

GAHC010131282023



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

Case No. : Bail Appln./2098/2023

SHAMIL UDDIN
SON OF SHAYAB ALI,
RESIDENT OF VILL.- KABUL (DHUBRI),
P.S.- NILAMBAZAR, DISTRICT- KARIMGANJ,
ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

03.08.2023

- 1.** Heard Mr. L. R. Mazumder, learned counsel for the petitioner as well as Ms. S. H. Bora, learned Additional Public Prosecutor representing State of Assam.

2. This bail application has been preferred under Section 439 of Code of Criminal Procedure, 1973, praying for bail of petitioner, namely, Shamil Uddin, who has been arrested on 13.11.2022 (263 days) in connection with Bazaricherra P. S. Case No. 197/2022 under Section 21(C)/25/29 of the NDPS Act.

3. The accusation in this case is that on 11.11.2022, one Jyoti Prasad, SI of Police, lodged an FIR before the Officer-in-Charge of Bazaricherra Police Station, *inter-alia*, alleging that on 11.11.2022 at about 4.00pm, on receipt of an information from reliable sources regarding transportation of huge quantity of drugs, one naka checking was conducted and one Mahindra Bolereo bearing Registration no. MZ 01 G 3542 was intercepted and approximately 1434.53 grams of suspected heroin were seized therefrom and the present petitioner, who was the driver of the said vehicle, was apprehended.

4. On receipt of the said FIR, Bazaricherra P. S. Case No. 197/2022 was registered and investigation was initiated. Ultimately, on completion of investigation charge-sheet was laid against the present petitioner along with co-accused persons under Section 21(C)/25/29 of the NDPS Act and charges are yet been framed.

5. Learned counsel for the petitioner has submitted that the petitioner is innocent and in no ways involved in the offence alleged against him in the FIR. It is also submitted that the petitioner is a driver by profession was not aware as to who kept suspected contraband in

his vehicle. Learned counsel for the petitioner has submitted that trial has yet not began of the petitioner is languishing behind the bar since 13.11.2022 and hence, on the ground of prolong incarceration, hence, he may be allowed to go on bail.

6. In support of his contention, learned counsel for the petitioner has cited a ruling of Hon'ble Supreme Court of India in ***Shariful Islam @ Sarif Vs. State of West Bengal*** (order dated 04.08.2022 in *SLP Criminal No. 4173/2022*), wherein the accused was detained behind the bar for one year six months and he was granted bail on the ground of long incarceration.

7. Learned counsel for the petitioner has also cited an order of the Co-ordinate Bench of this Court passed on 11.05.2023 in Bail Application No. 1128/2023 in ***Abu Sufian Vs. State of Assam***, wherein on the ground of prolong incarceration of one year eleven months, the accused was granted bail by this Court. In the same ground, the learned counsel for the present petitioner has also prayed for bail to the present petitioner.

8. On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner on the ground that considering the quantity of contraband seized from the present petitioner and considering the fact that the charge-sheet had been laid only on 9th May 2023, this is not a case, where it may be said that due to delay in trial, the petitioner is entitled to get bail. Learned Additional

Public Prosecutor has also submitted that considering the quantity of contraband seized in this case, the detention of 263 days may not be regarded as long incarceration, which may over ride the statutory embargo of Section 37 of the NDPS Act, 1985.

9. I have considered the submissions made by learned counsel for both sides and perused the materials available on record including the scanned copy of Special (NDPS) Case No. 159/2022.

10. Though, the Hon'ble Supreme Court of India in several of its judgment have observed that "prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in case of prolong incarceration the grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985. However, the question before this Court is as to what period may be regarded as prolong incarceration if an accused has been detained in connection with an offence involving commercial quantity of narcotic drugs and psychotropic substance.

11. In the two cited cases by learned counsel for the petitioner, wherein the accused persons were granted bail, they were under custody for a period of one year six months and one year eleven months, respectively. It has been seen in several such cases wherein the accused persons are detained for one year six month or more in connection with cases involving, commercial quantity of contraband which attracts embargo of Section 37 of the NDPS Act, Hon'ble Apex

Court had granted bail only due to prolong incarceration. Apart from the two ruling cited by learned counsel for the petitioner reference may also be made to the case of "**Nitesh Adhikari Vs. State of West Bengal**" (Order dated 04.05.2022 in *SLP Criminal No. 5769/2022*), Hon'ble Apex Court granted bail to accused facing accusation under Section 21 (c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

12. However, in the instant case, the accused has been detained for lesser period and considering the quantity of contraband seized in this case as well as considering the fact that the charge-sheet has been laid only on 09.05.2023 and the trial is in its initial state, this Court is of considered opinion that the period of incarceration of the present petitioner may not be considered as long enough so as to override the statutory embargo created under Section 37 of the NDPS Act, 1985.

13. Hence, the prayer for bail of the present petitioner is rejected at this stage.

14. With the above observation, this bail application is accordingly, disposed of.

JUDGE

Comparing Assistant