

GAHC010131272023



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

Case No. : Bail Appln./2114/2023

SAIP UDDIN
S/O- ABDUL MAJID, R/O- VILL- NORTH SAKAIBARI, BARUAKANDI,
CHANDRAPUR, P.S. DHARMANAGAR, DIST.- WEST TRIPURA, TRIPURA

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.10.2023

Heard Mr. L.R. Mazumder, learned counsel for the accused and also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely, Saip Uddin, who has been languishing in jail hazoot since 07.03.2022, in connection with

Patharkandi P.S. Case No.69/2022, under Section 21(c)/25/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Rajpratap Singha, S.I. of Patharkandi P.S. on 06.03.2022.

4. The essence of allegation made in the said FIR, dated 06.03.2022, is that on 06.03.2022, at about 11:00 a.m., at NH-08 Bypass, under Patharkandi P.S. the informant had intercepted one vehicle, bearing Registration No.TR-05D-0625, and found two persons, namely, Saip Uddin and Taj Uddin and recovered 297 gm of heroin from their possession.

5. Mr. Mazumder, learned counsel for the accused submits that the accused was arrested on 06.03.2022, and since then he has been languishing in jail hazot for last 582 days and that 297 gm of heroin recovered from their possession and after investigation, police submitted charge-sheet against the present accused, along with Taj Uddin and the learned Court below had framed charge against accused Saip Uddin and Taj Uddin, under Section 21(c) of the NDPS Act and till date no witnesses have been examined by the prosecution side and there is no immediate prospect of conclusion of trial and therefore, it is contended to allow this petition.

6. Mr. Mazumder further submits that though the embargo under Section 37 of the NDPS Act is there, as the quantity of contraband substance is recovered from the possession of the accused is of commercial quantity, yet, in view of the judgment of Hon'ble Supreme Court in **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) [Criminal Appeal Nos.....of 2023 (@ Special Leave Petition (Crl.) Nos.915/2023), decided on 28.03.2023]** and also in view of the order in **Nitish Adhikary @ Bapan Vs. The State of West Bengal [Special Leave to Appeal(Crl.) Nos.5769/2022, decided on 01.08.2022]** and also in view of the orders of this Court in **Litan Miah Vs. The State of Assam [Bail Appln./2149/2023, decided on 29.08.2023]** and **Abu Sufian Vs. The State of Assam [Bail Appln./1128/2023]**, the accused is entitled to bail on the ground of delay in trial and therefore, it is contended

to allow the petition.

7. On the other hand, Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam, submits that the quantity of contraband substance recovered from the possession of the accused is commercial quantity and that the embargo under Section 37 of the NDPS Act will be applicable here in this case and there is nothing on the record to show that the accused is not guilty of the offence and that he will not commit any offence while on bail and therefore, Mr. Parasar contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case laws referred by Mr. Mazumder, learned counsel for the accused and also perused the scanned copy of the record received from the learned Court below.

9. It appears that the accused was arrested on 06.03.2022 and he was remanded to jail hazot on 07.03.2022 and for last 582 days he has been languishing in jail hazot. It also appears that after completion of investigation, the I.O. had laid charge-sheet against the present accused and one Taj Uddin and after hearing the learned Advocates of both sides, the learned Court below has framed charge under Section 21(c) of the NDPS Act. Further, it appears that the quantity of contraband substance, allegedly recovered from the possession of the accused, is of commercial quantity i.e. 297 gm and as such, the embargo under Section 37 of the NDPS Act will be applicable here in this case. But, from the materials placed on record, specially from the scanned copy of the record, this Court is unable to derive its satisfaction that the allegation against the accused is not true and that he will not commit any offence while on bail.

10. It is to be noted here that, Mr. Mazumder, learned counsel for the accused has not advanced any argument on merit of the case. His only contention is that trial is being delayed and as such the accused is entitled to bail on this ground.

11. I have considered the submission of Mr. Mazumder, learned counsel for the accused on this point and also gone through the case laws in **Mohd. Muslim @ Hussain**

(supra), Nitish Adhikary @ Bapan (supra), Litan Miah (supra) and Abu Sufian (supra), referred by Mr. Mazumder in support of his case. But, it appears that the facts and circumstances of the aforementioned cases are different from the case in hand and as such, this Court is unable to record concurrence with the submission of Mr. Mazumder, learned counsel for the accused, that the ratio laid down in the said cases are applicable in all force to the facts and circumstances here in this case.

12. It appears that the charge has already been framed and on the last date i.e. on 28.06.2023 one witness was also present, but the said witness could not be examined by the learned Court below on that day due to non-availability of the seized articles. Thus, in the given facts and circumstances on the record, it cannot be said that there is any considerable delay in trial so as to term it as protracted and as such it cannot be said that it violates the right of the accused to speedy trial.

13. In the result, I find that this is not a fit case where the privilege of bail can be granted to the accused. Accordingly, the bail application stands dismissed.

14. However, the learned Court below is directed to expedite the trial and if necessary to take recourse to Section 309(1) of the Cr.P.C. and conclude the trial within a reasonable period preferably within a period of 6(six) months from today, without being influenced by any of the observations made herein above, which are made only to dispose of the present application.

Sd/- Robin Phukan
JUDGE

Comparing Assistant