

Page No.# 1/ vs The State Of Assam on 18 March, 2025

Author: Malasri Nandi

Bench: Malasri Nandi

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GAHC010273602024

2025:GAU-AS:2815

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

Case No. : Bail Appln./3929/2024

BIJOY DAS
S/O SANKAR CH. DAS
R/O VILL- SURYAMANI NAGAR,
P.S. AMTALI,
DIST. WEST TRIPURA,
TRIPURA, PIN-799130

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M J BARUAH, MR. A K PURKAYASTHA, MR. JITU
SAIKIA, MR. A. ALI

Advocate for the Respondent : PP, ASSAM,

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BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

18.03.2025 Heard Mr. A.K Purkayastha, learned counsel for the petitioner. Also heard Ms. S.H. Bora, learned Addl. P.P for the State.

2. By filing this application u/s 483 of BNSS, 2023, the petitioner, namely, Bijoy Das has prayed for granting regular bail in connection with Special Case No.480/2024 (arising out of Golakganj P.S Case No.40/2024) U/S 20

(b) (ii) (c) of NDPS Act, 1985, pending in the Court of learned Additional District & Sessions Judge, Dhubri.

3. The prosecution case in brief is that on 29.02.2024, an FIR has been lodged stating inter alia that on receipt of information from reliable source over telephone that a large quantity of suspected cannabis (ganja) were being transported from Guwahati in a Maruti Baleno Car bearing No. TR-01-BH-0787 and one new TATA Nexon Car without number plate. Accordingly, a naka checking was conducted and the aforesaid Baleno car was intercepted along with two persons i.e. the present petitioner who was the driver of the said car and another co-passenger Raj Kumar Sarkar. When the police team about to search the Maruti Baleno car, another vehicle i.e. TATA Nexon car without number plate coming from the same direction, and when the police has given signal to stop, the driver of the said vehicle disobeyed the signal and fled away from the car throwing the car key to some other place. However, the police team has apprehended the driver of the said vehicle after a chase. On being searched the Maruti Baleno car, 4 (four) packets of ganja were recovered and Page No.# 3/10 from TATA Nexon vehicle, 42 nos. suspected ganja were found. Thereafter, the said recovered contraband items were seized and the accused persons were arrested and a case was registered vide Golakganj P.S Case No.40/2024.

4. It was urged by learned counsel for the petitioner that the petitioner has been languishing in judicial custody for last one year since his arrest on 29.02.2024. The trial court has failed to complete the trial during such period. It is further submitted that the seizure witnesses examined by the trial court did not support the prosecution case, rather stated that nothing was recovered from the Baleno car, wherein the petitioner was travelling.

5. The learned counsel for the petitioner has specifically pointed out that PW- 1, who is one of the seizure witness has deposed that during the course of checking of one Maruti Baleno car, nothing was recovered and 46 packets of ganja were recovered from another vehicle manufactured by TATA Company. He was present on the spot when the search was conducted. PW-3 also stated in the same tune by stating that the suspected contrabands was weighed in his presence and recovered from another vehicle and driver of the said vehicle fled away.

6. According to learned counsel for the petitioner, as the seizure witnesses did not support the case of the prosecution, there is a bleak chance of conviction of the petitioner. Under such backdrop, the petitioner may be enlarged on bail.

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

1) NCB Vs Lakhwinder Singh reported in Criminal Appeal

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2) Jagdish Prasad Pradhan Vs. State of Chattisgarh vide

3) Union of India through NCB Vs Md. Nawaz Khan,
reported in Criminal Appeal No.1043/2021

7. Per contra, learned Addl. P.P has argued that out of 8 (Eight) witnesses, 5 (Five) witnesses have already been examined. PW-2 has supported the case of prosecution by stating that the petitioner was driving the Baleno car at the relevant time and other accused Raj Kumar Sarkar was driving the TATA Nexon vehicle. 4 (four) packets of ganja were recovered from Baleno car and 42 packets of ganja were recovered from TATA Nexon vehicle which are commercial quantity. Hence, S. 37 of the NDPS Act will come into play.

8. According to learned Addl. P.P, other witnesses are yet to be examined in this case, as such at this stage, it cannot be said that the embargo u/s 37 of NDPS Act has been complied with. Hence, learned Addl. P.P has opposed in granting bail to the petitioner.

9. Having heard the learned counsel for the parties, the main issue involved in this bail application is whether the petitioner is entitled for bail in spite of such restrictions made u/s 37 of the NDPS Act as the 2 (two) seizure witnesses did not support the prosecution case.

10. In Gurbaksh Singh Sibbia and others v.s State of Punjab, (1980) 2 SCC 565 , the Hon'ble Supreme Court as held that -

"It is thus clear that the question whether to grant bail or not Page No.# 5/10 depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail..."

11. In Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav, (2005) 2 SCC 42, the Hon'ble Supreme Court has observed as follows -

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since

the same is authorised by law..."

12. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in its schedule, and S.2 (xxiii-a) defines a small quantity as the quantity lesser than the quantity specified in the schedule. The remaining quantity falls in an undefined category, which is now generally called as intermediate quantity. All Sections in the NDPS Act, which specify an offence, also mention the minimum and maximum sentence, depending upon the quantity of the substance. When the substance falls under Page No.# 6/10 commercial quantity statute mandates minimum sentence of ten years of imprisonment and a minimum fine of INR One Lac, and bail is subject to the riders mandated in S.37 of NDPS Act.

13. In the present case, as per the contentions of the State, the quantity of substance seized is commercial quantity. Given the legislative mandate of S.37 of NDPS Act, the Court can release a person, accused of an offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after passing its rigors. Section 37 of the Act is extracted as under -

"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 2[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."

14. Reading of Section 37(1)(b)(ii) mandates that two conditions are to be satisfied before a person/accused of possessing a commercial quantity of drugs Page No.# 7/10 or psychotropic substance, is to be released on bail.

15. The first condition is to provide an opportunity to the Public Prosecutor and clear her stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable

grounds exist for believing that the accused is not guilty of such offence and that during bail he is not likely to commit any offence. If either of these two conditions is not fulfilled, the ban on 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. Be that as it may, if such a finding is arrived at by the Court, it is equivalent to giving a certificate of discharge to the accused. Even on fulfilling one of the conditions, the reasonable grounds for believing that during the bail period, the accused is not guilty of such an offence, the Court still cannot give a finding or assurance that the accused is not likely to commit any such crime. Thus, the grant of bail or denial of bail for possessing commercial quantity would depend on facts of each case.

16. Some Judicial precedents on S. 37 of NDPS ACT -

a) In Union of India v. Merajuddin, (1999) 6 SCC 43, Hon'ble Supreme Court while cancelling the bail, observed as follows-

"The High Court appears to have completely ignored the mandate of Sec. 37 of the Narcotic Drugs and Psychotropic Substances Act while granting him bail . The High Court overlooked the prescribed procedure."

b) In Satpal Singh v. State of Punjab, (2018) 13 SCC 813, it was held that since the quantity involved was commercial, as such High Court Page No.# 8/10 could not have and should not have passed the order under sections 438 or 439 CrPC, without reference to Section 37 of the NDPS Act.

c) In Union of India v. Niyazuddin & Anr, (2018) 13 SCC 738, the Hon'ble Supreme Court has observed as follows-

"7.Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said Section. They are :- (1) In the case of a person accused of an offence punishable under Section 19, (2) Under Section 24, (3) Under Section 27A and (4) Of offences involving commercial quantity. The accusation in the present case is with regard to the fourth factor namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; (2) that person is not likely to commit any offence while on bail.

8. There is no such consideration with regard to the mandatory requirements, while releasing the respondents on bail.

9. Hence, we are satisfied that the matter needs to be considered afresh by the High Court. The impugned order is set aside and the matter is remitted to the High Court for fresh consideration. It will be open to the parties to take all available contentions before the High Court....."

17. In view of the aforesaid legal proposition and from the summary of the law relating to rigors of Section 37 of NDPS Act, while granting bail involving commercial quantities in the NDPS Act, the fundamental principles emerged is that -

a) In case, the Court proposes to grant bail, apart from granting opportunity to the public prosecutor, the twin conditions which have relevance on the Court's satisfaction that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and further that he is not likely to commit any offence under the said Act, while on bail.

18. Admittedly, in the case in hand, out of out of 8 (Eight) witnesses, 5 (Five) witnesses have already been examined till date. It is true that two seizure witnesses i.e. PW-1 and PW-3 did not support the prosecution case. However, PW-2 has implicated the petitioner being the occupant of the Baleno car from which 4 (four) packets of ganja were recovered. Some other witnesses are yet to be examined in this case. Hence, at this stage, this Court is not in a position to pass any comment on the twin conditions imposed under Section 37 that there are reasonable grounds for believing that the accused petitioner is not guilty of the alleged offence and further that he is not likely to commit any offence while on bail.

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19. Keeping in view of the nature of allegations, at this stage, no case for bail is made out in favour of the petitioner. Hence, the bail application stands dismissed.

20. However, any observation made hereinabove is neither an expression of opinion on the merits of the case.

21. Accordingly, the bail application is disposed of.

JUDGE Comparing Assistant