

GAHC010222412023



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

Case No. : Bail Appln./3511/2023

UDIP DUTTA
S/O LATE MAHENDRA DUTTA
R/O VILL- DANGDHARA KARATIPAR
P.S. TITABAR, PIN-785630
DIST. JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

O R D E R

04.12.2023

— Heard Ms. D. Borgohain, learned counsel for the accused and Mr. K. Baishya, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973,

is preferred by accused persons namely, **Sri Udip Dutta**, who has been languishing in jail hazot, in connection with the **NDPS Case No. 81/2021**, under Sections 20[b][ii][C]/23[c]/ 27[A]/29 of the NDPS Act, arising out of Khatkhathi P.S. Case No. 69/2021, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by S.I. Mridul Rudra Paul of Khatkhathi Police Station, on 13.04.2021. The essence of allegations made in the FIR is that acting on a tip off, he has intercepted one Truck, bearing registration No. AS-01-FC-3711, on NH -39, near SBI Khatkhathi, and recovered 600 kg of suspected Ganja from the said Truck and found one Ranjit Singh as driver and one Abdul Mutalib as co-driver. Based upon their statements, he has apprehended one Udip Dutta, who was waiting for receiving the said consignment of Ganja at Silonijan, near Garampani Reserve, on being identified by the accused driver.

4. Ms. D. Borgohain, the learned counsel for the accused submits that the case has already been charge sheeted and the charge has been framed against the accused and two other persons under Sections 20(b)(ii)(C)/23(c)/27[A]/29 of the NDPS Act, and thereafter, the learned court below has examined as many as 10 witnesses, out of the 15 cited witnesses in the charge sheet and out of the 10 witnesses examined by the prosecution, except the complainant no other witnesses have uttered any word against the present accused. Ms. Borgohain further submits that nothing has been recovered from the possession of the accused and he was arrested only on the basis of the statement of the co-accused and CDR analysis, which, according to Ms. Borgohain, are not at all admissible. Ms. Borgohain also submits that the accused has been languishing in jail hazot since 14.04.2021, for last 919 days, and that there is delay in trial and that he will appear before the court regularly, and therefore, it is contended

to allow the petition.

5. Whereas, Mr. Baishya, learned Addl. P.P. submits that out of the 15 witnesses, 10 witnesses have already been examined and only 5 witnesses remained to be examined. Mr. Baishya further submits that there is no inordinate delay in the trial and examination of the remaining witnesses will also be concluded as soon as possible and if the present accused is enlarged on bail, it would cause delay in disposal of the case. Mr. Baishya also submits that while 5 witnesses are yet to be examined, at this stage it cannot be said that there is no material against the present accused and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. It appears that the accused has been languishing in jail hazot since 14.04.2021, for last 919 days and that the learned court below has examined as many as 10 witnesses, out of the 15 cited witnesses. It further appears that though some of the witnesses have not implicated the accused with the offence, yet the complainant has clearly implicated the accused with the offence alleged in the FIR and at this stage it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. **[See Union of India Ratan Malik reported in (2002) 2 SCC 624]**. Besides, there is no point for disbelieving the complainant Police Officer, while 5 witnesses are yet to be examined by the prosecution side.

8. It is, however, a fact that statement of co-accused and own statement of the

accused is not admissible. (See **Tofan Singh vs. State of Tamil Nadu, reported in (2021) 4 SCC 1**). But, the seized contraband substances were destined to be delivered to accused Udip Dutta at Selonijan, and the complainant police officer, acting on the information so received, had proceeded there and found him at Selonijan while he was waiting there to take delivery of the contraband substances. And because of this fact, along with the CRD analysis of the mobile phone of the accused persons and also in view of other facts and circumstances on the record, the matter stands on a different footing.

9. It is also not in dispute that 600 kg of Ganja was recovered from the Truck No. AS-01-FC-3711, and it is also true that nothing has been recovered from the possession of accused. But, there is material to indicate that the said consignment of Ganja was supposed to be delivered to the present accused and he was apprehended from the place, where he was waiting to receive the said consignment of Ganja. It is also not in dispute that the consignment of Ganja, recovered from the possession of the co-accused is of commercial quantity and as such, the present accused has to satisfy the requirement of Section 37 of the NDPS Act.

10. But, from the submission of learned counsel for the accused, and also from the materials placed on record, this Court is unable to derive its satisfaction that the accused has succeeded in satisfying the aforesaid requirement of section 37 of the NDPS Act.

11. We are not oblivious of the fact that fair, just and reasonable procedure is implicit in Article 21 of the Constitution, which also creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. A speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all

concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. (See -**Abdul Rehman Antulay v. R.S. Nayak**, reported in **(1992) 1 SCC 225**). In the said case it has also been held that –

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(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in *Barker* [33 L Ed 2d 101] “it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate”. The same idea has been stated by White, J. in *U.S. v. Ewell* [15 L Ed 2d 627] in the following words:

‘... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.’

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

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(10) It is neither advisable nor practicable to fix any time-limit for trial of

offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

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12. In the case in hand it appears from the record that there is no inordinate delay in the trial. Mr. Baishya, the learned Addl. P.P., had rightly pointed this out. It appears that examination of 10 witnesses, out of 15 cited witnesses, has already completed. According to Mr. Baishya, examination of remaining witnesses will be concluded very soon. Thus, having regard to all the attending facts and circumstances, including nature of offence, number of accused and witnesses, and also considering the prevailing local conditions it cannot be said that there is inordinate delay in trial and thereby in-effectuating the of right to speedy trial of the accused.

13. Under the aforesaid facts and circumstances, this Court is of the considered view that this is not a fit case, where the privilege of bail can be granted to the accused. Accordingly, the petition stands dismissed.

14. However, the learned court below is directed to expedite the trial and complete the same at the earliest possible time, without being influenced by any of the observation made herein above, as the same is made only for the purpose of disposing of this bail application, not on merit of the case, and if necessary, recourse has to be taken to the provision of section 309(1) Cr.P.C.

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

JUDGE

Comparing Assistant