

GAHC010035912024



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

Case No. : Bail Appln./496/2024

GURVINDER SINGH
S/O SRI MASTAN SINGH
R/O 1058, NANAKMATTAA, P.O. AND P.S. NANAKMATTAA,
DIST. UDHAM SINGH NAGAR, UTTARKHAND -262311

VERSUS

THE UNION OF INDIA
REP. BY NARCOTICS CONTROL BUREAU (NCB), THROUGH THE
INTELLIGENCE OFFICER, NCB, GUWAHATI ZONAL UNIT, GUWAHATI.

Advocate for the Petitioner : MR. O LASKAR

Advocate for the Respondent : SC, NCB

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

14.05.2024

1. Heard Mr. O. Laskar, learned counsel for the petitioner as well as Mr. S. C. Keyal, learned standing counsel, NCB.
2. By filing this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Gurvinder Singh**, has prayed for grant of bail in connection with **NDPS Case No.8/2023 (Corresponding to the NCB Crime No. 20/2022)** under Sections **8(c)/20(b)(ii)(C)/29 of NDPS Act**, pending in the court of learned Additional Sessions Judge, No.2, Kamrup(M), Guwahati.

3. The brief fact of the case is that on 11.07.2022 the NCB officials of Guwahati zonal unit conducted an inquiry from Khanapara bridge to Basistha Chariali on the basis of an information received earlier regarding trafficking of ganja. Accordingly, on that day at about 9.30 pm they intercepted a truck bearing No. UK 06 CA 7169 near Khanapara flyover and recovered huge quantity of ganja weighing 297.520kg. Accordingly, a case was registered vide NCB crime No. 20/2022. The driver of the truck Arif Mohmad was arrested and the contraband was seized. On the basis of the statement given by the arrested accused, the petitioner received a notice issued by the NCB asking him to appear before NCB, Guwahati for interrogation. On appearance of the petitioner on 25.09.2022, he was also arrested in connection with the case.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and no way connected with the alleged offence. The petitioner was made an accused only on the basis of the confessional statement given by the driver of the vehicle. It is further submitted that nothing was recovered from the possession of the petitioner and he was also not present at the place of occurrence. During investigation, the petitioner was summoned by the NCB, Guwahati for examination. On his appearance before the concerned authority, the petitioner was arrested and since then he has been languishing in judicial custody. The petitioner had no knowledge about the alleged trafficking of the contraband.

5. It is also submitted by the learned counsel for the petitioner that the three accused persons are absconding in the case pending before the trial court. Though warrant of arrest was issued against them but the police have failed to arrest the absconder accused. As such, there is no possibility that the trial would start soon in their absence. It is further submitted that the detention of the

present petitioner for an indefinite period of time for the trial is not justified and hence, he may be released on bail.

6. Another contention raised by the learned counsel for the petitioner is that the petitioner is also otherwise entitled for default bail under Section 167(2) Cr.P.C. as the investigation was not completed within the period of 180 days and the incomplete charge-sheet was filed without the chemical analysis report. According to learned counsel for the petitioner, the incomplete charge-sheet was filed to defeat the indefeasible right of the petitioner to claim default bail. An incomplete charge-sheet particularly, not accompanied by a chemical analysis report is not a charge-sheet in the eye of law. As such the petitioner is entitled to be released on default bail.

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

(i)(1014) *SCC online P& H 24880 (Ravinder @ Bindar vs State of Haryana)*

(ii) (2022) 12 SCC 633 *State (by NCB) Bengaluru vs Pallulabid Ahmed Arimutta and others.*

(iii) (2018) *SCC online P & H 6941 (Ajit Singh and others Vs state of Punjab).*

7. On the other hand, Mr. S. C. Keyal, learned standing counsel, NCB has admitted that though charge-sheet was filed within the specified period of 180 days but without the FSL report. According to learned standing counsel, NCB Hon'ble Supreme Court in catena of decisions has held that mere absence of forensic report does not vitiate the charge-sheet nor it should be treated as incomplete one.

8. It is also the submission of learned standing counsel, NCB that commercial quantity of ganja was recovered and seized from a false cavity in the roof of cabin of the alleged seized truck. It was the present petitioner, who contacted the owner of the truck and arranged the truck for smuggling the seized ganja. The present petitioner, who linked up with the supplier and arranged for the seized ganja for further trafficking to the State of Bihar. It is also submitted that he contacted with the driver of the truck to bring the truck to Ambasa for loading the packets of ganja and when the truck was brought there, he himself took the truck and informed the supplier Rati Ranjan Dev Verma another co-accused who then brought the consignment of ganja and loaded them in the false cavity in the roof of the cabin of the truck. Thereafter, the petitioner handed over the ganja loaded truck to Md. Arif and instructed to deliver the ganja consignment to one Ranjit in Bihar.

9. According to learned standing counsel, NCB the present petitioner is the main linkman between all the co-accused in the trafficking of ganja in the instant case. Therefore, he has prayed for dismissal of the bail application.

Learned standing counsel, NCB has cited one case law *Md. Arbaz vs State of NCB of Delhi (2020) O Supreme Delhi 1471*.

10. Regarding issue about entitlement of bail on the ground of incomplete charge-sheet, Hon'ble Supreme Court in the case of *CBI vs Kapil Wadhawan and another*, reported in *2024 SCC online SC 66*, has held that once charge-sheet has been filed against the accused within prescribed time, the accused cannot claim his statutory right of default bail under Section 167 (2) of Cr.P.C. on the ground that the investigation against other accused was pending.

11. In another case ***Dinesh Dalmia Vs CBI***, reported in **(2007) SCC online SC 1152**, Hon'ble Supreme Court has elaborately explained the scope of

Section 167 (2) vis-a-vis 173(8) Cr.P.C.The relevant paragraphs are reproduced below:

".....19. A charge-sheet is a final report within the meaning of sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefore. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge-sheet must await the arrest of the accused.

20 to 38.....

39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender, once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub- section (8) of Section 173 of the Code."

12. In the case of Sanjay Kumar Pundeer Vs State of NCT of Delhi, reported in (2023) SCC online Delhi 5696, it was held that charge-sheet is filed upon completion of investigation. After investigating officer has found sufficient evidence to prosecute the accused for offences under which the FIR has been registered while any other scientific examination report is only corroborative in nature to the material collected by the IO and filed with the charge-sheet. These observations were rendered by the Court in the light of the judgment of the Supreme Court in *Serious Fraud Investigation Office vs Rahul Modi and*

others 2022 SCC online SC 153 and the judgment *in Suraj vs State of NCT of Delhi 2022 SCC online Delhi 3501.*

13. In ***Tara Singh vs. State***, reported in ***AIR 1951 SC 441***, the report of imperial serologist and drawing of the sketch map of the occurrence was produced by filing second challan, beyond the period prescribed under Section 167(2) of Cr.P.C. The accused claimed bail Section 167(2) of Cr.P.C. on the ground that the first challan was incomplete. The submission was rejected by the Court. It was held that first challan was complete, even though the report of imperial serologist or the drawing of the sketch map of the occurrence did not accompany the same. Section 173(1)(a) requires that as soon as the police investigation under Chapter XIV is complete, there should be a report forwarded to the Magistrate in the prescribed form setting forth names of parties, nature of information and names of persons who appear to be acquainted with circumstances of the case. Thus, it was complete report.

14. In the case of ***Aleksander Kurganova vs. State of Maharashtra***, reported in ***2021 SCC Online Bom 150***, the Court dealt with questions viz. does a charge-sheet without FSL report in the crime under the **NDPS Act** remain incomplete and attracting Section 36-A (4) of the Act and findings of the 'field test' suffer evidently because the test is by the Police and not an independent agency. Several decisions were placed for consideration before the Court including the decision in the case of ***Sunil Phulbande and Rafael Palafox Garcia*** (supra). The Court considered the decision of the full bench of Punjab and Haryana High Court in the case of ***State of Haryana Vs. Mehal Singh and another*** (Supra). Reference was also made to the decision in the case of ***Dinesh Dalmia vs. C.B.I. (Supra)***. The Court observed that the ratio of ***Dinesh Dalmiya*** (Supra) has to be considered as it holds that mere absence of forensic

report does not vitiate the charge-sheet nor it should be treated as incomplete one.

15. In view of the aforesaid legal proposition, this Court is of the view that as the charge-sheet has been filed against the petitioner within the prescribed time limit and the cognizance having been taken by the Special Court on the offence allegedly committed by the petitioner and other co-accused, hence, the petitioner could not have claimed the statutory right of default bail under Section 167(2) Cr.P.C. on the ground that the investigation is incomplete as the charge-sheet has been submitted without the FSL report.

16. Coming to the question of delay in proceeding of the case, Hon'ble Supreme Court has held that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail vide Criminal Appeal No. 704/2024 dated 07.02.2024 in the case of *Gurwinder Singh vs State of Punjab and another*.

17. In view of the aforesaid legal mandates, this Court is not inclined to grant bail to the petitioner.

18. Hence, prayer for bail is rejected. However, the learned trial court is directed to split up the case against the absconder accused and to proceed with the trial in accordance with law.

19. Accordingly, the bail application stands disposed of.

JUDGE

Comparing Assistant