

**HIGH COURT OF TRIPURA
AGARTALA**

A.B. No. 78 of 2021

Shri Bikash Ray

.....Petitioner(s)

Versus

The State of Tripura

.....Respondent(s)

For Petitioner(s) : Mr. S. Lodh, Adv.

For Respondent(s) : Mr. R. Datta, P.P.

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Order

10/11/2021

This is an application under section 438 Cr.P.C for granting pre-arrest bail to Bikash Ray, petitioner who is apprehending arrest in Bishalgarh PS case No.2021/BLG/059 which has been registered under sections 20(b)(ii)(C), 25, 27A, 29 and 32 of the NDPS Act, 1985.

[2] Similar application was earlier considered by this court in A.B 66 of 2021 and after consideration of the grounds advanced by the petitioner as well as the submissions of learned P.P, the said application was rejected by an order dated 17.09.2021.

[3] The facts of the case may be reproduced from the said order dated 17.09.2021 which is as under:

"[3] The bare facts essential for disposal of the bail application is as under:

Sri Parthanath Bhowmik, Inspector of Police of Bishalgarh police station lodged suo motu written FIR with the Officer in Charge of Bishalgarh police station alleging, inter alia, that on 24.07.2021 he received an information from own source that a truck bearing registration No. TN47-AT 4858 (Ashok Leyland Truck) was coming towards Bishalgarh from Udaipur and the said vehicle was carrying dried ganja. Sri Bhowmik recorded the said information in the general diary of the police station vide GD entry No. 8 dated 24.07.2021 and procured permission from the jurisdictional Superintendent of Police to step into action. Then, he along with required number of Officers and Staff left the police station vide GD entry No. 10 dated 24.07.2021 and started noticing the vehicles which were coming from the said direction. The suspected vehicle arrived in front of Bishalgarh police station at 05.45 am and the same was detained by the police team. Driver Selvaraj K of Tamil Nadu told the police team that the vehicle was carrying rubber sheet. When police undertook a search in the said vehicle, the driver tried to flee away. He was however, detained and brought to police station for interrogation. With the help of interpreter, police interrogated him for about three hours and came to know that during the previous night rubber sheet was loaded in his vehicle from a place called Madhab Bari at Jirania. Thereafter, he was taken to a place between Tepania and Killa in Gomati Tripura for loading dried ganja where he noticed huge quantity of dried ganja stored in a place and he learnt from the conversation of the people that Bishu Kumar Tripura was the owner of the said contraband. 3390 Kg dried ganja wrapped in rubber sheets was recovered from the said vehicle and the same was seized in presence of witnesses.

[4] Pursuant to the said FIR lodged by Inspector Parthanath Bhowmik, Bishalgarh PS case No. 2021/BLG/059 under Sections 20 (b)(ii)(C), 25, 27A, 29 and 32 of the NDPS Act, 1985 was registered and investigation of the case was taken up."

[4] Heard Mr. S. Lodh, learned counsel appearing for the petitioner. Also heard Mr. R. Datta, learned P.P. representing the State respondent.

[5] It is contended by Mr. Lodh, learned counsel that on the same set of allegations and on the same set of incriminating materials, accused Bishu Kumar Tripura was granted pre-arrest bail by this court

by an order dated 20.08.2021 passed in A.B 58 of 2021 and another accused namely Naithak Jamatia was also granted anticipatory bail by the Additional Sessions Judge, Sepahijala District, Bishalgarh by his order dated 31.08.2021 in Bail Application No. 33 of 2021. Counsel contends that the learned Additional Sessions Judge considered the materials available against the accused at length and by a detailed and reasoned order he granted anticipatory bail to Naithak Jamatia, accused petitioner. Counsel, therefore, submits that the present accused namely, Bikash Ray deserves equal treatment and his bail application may be considered by this court on the ground of parity. Counsel submits that no contraband was recovered from the physical possession of the present petitioner and the materials collected by the investigating agency do not even remotely connect him to the alleged crime. Learned counsel, therefore, urges the court to grant anticipatory bail to the petitioner.

[6] Opposing the contention of Mr. Lodh, learned counsel, Mr. R. Datta, learned P.P. contends that the CDR analysis demonstrates that the petitioner was in regular touch with the carrier of the contraband namely, Selvaraj K and the other accused persons involved in the case. Learned P.P submits that he is the principal accused of this case against whom there are genuine materials with regard to his involvement in the case. It is contended by Mr. Datta, learned P.P that he is also involved in Manu PS case No. 2021/004 for similar offence in which he has been charge sheeted. Learned P.P submits that the racket consisting of the

present petitioner and the other accused of this case is the most active racket in the state involved in drug peddling within the state and drug smuggling across the border. Learned P.P. submits that serious charges have been brought against the petitioner and therefore the petitioner does not deserve the extra ordinary relief under section 438 Cr.P.C. Learned P.P further refers to section 37 of the NDPS Act which puts strict restrictions with regard to grant of bail under the NDPS Act. In support of his contention, Mr. Datta, learned P.P has relied on the decision dated 22.09.2021 of the Apex Court in **Criminal Appeal No. 1043 of 2021 (Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan)** wherein the Apex Court has held as under:

"20 Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed."

[7] Learned P.P urges that in view of the stringent parameters laid down by the Apex Court with regard to grant of bail under NDPS Act, petitioner does not deserve pre-arrest bail in this case.

[8] The detailed submissions of learned P.P and the defence counsel were also recorded by this court when similar application of bail

was considered by this court in A.B 66 of 202, relevant extract of which is as under:

"[6] Mr.J.Bhattacharjee, learned counsel appearing for the petitioner contends that there is no material to justify arrest and detention of the present petitioner. The petitioner is not even named in the FIR. Only from the submission of the learned PP in the course of hearing of AB No.58 of 2021 his name transpired when learned PP submitted before the court that the investigating agency was also looking for the present petitioner. Therefore, petitioner Bikah Roy is apprehending his arrest in the case for which he has moved this application under Section 438 Cr.P.C.

[7] It is contended by Mr. Bhattacharjee, learned counsel that even the FIR named accused persons have been released on bail in this case. The driver of the vehicle from whose physical possession the contraband was seized has also been released on bail. Counsel therefore, submits that the present petitioner cannot be treated differently and he may also be released on bail. Counsel refers to the order dated 20.08.2021 of this court passed in AB 58 of 2021 whereby accused Bishu Kumar Tripura of this case was released on anticipatory bail under similar circumstances. Learned counsel therefore, urges for release of the petitioner on bail on any condition whatsoever.

[8] Appearing for the prosecution, Mr. Ratan Datta, learned PP vehemently opposes the bail application and submits that the petitioner is a habitual drug peddler who has been charge sheeted for similar offences in Manu P.S. Case No. 2021 MANU 004. Relying on the case diary, Mr.Ratan Datta, learned PP also contends that it would emerge from the CDR collected by the investigating agency that the petitioner was having frequent conversation over cell phone with accused driver Selvaraj K when the said driver was proceeding towards Bishalgarh with the contraband in his vehicle. According to learned PP, the said circumstance demonstrates that he was an active collaborator in smuggling the said contraband.

[9] Relying on the decision of the Apex Court in **STATE OF KERALA AND OTHERS Versus RAJESH AND OTHERS** reported in **(2020) 12 SCC 122**, Mr.Datta, learned PP submits that in the said case the Apex Court has succinctly held that liberal approach in the matter of bail under NDPS case is indeed uncalled for. Counsel submits that where the offence involves commercial quantity, Section 37 of the NDPS Act will come into play and the restrictions put under Section 37 of the Act with regard to grant of bail shall apply. According to learned PP, the Apex Court has laid down broad

parameters with regard to grant of bail in NDPS cases in the said judgment which are as under:

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

21. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.

22. The submission made by learned counsel for the respondents that in Crime No. 14 of 2018, the bail has been granted to the other accused persons (A-1 to A-4), and no steps

have been taken by the prosecution to challenge the grant of post-arrest bail to the other accused persons, is of no consequence for the reason that the consideration prevailed upon the court to grant bail to the other accused persons will not absolve the act of the respondent-accused (A-5) from the rigour of Section 37 of the NDPS Act."

[10] Also relying on the decision of the Apex Court in **SATPAL SINGH Versus STATE OF PUNJAB** reported in **(2018) 13 SCC 813**, Mr.Datta, learned PP contends that in view of the restrictions under Section 37 NDPS Act, bail cannot be granted to an accused under NDPS Act involving commercial quantity without recording the required level of satisfaction of the court about the innocence of the accused. Counsel has relied on paragraph 14 of the judgment which is as under:

"14. Be that as it may, the order dated 21-09-2017 passed by the High Court does not show that there is any reference to Section 37 of the NDPS Act. The quantity is reportedly commercial. In the facts and circumstances of the case, the High Court could not have and should not have passed the order under Section 438 or 439 CrPC without reference to Section 37 of the NDPS Act and without entering a finding on the required level of satisfaction in case the Court was otherwise inclined to grant the bail. Such a satisfaction having not being entered, the order dated 21-09-2017 is only to be set aside and we do so."

[11] Leaned PP further argues that investigation is under progress and materials against the petitioner are forthcoming. Under these circumstances, his release on anticipatory bail will frustrate the investigation of the case. It is contended by learned PP that in view of the growing number of cases of drug trafficking in the state and the materials available on record, his bail petition may be turned down.

[12] In the present context commercial quantity of contraband was seized by the investigating agency. Prosecution has brought to record the past criminal antecedent of the petitioner. The fact that he has been charge sheeted in Manu P.S. Case No.2021/004 for similar offence is not disputed. The case diary also contains incriminating materials supporting the charges against him. The CDR collected and produced by the investigating agency demonstrates that the accused had frequent and long telephonic conversation with the accused driver of the offending vehicle prior to seizure of the contraband from his

vehicle. The materials available on record has, thus, made out a good prima facie case against the accused. There is merit in the submission of learned public prosecutor that if the accused is bailed out at this stage, fair investigation would be impaired and collection of evidence against the accused would be obstructed.

[13] In view of the legislative mandate of Section 37 of the NDPS Act and the judgments of the Apex Court cited to supra, this court is of the view that in the facts and circumstances of the case, it would not be appropriate to allow pre arrest bail to the accused."

[9] Learned P.P has produced the updated case diary in two volumes. Perused the case diary and all other materials available on record. Considered the submissions of the counsel representing the parties.

[10] In the case of **Union of India through Narcotics Control Bureau, Lucknow (Supra)**, the matter came up before the Hon'ble Supreme Court against the judgment of the learned Single Judge of the Lucknow bench of High Court of Judicature at Allahabad whereby the High Court granted bail to the accused who was charged with several offences under the NDPS Act. In this case, while setting aside the order of the Hon'ble Allahabad High Court, one of the crucial circumstances which was assessed by the Apex Court was that the CDR analysis of the mobile number used by the accused respondent indicated that the respondent was in regular touch with the other accused persons. Relying on the said observation of the Apex Court, learned P.P has also referred to the CDR analysis made by the investigating agency in the case in hand, from which it appears that the accused made several calls from his mobile to the other accused

persons of the present case particularly Selvaraj K who was the carrier driver of the contraband and he also received several calls to his mobile from those accused persons. Contraband which has been seized in this case is dried ganja weighing 3390 Kg. The quantity is no doubt commercial quantity and the incriminating materials available against the petitioner has made out a good prima facie case against him.

[11] In view of the parameters laid down by the Apex Court in several judicial pronouncements for granting anticipatory bail particularly in NDPS cases and all other facts and circumstances of the case, this court is of the view that the benefit of custodial immunity by granting pre-arrest bail cannot be allowed to the accused in the present case. Therefore, his bail application stands rejected and in terms of the above, the matter is disposed of.

Return the case diary to Mr. R. Datta, learned P.P.

सत्यमेव जयते

JUDGE