

GAHC010261462022



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

Case No. : Bail Appln./3557/2022

MOHIM UDDIN
S/O ISLAM UDDIN
R/O KHADIMPARA, WARD NO. 02, P.S. CHURAI BARI, DIST. NORTH
TRIPURA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.02.2023

Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Ms. S.H. Bora, the learned Addl. Public Prosecutor for the State.

2. The petitioner, namely, Mohem Uddin, who was arrested on 23.05.2022 in connection with Bazaricherra P.S. Case No. 97/2022, under sections 20(C)/25/29 of the NDPS Act, 1985 is seeking regular bail under section 439 IPC.

3. The learned counsel for the petitioner has submitted that the petitioner is in custody for last 269 days and there is no chance of an early trial. It is also submitted that a bail application for the petitioner was filed before the learned trial Court on 21.10.2022, which was rejected by order dated 16.11.2022. However, the I.O. had submitted charge-sheet in the case on 31.10.2022, i.e. after 131 days, whereas under Section 167(2) Cr.P.C., charge-sheet ought to have been filed within 90 days, which had expired on 21.08.2022. Hence, it is submitted that the petitioner would be entitled to default bail.

4. In support of his submissions, the learned counsel for the petitioner has placed reliance on the order dated 22.03.2022, passed by the Supreme Court of India in the case of *Shariful Islam @ Sarif v. The State of West Bengal, Petition for Special Leave to Appeal (Crl.) No. 4173/2022*. By the said order, the accused was granted bail as he had suffered incarceration for 1 year 6 months and there was no likelihood of early trial in near future. Reliance is also placed on the case of *Gopal Krishna Patra @ Gopalkrishna v. Union of India, Crl. Appeal No. 1169/2022, decided by the Supreme Court of India on 05.08.2022*.

5. The learned Addl. P.P. has opposed the prayer for bail.
6. The scanned copy of the case record and case diary, which was called for from the learned trial Court has been perused. At the outset, it may be stated that there are sufficient incriminating materials in the charge-sheet against the petitioner of being intercepted while driving vehicle bearing registration number AS-01-MC-8323, and on search, 44 packets of ganja (cannabis) with gross weight of 555 kg., which is commercial quantity. It may be mentioned that in respect of cannabis, the commercial quantity is notified as 1 kg.
7. In terms of the provision of Sub-Section (4) of Section 36A of the NDPS Act, 1985, the time for completing investigation is 180 days. The said provision is quoted below:-
- “36A. **Offences triable by Special Courts.**- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*
- * * *
- (4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days."*
- Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days*
8. The record received from the trial Court clearly discloses that charge-sheet no. 137/22 dated 30.09.2022 was filed on 31.10.2022 under sections 20(b)(ii)(C)/25/29 of the NDPS Act, 1985. As the petitioner was

arrested on 23.05.2022, the charge-sheet has been filed on 131st day from the date of arrest. Therefore, the petitioner is not entitled to default bail.

9. The order passed by the Supreme Court of India in the case of *Shariful Islam @ Sarif (supra)*, cited by the learned counsel for the petitioner has received due consideration. In the said context, the Court finds that 1 kg. of cannabis/ganja is the notified commercial quantity. Therefore, with the recovery of 555 kg. cannabis, the petitioner was allegedly transporting 555 times more than the minimum notified commercial quantity of cannabis. In the order in reference, the quantity of drugs seized is not mentioned. Nonetheless, in the said order, the requirement of Section 37 is not indicated. The said order cannot be read to have diluted the requirement of Section 37 of the NDPS Act, 1985. Therefore, the said case would not help the petitioner in any manner.

10. Similarly, as per the case of *Gopal Krishna Patra @ Gopalkrishna (supra)*, the accused therein was charged for commission of offence punishable under Sections 8, 20, 27-AA (*sic.*), 28 read with 29 of the NDPS Act, 1985. In the order in reference, the quantity of drugs seized is not mentioned. The said order also cannot be read to have diluted the requirement of Section 37 of the NDPS Act, 1985. Therefore, the said case would not help the petitioner in any manner.

11. The learned counsel for the petitioner has referred to the charge-sheet and has submitted that the driver and owner of the goods had escaped and the petitioner who had taken a lift in the said vehicle, had remained in the vehicle, and was arrested as the driver of the vehicle from which contraband was recovered and seized. The said projection is the subject

matter of trial and cannot be gone into at this stage of consideration of prayer for bail. As commercial quantity of cannabis was seized from the vehicle, which was being driven by the petitioner, it cannot be ruled out that the petitioner was not in conscious possession of the contraband psychotropic substance.

12. It would be relevant to quote the provision of Section 436A Cr.P.C., which is as follows:-

“436A. Maximum period for which an under trial prisoner can be detained.- *Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:*

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

13. It would also be appropriate to refer to the decision of the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, wherein it is provided that “*Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.*”

14. In the present case, the petitioner is charged of committing offence punishable under Sections 20(b)(ii)(C) of the NDPS Act, 1985, where the punishment is not less than 10 years but which may extend to 20 years and with fine which may extend to Rupees One lakh. The petitioner is also charged of committing offence punishable under Sections 25/29 of the NDPS Act, 1985, for which punishment same as one prescribed in concerned section, which would be punishment is not less than 10 years but which may extend to 20 years and with fine which may extend to Rupees One lakh. Therefore, following the ratio laid down in the case of *Satender Kumar Antil (supra)*, as well as the provision of Section 436A Cr.P.C., the petitioner having been incarcerated for a period of 269 days, has not become entitled to be released on bail.

15. Moreover, as the petitioner was intercepted and from the vehicle in which he was found commercial quantity of ganja (cannabis) was recovered and seized, the Court is unable to record its satisfaction that the petitioner is not guilty of the offence or that if released on bail, he would not repeat the offence, which is the requirement of Section 37 of the NDPS Act, 1985. Therefore, the petitioner is not entitled to bail.

16. In light of the discussions above, the Court has no hesitation to hold that the charge-sheet/ final-report has been filed by the I.O. well within the stipulated period prescribed under section 167(2) CrPC read with Section 36A(4) of the NDPS Act, and hence, there is no question of default bail to the petitioner.

17. This application for bail is disposed of.

18. The Registry shall not issue any certified/uncertified copy of any part of the scanned copy of the record received from the learned trial Court.

JUDGE

Comparing Assistant