

GAHC010065192023



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

Case No. : Bail Appln./1128/2023

ABU SUFIAN
S/O ABDUL KAYUM
VILL-MOINA
P.S. PATHERKANDI
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

11.05.2023

Heard Mr. A. Ahmed, learned counsel appearing for the accused petitioner as well as Mr. D.P. Goswami, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely **Abu Sufian** has prayed for grant of bail in connection with **Special (NDPS) Case No. 45/2021** pending in the Court of learned Special Judge, Karimganj arising out of **Patherkandi P.S. Case No. 298/2021** under Section **21(C)** of the NDPS Act, 1985.

The scanned copy of case record, as called for, is placed before the Court.

Mr. A. Ahmed, learned counsel appearing for the accused petitioner, submits that the accused has been in judicial custody for one year and eleven months (720 days) without any progress in trial of the case since charges were framed on 07.01.2022 and thereafter, twenty two dates were fixed for evidence. Mr. Ahmed further submits that in most of the occasions, the summons were not issued to the prosecution witnesses. According to Mr. Ahmed, although there is a bar created by Section 37 of the N.D.P.S. Act, that by itself cannot abridge the right created by Article 21 of the Constitution of India.

Opposing the bail application, Mr. D.P. Goswami, learned Addl. Public Prosecutor, submits that the learned trial Court has framed charges under Sections 21(C)/29 of the N.D.P.S. Act against the accused petitioner and another for having possessed commercial quantity of Methamphetamine tablets on 07.01.2022. The case is presently pending at evidence stage and the learned trial Court has been taking steps for summoning the witnesses. Mr. Goswami further submits that in view of the bar under Section 37 of the N.D.P.S. Act, the accused may not be released on bail.

The case relates to recovery and seizure of 16,000 WY tablets weighing 2.026 kg from the possession of the present petitioner and another.

It is noticed that the accused has been in custody since 21.05.2021.

A perusal of the case record reveals that the charge-sheet was laid under Sections 22(C)/29 of the N.D.P.S. Act against the accused petitioner and another vide order, dated 18.09.2021 and thereafter, the charges were accordingly framed on 07.01.2022.

Thereafter, however, not a single witness is examined by the prosecution due to either non-issuance of summons by the prosecution or non-service of summons. There is a list of 7 (seven) witnesses in the charge-sheet. There is no evidence of criminal antecedence.

In paragraph Nos. 22 and 23 of the judgment rendered in *Mohd Muslim @Hussain Vs. State (NCT of Delhi) in Special Leave Petition (Crl.) No(s) 915/2023*, the Hon'ble Supreme Court observed has herein below extracted:-

“22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²²[Working Papers- Group on Prisons & Borstals -1966 U.K.](also see Donald Clemmer’s ‘The Prison Community published in 1940 [Donald Clemmer, the Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, ‘ Donald Clemmer’s Concept of Prisonisation’, available at https://www.tkp.Edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf(accessed on 23rd March, 2023)]). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily. ”

Perused the order, dated 04.08.2022 passed in *Shariful Islam @Sarif Vs.*

State of W.B. in S.L.P. (Crl.) No. 4173/2022 by the Hon'ble Supreme Court granting bail on the grounds of prolonged incarceration (1 year 6 months) and there being no likelihood of completion of trial in the near future.

As submitted rightly by Mr. Ahmed, learned counsel for the accused petitioner, although there is a bar created by Section 37 of the N.D.P.S. Act, that by itself cannot abridge the right created by Article 21 of the Constitution of India.

Therefore, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 1,00,000/- (Rupees One Lakh) only** with two sureties of like amount to the satisfaction of the learned **Special Judge (N.D.P.S. Act), Karimganj** subject to the following conditions-

- i) That the accused/petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;
- ii) That the accused/petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court;
- iii) That the accused/petitioner shall refrain from committing any offences similar to the one of which he is accused; and
- iv) That out of the two bailors, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof

on record for future reference.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

Copy of this order be furnished to the Registrar (Vigilance) and learned Public Prosecutor, Gauhati High Court.

This disposes of the bail application.

JUDGE

Comparing Assistant