

GAHC010087502023



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

Case No. : Bail Appln./1534/2023

RAJU SURIN
S/O LT. FRANCIS SURIN
R/O 2 NO. JOYHING
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
STATE- ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR K THAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 14.08.2023

Heard Mr. K. Thakur, learned counsel for the petitioner and Mr. P. S. Lahkar, learned Addl. Public Prosecutor, Assam for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, (1) Raju Surin, who was arrested on 22.02.2022 in connection with Special (NDPS) Case No. 07/2022, arising out

of Bihpuria P.S. Case No. 38/2022, u/s 20(c)/25/29 of the NDPS Act.

The accusation in this case is that on 22.02.2022, one Sri Nipon Gogoi, SI of Police, of Banderdewa Police Outpost, lodged an FIR, before Officer-in-Charge of Bihpuria Police Station, inter-alia, stating that on receipt of the information from reliable sources, a search operation was conducted and 91.6 kgs of ganja was recovered from a vehicle, bearing Registration No.AR-02/8289, which was driven by the present petitioner. On receipt of the said FIR, Bihpuria P.S. Case No. 38/2022 was registered and investigation was initiated. After completion of the investigation, charge sheet was laid on 04.04.2022 against the present petitioner and the present petitioner is facing trial in the custody since the date of his arrest, i.e. 22.02.2022.

Learned counsel for the petitioner has submitted that the car of the petitioner was hired by a lady from Arunachal Pradesh and the bag, which contained the suspected ganja, belonged to the said lady. It is also submitted that though the charge-sheet was laid in this case on 04.04.2022, however, till now, only one prosecution witness has been examined in the case and the petitioner has been languishing behind the bar since last 538 days and also submitted that on the ground of prolonged incarceration, the petitioner is entitled to bail.

In support of his contention, learned counsel for the petitioner has cited ruling of judgment in the case of *Rabi Prakash -Vs- State of Odisha*, reported in *2023 Live Law (SC) 533* and also in the case of *Mohd. Muslim @ Hussain -Vs- State (NCT of Delhi)*.

In *Rabi Prakash* (supra), the Hon'ble Supreme Court of India observed that prolonged incarceration, generally militates against the most precious

fundamental right guaranteed under Article 21 of the Constitution of India and, in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

On the other hand, learned Public Prosecutor submits that since the quantity of contraband (ganja) in the instant case is of commercial quantity, the embargo of Section 37 of the NDPS Act is applicable in the instant case and on that ground opposed the grant of bail to the present petitioner.

It is seen that in number of cases, involving commercial quantity of contraband, the Supreme Court of India has granted bail to the accused persons, mainly on the ground of prolonged incarceration. In the instant case also, the petitioner has been detained behind the bar since last 538 days and only one prosecution witness has been examined till now and it is unlikely that trial of Special NDPS Case Case No. 07/2022 would culminate soon.

In the above circumstances, considering in the light of ruling of Hon'ble Supreme Court of India, this Court is of the considered opinion that the prolonged incarceration of 538 days under the attending circumstances of the present case overrides the embargo of Section 37 of the NDPS Act, 1985.

Hence, the petitioner, namely, Raju Surin, is hereby allowed to go on bail of **Rs. 50,000/-** with one surety of like amount to the satisfaction of the **learned Special Judge, North Lakhimpur** subject to the following conditions-

- i) That the accused petitioner shall cooperate in his trial and shall appear before the learned Trial Court as and when required; and

- 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 learned Trial Court; and
- iii) That the accused petitioner shall not indulge in the offence similar to that with which he has been charged in the instant case.

With the above observations, the instant bail application is hereby disposed of.

JUDGE

Comparing Assistant