

GAHC010018312023



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

Case No. : Bail Appln./337/2023

KISHANA RAM @ KISHAN RAM
S/O SHRI PRATAP RAM
R/O VILL- SAI NAGAR BHOJASAR, P.S. BHOJASAR, DIST. JODHPUR, STATE-
RAJASTHAN, INDIA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P HAZARIKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28.02.2023

Heard Mr. P. Hazarika, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Addl. P.P. for the State.

2. The petitioner, namely, Kishana Ram @ Kishan Ram, who was

arrested on 26.06.2021 in connection with Manja P.S. Case No. 34/2021 under sections 15(c), 25, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short), has prayed for regular bail under section 439 Cr.P.C. The said case is being tried before the learned Court of Special Judge, NDPS, Karbi Anglong.

3. The learned counsel for the petitioner has submitted that the petitioner has been in custody for 612 days and there is no chance of an early trial because as on date out of 9 witnesses, only 4 witnesses have been examined. It has been submitted that as per his instructions, the prosecution has not been able to secure the presence of witnesses on about 17-18 dates fixed for trial.

4. The learned counsel for the petitioner has also submitted that the private witnesses examined so far have not supported the case of the prosecution.

5. The learned Addl. P.P. has perused the scanned copy of the case records received from the learned trial Court and has opposed the prayer for bail.

6. As per the scanned copy of the case records received from the learned trial Court, it is observed that charge-sheet no. 31/2021 dated 24.09.2021 was submitted by the I.O. on 28.09.2021 and cognizance of the offence was taken on the same day. Charges against the petitioner and other co-accused was read over and explained to which the petitioner and other co-accused pleaded not guilty and claimed to be tried. In about 28 dates fixed thereafter, four out of nine witnesses has been examined.

7. As per the case of the prosecution, the petitioner was the owner-cum-driver of a 12 wheeler truck bearing registration no. RJ-19-GB-9825. The said truck was intercepted and 103 bags of suspected narcotic substance was seized, which as per seizure list dated 25.06.2021 was weighing 2507.5 kg. In the charge-sheet, the quantity of narcotic drugs seized is mentioned as 2815.5 kg. As per the FSL report, the narcotic drug had tested positive for pods of opium poppy. Be that as it may, commercial quantity of poppy straw is 50 kg.

8. In view of the submissions made by the learned counsel for the petitioner, it would also be relevant to quote the provision of Section 436A Cr.P.C., which is as follows:-

“436A. Maximum period for which an under trial prisoner can be detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

9. It would also be appropriate to refer to the decision of the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, wherein it is provided that “Where the undertrial accused is charged with an offence(s) under the Act punishable with

minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount."

10. In the present case, the petitioner is charged of committing offence punishable under sections 15(c), 25, 27A and 29 of the NDPS Act. Under each of the said provisions, the punishment prescribed is not less than 10 years but which may extend to 20 years and shall also be liable to fine which shall not be less than Rs.1.00 lakh but which may extend to Rs.2.00 lakh. Therefore, following the ratio laid down in the case of *Satender Kumar Antil (supra)*, as well as the provision of Section 436A Cr.P.C., the petitioner having been incarcerated for a period of 612 days, has not become entitled to be released on bail.

11. This application for bail is rejected.

12. However, before parting with the records, the learned Special Judge, NDPS, Karbi Anglong, Diphu shall take note of the fact that there has been a delay in the progress of the trial. Therefore, the said learned Court shall examine the said aspect and if deemed appropriate, direct the prosecution to ensure that remaining witnesses are produced within a given timeline and if required, explore the possibility to hold the trial on day to day basis.

13. Nothing contained in this order shall prejudice either side during trial.

14. The Registry shall not issue any certified/uncertified copy of any part of the scanned copy of the record received from the learned trial Court.

JUDGE

Comparing Assistant