

GAHC010216842023



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

Case No. : Bail Appln./3438/2023

TAJ UDDIN
S/O- MOBOSSIR ALI, R/O- VILL- PASCHIM CHANDRAPUR, POLICE
STATION- DHARMANAGAR, DISTRICT- DHARMANAGAR, TRIPURA

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 MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

30.11.2023

1. Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State of Assam.
2. This is an application made under Section 439 Cr. P.C. seeking bail by the accused/petitioner, namely, **Taj Uddin**, who is in custody since

06.03.2022 in connection with Special (NDPS) Case No. 40/2022 arising out of Patherkandi PS Case No. 69/2022 registered under Sections 21(C)/25/29 of the Narcotic Drug and Psychotropic Substances Act, 1985, (in short as NDPS Act, 1985).

3. The allegations against the petitioner and another accused namely, Saip Uddin was that both of them were arrested while possessing contraband kept concealed in their vehicle bearing registration No. TR 05 D 0625 in 27 Nos. of soap boxes on 06.03.2022.
4. After completion of the investigation, the Charge-Sheet was filed by the Investigating Authority on 31.07.2022 and thereafter, charges under Section 21(C) of the NDPS, Act, 1985 were framed against the accused petitioner by the learned trial Court below under its order dated 28.09.2022.
5. The prosecution is relying on 9 (nine) witnesses as cited in the charge-sheet. The first prosecution witness was examined on 11.07.2023 i.e. almost one year from the date of framing of charges inasmuch as the first prosecution witness is the seizure witness.
6. All the witnesses, except the witness Nos. 2, 3, 4 and 5 cited in the charge-sheet, are officials either of the police department or of the expert and therefore, in the considered opinion of this Court, there is delay in examination of the witnesses by the prosecution inasmuch as the charge-sheet was filed on 28.09.2022 and the first prosecution witness was examined on 11.07.2023.
7. It is also seen from the record that, after examination of PW-1, the learned trial Court below could realize that charges have not yet been

framed against the other co-accused persons who are still absconding and therefore, the trial is to be postponed and it is also seen from the record that the NBWA has been issued against the absconding accused on 25.07.2023 and the matter was fixed on 08.08.2023. Thereafter, also 2/3 days as stated by the learned counsel has passed in the case and the next date of the matter was fixed on 04.12.2023 for report on the execution of the warrant against the absconding accused.

8. In the aforesaid backdrop, this Court is of the view that the petitioner cannot be put under custody for long, awaiting the execution of warrant issued against the absconding accused. However, at the same time, this Court is of the opinion that the trial should be completed within a specific period of time looking at the mandate of the NDPS Act, 1985 inasmuch as the right of the petitioner under Article 21 of the Constitution of India should be protected.
9. To balance of the aforesaid, in the considered opinion of this Court, let learned Special Judge, (NDPS), Karimganj take a final call on the warrant issued against the absconding accused and proceed in terms of Section 82 of the Cr.P.C., and if necessary, thereafter, split the case record and have a separate trial against the present petitioner in terms of Section 317 (2) of Cr.P.C. In the aforesaid backdrop, the present application is closed with a time frame to the learned trial Court below to complete the trial within a period of 6 (six) months today and if such proceeding is not concluded within the aforesaid period, the learned Sessions Judge, shall consider the case of the petitioner for bail in terms of the law laid down in the case of **Ravi Prakash –VS- State of Odisha** reported in **2023 LiveLaw (SC)**

533, along with other relevant provisions of law after hearing both the sides. However, it is made clear that if the delay is caused for the fault of the petitioner or petitioner's lawyer that should not be treated as a delay on the part of the prosecution. It is also made clear that the present order passed should not be treated as precedent inasmuch as the present order is passed in the given facts of the present case.

10. In view of the aforesaid discussions, decisions and reasons, this bail application stands disposed of.

JUDGE

Comparing Assistant