

GAHC010223212023



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

Case No. : Bail Appln./3682/2023

HABIBUR RAHMAN BARBHUIYA
S/O RAIS UDDIN BARBHUIYA
R/O VILL- NUN NAGAR,
P.S. KATIGORAH
DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

01.12.2023

1. Heard Mr. L R Mazumder, learned counsel for the petitioner. Also heard Mr. D Das, learned Additional Public Prosecutor.

2. This is an application made under Section 439 Cr. P.C. seeking bail by the accused/petitioner, namely, **Habibur Rahman Barbhuiya**, who was arrested on 16.05.2022 in connection with Special NDPS Case No.77/2022 arising out of Badarpur PS case No. 116/2022 registered under Sections 22(C)/25/29 of the NDPS Act.
3. Mr. Mazumder, learned counsel relying on the decision of the Hon'ble Apex Court in the case of **Mohd Muslim –VS- State (NCT of Delhi)** reported in **AIR 2023 SC 164** contends that, there is no scope for early disposal of trial and the petitioner has been under incarceration for more than 1 years.
4. Per contra, Mr. Das, learned Additional Public Prosecutor relying on the judgment of the Hon'ble Apex Court in the case of **Narcotics Control Bureau –VS- Mohit Agarwal** reported in **2022 SCC OnLine 891**, argues that without having the satisfaction as regard the embargo placed in Section 37 of the NDPS Act, 1985, only on the ground of long incarceration an accused cannot enlarged on bail. The learned Additional Public Prosecutor has vehemently objected to the prayer of the petitioner for granting bail to the petitioner.
5. Heard the learned counsel for the parties, perused the material available on record.
6. Section 37 of the NDPS Act, 1985, mandates that a Court can grant bail to an accused only after hearing the Public Prosecutor and after having satisfactions of twin conditions that there are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and

that, he is not likely to commit any offence while on bail. Such satisfaction, which the Court is required to record, should be based on reasonable reading and does not called for a meticulous examination of the materials collected during the investigation or during the trial otherwise, the same will amount to mean a complete denial of bail under Section 37 of the NDPS Act, 1985 and the said provision would effectively exclude grant of bail altogether.

7. Grant of bail, on the ground of undue delay in the trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985, inasmuch as Section 436A of the Cr.P.C., is made applicable to the offences under the NDPS Act by the Hon'ble Apex Court in the case of **Satender Kumar Antil –VS- CBI** reported in **2022 10 SCC 51**.
8. Section 36A of the NDPS Act, 1985, mandates that the offences under the Act are triable by a Special Court. In the considered opinion of this Court, such mandate of the legislature is to achieve the object that the trials are completed at the earliest possible time inasmuch as the conditions of bail and other provisions under the Act, are very stringent in nature. It is also well settled that reasonable fair and just procedure in a criminal trial is a constitutional obligation on the part of the State. A speedy trial is also one of the dimensions of the fundamental right to life under Article 21 of the Constitution of India (Reference **Raghubir Singh –Vs- State of Bihar 1986-4SCC-481**).
9. So far relating to the constitution of Special Court, it is stated at the bar that in the State of Assam, though different Sessions Judges and Additional Sessions Judges are designated as Special Courts under Section 36A of the

NDPS Act, 1985, however, these Courts are also simultaneously entrusted with the different Sessions triable offences under IPC, Criminal Appeals under IPC and to act as Special Judges under Special Act like POCSO Act, 2012. In view of such undisputed factual position, the object of speedy trial under the NDPS Act, as discussed hereinabove shall be hardly achievable.

10. In the totality of the aforesaid backdrop and propositions of law, this Court is of the view that alongside the embargo placed in Section 37 of the NDPS Act, 1985, the ground of undue delay in trial can also be a ground for granting bail inasmuch as the Court is to come to the satisfaction that there is no likelihood of completion of trial in near future. Thus, such ground of inordinate delay, in the considered opinion of this Court, shall depend on the facts of the each case and the cause of delay is also required to be noted down.
11. On the aforesaid backdrop, now let this Court look into the facts of the present case.
12. The prosecution case is that on 15.05.2022 at about 4:30 p.m., approximately 200 tablets suspected to be Yaba tablets weighting about 212 grams were recovered from two Pulsar bike bearing registration No. AS 10 F1598 and AS 11 N7394 driven by the present petitioner and one Samim Ahmed Barbhuiya. Contrabands were recovered from the possession of the present petitioner and one Samim Ahmed Barbhuiya.
13. The charge-sheet was filed on 29.07.2022, charges under Section 20(C) of the NDPS Act read with Section 34 IPC and under Section 25/29 of the NDPS Act, were framed by the learned trial Court 14.11.2022. The

prosecution has proposed to lay their case on the basis of fourteen witnesses.

14. PW1, the independent seizure witness has already been examined, who has deposed that the contraband has been recovered from the two accused petitioners. In the meantime, two witnesses have already been examined out of total fourteen numbers of witnesses.
15. In view of the aforesaid, in the considered opinion of this Court, the petitioner has failed to satisfy that there are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged. Accordingly, considering the period of trial till date and examination of witness therein, in the considered opinion of this Court ends of justice would be met if the trial is directed to be completed within a period of six months from today. Ordered accordingly.
16. It is further provided that in the event of failure to complete the prosecution within the stipulated period, the learned trial Court shall consider the grant of bail to the petitioners taking note of the decision rendered by the Hon'ble Apex Court in the case of **Mohd. Muslim (Supra)**. However, it is also made clear that the trial should not be delayed by the defence.
17. With the aforesaid, this bail application stands closed.

JUDGE

Comparing Assistant