

GAHC010245582022



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

Case No. : Bail Appln./3295/2022

ABDUL WAHAB @ ABDUL AHADA AND ANR
S/O KUDDUS ALI
VILL- GHUNIMARI
P.S. CHAPAR
DIST. DHUBRI, ASSAM

2: ABDUL SOBUR @ ABDUR SABUR
S/OMD. SAHED ALI SK
VILL- RAUMARI
P.S. CHAPAR
DIST. DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR Z HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 25.04.2023

Heard Mr. NJ Dutta, learned counsel appearing for the accused petitioners as well as Mr. R. J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused-petitioners, namely, **1. Abdul Wahab @ Abdul Ahad** and **2. Abdul Sobur @ Abdur Sabur** have prayed for grant of bail in connection with **Special N.D.P.S. Case No.13/2021** arising out of Chapar PS Case No. 265/2021 under Section 22(C) of the N.D.P.S. Act .
3. The scanned copy of case record along with case diary, as called for, is placed before the Court.
4. Mr. NJ Dutta, learned counsel for the accused petitioners, submits that the accused petitioners are languishing in judicial custody for 685 days on charges of having possessed commercial quantity of codeine phosphate based cough syrup bottles. Mr. Dutta submits that the charges under Section 22(c)/29 of the NDPS Act were framed on 07.10.2021 and thereafter 04(four) prosecution witnesses out of 05(five) are examined despite learned trial court fixed 42 (forty two) dates for prosecution evidence. Mr. Dutta further submits that as both the accused petitioners are resident under Chapar PS, there is no chance of them jumping the course of trial if released on bail. In support of his submission, Mr. Dutta 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 and two bail orders passed by this Court in Bail Application 3154/2022 and Bail Application 3074/2022.
5. Opposing the bail application, Mr. R. J. Baruah, learned Additional Public Prosecutor, submits that as the matter involves commercial quantity of drugs in view of the bar contained in Section 37 of the NDPS Act in granting bail and the case being pending for examination of one PW, the bail application of the accused petitioners may not be considered favourably.
6. The case relates to recovery and seizure of 46 Nos. of Cough syrup (OWNREX) bottles from the present accused petitioners at Chapar Bazar, Beparlotti.
7. It is noticed that both the accused petitioners are in judicial custody sine 09.06.2021, that is , for 685 days.
8. A perusal of the case record reveals that charges under Sections 21(C)/29 of the N.D.P.S. Act were framed by the learned trial court against both the accused petitioners vide order, dated 07.10.2021. The FSL report shows that samples of cough syrup bottles gave positive tests for Codeine Phosphate present in each exhibit to be 198.7 mg.
9. On further scrutiny of the case record reveals that PW-1 was examined on 24.01.2022, PWs 2 and 3 on 21.03.2022 and PW-4 on 03.08.2022, that is intermittently after long gaps in between the dates despite so many dates were fixed for evidence of the listed prosecution witnesses numbering only

05(five). After 03.08.2022, no prosecution witnesses is examined till date despite the accused petitioners are in jail custody.

10. There is no evidence of criminal antecedence of the accused petitioners.

11. 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 23 rd 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. ”

12. 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 (685 days) and applying the ratio of the judgment rendered in Mohd Muslim (supra), it is provided that the accused petitioners, named above, shall be released on bail of **Rs. 1,00,000/- (Rupees one lakh) each**

with 2 (two) sureties of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Bilasipara** subject to the following conditions-

- (i) That the accused petitioners 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 petitioners 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 petitioners shall refrain from committing any similar offences in future, of which they are 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.

13. 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