

GAHC010052072023



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

Case No. : Bail Appln./1085/2023

VINAY KUMAR
S/O LATE HARI NARAYAN SAHANI
R/O VILL- ANZANI
P.S. SARAI
DIST. VAISHALI (BIHAR)
PIN-822125

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N HASAN
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

02.05.2023

Heard Shri N. Hasan, learned Counsel for the petitioner, namely, **Sri Vinay Kumar**, who has filed this bail application under Section 439 of the Cr.P.C. praying for bail in connection with **NDPS Case No. 55/2021** under **Section 21(c)/27A/28/29** of the NDPS Act r/w Section 201 IPC.

The petitioner was arrested on 22.10.2021.

Pursuant to the order of this Court, the scanned copies of the case records all

the connected NDPS case have been received.

At the outset, the learned counsel for the petitioner has submitted that on an earlier occasion, the prayer for bail of the petitioner was rejected by this Court vide an order dated 08.04.2022 in BA No. 526/2022. This Court was of the view that the conditions which are required to be taken into consideration under Section 37 of the NDPS Act appears to be against the petitioner and therefore the bail was rejected at that stage.

Shri Hasan, the learned counsel for the petitioner has primarily laid emphasis on the ground of the length of detention which is about 558 days. He further submits that though the trial is on, out of 13 numbers of cited witnesses, 8 numbers have been examined and there is uncertainty on the time for completion of the trial. He has also relied upon certain orders passed by a Coordinate Bench of this Court in the same police case wherein bail orders have been granted in favour of the co-accused, mainly on the ground of length of detention. Those orders are:-

1. Bail Appln. No. 3154/2022 dtd. 11.04.2023 (Vinod Kumar Doohun Vs The State of Assam)

2. Bail Appln. No. 3074/2022 dtd. 11.04.2023 (Pezalhoulie Rupero Vs The State of Assam)

3. Bail Appln No. 1411/2023 dtd. 21.04.2023 (Junush Khan Vs The State of Assam)

4. Bail Appln. No. 1357/2023 dtd. 21.04.2023 (Ranjit Kumar Singha Vs The State of Assam)

Shri Hasan, the learned counsel for the petitioner has also relied upon the case of **Mohd. Muslim @ Hussain Vs State (NCT of Delhi)** reported in **2023 LiveLaw (SC) 260** wherein the Honble Supreme Court has made a discussion on the aspect of

bail under Section 37 of the NDPS Act.

The learned counsel for the petitioner accordingly submits that his case may be considered in the line of consideration of the co-accused, who have already been granted bail.

Shri K. K. Das, the learned Addl. PP, Assam, however submits that the offence is a grave one and the contraband involved is chemical drug (Heroin) with weighing of 78% as per the FSL report. He further submits that the accused himself being a police personnel, no leniency should be shown.

After considering the rival submission and on perusal of the scanned copies of the case records, this Court is of the opinion that following the guidelines laid down by the Hon'ble Supreme Court in the case of ***Mohd. Muslim @ Hussain*** (supra), wherein the length of detention has been held to be a relevant factor, this Court is of the considered opinion that since in the present case the petitioner is behind the bars for about 558 days and other co-accused have been released on bail, the present application is also required to be considered favourably.

Accordingly, the petition stands allowed by directing that the abovenamed petitioner in connection with the aforementioned police case be released on bail on furnishing a bail bond of **Rs.1,00,000/-** (Rupees One Lakh) only with two sureties of the like amount subject to the satisfaction of the learned **Addl. Session Judge, Dibrugarh (Special Judge)**.

It is however directed that the petitioner shall render full cooperation in the ongoing trial and would report to the concerned police station and the Trial Court as and when required.

Accordingly, the bail application stands disposed of.

JUDGE

Comparing Assistant