

GAHC010198942022



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

Case No. : Bail Appln./2507/2022

MOHAMMAD RAQIBUDDIN @ RAQIBUDDIN
S/O MOHAMMAD SIRAJUDDIN
PERMANENT RESIDENT OF LILONG HAOREIDI MAKHA LEIKAI
P.O. LILONG
P.S. LILONG,
DIST. THOUBAL, MANIPUR, 795130

VERSUS

THE UNION OF INDIA
REP. BY THE STANDING COUNSEL, DIRECTOR OF REVENUE
INTELLIGENCE, GUWAHATI-05.

Advocate for the Petitioner : MR. J ABBAS

Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01-03-2023

Heard Mr. J. Abbas, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned S.C. for the Directorate of Revenue Intelligence.

2. The petitioner, namely, Mohammad Raqibuddin @ Raqibuddin,

who was arrested on 06.04.2022 in connection with D.R.I. Case No. 01/CL/NDPS/HEROIN/DRI/GZU/2022-23 under sections 8(c), 21, 22, 22(c), 23(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short), has prayed for regular bail under section 439 Cr.P.C. The said case is being tried before the learned Court of Special Judge, Kamrup (M), Guwahati.

3. The learned counsel for the petitioner has submitted that the petitioner has been in custody for 329 days and there is no chance of an early trial because Final Complaint was submitted on 30.11.2022 and out of 10 listed witnesses, no witnesses have been examined so far.

4. The learned counsel for the petitioner has also submitted that the petitioner was the driver of the vehicle in which drugs were seized and therefore, he cannot be said to be in conscious possession of the contraband, which was in possession of the passenger. In support of the said contention, reliance has been placed on the case of *Avtar Singh & Ors. v. State of Punjab*, 2002 CrLJ 4330.

5. The learned standing counsel for the DRI has referred to the objection filed in this case and has submitted that the prosecution has clearly demonstrated that the petitioner was aware that he would be carrying the contraband heroin in lieu of handsome extra money. The said contraband was brought by the passenger of the vehicle with whom he had prior meeting of mind. It is projected that although the said co-accused had a car for himself, he boarded the vehicle of the petitioner only to complete the dealing in narcotic drug, i.e. heroin. It has been submitted that as per the call dial record, the petitioner was found to be in close contact with the co-accused carrying the

contraband. Reliance is placed on the case of *Nawaz Khan, (2022) 0 Supreme(SC) 508*.

6. As per the scanned copy of the case records received from the learned trial Court, it is observed that in the seizure list dated 05.04.2022, 807.18 grams of heroin were found stored in 65 soap cases, the value of which is estimated at Rs.5,65,02,600/- (Rupees five crore sixty five lakh two thousand six hundred only). Thus, there is no doubt that the seized contraband is of commercial quantity.

7. In the case of *Avtar Singh*, the trial Court had acquitted the appellant-accused, which was reversed by the High Court. In the said context, it was observed by the Supreme Court of India as follows:-

“The High Court resorted to the presumption under Section 35 which relates to culpable state of mind, without considering the aspect of possession. The trial court invoked the presumption under S. 54 of the Act without addressing itself to the question of possession. The approach of both the courts is erroneous in law. Both the courts rested their conclusion on the fact that the accused failed to give satisfactory explanation for travelling in the vehicle containing poppy husk at an odd hour. But, the other relevant aspects pointed out above were neither adverted to nor taken into account by the trial court and the High Court. Non application of mind to the material factors has thus vitiated the judgment under appeal.”

8. In the present case, the trial is yet to be concluded. Nonetheless, the prosecution has been able to *prima facie* satisfy the Court that there are materials in the final complaint to suggest that the petitioner was in conscious possession of huge quantity of contraband.

9. It would also be relevant to quote the provision of Section 436A Cr.P.C., which is as follows:-

“436A. Maximum period for which an under trial prisoner can be

detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

10. It would also be appropriate to refer to the decision of the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, wherein it is provided that "*Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.*"

11. In the present case, the petitioner is charged of committing offence punishable under sections 8(c), 21, 22, 22(c), 23(c), 25 and 29 of the NDPS Act. Under the said provisions, the punishment prescribed is not less than 10 years but which may extend to 20 years and shall also be liable to fine which shall not be less than Rs.1.00 lakh but which may extend to Rs.2.00 lakh. Therefore, following the ratio laid down in the case of *Satender Kumar Antil*

(*supra*), as well as the provision of Section 436A Cr.P.C., the petitioner having been incarcerated for a period of 329 days, has not become entitled to be released on bail.

12. This application for bail is rejected.

13. Nothing contained in this order shall prejudice either side during trial.

14. The Registry shall not issue any certified/uncertified copy of any part of the scanned copy of the record received from the learned trial Court.

JUDGE

Comparing Assistant