

GAHC010187152023



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

Case No. : Bail Appln./3006/2023

ANAR HUSSAIN
SON OF BAHAJUDDIN SHEIKH, RESIDENT OF VILLAGE- ICHAGURI,
POLICE STATION- AMPATI, DISTRICT- SOUTH WEST GARO HILLS,
MEGHALAYA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTORS

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

08.11.2023

Heard Mr. N. Ahmed, learned counsel for the accused. Also heard Mr. B. Sarma, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by accused, Anar Hussain, who has been languishing in jail hajat in connection with Special (N)

Case No. 70/2022, arising out of Mankachar P. S. Case No. 181/2022, under Sections 22(C) of the Narcotic Drugs and Psychotropic Substance Act, pending before the Learned Special Judge, South Salmara Mankachar, for grant of bail.

3. The above noted case has been registered on the basis of an FIR lodged by one Kameswar Basumatary, S. I. of Police, Mankachar, on 27.6.2022.

4. The essence of allegation, made in the FIR, dated 27.6.2022, is that acting on a tip off the informant and other police staff conducted search in a Bus, bearing registration No. AS-01-NC-1582 at Mankachar Tin-ali and recovered two nos. of cartoon, containing 200 bottles of Eskuf cough syrup, each bottle contains 100 ML(approximate weight 26 Kg) which was suspected to be narcotic drugs, from the possession of Anar Hussain.

5. Mr. Ahmed, learned counsel for the accused, submits that the accused was arrested on 27.06.2022, and since then, he has been languishing in jail hajot for more than 500 days. Mr. Ahmed further submits that the investigation has culminated in submission of charge sheet before the learned Court below and the learned Court below had framed charge against the accused u/s 21(C) of NDPS Act, and thereafter, the learned Court below had examined as many as 8(eight) witnesses, out of 12 witnesses, cited in the charge sheet. Mr. Ahmed further submits that there is undue delay in conclusion of the trial and as such, the right of the accused stands violated and that the accused is a local person and he will face the trial and he will appear before the learned Court below on each and every date and, therefore, Mr. Ahmed contended to allow this petition.

6. On the other hand, Mr. B. Sarma, learned Addl. P. P. submits that the trial is about to complete, as out of 12 witnesses, 8 witnesses have already been examined and only 4 witnesses are left to be examined and that the quantity of contraband substance recovered from the possession of the accused is of

commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of NDPS Act but, the accused has failed to satisfy those requirements, and therefore, Mr. Sarma, the learned Addl. P.P., has opposed the petition.

7. Having heard the submission of learned Advocates for both the parties and I have carefully gone through the petition and the documents placed on record and also perused the evidence of the 8 witnesses recorded by the learned Court below.

8. It is not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused person is of commercial quantity, and as such the accused person has to satisfy the twin conditions 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, specially from the scanned copy of the record received from the learned court below 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.

10. At this stage the learned counsel for the accused submits that he relied upon a decision of Hon'ble Supreme Court in **Md. Muslim @ Hussain vs. State (NCT of Delhi)** reported in **2023 SCC OnLine SC 352**, in respect of the requirement of section 37 of the NDPS Act. I have gone through the ratio laid down in the said case and I find that the facts and the facts and circumstances of those cases are quite different from the case in hand. In the said case Hon'ble Supreme Court has held that Article 21 of the Constitution of India confers a fundamental right on every individual not to be deprived of his life or personal liberty except in accordance with the procedure established by law and ordered for releasing the accused on bail taking into account the period of detention and also taking into account the section 436A which is applicable in the cases under NDPS Act. It is to be noted here that accused in that case was behind the bar for more than seven years.

11. It is also to be mentioned here that in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on

28 March, 2023, a bench of co-equal strength of Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

12. Same principle is echoed by another bench of co-equal strength, of Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021, decided on 19 July, 2022. It may be noted here that these decisions are earlier in point of time, and therefore, the same also cannot be ignored altogether in view of the Doctrine of binding precedent, as held by a five Judges bench of Hon'ble Supreme Court in - **National Insurance Company Ltd. vs. Pranay Sethi & Another reported in (2017) 16 SCC 680.)**

13. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same 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.

14. However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, preferably within a period of three months from today, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

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

JUDGE

Comparing Assistant