

GAHC010243012023



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

**Case No. : Bail Appln./3887/2023**

ANIL MALAKAR

VERSUS

THE STATE OF ASSAM  
REP BY PP, ASSAM

**Advocate for the Petitioner : MR SARFRAZ NAWAZ**

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

**BEFORE**  
**THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY**  
**ORDER**

01.12.2023

1. Heard Mr. A W Aman, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.
2. This is an application made under Section 439 Cr. P.C. seeking bail by the

accused/petitioner, namely, **Anil Malakar**, who was shown arrested on 10.05.2023 in connection with Special (NDPS) Case No. 41(H)/2023 registered under Sections 20(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 arising out of Lumding PS case No. 181/2022.

3. Mr. Aman, learned counsel arguing for grant of bail submits that in view of the determination made by the Hon'ble Apex Court in the case of **State vs Pallulabid Ahamed Arimutta & Others** reported in **2022 12 SCC 633**, the ratio laid down in the case of **Tofan Singh vs State of Tamil Nadu** reported in **(2021) 4 SCC 1**, regarding value of confessional statement recorded under Section 67 of the NDPS Act, such statement shall remain inadmissible even at the stage of consideration of the bail. Therefore, in view of such settled proposition of law, the petitioner is entitled for grant of bail.
4. Per contra, Mr. Das, learned Additional Public Prosecutor relying on the judgment of the Hon'ble Apex Court in the case of **Narcotics Control Bureau –VS- Mohit Agarwal** reported in **2022 SCC OnLine 891**, argues that without having the satisfaction as regard the embargo placed in Section 37 of the NDPS Act, 1985, only on the ground of long incarceration an accused cannot enlarged on bail. The learned Additional Public Prosecutor, Assam has vehemently raised objection to the prayer of the petitioner for granting bail to the petitioner.
5. Heard the learned counsel for the parties, perused the material available on record.
6. Section 37 of the NDPS Act, 1985, mandates that a Court can grant bail to

an accused only after hearing the Public Prosecutor and after having satisfactions of twin conditions that there are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. Such satisfaction, which the Court is required to record, should be based on reasonable reading and does not called for a meticulous examination of the materials collected during the investigation or during the trial otherwise, the same will amount to mean a complete denial of bail under Section 37 of the NDPS Act, 1985 and the said provision would effectively exclude grant of bail altogether.

7. Grant of bail, on the ground of undue delay in the trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985, inasmuch as Section 436A of the Cr.P.C., is made applicable to the offences under the NDPS Act by the Hon'ble Apex Court in the case of **Satender Kumar Antil –VS- CBI** reported in **2022 10 SCC 51**.
8. Section 36A of the NDPS Act, 1985, mandates that the offences under the Act are triable by a Special Court. In the considered opinion of this Court, such mandate of the legislature is to achieve the object that the trials are completed at the earliest possible time inasmuch as the conditions of bail and other provisions under the Act, are very stringent in nature. It is also well settled that reasonable fair and just procedure in a criminal trial is a constitutional obligation on the part of the State. A speedy trial is also one of the dimensions of the fundamental right to life under Article 21 of the Constitution of India (Reference **Raghubir Singh –Vs- State of Bihar 1986-4SCC-481**).

9. So far relating to the constitution of Special Court, it is stated at the bar that in the State of Assam, though different Sessions Judges and Additional Sessions Judges are designated as Special Courts under Section 36A of the NDPS Act, 1985, however, these Courts are also simultaneously entrusted with the different Sessions triable offences under IPC, Criminal Appeals under IPC and to act as Special Judges under Special Act like POCSO Act, 2012. In view of such undisputed factual position, the object of speedy trial under the NDPS Act, as discussed hereinabove shall be hardly achievable.
10. In the totality of the aforesaid backdrop and propositions of law, this Court is of the view that alongside the embargo placed in Section 37 of the NDPS Act, 1985, the ground of undue delay in trial can also be a ground for granting bail inasmuch as the Court is to come to the satisfaction that there is no likelihood of completion of trial in near future. Thus, such ground of inordinate delay, in the considered opinion of this Court, shall depend on the facts of the each case and the cause of delay is also required to be noted down.
11. On the aforesaid backdrop, now let this Court look into the facts of the present case.
12. The prosecution case is that on 13.11.2022 at about 5.15 am, 29.030 kg of Ganja were recovered from the Agartala Deodhar Express but no accused/suspect was found at the place of occurrence. The petitioner was implicated on the basis of statement of two witnesses recorded under Section 161 Cr.P.C. and the petitioner was arrested after six months of the date of FIR and the alleged contraband was found in a train.

13. The charge-sheet was filed on 31.05.2023, charge under Section 20(C) of the NDPS Act was framed by the learned trial Court on 13.09.2023.
14. That being the position and in view of the ratio laid down in the case of ***Pallulabid Ahamed Arimutta (supra)***, that a confessional statement recorded under Section 67 of the NDPS Act, 1985, will remain inadmissible in the trial of an offence under the NDPS Act and therefore, such statement more particularly on the basis of the confessional statement/voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence.
15. For the reasons, discussed hereinabove, this Court is of the view that the petitioner has been able to make out a prima facie case that there is no plausible ground to believe that petitioner is guilty of any offence under Section 29 of the NDPS Act, 1985.
16. Now coming to the other aspect of the matter is that there is no likelihood of the petitioner committing any further similar offence, this Court is of the view that such anxiety of the prosecution can be redressed if stringent conditions are imposed while granting bail.
17. Therefore, the aforesaid leads to a belief of this Court that there are reasonable grounds that the petitioner is not guilty of such offence. In the aforesaid background, to balance the stringent condition of the NDPS Act, 1985 and the right of the petitioner under Article 21 of the Constitution of India, in the considered opinion of this Court, the petitioner can be released on bail with stringent conditions to ensure that the petitioner does not commit any such similar offence while on bail.

18. Considering the aforesaid aspects, propositions of law and in the given facts and circumstances of the present case, this Court is of the considered opinion that by imposing stringent conditions, the attendance of the petitioner before the learned trial Court could be secured and he can be barred from hampering and tampering or influencing the witnesses.
19. In view of the peculiar facts and circumstances of the case, the petitioner, namely, Anil Malakar, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) with two suitable solvent sureties of like amount to the satisfaction of the learned Special Judge, Hojai, Assam in connection with aforementioned case. The bail granted to the petitioner shall be subject to following conditions:-
  - (a) The petitioner shall not leave the territorial jurisdiction of learned Special Judge, Hojai, Assam, without prior written permission from him;
  - (b) The petitioner shall not hamper and tamper with the evidence of the case;
  - (c) The petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
  - (d) The petitioner shall surrender his passport, if any (if not already surrendered) before the learned Special Judge, Hojai, Assam.
  - (e) The petitioner shall not try to contact any of the witnesses by any mode including telephone, social media etc.

- (f) The petitioner shall furnish the present residential address with proof to the learned trial Court below and shall not change the said residence without prior permission of the learned trial Court.
- (g) The petitioner shall appear before the Officer-in-Charge, Lumding PS, on the 1<sup>st</sup> day of every week.
- (h) The petitioner shall appear before the learned trial Court below on each and every date of appearance during trial.

In the aforesaid terms, this bail petition is allowed.

**JUDGE**

**Comparing Assistant**