

GAHC010032412024



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

**Case No. : Bail Appln./462/2024**

DINBANDHU KUMAR,  
S/o SRI LALA ROY,  
R/o VILL. - GIASPUR MAHAJI,  
P.S. - SALIMPUR,  
DIST. - PATNA, BIHAR.

VERSUS

THE STATE OF ASSAM  
REP BY THE PP, ASSAM

**Advocate for the Petitioner : MR S RAHMAN**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE ROBIN PHUKAN  
ORDER**

**12.06.2024**

Heard Mr. S. Rahman, learned counsel for the accused and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

**2.** This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Sri Dinbandhu Kumar**, who has been

languishing in jail hazot in connection with the **NDPS Case No. 37/2023**, pending before the learned Additional Sessions Judge No. 2, Kamrup (M) at Guwahati, arising out of **Garchuk P.S. Case No. 357/2022**, under Sections 20(c)/27(A)/29 of the NDPS Act, for granting bail.

**3.** It is to be noted here that the said case has been registered on the basis of an FIR lodged by S.I. Mabarak Ali Ahmed of Garchuk P.S., on 29.11.2022. The essence of allegations, made in the FIR dated 29.11.2022, is that on 29.11.2022, at about 03:40 a.m., acting on a tip off the informant along with his staff intercepted one vehicle, bearing registration No. NL-01-AA-3038, which was coming from Tripura and apprehended four persons namely, Manish Kumar, Dinbandhu Kumar, Sanjoy Kumar and Navin Kumar, thereafter, on searching the vehicle they have recovered 75 numbers of packets of suspected Ganja (Cannabis), weighing 512.96 kg, and thereafter, seized the same, along with the vehicle and three mobile phones preparing seizure list.

**4.** The accused also filed one Additional Affidavit enclosing a Bus Ticket to contend that he had travelled to Siliguri by Bus and from Siliguri to Guwahati and thereafter to Agartala and since he is a student and not had enough money with him, he opted to perform the journey from Agartala to Bihar by the Truck seized by police.

**5.** Mr. Rahman, learned counsel for the accused submits that the accused was arrested on 29.11.2022, and since then he has been languishing in jail hazot for more than 1 year 6 months and 4 days. Mr. Rahman further submits that the accused is a student and that he had visited Tripura and was returning home in the Truck seized herein this case. Mr. Rahman also submits that the accused is no way involved with the offence alleged in the FIR and that the contraband substances were recovered from a specially made chamber in the vehicle and as such, the driver, owner and the handyman are responsible for the same. It is the further

submission of Mr. Rahman that the accused has no culpable mental state as provided in Section 35 and that the presumption under Section 54 of the NDPS Act is not available here in this case. Mr. Rahman further submits that the trial of the case is yet to be started and no witness has been examined till that and that the accused has right to fair trial and the said right is violated and that he is ready to face the trial and will appear before the learned trial court on each and every date, and therefore, it is contended to allow this petition.

**6.** On the other hand Mr. Lahkar, learned Additional Public Prosecutor has vehemently opposed the petition on the ground that the present accused was travelling with the other three accused persons in a Truck from where 512.96 kg of Ganja were recovered, which is of commercial quantity and that there is nothing on record to satisfy the twin requirements of Section 37 of the NDPS Act. Referring to a decision of Hon'ble Supreme Court, in the case of **Union of India Through NCB vs. Md. Nawaz Khan** {Criminal Appeal No. 1043/2021, arising out of SLP (Crl.) No. 1771/2021} Mr. Lahkar submits that since the accused was travelling along with the other three accused persons in a same Truck from Bihar to Tripura and then from Tripura to Bihar, from where the contraband substances were recovered, from a specially made compartment and therefore, it cannot be said that he had no knowledge of the contraband substances being carried in the Truck and that the same were not recovered from conscious possession of the present accused. Further, referring to another decision of Hon'ble Supreme Court, in **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Another**, reported in **(2004) 7 SCC 528**, Mr. Lahkar submits that there is no considerable delay herein this case and at best the delay can be termed as systemic delay causing no apparent prejudice and as such, it cannot be said that the right to fair trial of the accused is violated herein this case and therefore, it is contended to dismiss the application.

**7.** Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned trial court.

**8.** It appears that the accused was arrested on 29.11.2022, and since then he has been languishing in jail hazot for more than 1 year 6 months and 4 days. Further, it appears from the status report dated 12.03.2024, received from the learned trial court, indicates that the charge has been framed against the accused person under Sections 20(c)/27(A)/29 of the NDPS Act on 06.06.2023 and only one prosecution witness has been examined till date and presently the case is pending for examination of other witnesses. It also appears from the case record that all the four accused were travelling together from Tripura to Bihar in the said vehicle from where the commercial quantity of contraband substances was recovered.

**9.** As the possession is disputed here in this case, it would be in the interest of justice what it is. The issue of possession has been dealt with by Hon'ble Supreme Court in the case of ***Union of India v. Mohd. 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 *MadanLal v. State of H.P.* (2003) 7 SCC 465 this Court held that: (SCC p. 472, paras

19-23 & 26)

'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 vs. 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 vs. 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.”

**10.** Now, advertig to the case in hand, I find the following facts and circumstances from the record of the learned trial court and also from the documents placed on record :-

- (i) The accused was travelling in the seized Truck, bearing registration No. NL-01-AA-3038, from Agartala to Bihar;
- (ii) From a specially made compartment of the said Truck, the seized contraband substances were recovered;
- (iii) Indisputably, the seized contraband substances recovered from the seized Truck was of commercial quantity; and
- (iv) He was travelling in the said Truck with other three co-accused persons and explanation, so forthcoming from the accused in travelling together in a Truck, which is not a public conveyance is found to be not acceptable.

**11.** From a careful analysis of the facts and circumstances here in this case and applying the ratio laid down by Hon'ble Supreme Court in the case of **Nawaz Khan** (supra), to the same this Court is unable to agree with the submission of Mr. Rahman, learned counsel for the accused in respect of possession of contraband substances and also in respect of absence of no culpable mental state as provided in Section 35 and that the presumption under Section 54 of the NDPS Act is not available to him.

**12.** Indisputably, the quantity of contraband substances so recovered from the possession of the accused parson is of commercial quantity. And as such he has to satisfy the twin requirements of section 37 of the NDPS Act. It is also to be noted here that in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**,

reported in **(2023) SCC OnLine SC 346**, the Hon'ble Supreme Court has observed that :-

"in view of the above position, 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."

**13.** In the present case, neither from the documents placed on record nor from the submission of learned counsel for the accused, this Court is able to derive its satisfaction that the accused has succeeded in satisfying the twin requirements of Section 37 of the NDPS Act, as provided in **Ajay Kumar Singh @ Pappu** (supra).

**14.** Though Mr. Rahman, learned counsel for the accused submits that the accused has the right to have a fair trial, yet from the scanned copy of the record this court is unable to find anything, which suggest that there is delay in trial for which prejudice is caused to the accused, so as to impair the right to fair trial of the accused. No doubt some delay is herein there, but the same, at best, can be termed as systemic delay as held by Hon'ble Supreme Court, in the case of **Kalyan Chandra Sarkar** (supra).

**15.** The offences here in this case are serious in nature and the trial is going on and enlarging the accused on bail, at this stage will hamper the same.

**16.** Having regards to the facts and circumstances discussed herein above, and also considering the submissions of learned Advocates of both side, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused.

**17.** Accordingly, this Bail Application stands **dismissed**.

**JUDGE**

**Comparing Assistant**