

GAHC010109962023



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

Case No. : Bail Appln./1799/2023

SAFIQUL ISLAM KHAN
S/O MOHAR KHAN, R/O F.A. AHMED NAGAR, 2 NO. MATHGHARIA, P.S.-
NOONMATI, GUWAHATI, DIST- KAMRUP (M) (ASSAM), 781020

VERSUS

UNION OF INDIA
REPRESENTED BY SC, NCB

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : SC, NCB

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

03.10.2023

Heard Ms S K Nargis, learned counsel for the petitioner and Mr S C Keyal, learned Standing Counsel for NCB.

2. The petitioner, Safiquel Islam Khan, has filed this application under Section 439 CrPC, with a prayer of bail in connection with NDPS Case No. 49/2019, arising out of NCB Crime No. 01/2019, under Sections 21 (C)/22(C)/29 of the NDPS Act.

3. It is submitted on behalf of the petitioner that he has been languishing in jail since 24.01.2019, for more than 4 years 8 months. The trial is yet to commence.

4. The petitioner has pledged to cooperate with the trial. It is submitted that the petitioner is a local resident and there is no apprehension of abscondance. Due to the delay in the commencement of trial, the petitioner's personal liberty has been curtailed. The learned counsel for the petitioner has relied the decision of Hon'ble the Supreme Court in **Rabi Prakash vs. State of Odisha**; in connection with Special Leave to Appeal (Crl.) No. 4169/2023 vide order dated 13.07.2023. It has been observed that-

"2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under

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

4. The petitioner has also prayed for bail on the ground of parity and has also relied on the decision of this Court, wherein by order dated 22.08.2019, the co-accused, Dr Dhruba Hojai was enlarged on bail.

5. The learned Standing Counsel, Mr S C Keyal has raised serious objection stating that contraband was seized from the possession of the petitioner. The petitioner was caught carrying a huge cache of contraband and he is booked under Sections 21 (c)/22 (c)/29 of the NDPS Act for transporting commercial quantity of contraband consisting of-

i) 1000 bottles of phensydyl

ii) 11,520 capsules (Spaswon).

5. The learned Standing Counsel for NCB has relied on the decision of this Court in Bail Application No. 193 of 2023, vide order dated 03.04.2023, wherein it has been observed that –

“32. Though length of detention may be one of the factor in consideration the prayer for bail, the same cannot be the sole factor more so when all the requirement of Section 37 of the Act are not fulfilled.

33. In the case of Chandrakeshwar Prasad Vs. State of Bihar; reported in (2016) 9 SCC 443 (Popularly known as Md. Sahabuddin Case), the Hon'ble Supreme Court has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted hereinbelow:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof: "We are of the

opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

6. It is also submitted that the delay in trial was due to COVID -19 and due to non-appearance and non-cooperation of some other accused. The prosecution cannot be blamed for the delay in trial.

7. I have considered the submissions at the Bar with circumspection and I have also perused the scanned copies of the LCR.

8. It is true that the petitioner has been languishing in the jail for more than 4 years, but the trial has not commenced. I have also relied on the decision of Hon'ble the Supreme Court in ***Rabi Prakash's case (supra)***. In this case at hand, not a single witness has been examined and the charge is yet to be framed.

9. I have considered the submission of the petitioner that he will cooperate with the trial. I have also considered the submission that the petitioner being a local resident is not at flight risk. Considering the ratio of the decision of Hon'ble the Supreme Court in ***Rabi Prakash's case (supra)***, the petitioner has drawn out sufficient grounds for bail.

10. Considering all aspects and in view of my foregoing discussions, the petitioner is enlarged on bail of Rs. 50,000/- with two suitable sureties of the like amount, one being a Government employee to the satisfaction of the learned Special Judge, NDPS, Kamrup (Metro), under the conditions that:-

- i) the petitioner will refrain from such activities with which he is alleged;
- ii) the petitioner will not tamper with the evidence or exercise threats to

the witnesses; and

iii) the petitioner will cooperate with the investigation and trial, failing which, bail order will be cancelled.

11. Bail Application stands disposed of.

JUDGE

Comparing Assistant