

GAHC010238812023



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

Case No. : Bail Appln./3900/2023

BABUL HUSSAIN
S/O MD. MALEK MIAH
R/O VILL- NABINAGAR
PS. BISHALGARH, PIN-799102
DIST. SIPAHIJELA, TRIPURA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A PAUL

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

12.12.2023

Heard Mr A Paul, learned counsel for the petitioner, Babul Hussain.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 11.11.2022, in connection with NDPS Case No. 11/2023,

arising out of Rangiya GRPS Case No. 43 of 2022, under Section 20(b) (ii) (C) of the NDPS Act.

3. It is submitted by the learned Senior Counsel for the petitioners that both the petitioners have earlier applied for bail on 12.09.2023, before completion of 180 days and they were entitled to default bail, as charge sheet was not submitted before completion of 180 days.

4. It is submitted on behalf of the petitioner that the petitioner's special Right to Personal Liberty has been curtailed, as he has been behind bars since 11.11.2022 and only five witnesses have been examined in connection with this case. The learned counsel for the petitioner has taken this Court through the cross-examination of the witnesses, PWs-1 to 5, which clearly reveals that photographs of the place of occurrence were not taken. The petitioner's signatures on the seized article or sample were not taken. There was no Magistrate during the seizure. The railway ticket was not examined to ascertain as to whether the petitioner was a passenger. It is also submitted that the witness, PW-1 has admitted in his cross-examination that at the time of seizure of ganja, neither the informant nor the Investigating Officer took photographs of the place of occurrence. PW-3 has admitted in his cross-examination that the picture of the accused sitting at the place of occurrence was not captured. SI Puheswar Das did not obtain the signature of the accused on the recovered bag. No photograph was captured at the time of weighing the recovered ganja.

5. It is also submitted that the PW-4 has admitted in his cross-examination that no notice was issued to the petitioner at the time of body search. It is also submitted on behalf of the petitioner that PW-5 has admitted in his cross-examination that the bags were found near the accused, who was sitting on the bench. The bags were not found with the accused. The bags may have been left by some other commuters. It is submitted that the possibility of conviction appears to be remote and bleak, as the procedure has not been scrupulously followed by the Investigating Agency.

6. The learned counsel for the petitioner has also relied on the decision of a Division Bench of this Court in Bail Application No. 2821/2023 (***Penjon Daimary –Vs- The Union of India***), wherein the accused, Penjon Daimary was in judicial custody for 1480 days and the learned trial Court had examined only five prosecution witnesses, out of the enlisted nine witnesses.

7. The learned counsel for the petitioner has also relied on the order dated 01.12.2023, passed by a coordinate Bench of this Court in Bail Application No. 3887/2023 (***Anil Malakar –vs- State of Assam***), wherein it has been observed that-

“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.”

8. Head Mr B Sharma, learned Additional Public Prosecutor, Assam.

9. The learned Additional Public Prosecutor has raised serious objection stating that the charge was framed on 17.05.2023, and, thereafter, five witnesses have been examined. This is not a case where trial is dragging with a leaden feet. It is submitted by the learned Additional Public Prosecutor that the trial is proceeding at a regular pace.

10. The learned Additional Public Prosecutor has relied on the decision of Hon’ble the Supreme Court in *Union of India –vs- Sri Shiv Shanker Kesari*, reported in (2007) 7 SCC 798, wherein it has been observed that-

“11. The Court while considering the application for bail with reference to [Section 37](#) of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some

materials to come to such a conclusion.”

11. Relying on the decision of ***Shiv Shander Kesari’s case (supra)***, the learned Additional Public Prosecutor has submitted that at this juncture, the Court is not required to go into the merits of the evidence.

12. I have considered the submissions at the Bar with circumspection.

13. It is apparent that the trial is not dragging with a leaden feet. Trial is proceeding at a regular pace. It is true that the petitioner is behind bars for 1 year 1 month, but at the same time, it cannot be said that the trial is being procrastinated. However, trial has to be expedited. At this juncture, this Court cannot be oblivious of the rigours of Section 37 of the NDPS Act. At this juncture, there appears to be no justified ground to grant bail to the petitioner. At this juncture, petition with prayer for bail is rejected. However, the learned trial Court is directed to expedite the trial and record the evidence of remaining five witnesses and dispose of the matter expeditiously.

14. Bail Application stands disposed of.

JUDGE

Comparing Assistant