seen that the parameters for consideration of a bail under the NDPS Act are not the same as under the Cr.PC. Under the present Act not only the conditions are more stringent and narrow, the privileges which would otherwise be available under the Cr.PC are also not relevant. As regards the presumption of guilt, the same is almost contrary in the NDPS Act wherein the Court has to come to a satisfaction that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The aforesaid satisfaction is a subjective one which are to be based on the materials on record.

11. On the aforesaid expression "reasonable grounds", the Hon'ble Supreme Court in the case of Narcotics Control Bureau Vs. Mohit Aggarwal reported in



“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."

12. Shri Mazumdar, the learned counsel has relied upon two orders of the Hon'ble Supreme Court passed in SLP 5769/2022 (Nitish Adhikary @ Bapon vs. State of West Bengal) and SLP 299/2022 (Sariful Islam @ Sarif vs. State of West Bengal) wherein bail has been granted considering the length of detention. However, neither of the two cases contain the facts of those cases from which the nature of involvement can be deciphered. In the instant case however the

petitioner accused was the driver of the vehicle who was arrested on the spot.

13. After considering the rival submissions, 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 cannot 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 wherein the petitioner has been directly implicated. Further, Section 37 of the NDPS Act lays down that before granting a bail, the relevant factors are that the Court should come to a prima facie satisfaction that 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.

14. In that view of the matter, this Court is of the opinion that no case for grant of bail is made out at this stage. Accordingly, the same stands rejected. It is, however, clarified that the observations made are tentative in nature and shall not cause prejudice to either of the parties in the trial.

15. This Court has been informed that in the ongoing trial before the learned Special Judge, Karimganj, out of five nos. of PWs, two have been examined already. The learned Trial Court is accordingly requested to expedite the trial and complete the same within a reasonable time.

JUDGE

Comparing Assistant