

GAHC010188752023



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

Case No. : Bail Appln./2106/2023

ABDUL LATIF
S/O LATE RAJAB ALI
VILL- LAMAJUAR
SHERALIPUR
P.S. BADARPUR
DIST. KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR H R CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

11.12.2023

Heard Mr HRA Choudhury, learned Senior Counsel for the petitioner, Abdul Latif.
Also heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam

2. The petitioner has filed this application under Section 439 CrPC, with prayer for

bail as he is in jail since 27.10.2022 in connection with Special NDPS Case No. 152/2022, arising out of Badarpur PS Case No. 250/2022, under Sections 21(c)/25/29 of the NDPS Act, 1985.

3. The learned Senior Counsel for the petitioner has submitted that the petitioner is innocent. He was inside the vehicle. He was travelling as a passenger and the contraband was found in the dickey of the vehicle bearing Registration No. AS-10-D-7320. 48 packets weighing 621.09 grams of heroin was recovered from the vehicle. It is submitted that on the day of the alleged occurrence, accused petitioner was standing at Sairang Zero point and waiting for vehicle to return to his house and at that time, he boarded a vehicle and he also agreed to pay Rs. 700/- as fare.

4. The learned Additional Public Prosecutor has raised serious objection stating that the petitioner is complicit. He was travelling in a vehicle where a huge amount of heroin more than 500 grams was recovered. Charge sheet has been laid against him as there were incriminating materials found against him.

5. The learned Additional Public Prosecutor has prayed to reject the bail petition as insulating the petitioner by an order of bail may adversely affect the trial. The petitioner may tamper with the evidence. The embargo under Section 37 of the NDPS Act also acts as a fetter to this bail application as he is booked under Section 22(C) of the NDPS Act.

6. The learned Senior Counsel for the petitioner has relied on the decision of Hon'ble the Supreme in ***Rabi Prakash –vs- State of Odisha***; reported in **2023 SCC OnLine SC 1109**; in connection with Special Leave to Appeal (Crl.) No. 4169/2023. Vide Judgment and Order dated 13.07.2023, it was observed that-

“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

1 st condition stands complied with. So far as the 2 nd 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.”

7. The judgment of a coordinate Bench of this Court in Bail Application No. 1128/2023 dated 11.05.2023 has also been referred to by the learned Senior Counsel for the petitioner, whereby it has been observed that-

“Thereafter, however, not a single witness is examined by the prosecution due to either non-issuance of summons by the prosecution or non-service of summons. There is a list of 7(seven) witnesses in the charge sheet. There is no evidence of criminal antecedence.”

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

9. In this case too, not a single witness has been examined and the petitioner has been in jail for 410 days.

10. I have considered the submission that the petitioner is suffering from kidney stone for long time as mentioned in paragraph-9 of the petition and he has been unable to undergo surgery and his condition is deteriorating.

11. Considering all aspects and in view of my foregoing discussions and also considering the fact that not a single witness has been examined despite the fact that the petitioner has been in jail for the last 410 days, petition is allowed. The petitioner is

enlarged on bail of Rs. 1,00,000/- (Rupees One Lac) only, with two suitable sureties of the like amount, to the satisfaction of the learned Special Judge (NDPS), Karimganj, under the conditions that:-

- i) the petitioner shall refrain from such activities with which he is alleged,
- ii) the petitioner shall not default appearance and appear regularly,
- iii) the petitioner shall not leave the jurisdiction of the Court without prior permission from the jurisdictional Court, till completion of investigation.

On breach of any of the bail conditions, the bail order shall stand cancelled.

12. Bail Application stands disposed of.

JUDGE

Comparing Assistant