

GAHC010125222023



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

Case No. : Bail Appln./2018/2023

MD. ISHLAODDIN @ MD ASLAUDDIN AND ANR
S/O LATE MD. NAZIM UDDIN
VILL- LILONG TAIREN MAKHANG
P.S. LILONG, DIST. THOUBAL (MANIPUR)

2: ABBAS ALI
S/O MD.NASIM ALI
VILL- BAGHORGURI
PANITOL ROAD
P.S. SATGAON

DIST. KAMRUP (M)
ASSAM
PERMANENT ADDRESS-
VILL- DHUMRI
P.O. DHAKKA

P.S. KHERAWA
P.S. MOTIHARI (BIHAR)

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

25.08.2023

Heard Mr N N B Choudhury, learned counsel for the petitioners and Mr B Sarma, learned Additional Public Prosecutor, appearing on behalf of the State of Assam.

2. The petitioners, Md. Ishlaoddin @ Md Aslauddin and Abbas Ali, have filed this application under Section 439 CrPC, with a prayer for bail in connection with Garchuk PS Case No. 201/2022, under Sections 420/468 IPC, read with Sections 22(c)/29 of the NDPS Act, 1985.

3. At present, the petitioners are in trial in connection with NDPS Case No. 334 of 2022, arising out of the same FIR, i.e., Garchuk PS Case No. 201/2022.

4. It is submitted on behalf of the petitioners that they have been languishing in the jail for 342 days. The FIR clearly reveals that both the petitioners were not found in possession of the contraband substance seized in connection with this case. The witnesses have not incriminated the petitioners. The petitioners have been roped in connection with this case on misunderstanding.

5. The FIR unfolds that on 28.06.2022, two persons were found loitering near the Assam Meghalaya Border. A secret information was received that the drug peddlers, who were loitering had already delivered the contraband substance at Borni, Roha and Panjabari and they were planning to deliver the NDPS substance at Baragaon Chariali in the morning between 6:00 am to 7:00 am. On receipt of the secret information, the complainant proceeded to Baragaon Chariali on 29.06.2022 at around 05:30 am and apprehended the aforementioned two miscreants, who were approaching on a scooty

without a number-plate. A General Diary Entry was registered being GD Entry No. 699 dated 29.06.2022. The complainant was accompanied by the Police staff. As soon as the miscreants noticed the Police, they tried to escape, but the Police apprehended the miscreants at Baragaon Chariali. On searching the miscreants, no substances could be found and the miscreants were brought to the Police Station and on interrogation, they identified themselves as Md. Ishlaoddin and Md Abbas Ali. The petitioner Md Ishlaoddin confessed that he made one fake identity card in the name of Manipur Police Department to deal in illegal drug trafficking. A scooty without a number plate was also seized in connection with this case. Both the petitioners admitted that a truck bearing Registration No. MN-06-T-2136 was approaching from Imphal. The truck was loaded with a huge cache of NDPS substances to be transported at different places around the Garchuk area. The Police team then proceeded towards Garchuk near Nezone Hotel. A naka checking was conducted and the truck, a dumper, bearing Registration No. MN-06-T-2136 approaching from Basistha towards Garchuk with excessive speed was identified by the apprehended petitioners. The truck was intercepted, but the driver of the vehicle tried to escape. Two persons were found inside the truck at around 02:45 pm. The vehicle was searched and 73000 YABA tablets were recovered from the dumper. Two miscreants, namely, Md. Aboy and Md Sakir Ahmed were apprehended. They were travelling in the vehicle loaded with the contraband substances. The YABA tablets and other articles, including the vehicle was seized in connection with this case.

6. Based on the copies furnished to the petitioners, the learned counsel for the petitioners submitted that the Police has falsely stated that the petitioners had confessed about the approaching truck carrying a huge cache of YABA tablets.

7. Their statements under Section 161 CrPC does not at all indicate that they had confessed of having carried any contraband substance

8. The learned Additional Public Prosecutor has raised serious objection stating that the Case Diary clearly incriminates that both the petitioners are complicit. The FIR itself

clearly indicates that both the petitioners were caught near the Garchuk area. Their conduct clearly indicates the shady nature of the movement of the petitioners. They were travelling in a scooty without a number plate with a fake identity card, impersonating Manipur Police. On their confession, this truck with commercial quantity of contraband was seized.

9. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in ***Rabi Prakash –Vs- The State of Odisha (Bail Application No. 11613/2021)***; reported in **2023 Live Law (SC) 533**; wherein it has been observed that-

“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 mitigates 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.”

10. In the instant case, the petitioners have been languishing in jail for 342 days. This case is not similar to the case of ***Rabi Prakash (supra)***. In the case of ***Rabi Prakash (supra)***, the petitioners were languishing in the jail for 3 ½ years, and only one witness out of nineteen witnesses was examined, but in the instant case, trial has already commenced. Two witnesses have already been examined.

11. Learned Additional Public Prosecutor has relied upon the Judgment of the Hon'ble Supreme Court in the case of ***NCB –Vs. Mohit Aggarwal***; reported in **2022 SCC OnLine SC 891**, wherein it has been observed that-

“In our opinion the narrow parameters of bail available under Section 37 of the Act have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail.

The length of the period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

12. In the instant case too, the narrow parameters of bail available under Section 37 of the NDPS Act, have not been satisfied in the facts of the instant case. Trial has commenced and two witnesses have already been examined. At this stage, it is not safe to conclude that the petitioners have successfully demonstrated that there are reasonable grounds to believe that they are not guilty of the offence alleged against them, the important witnesses, such as the complainant are yet to be examined.

13. In view of the foregoing discussions, I am constrained to reject the petition with prayer for bail, at this juncture.

14. The Bail Application stands disposed of.

JUDGE

Comparing Assistant