

GAHC010231062023



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

Case No. : Bail Appln./3778/2023

JAHIDA BEGUM
S/O AMINUR HUSSAIN , R/O VILL. DHUBRI WARD NO. 10, BIDYAPARA, P.O.
DHUBRI, DIST - DHUBRI, ASSAM. PIN - 783301

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 22.12.2023

Heard Mr. M. U. Mondal, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure

praying for grant of bail to the accused/petitioner, who has been arrested on 17.10.2022 in connection with Dhubri P.S. Case No. 492/22, under Section 22(C) of the NDPS Act, corresponding to Special Case No. 41/2023 (NDPS).

3. It is submitted by the learned counsel for the petitioner, Mr. Mondal, that the accused is behind the bar for last 444 days and she, being a lady, is facing difficulty inside the jail premises and that apart, there is no one to look after her only daughter, who is pursuing her graduation course. Further he submitted that already 6-7 numbers of witnesses are being examined by the learned Court below and hence, considering this aspect of the case as well as considering her status and length of detention already undergone, her case may be considered and she may be released on bail. In that context, the learned counsel for the petitioner also relied on a decision of Hon'ble Apex Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi)**, reported in **2023 LiveLaw (SC) 260**, wherein, the Hon'ble Apex Court has expressed the view that the Court have to be sensitive to consider all those aspects specially the liberty of the accused and more particularly in cases where special laws enacted stringent provision are taken up and concluded speedily. The learned counsel further emphasized on paragraph Nos. 18, 19, 20, 21 & 22 of the said judgment, which are read as under:

"18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails ([Sections 436, 437 and 439, CrPC](#)) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under [Special Acts \(NDPS Act, etc.\)](#), which apply over and above the ordinary

bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under [Section 37](#) (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under [Section 37](#) can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under [Section 37](#) of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in [Union of India v. Rattan Malik](#)¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by [Section 37](#) of the Act, given the imperative of [Section 436A](#) which is applicable to offences under the [NDPS Act](#) too (ref. [Satender Kumar Antil supra](#)). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in [A Convict Prisoner v. State](#)²¹ as "a radical

transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

23. *There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"*²² (also see Donald Clemmer's 'The Prison Community' ²⁰ National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf ²¹ 1993 Cri LJ 3242 ²² Working Papers - Group on Prisons & Borstals - 1966 U.K. published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

24. *For the above reasons, the appellant is directed to be enlarged on bail, subject to such conditions as the trial court may impose. The appeal is allowed, in the above terms. No costs."*

4. In this context, the learned Additional Public Prosecutor, Mr. Goswami, has submitted that the case law which has been relied on by the learned counsel for the petitioner is not applicable in this case as in the said case, the Hon'ble Supreme Court has considered the period of incarceration which is more than 5 years. But, here in the instant case, it is seen that the accused is behind the bar only for 444 days and that apart, the case is at the verge of the end of the trial. The witnesses are being examined regularly and at present, 13 numbers of witnesses are already being examined by the learned Court below and hence, in such a situation, if the accused is enlarged on bail, the probability of absconding of the accused cannot out rightly be denied at this stage. Accordingly, the learned Additional Public Prosecutor raised objection in granting bail to the accused/petitioner and submitted that as the case is under commercial quantity,

rigor of Section 37 NDPS Act will follow.

5. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the LCR, which has been received from the concerned learned Court below.

6. From the LCR, it reveals that already 13 numbers of witnesses are being examined and almost in every dates, the prosecution witnesses have attended the Court and those were examined by the learned Special Judge. From the materials available in the evidences of the prosecution witnesses, it is seen that there are sufficient incriminating materials brought against the present accused/petitioner and thus, there is no reasonable ground to believe that the present accused/petitioner is innocent or she may not be involved in any similar kind of offence in near future, which is required under Section 37 of the NDPS Act in the case of commercial quantity. Further, the plea of absconding taken by the learned Additional Public Prosecutor also cannot be denied and the possibility of absconding of the accused cannot be denied at this stage.

7. In view of above and also considering all aspects of the case, viz-a-viz the progress the trial, which is at the verge of conclusion, I find it not a fit case to extend the privilege of bail to the accused/petitioner at this stage and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant