

(2013) 03 GAU CK 0019

In the Gauhati High Court

Case No : Bail Application No. 386 of 2013

Haji Samsul Hoque Talukdar (Md.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 23, 27A,
37(1)(b)(ii), 60

Citation : (2013) 3 GLT 342

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : S.K. Nargis, Mr. A. Neog and Mr. S. Oraon, for the Appellant; R. Dubey, Advocate and SC, Central Excise, for the Respondent

Final Decision : Allowed

Judgement

Tinlianhang Vaiphei, J.—This bail application is one u/s 439 Cr.P.C. for granting bail to the petitioner, namely, Md. Haji Samsul Hoque Talukdar@ Pakhi Mia @ Munna Bhai, who has been detained in custody/shown arrested since 23.5.2008 in connection with Sessions (Spl.) Case No. 05(K)/2005 pending before the learned Sessions Judge, Kamrup arising out of DRI Case No. 2/Narc/Ganja/DRI/Gau/2005-06 under Sections 8/20/23/27A/60/61 ND&PS Act. The facts material for disposal of this application may be briefly noticed at the outset. On 5.9.2005 at 21.00 hours, acting on specific information, the officers of the DRI, Guwahati, with the assistance of the Assam Police personnel intercepted 3 Tata Trucks bearing registration numbers DL 6D 8935, DL 6D 3597 and DL 6D 2483 at the southern end of the Kaliabhomra bridge on Brahmaputra river, Assam, and searched the trucks which resulted in the recovery of 479 packets "Manipur Ganja" weighing 9,208.6 kg., 8 AK 47 series rifles, 12 rounds of live ammunitions and 10 extra magazines along with 12 persons. A regular case was thereafter registered being DRI case No. 2/Narc/Ganja/DRI/Gau/2005-06, dated 5.9.2005. According to the prosecution, the petitioner herein has been made the co-

accused as he was one of the owners and the main gang leaders behind the loading, transportation and trafficking of the seized contraband and arms and ammunition as per the statements of those arrested persons. It is the case of the prosecution that he was instrumental in sending some of the arrested accused by offering money, had planned the trafficking operations and misled the enforcing agencies by providing transportation of the seized contraband and arms and ammunitions in coloured trucks, fake army fatigues. It was under the aforesaid circumstances that he was implicated in the case even though he had already been detained in judicial custody in connection with some other case.

2. Drawing my attention to the additional affidavit filed by the petitioner incorporating the depositions (examination-in-chief) of prosecution witnesses examined who have been examined heretofore, Ms. S.K. Nargis, the learned counsel for the petitioner submits that out of the nine witnesses cited by the prosecution, the seven principal witnesses examined so far have not thrown any light on the involvement of the petitioner in the crime in question. According to the learned counsel, there are, therefore, at this stage no reasonable grounds for believing that the petitioner is not guilty of the offence charged against him. She thus submits that the petitioner is entitled to be released on bail and that he ready and able to comply with any terms and conditions imposed by this Court to ensure his regular appearance in Court. On the other hand, Mr. R. Dubey, the learned counsel for the DRI, strongly opposes the bail application and submits that the petitioner is a habitual offender and has been involved in many other drug and drug related cases including a murder case, and if he is released on bail, he will commit many more offences while on bail.

3. I have carefully gone through the depositions of the prosecution witnesses referred to earlier. I find force in the contention of the learned counsel for the petitioner. Confronted with this situation, the only submission of the learned standing counsel for the DRI is that if the petitioner is released on bail, he will commit many more offences while on bail. I have no particular sympathy for the petitioner, who has been accused of committing many heinous crimes in the past including a murder case and is also notorious for jumping the bail or of abscondence, but that is no consideration in the eye of law for denying bail to an accused. I cannot permit myself to be swayed by the argument of public safety: I am not now dealing with a preventive detention law but a punitive law. On the contrary, the more valid point to be considered in this bail application is whether the likelihood of his committing other or similar offences in future while on bail, without anything more, can be a valid ground for denying bail, more so, when tangible evidence yet to be adduced by the prosecution to connect him with the crime charged against him. I am afraid, it cannot be. In my opinion, no citizen can be deprived of his life or liberty except in accordance with the procedure laid down by law. The first and foremost condition for denying bail to a person accused of an non-bailable offence, irrespective of the crime he is accused of committing, is the existence of there being reasonable for believing that he is guilty of the offence charged against him. The corollary of the above is that if

there are no reasonable for believing that he is not guilty of the offence charged against him, he cannot be denied of bail even if he is likely to commit more offences while on bail. After all, it must be noted that the second limb of Section 37(1)(b)(ii) of the Act is not a preventive detention. Any other construction of this provision will result in re-writing the fundamental principles of the law of bail. This is perhaps the reason why the Parliament has enacted "The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988" to deal with a case of this nature. Undoubtedly, the possibility of credible evidence coming to light in future against him as the trial proceeds cannot be ruled out. But for the time being, the petitioner has made out a reasonable case for bail. Nevertheless, some stiff conditions shall have to be imposed to ensure his regular appearance in Court. For what has been stated in the foregoing, this bail application succeeds. The petitioner shall be released on bail on his executing a PR Bond of Rs. 1,00,000/- with two surety bonds of local Government servants, one of them shall be not below the rank of a Class II (two) officer to the satisfaction of the learned Sessions Judge, Sonitpur, Tezpur subject to the further conditions that he shall appear before the Investigating Officer of this case once every fifteen days at the time and place to be fixed by the latter and shall not leave Nagaon District without the prior permission of the trial court till the trial is over. Nothing stated in the forgoing shall be construed as an observation on the merit of the case, which will be decided by the trial court independently and in accordance with law after all the evidence have been adduced by the parties.