

GAHC010084622023



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

Case No. : Bail Appln./1431/2023

DEEPAK CHOUHAN
S/O DEVI PRASAD CHOUHAN,
R/O VILL- THALDANA
P.O. T. WAICHANG, P.S. KANGPOKPI, DIST. KANGPOKPI
MANIPUR-795112

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

05.06.2023

Heard Mr. D. Das, learned counsel for the accused petitioner as well as Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioner, namely

Deepak Chouhan has prayed for grant of bail in connection with **NDPS Case No. 26/2022 (G.R. Case NO. 14/2022)** arising out of **Dillai P.S. Case No. 1/2022** under Section **21(c)** of the NDPS Act, pending in the Court of learned Special Judge (NDPS Act), Karbi Angonlg, Diphu.

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

The case relates to recovery and seizure of 1444.96 grams of heroin from the possession of the accused petitioner while transporting by a TATA 1109 LPT truck bearing registration No. NL 01 AA 5840.

It is noticed that the accused petitioner has been in judicial custody since 12.01.2022, that is, for 510 days.

The FSL report on the sample of the seized substance gave positive tests for heroin.

Perusal of the case record shows that charge under Section 21(c) of the NDPS Act was framed on 13.05.2022. The charge-sheet shows that there are 11(eleven) number of witnesses and out of them only 2(two) witnesses, who are police personnel, have been examined till 27.09.2022. Thereafter, summonshave been issued to the remaining witnesses including the seizure witnesses, but, none of them has appeared due to non-service of summons by the police.

In paragraphs 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 Sobiecki, ‘ Donald Clemmer’s Concept of Prisonisation’, available at https://www.tkp.Edu.pl/wpcontent/uploads/2020/12/Sobiecki_sklad.pdf(accessed on 23 rd 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. ”*

Having considered that only 2(two) number of witnesses are examined in the case despite fixing several dates for examination of the prosecution witnesses since the date of framing charges, this Court, in view of the of above decision rendered by the Hon’ble Supreme Court, is of the opinion that the accused cannot be continued to be detained indefinitely for the purpose of trial depriving him of the right to speedy justice enshrined in Article 21 of the Constitution of India. However, considering the bar contained in Section 37 of the NDPS Act in granting bail to the accused involving commercial quantity, at the present stage of trial of the case, the liberty of bail to him cannot be considered favourably.

Accordingly, the bail application stands **rejected**.

The accused petitioner is however, given liberty to file bail application, if so advised, at an appropriate stage of trial of the case and if such application is filed, the same shall be considered and disposed of in accordance with law.

Further, it is provided that the learned trial Court shall maintain a calendar

of hearing in the case to ensure early disposal of the case avoiding unnecessary adjournments.

This disposes of the bail application.

JUDGE

Comparing Assistant