

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.89 of 2024**

Smt. Ritu Parna Sen

D/O- Sri Manash Sen

W/O- Sri Abhijit Nama

R/O- Siddhi Ashram, Agartala.

P.S.- Amtali, P.O.- Amtali, West Tripura

.....Applicant

On behalf of:

Sri Abhijit Nama

S/O- Sri Ajit Nama

R/O- Siddhi Ashram, Agartala.

P.S.- Amtali, P.O.- Amtali, West Tripura

....Accused person

Versus

The State of Tripura

Represented by the Principal Secretary to the Government of Tripura.

...Respondent

For Applicant(s)	:	Mr. D. Biswas, Adv, Ms. P. Chakraborty, Adv.
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For Respondent(s)	:	Mr. Raju Datta, P.P, Mr. Rajib Saha, Addl. P.P.
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HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

18/12/2024

This bail application under Section 439 of Cr.P.C. is filed for releasing of the accused-in-custody namely, Sri Abhijit Nama in connection with G.R.P.S. case No.08 of 2021 under Section 21(c)/29 of NDPS Act.

Heard Learned Counsel, Mr. D. Biswas along with Learned Counsel, Ms. P. Chakraborty appearing on behalf of the accused-in-custody and also heard Learned P.P., Mr. R. Datta assisted by Learned Addl. P.P., Mr. Rajib Saha representing the State-respondent.

Taking part in the hearing, Learned Counsel for the accused-in-custody first of all drawn the attention of the Court that the said accused is in custody since last 314 days and by this time, the I.O. has laid charge-sheet against this accused and another but as the another accused is absconding, so, trial could not be commenced and as such the said accused is languishing in jail without any valid reason. In addition to that Learned Counsel also submitted that there is non-compliance of the relevant provisions of Section 42 & 55 of NDPS Act as the search and seizure was not made in-accordance-with law and furthermore, the seized contraband items were not sent to SFL for examination within the stipulated period violating the directions given by the Hon'ble Apex Court and furthermore, there were huge procedural irregularities in this case. So, in summing up Learned Counsel submitted that considering the period of detention of the accused-in-custody and for huge irregularities of the prosecution emerged from the record as the I.O. by this time has laid charge-sheet against the accused-in-custody, so, Learned Counsel for the applicant urged for releasing the accused on bail in any condition. He also referred few citations in support of his contention in course of hearing.

On the other hand, Learned P. P., Mr. R. Datta appearing on behalf of the State-respondent strongly opposed the bail application and submitted that against this accused, apart from this case, two other cases are pending and he is a habitual offender and furthermore, after furnishing fake medical certificate he obtained bail from the Court, so his bail was cancelled from the Lower Court and also by this Court by order

dated 05.12.2023 in connection with case No.B.A. 47 of 2023 arising out from G.R.P.S. case No.30/2022 (NDPS) under Section 21(c)/29 of NDPS Act and referring the citations referred by Learned Counsel for the applicant, Learned P.P. submitted that in those cases the accused was languishing in jail for more than 7 ½ years, so, considering the period of detention in custody, Hon'ble Apex Court granted bail and Learned P.P. also submitted that as referred by Learned Counsel for the applicant that there were procedural irregularities in this case, the same cannot be considered during hearing of bail application rather those are the matters to be considered during trial and finally, urged for dismissal of the bail application.

Considered.

In this case, the prosecution was set into motion on the basis of an FIR laid by one Sri Jitendra Kumar Singh, S.I., RPF, N.F. Railway to O/C GRP Agartala alleging inter alia that on 27.09.2021 at about 1900 hours, he received telephonic information from Sri Aswani Kumar, Chief Commercial Clerk/Agartala that during unloading of the consignment from R/SLR No.ER-142722-D Rear compartment attached with T/No.03173 Up (K.J. Express) which arrived at Agartala at about 18:10 hours at Platform No.2, he suspected that some contraband goods were booked under the PW Bill no.370560 in two bundles out of 07 bundles. Accordingly, he along with ASI/B.P. Das and other staff under the supervision of IPF/AGTL and OC/GRP/AGTL and his other officers attended at Platform No.02 of AGTL station and started checking all the booked 07 numbers of bundles of PW Bill No.370560 Ex. SDAH-AGTL by

Sristi Enterprises 11/2/H/2 BG Road KOL-15 to Abhijit Nama of AGTL and during checking out of 07 Nos. of bundles in which 02 bundles No.(1) & (2) could detected Eskuf cough syrup (Codeine Phosphate & Chlorpheramine Maleate Syrup) 100 ml each of Batch No.LESL-394, LESL-381 and LESL-345 respectively total 620 Nos. of bottles. It was also stated in the FIR that all the recovers suspected contraband goods of 620 Nos. of bottles of Eskuf cough syrup and other 05 Nos. bundles manihari (stationeries) goods are seized at the spot as per seizure list in presence of witnesses. On the basis of that information, Agartala P.S. G.R.P.S. case No.8/2021 under Section 21(c)/29 of NDPS Act was registered and in course of investigation this present accused, Abhijit Nama surrendered before the Court on 13.09.2023 and he was taken into custody and on the ground of illness, he was granted interim bail till 13.10.2023. In the meantime, the I.O. of the case submitted a prayer before the Court for cancellation of his bail on the ground that he has submitted fake medical papers and as such on and from 09.02.2024 he was again taken into custody in connection with this case and since then he is languishing in jail. The I.O. by this time submitted charge-sheet against this accused and other accused Ranjan Dutta Chowdhury. In the report it is also submitted by I.O. that the accused is the authorized agent of M/S Sristhi Enterprise and M/S Maa Kali Enterprise since 2020 and it also revealed that the accused himself was the recipient of contraband goods at Agartala Station which were sent by M/S Sristhi Enterprise, Kolkata and this accused was also involved in connection with G.R.P.S. case No.07 of 2022 under Section

21(C)/29 of NDPS Act and also Agartala G.R.P.S. case No.30/2022 under Section 21(C)/29 of NDPS Act for possessing contraband items of commercial quantity.

In course of hearing, Learned P.P. also submitted that the consignment was booked in the name of the accused-in-custody although the same was rebutted by Learned Counsel for the applicant. As already stated, in course of hearing few citations were referred by Learned for the applicant.

The High Court of Jammu & Kashmir and Ladakh at Jammu in **State of J & K vs. Sham Lal** dated 26.04.2023 wherein in para No.16 the High Court of Jammu & Kashmir and Ladakh observed as under:

"16. The prosecution has failed to prove that contraband recovered in the present case was kept in the safe custody and forwarded to FSL in accordance with law and without any delay. It is pertinent to note that in view of stringent provisions regarding punishment and grant of bail, the legislature in its wisdom enacted section 55 of the NDPS Act to ensure that officer Incharge of Police Station shall immediately take charge and keep the alleged contraband in safe custody, in order to rule out any possibility of tampering with the contraband. Prosecution is obliged to prove that the contraband after its recovery and seizure from the accused was kept in safe custody, in the Malkhana of the concerned Police Station under proper entry in the Malkhana register. The prosecution is also obliged to prove that said sample of the contraband was forwarded to FSL without any delay."

Referring the same, Learned Counsel submitted that in this case the contrabands were not sent to the SFL within time. As such the accused deserves to be released on bail.

Learned Counsel further referred another citation of High Court of Judicature at Allahabad, Lucknow Bench in **Wahid Ali vs. Narcotics Control Bureau Lucknow** dated 12.07.2023

reported in **(2023) SCC OnLine All 423** wherein in para No.24, Hon'ble the High Court of Allahabad observed as under:

"24. As regards the second condition prescribed under Section 37(1) (b)(ii) that the accused if enlarged on bail, he is not likely to commit any offence while on bail, it is essential to note that the Hon'ble Supreme Court in the case of *Ranjitsingh Brahmajeetsing Sharma* (supra) had clearly held that while forming a view with regard to future conduct of the accused, the court should consider keeping in view the antecedents of the accused, his propensity and the nature and the manner in which he is alleged to have committed the offence. In the present case, the accused has no criminal antecedents and thus, I have reasons to record satisfaction as is required in the second part of Section 37(1)(b)(ii) of the Act. Although, delayed trial in itself is a ground for grant of bail in the cases under N.D.P.S. Act, the court cannot ignore the fact that after about two years of detention, only one witness has been examined. This view has been recently taken by the Hon'ble Supreme Court in the case of *Mohd Muslim @ Hussain* (supra) and the order passed by the Hon'ble Apex Court in the Case of *Rabi Prakash v. The State of Odisha* decided in the Special Leave to Appeal (Crl.) No(s).4169/2023. I am not going to the other arguments raised at the bar with regard to the violation of Circular No. 1/88, the factum regarding the conscious possession which is to be analyzed after the evidence. Any finding at this stage may have affect on the outcome of the trial and the same are also not required in view of my findings recorded above pertaining to the violation of condition under Section 50 N.D.P.S. Act. In view of the findings recorded above, the accused-applicant is entitled to be enlarged on bail. Thus, the bail application is allowed."

He further referred another citation of High Court of Bombay in **Shivraj Gorakh Satpute vs. The State of Maharashtra** dated 15.09.2023 reported in **(2023) SCC OnLine Bom 1996** wherein para No.9 the High Court of Bombay observed as under:

"9. In the instant case, it is not in dispute that the house of the Applicant was searched and Ganja was seized between sunset and sunrise without any warrant or authorization and that there was no compliance of Section 42 of the NDPS Act. It is sought to be projected that it was a chance seizure and hence, compliance with section 42 was not possible. In this regard, it is relevant to note that the accused no. 1 - Vinod Rajaram Shinde, who was allegedly found in possession of two bags containing 22 kgs of Ganja was arrested on 01/07/2021. It is the case of the prosecution that on 02/07/2021, the accused no. 1 had

made a disclosure statement that he was willing to show the place and the person from whom he had purchased the contraband and that pursuant to the said disclosure statement, 10 kgs of Ganja was recovered from the house of accused no. 2 - Samadhan Tawde at Nashik. The accused no. 2 allegedly made a disclosure statement on 05/07/2021 that he had purchased the contraband from the Applicant herein, who was a resident of Sangamner, Ahmednagar and that he was willing to show his house. Pursuant to the said disclosure statement, the NCB team proceeded to the house of the Applicant at Ahmednagar and allegedly recovered 50 kgs of Ganja from his residence. The material on record reveals that the co-accused had disclosed the name of the Applicant as well as his address. Hence, prima facie it was not a case of chance recovery or seizure in the normal course of investigation but it was on the basis of specific information given by the co-accused. It is also pertinent to note that the said information was given at about 3.00 p.m. and the search and seizure was conducted after sunset. It is not the case of the prosecution that the empowered officer did not have sufficient time to obtain warrant or authorization without affording opportunity to the Applicant to escape or conceal the evidence. The concerned officer has not recorded reasons for such belief in terms of proviso to Section 42(1) of the NDPS Act. Hence, prima facie the search and seizure, which is in contravention of the mandatory provisions of Section 42 of the NDPS Act prima facie makes the recovery doubtful."

Referring the same, Learned Counsel submitted that since there was non-compliance of the provision of Section 42 of NDPS Act, the accused deserves to be released on bail.

Learned Counsel again referred another citation of the Hon'ble Supreme Court of India in **Mohd. Muslim alias Hussain vs. State (NCT of Delhi)** dated 28.03.2023 reported in **(2023) SCC OnLine SC 352** wherein in para Nos.20 & 21 Hon'ble the Apex Court observed as under:

"20. 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.

21. 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 Malik¹⁹). 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."

Referring those citations and others, Learned Counsel for the applicant submitted that since the accused is lodging in jail for a considerable long period of time and another accused is absconding and there is no immediate chance of his appearance before the Court as warrant has been issued against him, so, considering the period of detention, the accused may be released on bail in any condition.

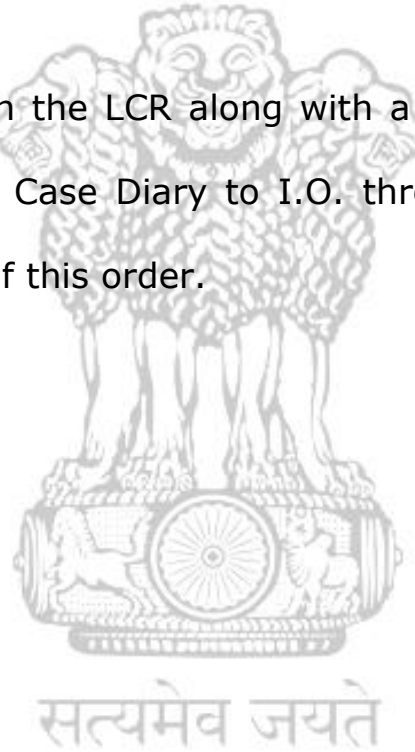
I have heard arguments of both the sides at length and gone through the relevant prosecution papers. Here in the case at hand, there is charge against the accused for committing offence punishable under Section 21(C)/29 of NDPS Act by the accused-in-custody. So, considering the facts and circumstances of the case and the nature of allegation against the accused and also the fact that the trial of the case is likely to be commenced, I find no scope at this stage to release the accused on bail. The matters of procedural irregularities as submitted are requires to be dealt with during trial by the concerned Trial Court, not at this stage. So, the bail application

deserves no consideration and accordingly, the same is rejected. The accused is to remain in J/C as before. From the record it transpires that another accused is absconding, so, if the Learned Trial Court thinks it prudent, in that case, the Learned Trial Court may consider splitting up of the trial against this accused and may proceed accordingly for disposal of the case, considering the fact that the accused is lodging in jail for a considerable long period and in that event all endeavours should be made to dispose of the case giving top priority.

With these observations, this bail application stands disposed of.

Send down the LCR along with a copy of this order. Also return back the Case Diary to I.O. through Learned P. P. along with the copy of this order.

JUDGE



MOUMITA
DATTA
Purnita

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