

GAHC010006452024



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

Case No. : Bail Appln./231/2024

RAMVIJOY KUMAR
S/O LOKNATH ROY
R/O VILL- RUSTAMPUR,P.S. RUSTAMPUR,P.S. RUSTAMPUR, DIST.
VAISHALI (BIHAR), PIN-781029

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N DUBEY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

04.03.2024.

Heard Mr. N. Dubey, learned counsel for the accused. Also heard Mr. B. Sharma, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure,

1973, is preferred by accused, namely, Ramvijoy Kumar, who has been languishing in jail hazoot since 20.07.2023, in connection with Nilambazar P.S. Case No. 133/2023, under Sections 20(b)(ii)(c)/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Dipjyoti Malakar, SI of Police, Nilambazar P.S. on 19.07.2023.

4. The essence of allegations, made in the said complaint is that acting on a tip off on 19.07.2023, at about 04.20 pm, he along with other staff, have arrived at N.H. 8, in front of Tyre repairing Garage of Ashish Paul and apprehended six persons, namely, Akash Yadav, Ramvijoy Kumar, Hira Roy, Promod Kumar, Ratnesh Kumar and Pradip Roy, while they were waiting for vehicle, and found one gray coloured bag containing two packets of suspected Ganja weighing 2.586 kg in each bag from the possession of Akash Yadav, one gray and sky coloured bag containing four packets of suspected Ganja weighing 2.578 kg, 2.593 kg, 2.574 kg, and 2.576 kg respectively, from the possession of Hira Roy, and one black and grey coloured bag containing two packets of suspected Ganja, weighing 2.586 kg and 2.596 kg from the possession of Promod Kumar and one green coloured bag containing four packets of Ganja weighing 2.592 kg, 2.562 kg, 2.582 kg, and 2.576 kg, respectively, from the possession of Ratnesh Kumar and one blue coloured bag containing one packet of Ganja weighing 2.574 kg from the possession of Pradip Roy, all total 33.560 kg and also found one Redmi mobile in the possession of Ramvijay Kumar, and one POCO Mobile in the possession of Ratnesh Kumar, one Vivo Mobile from the possession of Pradip Roy and one LAVA Mobile from the possession of Pramod Kumar and seized the same by preparing seizure list in presence of witnesses.

5. Mr. Dubey, learned counsel for the accused, advanced his arguments on the following points and to release the accused on bail after consideration of said points:-

- (i)** The accused is languishing in jail for 220 days;
- (ii)** The investigation has already been completed and charge sheet has been submitted before the learned court below;
- (iii)** Nothing has been recovered from the possession of the accused except a Mobile Phone;
- (iv)** The accused is innocent and not involved with the offences alleged ;
- (v)** He is ready to face trial and will appear before the learned court below on each and every date;

6. On the other hand, Mr. B. Sharma, the learned Addl. P.P. submits that all the accused were apprehended while they were waiting for vehicle on the N.H. 8 and the contraband substances were recovered from the possession of five accused persons. Mr. Sharma further submits that though nothing has been recovered from the possession of the accused, yet, he was with the other accused persons and there is no explanation how he was with them and he was in conspiracy with the other accused persons and the same is apparent from the fact that the articles were being carried in small packets by different accused persons. It is the further submission of Mr. Sharma, that the contraband substances were of commercial quantity and the accused has failed to satisfy the twin requirements of section 37 NDPS Act. Mr. Sharma, therefore, contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and

also perused the scanned copy of the case record, and also the Status Report, received from the learned Court below.

8. It also appears from the record of the learned court below that charge sheet has already been submitted against the accused persons under Sections 20(b)(ii)(c)/29 of the NDPS Act, and charge against the accused persons has not yet been framed and the case has been fixed for copy on 16.02.2024.

9. It is also not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused persons are of commercial quantity, and as such the accused has to satisfy the twin conditions of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

10. But, from the materials on record, specially from the scanned copy of the record received from the learned court below also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail.

11. It is also to be mentioned here that in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, a bench of co-equal strength of Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail

unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

12. Same principle is echoed by another bench of co-equal strength of Hon’ble Supreme Court in the case of **NCB vs. Mohit Agarwal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021, decided on 19 July, 2022.

13. Though the learned counsel for the accused submits that as the contraband substances were not recovered from the conscious possession of the accused, yet, such a submission left this court unimpressed in view of the materials collected during investigation.

14. It is to be noted here that the issue of possession has been dealt with by Hon’ble Supreme Court in the case of **Union of India through NCB, Lucknow vs. Nawaz Khan**, reported in **(2021) 10 SCC 100**, as under :-

“**25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In *Madan Lal v. State of H.P.* (2003) 7 SCC 465 this Court held that:**

“**19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.**

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make

the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* (1979) 4 SCC 274 to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

26. What amounts to "conscious possession" was also considered in *Dharampal Singh v. State of Punjab* (2010) 9 SCC 608, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan* (2015) 6 SCC 222, this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this

knowledge.

15. In the case in hand, the scanned copy of the record of the learned court below indicates that all the six accused hails from Vaishali District of Bihar and they were working in a brick industry at Tripura and they were travelling together from Tripura and their destination was Vaishali, Bihar. And it also appears that they have alighted from Train at Nilam Bazar Station and waiting for vehicle to proceed to another Station. And as such, and applying the proposition of law, laid down in the case of **Nawaz Khan** (supra), it cannot be said that the same were not recovered from the conscious possession of the accused.

16. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the opinion that this is not a fit case to grant the privilege of bail, under Section 439 of the Cr.P.C., to the accused and therefore, the same stands dismissed.

17. However, the learned Court below is directed to expedite the trial and conclude the same within shortest period of time, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

18. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant