

GAHC010073672023



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

Case No. : Bail Appln./1256/2023

AKATO YEPTHO SUMI @ AKATO YEPTHO
S/O SHRI INAKHU YEPTHO
R/O RONI NEW GAON, P.S. BHANDARI
DIST.WOKHA, NAGALAND
PIN- NO. 797111.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 26.06.2023

Heard Mr N K Murry, learned counsel, appearing on behalf of the petitioner. Also heard Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. The petitioner, Sri Akato Yeptho Sumi @ Akato Yeptho, who was arrested on 02.03.2022, has preferred this application under Section 439 CrPC, seeking regular bail

in connection with NDPS Case No. 36 of 2022, now pending in the Court of learned Special Judge (NDPS), Karbi Anglong, Diphu, Assam, (arising out of Khatkhathi PS Case No. 22/2022, under Section 22/2022, under Section 22 (C) of the NDPS Act, 1985 (GR Case No. 168/2022).

3. The case of the prosecution is that on 02.03.2022, at around 12:10 pm, on receiving an information regarding transportation of suspected psychotropic substances by one Ultra Bus, coming from Dimapur side towards Bokajan, the Police set up a special checking on NH-39, near SBI, Khatkhathi Branch and at around 01:00 pm, the alleged contraband were recovered from the possession of the accused petitioner. Accordingly, he was arrested and subsequently, the FIR was lodged.

4. On the basis of the FIR, a case was registered vide Khatkhathi PS Case No. 22/2022. After completion of investigation, charge sheet was submitted against the accused petitioner under Section 22(C) of the NDPS Act and during trial, charge was framed under Section 22 (c) of the NDPS Act and two witnesses were examined by the learned trial Court.

5. It is submitted by the learned counsel for the petitioner that the accused petitioner was a passenger in the said Ultra Bus and the bag from which the alleged recovery of contraband was made does not belong to the accused petitioner. The petitioner has been falsely implicated in the instant case.

6. It is further submitted that the accused petitioner was arrested on 02.03.2022. Since then, he has been languishing in jail custody. As the charge sheet has been submitted and the trial is going on, there is no justification in keeping the petitioner under judicial custody.

7. Learned counsel for the petitioner, by referring to the Judgment of the Hon'ble Supreme Court in the case of *Mohd. Muslim @ Hussain vs. State (NCT of Delhi)*; 2023 LiveLaw(SC) 260, and *Bhagirathsingh s/o Mahipat Singh Judeja vs. State of*

***Gujarat;*(1984) 1 SCC 284**, has pointed out that even where a *prima facie* case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment, but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. It is further submitted that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

8. On the other hand, learned Additional Public Prosecutor has submitted that contraband which was recovered from the possession of the accused petitioner, was of commercial quantity. The trial is going on. Two witnesses were examined and 2 (two) vital witnesses are yet to be examined in the case. Hence, at this stage, bail may not be granted to the petitioner.

9. I have considered the submissions made by the learned counsel for both the parties. I have also perused the evidence of the witnesses so far recorded by the learned trial Court. Status Report as called for is received, which reveals that the charge was framed on 17.06.2022, and out of four witnesses two witnesses were examined. The last witness was examined on 03.11.2022. After that, though summons were issued, but prosecution has failed to produce two other witnesses to be examined in the case. The accused petitioner has been detained in custody since 02.03.2022, i.e., from the date of his arrest.

10. The Hon'ble Supreme Court in ***Mohd. Muslim (supra)***, has observed that grant of bail on the ground that undue delay cannot be said to be fettered by Section 37 of the NDPS Act, given the imperative of Section 436A, which is applicable to offences under the NDPS Act too.

11. In ***Satender Kumar Antil vs. Central Bureau of Investigation; (2022) 10 SCC 51***, the Hon'ble Supreme Court observed that prolonged incarceration and inordinate delay engaged the attention of the Court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 of the NDPS Act.

12. Having regard to these factors, this Court is of the opinion that under the facts and circumstances of this case, the petitioner deserves to be enlarged on bail.

13. Accordingly, it is hereby directed that the aforesaid petitioner shall be released on bail on furnishing bail bond of Rs. 1,00,000/- (Rupees One Lac) only, with two sureties of the like amount, one of whom must be a Government servant, to the satisfaction of the learned Special Judge, Karbi Anglong, Diphu, in connection with the aforesaid case. The bail granted to the petitioner shall be subject to following conditions:-

(a) The petitioner shall not leave the territorial jurisdiction of learned Special Judge, Karbi Anglong, Diphu, without prior written permission from him;

(b) The petitioner shall not hamper and tamper with the evidence of the case;

(c) The 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 them from disclosing such facts to the Court or to any police officer.

14. With the aforesaid directions, this Bail Application stands disposed of.

JUDGE

Comparing Assistant