

GAHC010131052023



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

Case No. : Bail Appln./2069/2023

ABDUL MANNAN ALI
S/O ABDUL MATLEB ALI
R/O VILL- DOLOITOLA
P.S. HAJO
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.08.2023

1. Heard Ms. S. K. Nargis, learned counsel for the petitioner as well as Ms. S. H. Bora, learned Additional Public Prosecutor representing the State of Assam.

2. This bail application has been preferred under Section 439 of Code of Criminal Procedure, 1973, praying for bail of the petitioner, namely, Abdul Mannan Ali, who has been detained behind the bar since 31.01.2023 (185 days) in connection with NDPS Case No. 86/2023 corresponding to Jalukbari P.S Case No. 56/2023 under Section 21(C) of the NDPS Act, 1985.

3. The accusation in this case is that on 31.01.2023, one Sri Pritam Das, SI of Police of Jalukbari Police outpost lodged an FIR before the Officer-in-Charge of Jalukbari Police Station, *inter-alia*, alleging that on 30.01.2023 at about 10.30pm, while performing naka checking duty near Saraighat Bridge, the present petitioner was found coming in his motorcycle bearing Registration No. AS 25 V 2700 and when he was checked 48 numbers of RTx-Care Premium (Codine Phosphate & Chlorpheniramine Maleate Syrup) and 200 numbers of Nitzacare-10 (Nitrazepam tablet IP), which was kept in a white colored plastic bag was found from his possession. It is also stated in the FIR that one another person/accomplice escaped from the naka checking place when the police party conducted the search of the said motorcycle.

4. On receipt of the said FIR, Jalukbari P.S Case No. 56/2023 under Section 21 (c) was registered and the present petitioner was apprehended. Ultimately, after completion of the investigation charge-sheet was laid against the present petitioner on 28.06.2023 and presently the case is pending before the Court of Additional Sessions Judge No. 2, Kamrup (Metro) Guwahati and the petitioner has been detained behind the bar since last 185 days.

5. Learned counsel for the petitioner submits that the petitioner is the victim of the circumstances. She submits that the actual facts of the case is that on the date of alleged incident i.e., on 30.01.2023, the petitioner was coming back from his office Bamunimaidan to his home and when he reached Jalukbari Chariali at about 8.30 pm, a young college going boy at Jalukbari holding a bag introduced himself as a law student of National Law University and asked for a lift from the petitioner. The petitioner on humanitarian ground gave lift to said student without verifying anything. However, thereafter, when they reached Saraighat Bridge, seeing the police naka checking the said boy fled away leaving his bag and later on police found seized contraband inside the said bag.

6. It is submitted by the learned counsel for the petitioner that the actual owner of the bag containing the contraband was the person who had absconded from the place of naka checking.

7. Learned counsel has submitted that the present petitioner has been detained behind the bar since 31.01.2023 and because of no fault of his own and she prays for enlarging the present petitioner on bail on ground of long incarceration and in support of her contention, she submits a ruling of Hon'ble Supreme Court of India in ***Rabi Prakash Vs. State of Orissa*** (order dated 13.07.2023 passed in *SLA (Crl.) No. 4169/2023*).

8. On the other hand, learned Additional Public Prosecutor submits that the materials on record shows that the contraband was seized from the possession of the present petitioner and though the present petitioner has

stated that another person was accompanying him however, during naka checking no one has seen any other person accompanying the present petitioner when the search operation was going on and therefore, learned Additional Public Prosecutor submits that considering the commercial quantity of contraband seized in this case from the possession of the present petitioner, the embargo of Section 37 would come into play and the petitioner may not be allowed to go on bail.

9. I have considered the submissions made by learned counsel for the petitioner as well as learned Additional Public Prosecutor and have also perused the materials available on record including the scanned copy of case record of NDPS Case No. 86/2023 and the case diary of Jalukbari P.S Case No. 56/2023.

10. It appears from materials available on record that though the present petitioner has taken the plea that one another person was accompanying him when the search operation was made. Though, the story narrated by the petitioner may or may not be true and same may be taken as a defense during trial by the petitioner, however, from the materials available in the case diary, it appears that the commercial quantity of contraband which has been seized in connection with Jalukbari P.S Case No. 56/2023 was found from the possession of the present petitioner and at this stage, it is difficult to come to a satisfaction that there are reasonable grounds for believing that the present petitioner is not guilty of offence alleged against him in the instant case. Hence, the embargo of Section 37 of the NDPS Act, 1985 would be applicable in the instant case. Moreover, though the petitioner had been detained behind the bar

for last 185 days and though Hon'ble Supreme Court of India has observed in ***Rabi Prakash Vs. State of Orissa (Supra)*** that prolong incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India, however, considering the fact that in the instant case charge-sheet has been laid, against the present petitioner, only on 28.06.2023, and in the facts and circumstances of the instant case, the incarceration already suffered by the present petitioner does not appear to be long enough to override the embargo imposed by Section 37 of the NDPS Act, 1985.

11. In view of above, this Court is constraint to reject the prayer for bail of the present petitioner. This instant bail application is accordingly disposed of.

JUDGE

Comparing Assistant