

GAHC010244912023



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

Case No. : Bail Appln./3947/2023

KAMRUL UDDIN
S/O LT. MOYAB ALI, VILL-JABAINPUR, WARD NO. 6, P.S. AND DIST-
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

15.12.2023

- 1.** Heard Mr. H.R. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Sarmah, learned Additional Public Prosecutor representing the State of Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Kamrul Uddin, who has been detained behind the bars since 12.09.2022 (for last 1 year 3 months and 2 days), in connection with Special NDPS Case No. 137/2022.

3. Learned counsel for the petitioner has submitted that the petitioner has been facing a trial before the Court of learned Special Judge, Karimganj in Special NDPS Case No. 137/2022 and charges under Section 22(c)/29 of the NDPS Act, 1985 have been framed against the present petitioner and though he has been detained behind the bars for last 1 year 3 months only 3(three) prosecution witnesses have been examined and therefore, the petitioner has prayed for bail on the ground of prolonged incarceration.

4. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the quantity of contraband seized in this case is of commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 is applicable here in this case. He has further submitted that the charges were framed only on 24.05.2023 and on 14.08.2023 and the incarceration of the petitioner is not long enough to justify his release of bail only on the ground of long incarceration.

5. Learned counsel for the petitioner has submitted a ruling of Hon'ble Apex Court in "***Nitish Adhikary @Bapan Vs. The State of West Bengal***" (***Order dated 04.05.2022 in SLP Criminal No. 5769/2022***), where the petitioner was released on bail while he was incarcerated for 1 year 6 months.

6. He has also cited another case of Apex Court in "***Shariful Islam @ Sarif Vs. The State of West Bengal***," where also the petitioner was allowed to go on bail on the ground of incarceration for 1 year 6 months.

7. I have considered the submissions made by learned counsel for the petitioner as well as learned Additional Public Prosecutor and also perused

the scanned copy of the case record of Special NDPS Case No. 137/2022. In the instant case, the petitioner has been detained behind the bars for last 1 year 3 months, however, in the rulings of Hon'ble Apex Court cited by the learned counsel for the petitioner regarding the grant of the benefit of prolonged incarceration the petitioners in those cases were behind the bars for 1 year 6 months, which is more than the incarceration of the present petitioner.

8. In view of the fact that the contraband seized from the present petitioner in this case is of commercial quantity. Hence, *prima-facie* the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case and in view of the fact that the petitioner has been detained behind the bars only for 1 year 3 months, this Court is of the considered opinion that the incarceration of the petitioner does not appear to be long enough to give him the benefit of prolonged incarceration so as to override the embargo of Section 37 of the NDPS Act, 1985.

9. Hence, the prayer for bail of the petitioner is rejected at this stage.

10. With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant