

2022 LiveLaw (SC) 878

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UDAY UMESH LALIT; CJI., BELA M. TRIVEDI; J.**

October 21, 2022

Criminal Appeal No(s). 1841-1842/2022 (Arising out of SLP (Crl.) No(s). 5505-5506/2022)

UNION OF INDIA (NCB) ETC. *versus* KHALIL UDDIN ETC

Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 37, 67 - Appeal against Bail granted to NDPS accused - Allowed - Validity and scope of statements under Section 67- Referred to Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1 - The rigour of law lay down in Tofan Singh was held to be applicable even at the stage of grant of bail - Referred to State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta & Anr. 2022 LiveLaw (SC) 69 - However, going by the circumstances on record, at this stage, the matter stands on a different footing - In the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail.

(Arising out of impugned final judgment and order dated 19-01-2022 in BA No. 2356/2021 19-01-2022 in BA No. 2955/2021 passed by the Gauhati High Court)

For Appellant(s) Mr. Jayant K. Sud, ASG (NP) Mr. Kartik Jasra, Adv. Mr. Randeep Sachdeva, Adv. Ms. Mansi Kumari, Adv. Ms. Vimla Sinha, Adv. Ms. Priyanka Das, Adv. Mr. Raghavendra Shukla, Adv. Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Mr. Shuaib Hussain, Adv. Mr. Jitin Chaturvedi, AOR Mr. Ramakrishnan Viraraghvan Sr Adv Mr Rajneesh Chuni Adv Mr. Akbar Siddique AOR Mr. Daiyyan Hussain, Adv Mr. K Krishna Kumar Adv Mr. Parv K Garg Adv Mr. Animesh Mishra Adv Mr M Fareed Siddiqui, Adv. Mr. Hasan Zaidi, Adv.

ORDER

Leave granted.

This appeal challenges the judgment and order dated 19.01.2022 passed by the Gauhati High Court in BA No. 2356/2021 & 2955/2021.

By said judgment and order, the High Court proceeded to grant relief of bail to accused named Khalil Uddin and Md. Abdul Hai @ Abdul Hai Talukdar in connection with crime registered pursuant to NCB Crime No.13/2019 in respect of offences punishable under Sections 21(c) read with 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 ("The NDPS Act" for short).

According to the prosecution, contraband material weighing about 13 kgs. of morphine was found in a motor vehicle which was driven by co-accused named Md. Jakir Hussain. During the course of investigation, it was found that the motor vehicle was recorded in the name of Md. Nizam Uddin who had executed a sale letter and handed over the custody of the vehicle to accused Md. Abdul Hai and that accused Md. Jakir Hussain was the driver employed by accused Md. Abdul Hai and that contraband material in question was to be handed-over to accused -Khalil Uddin, an owner of a tea shop.

The High Court by its order which is presently under challenge, directed release of both the accused as stated above on bail after they had undergone custody to the tune of about a year. Questioning grant of relief to said accused, the instant appeals have been preferred.

We have heard Mr. Jayant K. Sud, learned Additional Solicitor General for the appellant and Mr. Ramkrishnan Viraraghvam, learned Senior Advocate and Mr. Shuaib Hussain learned advocate for the accused-respondents.

What emerges from the record is that large quantity of contraband weighing about 13 kgs of morphine was found in a car which was driven by Md. Jakir Hussain. Whether the role played by said Md. Jakir Hussain could get connected with both the accused is a question.

The answer to said question could be the statement recorded of Md. Nizam Uddin. The statement of Md. Jakir Hussain recorded under Section 67 of the Act has also named his owner accused Abdul Hai. We are conscious of the fact that the validity and scope of such statements under Section 67 has been pronounced upon by this Court in Tofan Singh vs. State of Tamil Nadu¹. In State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.², the rigour of law lay down by this Court in Tofan Singh was held to be applicable even at the stage of grant of bail.

However, going by the circumstances on record, at this stage, on the strength of the statement of Md. Nizam Uddin, though allegedly retracted later, the matter stands on a different footing. In our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. We, therefore, allow these appeals, set aside the view taken by the High Court and direct that both the appellants be taken in custody forthwith.

We have been given to understand that the charge-sheet has been filed. In the circumstances, we direct the Trial

Court to take up the matter and conclude the proceedings as early as possible and preferably within six months from the receipt of this order.

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*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)

¹ (2021) 4 SCC 1

² 2022 LiveLaw (SC) 69