

**HIGH COURT OF TRIPURA****Bench: Justice Arindam Lodh****Date of Decision: 20<sup>th</sup> June 2024**

Case No. : B.A. 30/2024

**APPLICANT(S):****State of Tripura ....Applicant****VERSUS****RESPONDENT(S):****Mijanur Rahaman ....Respondent****Legislation:**

Sections 20(b)(ii)(c), 25, 29 of the NDPS Act, 1985

Section 37 of the NDPS Act, 1985

Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973

**Subject:** Application for cancellation of bail granted to the respondent-accused by the Special Judge, Sepahijala District, Sonamura in a case under the NDPS Act, focusing on the grounds for believing the respondent-accused's guilt and the procedural correctness of the GD entries.

**Headnotes:**

Bail – Cancellation – NDPS Act – Application under Section 439(2) Cr.P.C. for cancellation of bail – Bail granted by the Special Judge, Sepahijala District, Sonamura – Grounds for cancellation included discrepancies in GD entries and lack of reasonable grounds to believe accused's non-guilt – Printing errors in GD entries noted but considered non-material – Section 37 of NDPS Act discussed, emphasizing that mere filing of charge-sheet is not sufficient ground for bail – Bail order set aside – Respondent directed to surrender [Paras 1-13].

Section 37 NDPS Act – Bail limitations – Requirement for Public Prosecutor to oppose bail and court to be satisfied of non-guilt and no likelihood of reoffending – Emphasized that bail under NDPS Act is an exception, not the rule – Court not to conclude guilt or innocence at bail stage but focus on reasonable grounds [Paras 8-10].

Decision – Application allowed – Bail order by Special Judge set aside – Respondent to surrender, failing which arrest to be ensured – Bail bond cancelled – Court mandates adherence to stringent criteria for bail under NDPS Act [Paras 11-13].

**Referred Cases:**

- Narcotics Control Bureau vs. Mohit Aggarwal, 2022 SCC OnLine SC 891
- Mohd Muslim @ Hussain vs. State (NCT of Delhi), Criminal Appeal No.(s) of 2023 arising out of Special Leave Petition (Crl.) No(s) 915 of 2023

**Representing Advocates:****For Applicant(s): Mr. Raju Datta, PP****For Respondent(s): Mr. S. Ali, Advocate****Order**

Heard Mr. Raju Datta, learned PP appearing for the applicant-State. Also heard Mr. S. Ali, learned counsel for the respondent-accused.

2. This is an application filed under Section 439(2) read with Section 482 Cr.P.C. by the applicant-State for cancellation of bail granted to the respondent-accused by the learned Special Judge, Sepahijala District, Sonamura vide Order dated 30.01.2024 in case no. Special (NDPS) 97 of 2023 arising out of Sonamura PS Case No. 118 of 2023 registered under Sections 20(b)(ii)(c)/25/29 of the NDPS Act.

3. Mr. Ali, learned counsel appearing for the respondent-accused person has vehemently opposed the petition filed by the applicant-State for cancellation of bail of the respondent-accused. The main argument advanced by learned counsel for the respondent-accused is that the police authorities have mechanically registered the case with an ulterior motive against the respondent-accused. Mr. Ali, learned counsel has pointed out some discrepancies in mentioning the dates of recording the GD entries where GDE No. 19 was registered on 18.08.2023, but, GDE No. 21 has been recorded on 08.07.2023. The second fold of submission of Mr. Ali, learned counsel for the respondent-accused is that Section 37 of the NDPS Act nowhere suggests that after filing of charge-sheet the accused

can be kept in custody, which the learned Special Judge, Sepahijala District, Sonamura has rightly held.

4. On the other hand, Mr. Datta, learned PP submits that records do not reveal anything that there are reasonable grounds to believe that the respondent-accused is not guilty of committing the alleged offence. Learned PP further contends that there is no error in mentioning the dates of GD entries and there might be some printing errors in mentioning the dates.

5. I have considered the rival submissions advanced by learned counsel appearing for the parties.

6. At the outset, I have perused the dates of the GD Entries No. 19, 20 and 21 (Annexure 'D', Annexure 'F' and Annexure 'E' to the Bail Application no. 30 of 2024). On cumulative perusal of the dates of GD Entry nos. 19, 20 and 21, the printing error is apparent. In the GDE No. 21, which is recorded at 1228 hours, the date is mentioned as on 08.07.2023. On perusal of the entries under GDE No. 21, it reveals that there is reference of GDE No. Sonamura PS GDE No. 19, dated 18.08.2023. Furthermore, on perusal of the GDE No. 20 which was recorded at 1208 hours, it is revealed that it is recorded on 18.08.2023. So, according to learned PP, the printing error is quite eminent.

7. The submission of Mr. Ali, learned counsel for the respondent-accused that the learned Special Judge has rightly held that Section 37 of the NDPS Act, clearly postulates that an accused cannot be kept in custody after

filing of charge-sheet, according to this court, has no legs to stand and does not deserve to be considered.

8. At this juncture, it is necessary to reproduce Section 37 of the NDPS Act, 1985, which reads as under:

**“37. Offences to be cognizable and non-bailable. -- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--**

- (a) every offence punishable under this Act shall be cognizable;**
- (b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--**
  - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and**
  - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.**

**(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”**

9. On careful reading of the above provision, it is clear that to grant bail to an accused arrested for alleged commission of offence under the provisions of the NDPS Act, the Court or the Public Prosecutor must be satisfied that there is reasonable ground to believe that the accused is not guilty of committing the alleged offence. Moreso, learned Special Judge, Sepahijala District, Sonamura, has not kept in mind that granting of bail to an accused of committing offences under the penal provisions of the NDPS Act is an exception and bail is not a rule.

10. In the case of ***Narcotics Control Bureau vs. Mohit Aggarwal***, reported in ***2022 SCC OnLine SC 891***, a three-Judge Bench of the Hon’ble Supreme Court held that-

**“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is**

unlikely to commit any offence while on bail.

**15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”**

Thereafter, the Hon’ble Supreme Court at para 18 of the said judgment held that:-

**“18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge- sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”**

**11.** On careful consideration of the above enunciation of law, I can easily hold that mere filing of charge-sheet is not a ground at all or has no persuasive value to grant bail to an accused of allegedly committing offence under the penal provisions of NDPS Act. The materials available on records do not suggest anything that there are reasonable grounds to believe that the accused is not guilty of committing the alleged offence under Sections 20(b)(ii)(c)/25/29 of the NDPS Act.

**12.** I have also perused the judgment cited by Mr. Ali, learned counsel for the respondent-accused. In the case of Mohd Muslim @ Hussain vs. State (NCT of Delhi) [Criminal Appeal No.(s) of 2023 arising out of Special Leave Petition (Crl.) No(s) 915 of 2023], the Hon’ble Supreme Court has released the accused on the ground that the trial was delayed for 7 years. This is not the case here.

**13.** In the light of the above discussion, the instant application for cancellation of bail of the accused stands allowed.

The Order dated **30.01.2024** granting bail to the respondent-accused by the learned Special Judge, Sepahijala District, Sonamura in **Special (NDPS) 97 of 2023**, stands set-aside and quashed.

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The respondent-accused, namely, **Mijanur Rahaman**, is directed to **surrender** before the **learned Special Judge, Sepahijala District, Sonamura** by **11.00 a.m.** on **21.06.2024**, failing which learned Special Judge, Sepahijala District, Sonamura shall pass necessary direction to ensure arrest of the respondent-accused.

Consequently, the bail bond furnished by the surety for and on behalf of the respondent-accused also stands cancelled.

Registry is directed to furnish a copy of this order to the learned Special Judge, Sepahijala District, Sonamura.

**JUDGE**

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