

GAHC010185382023



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

Case No. : Bail Appln./3007/2023

SHIBANKAR BISWAS @ GAUTAM BISWAS
S/O DIPAK BISWAS
R/O RELIEF YARD
P.S.LUMDING,
DIST HOJAI, ASSAM
PIN NO. 782435

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 27-09-2023

Heard Mr. NK Murry, learned counsel for the petitioner. Also heard Mr. RR Kaushik, learned Additional Public Prosecutor appearing for the State respondent.

2. The petitioner, who had been arrested on 30.07.2022, in connection with the recovery of 26 kgs of ganja in Lumding P.S. Case No. 127/2022, under

Section 20(C) of the NDPS Act, is praying for bail on the ground that while charges have been framed against the petitioner on 03.02.2023, only four out of the nine prosecution witnesses have been examined so far by the learned Trial Court.

3. The learned counsel for the petitioner submits that in terms of the judgment of the Supreme Court in the case of ***Bhagirathsinh s/o Mahipat Singh Jadeja –vs- State of Gujarat***, reported in ***(1984) 1 SCC 284*** and in the case of ***Mohd Muslim @ Hussain –vs- State (NCT of Delhi)***, reported in ***2023 LiveLaw (SC) 260***, the petitioner should be released on bail. He also submits that the evidence of the three seizure witnesses who have been examined by the learned Trial Court does not point towards the guilt of the petitioner. Accordingly, bail should be granted to the petitioner.

4. The learned Additional Public Prosecutor, on the other hand submits that there is no delay in the trial proceedings and as the drugs have been recovered from the petitioner, the petitioner cannot be released on bail, unless the conditions imposed under Section 37 of the NDPS Act is fulfilled. He also submits that there has been no prolonged incarceration of the petitioner as he has been in jail for one year two months only. He accordingly, submits that the bail application should be rejected.

5. I have heard the learned counsels for the parties.

6. The petitioner having been arrested in connection with the recovery of 26 kgs of ganja, the petitioner has to be charged under Section 20(B)(ii)(c) of the NDPS Act. In any event, mere mention of a wrong provision of law does not invalidate any order, when the correct provision of law is in existence.

7. As can be seen from the order passed earlier in the Bail Application No.

2787/2022, consideration of charge was to have taken place on 03.02.2023. As four prosecution witnesses have been examined out of nine, there does not appear to be any delay in the trial proceedings. Further, in terms of Section 37 of the NDPS Act, bail can only be granted when the Court is satisfied that there is reasonable ground to believe that the accused is not guilty of the offence and is not likely to commit any offence, while on bail.

8. In the present case, the trial not having been completed, it cannot be stated that there are reasonable grounds for believing that the petitioner is not guilty of the crime. Further, the case relied upon by the learned counsel for the petitioner, i.e., **Bhagirathsinh s/o Mahipat Singh Jadeja (supra)** is not applicable to the facts of the case, as the said decision was with regard to an application for bail made under Section 439(2) Cr.PC, against the charge made under Section 307 IPC and Section 135 of the Bombay Police Act. The judgment passed by the Supreme Court **in Mohd Muslim @ Hussain (supra)** is with regard to the accused having been in custody for around eight years and the trial not having been concluded. It was in that context that the Supreme Court held that refusal of bail on the one hand and to delay trial of cases on the other, was clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the NDPS Act, Section 309 Cr.PC and Articles 14, 19 and 21 of the Constitution of India.

9. In the present case, though there is some delay in the trial proceedings, it is seen that not even one year has passed from the date of consideration of charge. In view of the above grounds, this Court finds that the case of **Mohd Muslim @ Hussain (supra)** would not be applicable to the facts of this case, as the two cases have different fact situations.

10. The application for bail is accordingly dismissed. However, it is hoped

that the learned Trial Court shall expedite the trial proceedings in NDPS Case No. 123/2022 and dispose of the same, at the earliest.

JUDGE

Comparing Assistant