

GAHC010182162023



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

Case No. : Bail Appln./3092/2023

VIKASH KUMAR
S/O BOHORAN BHARTI
VILL- WARD NO. 7, PUSAHO
P.S. BITHAN,
DIST. SAMASTIPUR, BIHAR

VERSUS

THE STATE OF ASSAM
THROUGH THE PP, ASSAM

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.10.2023.

1. Heard Mr. P.K. Roy, learned counsel for the accused. Also heard Mr. K.K. Parasar, learned Addl. P.P., Assam, for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Vikash Kumar, who has been languishing in jail since 14.04.2022, in connection with the Badarpur P.S. Case No.87/2022, corresponding to Special Case No.58/2022, under Section 20(b)(ii)(c) of the NDPS Act, pending before the learned Special Judge, Karimganj, for grant of bail.
3. The aforementioned case has been registered on the basis of an FIR, lodged by SI Moon Basumatary of Badarpur P.S., on 14.04.2022, to the effect that acting on a tip off, they have apprehended two persons, namely, Vikash Kumar and Manoj Debberma from Badarpur Night Super Counter, at around 6:45 P.M. and recovered 30.930 Kg. of Ganja in four packets and seized the same in presence of witnesses, preparing seizure list.
4. Mr. Roy, learned senior counsel for the accused, submits that the accused is behind the bar for last 532 days, as he was arrested on 14.04.2022. Mr. Roy further submits that the case has already been charge sheeted, but, the trial has not yet started and that the accused is ready to face the trial and the seized four packets of Ganja were not recovered from his possession and the recovery was doubtful and in fact it was recovered from the possession of another person. Mr. Roy further submits that this court has already enlarged the accused involved in commercial quantity of contraband substance on bail in Bail Application No. 1128/2023, vide order dated 11.05.2023, considering the period of detention and also placing reliance upon a decision of Hon'ble Supreme Court in **Mohd. Muslim @ Hussain vs. State (NCT of Delhi) in Special leave Petition (Crl.) No(s) 915/2023**, and the ratio laid in the said case may be followed in the present case also, and that the accused is ready to face trial and therefore, it is contended to allow the petition.
5. On the other hand, Mr. K.K. Parasar, the learned Addl. P.P., Assam, submits that four packets of Ganja, were recovered from the joint possession of the present accused and one Manoj Debberma, and that the quantity of Ganja recovered from the accused are commercial quantity, and the rigor of Section 37 of the NDPS Act is applicable in the present case and the accused could not satisfy the requirement of the said section and therefore, Mr. Parasar has contended to dismiss the petition.
6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the case record, received from the learned Court below.

7. It appears that the I.O. has already completed investigation and laid charge sheet against the accused and the learned Court below has framed charge against the accused under Section 20(b)(ii)(c) of the NDPS Act and now the case pending for examination of witnesses.

8. It is not in dispute that the quantity of the Ganja recovered from the alleged possession of the accused is of commercial quantity. And since the quantity of the contraband substance recovered from the possession of the accused is of commercial quantity, the accused has to satisfy the two requirements of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

9. But, from the materials on record and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail. Though Mr. P.K. Roy, the learned counsel for the accused submits that the recovery of contraband substance itself is doubtful, yet, the seizure list, dated 14.04.2022 indicates that 30.930 Kg. of Ganja was recovered from the joint possession of present accused and another accused at Badarpur Night Super Counter, and the seizure list also bears his signature. The accused also hails from Bihar and since the case is in the evidence stage, enlarging him on bail at this stage, will affect speedy disposal of the case.

10. Though, Mr. Roy, the learned counsel for accused submits that this Court should consider the period of detention of the accused, for enlarging him on bail, yet Hon'ble Supreme Court, in the case of **NCB vs. Mohit Agarwal**, reported in **(2022) 0 Supreme (SC) 619**, had made it clear that where the commercial quantity of the contraband substance is involved, the period of detention of the accused is immaterial. I have gone through the case law - **Mohd. Muslim @ Hussain** (supra), referred by the Mr. Roy and also gone through the bail order dated 11.05.2023, in Bail Application No. 1128/2023. But, the ratio laid down therein has to be treated to be restricted to its own facts. In that case, **Mohd. Muslim @ Hussain** (supra), the appellant was in jail hazoot for 7 years and 4 months. And the Hon'ble Supreme Court, considering the prolong detention period and of section 436A Cr.P.C., has enlarged the appellant on bail.

11. In view of above, this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the Cr.P.C. to the accused and therefore, the same stands dismissed.

12. However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, preferably within six months from today, and if necessary, by taking recourse of the provision of Section 309(1) of the Cr.P.C.

13. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant