

(2021) 06 GAU CK 0150

Gauhati High Court

Case No: Bail Application No. 945 Of 2021

Satyender Ray

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: June 24, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 439
- Narcotic Drugs & Psychotropic Substances Act, 1985 - Section 8(c), 19, 20(b)(ii)(C), 24, 27A, 29, 37, 37(1)(b), 37(2), 42, 52(a), 57, 67

Hon'ble Judges: Manish Choudhury, J

Bench: Single Bench

Advocate: N Alam R K

Final Decision: Dismissed

Judgement

1. The Court proceedings have been conducted through remote video conferencing mode due to the prevailing situation in the State due to Covid-19

pandemic.

2. Heard Mr. A. Rahman, learned Counsel for the accused-petitioner. None has appeared for the respondent Narcotics Control Bureau (NCB).

3. This application has been preferred under Section 439, Code of Criminal Procedure, 1973 (CrPC) by the accused-petitioner, Satyender Ray seeking bail in connection with N.D.P.S. case no. 36/2020, arising out of N.C.B. Crime No. 18/2019, presently pending before the Court of Sessions (Special)

Judge, Kamrup (M), Guwahati.

4. The accused-petitioner after arrest, was remanded to custody on 09.12.2019 in connection with N.C.B. Crime No. 18/2019 which was registered

under Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985, for short) which is stated to be punishable under

Sections 20(b)(ii)(C)/29 of the NDPS Act, 1985. After completion of investigation, the respondent NCB had submitted offence report on 03.06.2020.

After submission of the Offence Report, the case has been registered as NDPS Case No. 36/2020 before the Court of District and Sessions Judge

No. 5 (Special Judge), Kamrup (M), Guwahati. The scanned copies of the case records of NDPS Case No. 36/2020 were called for and accordingly,

the same have been received from the Court of learned Special Judge, Kamrup (M), Guwahati.

5. Learned counsel for the accused-petitioner has submitted that the accused-petitioner is in custody since 09.02.2019. After arrest, the Offence

Report has been submitted by the respondent NCB and accordingly, NDPS Case No. 36/2020 has been registered. But no progress has been made in

the trial till date. It is further submitted by him that the accused-petitioner was the driver of the vehicle wherefrom the contraband was allegedly

recovered. According to him, the main perpetrator of the crime has not been apprehended till date by the respondent NCB. In the above fact situation,

the accused-petitioner considering the length of detention, may be released on bail subject to imposition of any terms and conditions as there is no

chance of his abscondance.

6. The case of the prosecution, as it appears from the case records of NDPS Case No. 36/2020, can be stated, in brief, as under :

On receipt of a specific information on 07.12.2019 to the effect that a huge quantity of Ganja was being transported in a truck bearing registration no.

WB-11/B-7813 (the subject-vehicle™, for short) from Agartala to Guwahati by the accused-petitioner, the said truck was intercepted near

Health City Hospital, Khanapara, Guwahati at about 05-00 a.m. on 08.12.2019. Thereafter, the subject-vehicle was searched in presence of

independent witnesses. When searched, it was found that there was a cavity inside the driver's cabin of the subject-vehicle sealed with steel

sheets packed with nut bolt. When the said cavity was opened in presence of the accused-petitioner and independent witnesses by the team of NCB,

15 packets were found. On cutting open the packets, dried flowering tops believed to be Ganja were found. A small quantity of the dried flowering top was taken from each of the 15 packets and tested separately with the field drug detection kit and the tests gave positive result for Ganja. When weighed, the contraband (Ganja) found to be 199.450 Kgs in weight. An Inventory/search cum seizure memo and a panchnama of seized goods were prepared. The statement of the accused-petitioner was recorded under Section 67 of the NDPS Act. The accused-petitioner was produced before the Court of learned Chief Judicial Magistrate, Guwahati on 09.12.2019 and he was remanded to custody on 09.12.2019. Samples of suspected contraband, 15 in nos., were sent to the Forensic Science Laboratory (FSL) on 09.12.2019 for chemical analysis. The report of the chemical analysis in respect of the samples was received on 29.05.2020 from the FSL. The report had indicated that the chemical analysis test gave positive result of Ganja/cannabis.

7. The powers of this Court to grant bail under Section 439, CrPC are subject to the limitations contained in Section 37, NDPS Act, 1985 and the restrictions placed to under powers of the Court under Section 37, NDPS Act, 1985 are applicable to this Court also in the matter of granting bail.

Section 37 of the NDPS Act, 1985 starts with a non-obstante clause. Keeping the non-obstante clause in mind, a reading of sub-section (2) of Section

37 of the NDPS Act, 1985 makes it clear that the power to grant bail to a person accused of having committed an offence either under Section 19 or

Section 24 or Section 27A and also offences involving commercial quantity under the NDPS Act, 1985 is not only subject to the limitations imposed

under Section 439, CrPC, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act, 1985. Apart

from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other two conditions viz. (i) the satisfaction of the

Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any

offence while on bail, have to be satisfied. In other words, these limitations are in addition to those prescribed under the CrPC or any other law in

force on the grant of bail. The operative part of Section 37, NDPS Act, 1985 is in the negative form. Such stringent restrictions have been put on the discretion of the Court for considering application for release of a person accused of offences prescribed therein by the Legislature consciously in view of the seriousness of the offences. The conditions mentioned in Section 37 of the NDPS Act, 1985 are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression "reasonable ground" means something more than prima facie grounds. In an application for bail involving commercial quantity which brings in the limitations prescribed in Section 37 of the NDPS Act, 1985, it is not the period of detention but merits qua the twin conditions laid down in Section 37 which are to be considered.

8. On perusal of the case records, it is found that the accused-petitioner was the only occupant in the subject-vehicle when the same was intercepted and he was driving the same. The contraband i.e. Ganja weighing 199.450 Kgs were recovered from a special cavity made inside the driver's cabin of the subject-vehicle. The materials in the case record prima facie indicate compliance of procedure prescribed in Section 42, Section 52(a) and Section 57 of the NDPS Act. Whether the contraband substances i.e. Ganja which is evidently commercial quantity, was kept inside the special cavity made inside the subject-vehicle, driven only by the accused-petitioner, was with his conscious knowledge or otherwise will be determined in the course of the trial on the basis of the evidence to be led by the parties.

9. Having gone through the materials available in the case diary and the provision contained in Section 37(1)(b) of the NDPS Act, this Court is not persuaded to hold a view that the accused-petitioner is not guilty of any offence under Section 8(c), which is punishable under Section 20(b)(ii)(c)/29 of the NDPS Act, 1985.

10. In the above fact situation, this application fails and accordingly, the same is dismissed.

11. It is, however, made clear that the observations made above are only for the purpose of consideration of the present accused-petitioner's

prayer for bail and none of the observations made in this order shall have any bearing on the trial of the accused-petitioner.

12. It is expected that the learned jurisdictional trial Court will make endeavour to conclude the trial expeditiously.