

GAHC010232522022



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

Case No. : Bail Appln./3074/2022

PEZALHOULIE RUPERO
S/O LATE NEIKUOLIE RUPERO
R/O SOVIMA 6TH MILE,
P.S. DIPHUPAR,
DIST. DIMAPUR, NAGALAND.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

11.04.2023

Heard Ms. S. K. Nargis, learned counsel appearing for the accused petitioner as well as Mr. R. J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.

By this second petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Pezalhoulie Rupero** has prayed for grant of bail in connection with **N.D.P.S. Case No.55/2021** arising out of **Dibrugarh PS Case No. 2036/2021** registered under Section **22(C)/27A/25/29 of the N.D.P.S. Act .**

The scanned copy of case record along with case diary, as called for, is placed before the Court.

It may be mentioned that by order, dated 25.05.2022, this Court had rejected the bail application of the petitioner in BA No. 538/2022.

Ms. S. K. Nargis, learned counsel for the accused petitioner, submits that the accused has been languishing in jail for 536 days despite being innocent as no contraband was recovered and seized from his possession. Ms. Nargis further submits that 08(eight) out of 13(thirteen) prosecution witnesses are examined so far by the learned trial court, but none of them has implicated the accused with the alleged offences. Therefore, Ms. Nargis submits that the accused undertakes to continue to appear before the learned trial court, if he is released on bail.

Mr. R. J. Baruah, learned Additional Public Prosecutor, submits that the accused petitioner and 04(four) others have been facing trial for alleged offences under Sections 21(C)/29 of the N.D.P.S. Act and 8(eight) prosecution witnesses out of 13 (thirteen) listed witnesses are examined. Mr. Baruah, therefore, submits that in view of bar contained in section 37 of the N.D.P.S. Act, the bail application of the accused, if accepted, may likely to hamper a smooth trial of the remaining part of trial.

The case relates to recovery and seizure of 269 grams of heroin from the joint

possession of the accused persons.

A perusal of the case record reveals that the accused has been in judicial custody since 22.10.2021, that is, for 536 days.

Ms. S. K. Nargis, learned counsel for the accused petitioner relied on the ratio of the judgment rendered by the Hon'ble Supreme Court in the case of *Mohd Muslim @ Hussain Vs State (NCT of Delhi) in Special Leave Petition (Crl.) No(s).915 of 2023*.

A perusal of the case record *interalia*, reveals that the learned trial court, after perusal of the materials produced before it and hearing of both sides framed charges under Sections 21(C)/28/29 of the N.D.P.S. Act against the present accused and 4(four) others vide order, dated 05.03.2022. There is a list of 13(thirteen) prosecution witnesses in the charge-sheet laid on 17.01.2022. Thereafter, the prosecution examined 08(eight) witnesses despite 24 (twenty four) dates were fixed for examination/cross examination of the witnesses by the learned trial court. In such a sluggish trend of production of prosecution witness for deposition, it can be presumed that there is no immediate prospect of completion of trial of the case, which is certainly a violation of the accused's right to speedy justice under Article 21 of the Constitution of India.

On scrutiny of the evidence of the prosecution witnesses, it can *prima facie* be said that there is sufficient incriminating materials against the accused subject, of course, to final outcome on completion of trial of the case. This Court is conscious of the bar in granting bail to accused involved in trafficking of commercial quantity of drugs provided in Section 37 of the N.D.P.S. Act.

In paragraphs 22 and 23 of the judgment in *Mohd Muslim (supra)*, the Hon'ble Supreme Court observed has herein below extracted:-

“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. State²¹ 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[Working Papers- Group on Prisons & Borstals -1966 U.K.](also see Donald Clemmer’s ‘The Prison Community published in 1940 [Donald Clemmer, the Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, ‘ Donald Clemmer’s Concept of Prisonisation’, available at https://www.tkp.edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf(accessed on 23rd March, 2023))]. 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. ”

For the reasons, set forth above, this Court is of the opinion that without passing any comment on the evidence already recorded in the case, only on consideration of the length of detention (536 days) and applying the ratio of the judgment rendered in *Mohd Muslim (supra)*, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 1,00,000/- (Rupees one lakh) only** with 2 (two) sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Dibrugarh** subject to the following conditions-

- (i) That the accused petitioner shall continue to appear before the learned trial court on all dates to be fixed from time to time till the case is disposed of.
- (ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to the remaining listed prosecution witnesses acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court.
- (iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is accused or suspected of commission; and
- (iv) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Be it mentioned here that breach of any of the above conditions of bail shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant