

GAHC010199252023



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

Case No. : Bail Appln./3410/2023

IQUEBAL HUSSAIN @ IKBAL HUSSAIN
S/O- BADRUL ISLAM, VILL- JAGGANATHI, P.S. AND DIST.- KARIMGANJ,
ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR

Advocate for the Petitioner : MR. M A CHOUDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 21-12-2023

Heard Mr. M. A. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Addl. P.P.

The petitioner, Iquebal Hussain @ Ikbal Hussain has filed this application u/s 439 Cr.P.C. praying for bail as he is behind bars since 26.10.2022, in connection with Special (NDPS) Case No. 150/2022 pending in the Court of learned Sessions Judge, Karimganj arising out of Karimganj P. S. Case No. 608/2022 u/s 22(c)/25/29 of NDPS Act, 1985.

The allegation against the petitioner is that he was driving a car bearing

registration No. AS-10A-8273, a Maruti Wagnor-R vehicle, alongwith two passengers. On a tip off the vehicle was stopped by the investigating team and the driver of the vehicle i.e present petitioner, stopped the vehicle approx 70 meters away. As soon as the vehicle was stopped, two passengers from the vehicle fled away and the complainant somehow managed to apprehend the present petitioner. After searching the vehicle, 20,000 yaba tablets were found inside the vehicle. It is submitted that the present petitioner being the driver of the vehicle is not complicit. The passengers boarding the vehicle were carrying the tablets, but as they fled, the police apprehended the present petitioner alongwith the yaba tablets

The petitioner has prayed for bail as he is behind bars for 421 days and not a single witnesses has been examined, after charge was framed on 21.4.2023.

The learned Addl. P.P. has raised objection that at least the complainant has to be examined and bail petition is restricted by the rigour of Section 37 of NDPS Act.

I have considered the submissions at the bar with circumspection and I have also perused the scanned copies of the LCR. The charge sheet reveals that there are seven witnesses to be examined and not a single witness has been examined after charge was framed in the month of April. Balance has to be struck between the rigour of Section 37 of the NDPS Act and the fundamental right to personal liberty of the petitioner. It is submitted at the bar that there is every possibility that the petitioner would be acquitted from the charges as the petitioner is innocent. It is also submitted on behalf of the petitioner that the investigating agency did not submit charge sheet against other two passengers who fled from the place of occurrence and instead booked the present accused who was driver of the vehicle. The decision of Hon'ble Supreme Court in *Rabi*

Prakash Vs State of Odissa , reported in 2023 SCC On Line SC 1109 is relevant to this case wherein it has been observed that :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent-State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not before at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

In the light of the decision of Hon'ble the Supreme Court in *Rabi Prakash Vs State of Odissa* (supra), this petition is allowed.

The petitioner is enlarged on bail of Rs.1,00,000/- with a local surety of like amount to the satisfaction of the learned Special Judge, NDPS, Karimganj under the condition:

- (1) that the petitioner shall refrain from such activities with which he is alleged;
- (2) the petitioner shall not default appearance and appear regularly
- (3) the petitioner shall not leave the jurisdiction of the Court without prior permission from the jurisdictional Court till completion of trial.

On breach of any of the bail conditions, bail order shall stand cancelled.

Bail application stands disposed of.

JUDGE

Comparing Assistant