

GAHC010214062023



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

Case No. : Bail Appln./3419/2023

ABDUL JALIL
S/O LT. NUR UDDIN
VILL- DURLABPUR
P.S. PATHERKANDI,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 30.11.2023

- 1.** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Abdul Jalil* who has been detained behind the bar since 14.08.2022 in connection with Special (NDPS) Case No.

119/2022 corresponding to GR Case No. Patharkandi P.S. Case No. 205/2022 under Section 22(c)/25/29 of the NDPS Act, 1985.

3. The accusation in this case is that on the basis of FIR lodged by one R.P. Singh, S.I. of Patharkandi Police Station on 13.08.2022, *inter alia*, alleging that recovery of commercial quantity of suspected Yaba tablets were made from the possession of present petitioner, Patharkandi P.S. Case No. 205/2022 was registered and investigation was initiated.

4. During the course of investigation, the present petitioner was arrested on 13.08.2022 and on 14.08.2022, he was remanded to judicial custody. Thereafter, charge-sheet was laid against the present petitioner in this case. It is the case of the present petitioner that charge-sheet was not laid within a period of 180 days from the date of remand of the present petitioner and, hence, he is entitled to get default bail under Section 167(2) Cr.P.C. read with Section 36A(4) of the NDPS Act, 1985.

5. Learned counsel for the petitioner has submitted that earlier also the petitioner had approached this Court filing a Bail Application No. 1105/2023 in which similar grounds were taken by the petitioner which he has taken in the instant bail application and the said bail application was rejected by this Court by order dated 14.08.2023. Now, the petitioner has again approached this Court on the ground that he has preferred a criminal petition impugning the order dated 07.02.2023 passed by the learned Sessions Judge, Karimganj in Special (NDPS) Case No. 119/2022 and in the event of setting aside of the said impugned order dated 07.02.2023 in the criminal petition filed by the present petitioner, this bail application would be automatically allowed as then it would be inferred that the charge-sheet in the instant case has not filed then the statutory period of the petitioner would not be entitled to get default bail.

6. Learned counsel for the petitioner has also submitted that two prosecution witnesses have already been examined in the Special (NDPS) Case No. 119/2022 and the witnesses so far as examined have not implicated the present petitioner and on that count also, the petitioner is entitled to be released on bail.

7. On the other hand, learned Additional Public Prosecutor has submitted that the petitioner has been charged for an offence involving commercial quantity of contraband and hence, the embargo of Section 37 of the NDPS Act, 1985 comes into play and at this stage when only two prosecution witnesses have been examined, it may not be appropriate to conclude that there are reasonable ground for believing that the present petitioner is not guilty of the offence under Section 22(c) of the NDPS Act, 1985 which he has been charged in this case.

8. I have considered the submissions made by learned counsel for both sides and have perused the materials available on record.

9. It appears that by order dated 14.08.2023 passed in Bail Application No. 1105/2023, prayer for bail of the present petitioner was rejected by this Court holding that the petitioner is not entitled to statutory default bail as the charge-sheet in the instant case has been filed within the statutory period.

10. It is pertinent to mention herein that the criminal petition No. 1020/2023 which was preferred by the present petitioner wherein the order dated 07.02.2023 passed by learned Sessions Judge Karimganj in Special (NDPS) Case No. 119/2022 was impugned has been dismissed today i.e., 30.11.2023 by this Court.

11. In view of the fact that the plea of default statutory bail taken by the

present petitioner in this bail application again fails. On the other hand, as regards submissions made by learned counsel for the petitioner that on the basis of two prosecution witnesses, this Court may come to a conclusion that there are no materials against the present petitioner is also not reasonable as there are ten prosecution witnesses listed in the charge-sheet and only two have been examined and merely on the basis of testimony of two prosecution witnesses, a conclusion may not be arrived at, as the contraband involved in this case is of commercial quantity, hence, the embargo of Section 37 of the NDPS Act, 1985 comes into play in this case and as presently from the materials on record, it is difficult to arrive at a satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of offence under Section 22(c) of the NDPS Act, 1985 with which he has been charged in the instant case.

12. In view of the above, this Court is constrained to hold that the present petitioner is not entitled to get bail on the grounds pleaded by the present petitioner in the instant bail application. Accordingly, this bail application is hereby dismissed.

JUDGE

Comparing Assistant