

GAHC010053912024



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

Case No. : Bail Appln./763/2024

SEWA SINGH
S/O LATE MOHON SINGH
R/O VILL- JANAKPUR BOSTI,
BARARA, P.S. BARARA,
DIST. AMBALA, STATE- HARYANA.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P BORDOLOI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 24.04.2024

Heard Mr. P. Bordoloi, learned counsel for the accused-petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Sewa Singh**, in connection with **NDPS Case No. 14/2023**, registered under Section **20(b)(ii)(C) of NDPS Act, 1985** pending in the court of **learned Special Judge, NDPS, Karbi Anglong, Diphu**.

3. The brief fact of the case is that an FIR has been lodged before the officer-in-charge Borpathar Police Station, stating inter alia that on the basis of an information received from a reliable source that a goods carrier truck bearing no HR38X8039 was carrying suspected ganja from Dimapur through NH 39. Accordingly, they set up a naka checking at Khakrajan checking point and intercepted the said truck. On being searched, about 78 packets of suspected ganja was recovered from the body of the vehicle which was concealed under a plain sheet and accordingly, the ganja was seized and the petitioner was apprehended.

4. The learned counsel for the petitioner has submitted that the petitioner is the driver of the seized vehicle and while the petitioner was returning from Dimapur after delivering goods, the petitioner was apprehended and arrested by the police. It is also submitted that the petitioner is no way involved with the alleged offence neither the petitioner is aware of the alleged contrabands recovered from his vehicle by the police.

5. Learned counsel for the petitioner also contended that the petitioner was arrested on 30/10/2022 and the charge sheet has been laid on 30/12/2022 but till date no any witness has been examined. According to the learned counsel for the petitioner, the petitioner has the right to be considered innocent until his guilt is proved in the court on the basis of

evidences and it needs an equal opportunity to prepare for his defense which is only possible after his release on bail.

6. It is further argued that it is a settled proposition of law that in case of prolonged incarceration, conditional liberty will override the statutory embargo under section 37 of the NDPS Act. In the present case, the petitioner is behind the bar for more than 16 months and none of the witnesses have been examined. Considering this aspect of the matter, the petitioner may be enlarged on bail.

In support of his submissions, learned counsel has placed reliance on the following case laws –

- a. (2023) live law (SC) 533 (Rabi Prakash vs. State of Odisha)
- b. AIR 2023 SC 1648 [Md. Muslim @ Hussain vs. State (NCT of Delhi)]
- c. 1987 Crl J 157 (Raghbir Singh and others vs. State of Bihar)
- d. Order dated 04/08/2022 in SLP Criminal No. 4173/2022 (Shariful Islam @ Sarif vs. State of West Bengal)
- e. Order dated 04/05/2022 in SLP Criminal No. 5769/2022 (Nitesh Adhikari vs. State of West Bengal)
- f. Order darted 22/08/2022 in SLA Criminal No. 5530/2022 (Md. Salman Hanif Shaikh vs. State of Gujarat)
- g. Order dated 01/12/2023 in Bail Application No. 3548/2023 (Bayar Debbarma @ Jakki and another vs. Union of India)

h. Order dated 11/12/2023 in Bail Application No. 2754/2023
(Deepak Chauhan vs. State of Assam)

i. Order dated 20/12/2023 in Bail Application No. 3676/2023
(W. Samarjit Meitei vs. State of Assam)

j. Order dated 15/12/2023 in Bail Application No. 3157/2023
(Md. Manju Shek vs. State of Assam)

k. Order dated 18/10/2023 in Bail Application No. 3067/2023
(Moina Kachari @ Tulashi and two others vs. State of Assam)

7. Per contra, learned Additional PP has submitted that commercial quantity of ganja was recovered from the vehicle which was driven by the petitioner at the relevant time of detection. No other person was present in the said vehicle. As the commercial quantity of ganja was recovered, without having the satisfaction as regard the embargo placed u/s 37 of the NDPS Act, 1985, only on the ground of long incarceration, the accused/petitioner cannot be enlarged on bail. Accordingly, learned Additional PP has prayed for dismissal of the bail application.

8. On perusal of the trial court record, it reveals that the accused petitioner was arrested on 31/10/2022. Charge sheet was submitted on 14/02/2023. Charge was framed on 10/03/2023. But it is really shocking that, though the case was fixed for recording evidence from time to time but for last one year no witness was examined by the prosecution. The order of the trial court does not reveal that the trial court has taken any such initiative to dispose of the matter early. Now the question comes whether for such lackadaisical attitude of the trial court the accused/petitioner is entitled for bail in such offence of dealing with transporting of commercial quantity of

drugs which has the tendency to adversely affect the society and destroy the future of the youths.

9. The Hon'ble Apex Court in Mohd Muslim @ Hussain (*supra*), on facts, noticed that on the basis of secret information, a raid was held by the police on 28.09.2015 to seize 180 kilo grams of ganja. The accused was arrested on the intervening night of 3/4.10.2015 and his bail applications were rejected. The investigation was completed and charge sheet was filed and since then the accused in the said case was in custody. Under such circumstances, learned counsel representing the accused contended that there is long incarnation suffered by the accused and he is entitled for grant of bail since more than 34 witnesses are yet to be examined and there is no progress in the trial. It was also urged that the main accused and the co-accused are already enlarged on bail and under such circumstances, the accused before the Hon'ble Apex Court is also entitled for grant of bail. On the facts of the said case, the Hon'ble Apex Court considered Section 37 of NDPS Act and held as under:

"The conditions which courts have to be cognizant of are 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. What is meant by "not guilty" when all the evidence is not before the court? It can only be a *prima facie* determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436,437 and 439, Cr.P.C.) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court

should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material on record

(whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved.

The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only *prima facie*, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

10. The Hon'ble Apex Court in *Mohd Muslim @ Hussain (supra)*, considered a situation where the accused was languishing in prison for about 8 years and still the trial had not commenced. The prosecution has cited as many as 34 witnesses who are to be examined, but there was no progress in the trial. The main accused was also enlarged on bail. With these facts, it was held that the accused therein is detained due to undue delay and prolonged trial. However, the Hon'ble Apex Court re-iterated that the Special Courts have to consider the materials, which are *prima facie* sufficient to

prove the guilt of the accused and likelihood of the committing any offence upon release. The Court has also highlighted the responsibility of the Courts to balance the interest of the accused against the public interest. The Court observed that the stringent conditions under Section 37 of NDPS Act cannot be made applicable casually or generally in all the cases, where even the prima facie material to prove the guilt is lacking.

11. In the case in hand, when sufficient materials are placed before the Court which prima facie substantiates the contention of the prosecution at the initial stage of considering the bail application, I do not find any reason to accept the contention of the petitioner, that there is inordinate delay in concluding the trial and it is a ground to enlarge the accused on bail without reference to the bar under Section 37 of NDPS Act. The decision of the Hon'ble Apex Court cannot be stretched to such an extent to state that in any case irrespective of the materials that are placed by the prosecution to prove the guilt of the accused, the accused is entitled to be enlarged on bail ignoring Section 37 of NDPS Act. If this yardstick is adopted by the Courts, by and large no person accused of committing the offence under the special enactment could be detained in prison after expiry of certain specified period, ignoring the prima facie materials that are relied on by the prosecution. One should keep in mind the object with which the NDPS Act was enacted. Each one of us know the menace that is being caused by Narcotics Drugs and Psychotropic Substances. This menace of drug may enter our house unknowingly, but its effect will be unimaginable. When the Courts recognize and respect the individual right to life and liberty as guaranteed under Article 21 of the Constitution of India, it is the duty of the Court to recognize and respect such rights of the citizens as a whole. The

societal interest will always be paramount when compared to the individual right of a person.

12. If the seriousness of the offence with the peculiar facts and circumstances are taken into consideration, it cannot be said that the accused is languishing in prison due to undue delay in trial. The facts and circumstances discloses that the Trial Court has already taken up the matter for trial though no witness has been examined. When admittedly the petitioner is booked for the offence of carrying commercial quantity of drugs, definitely the rigors of Section 37 NDPS Act has come into play.

13. In view of the discussions held above, this Court is of the view that when the individual right of the accused guaranteed under Article 21 of the Constitution of India is considered in the light of the interest of society as a whole, which is to be protected by unscrupulous drug peddlers, the balance will tilt in favour of the society as a whole rather in favour of the accused. The societal interest is always paramount when compared to the individual right of the accused. Therefore, it is to be held that no grounds are made out to entertain the petition. Hence, bail application is rejected. However, trial court is directed to expedite the matter and take much of initiative to dispose of the matter within three months from the date of receipt of the order.

14. In view of the above, the bail application stands disposed of.

JUDGE