

GAHC010027182024



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

Case No. : Bail Appln./406/2024

MOHUBAR RAHMAN
R/O VILL- JHAWDANGA,
PT. II
P.S. AND P.O MANKACHAR,
R/O VILL- JHAWDANGA, PT.II
P.S. AND P.O. MANKACHAR
DIST. SOUTH SALMARA-MANKACHAR, ASSAM
PIN-783131

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 20.03.2024

Heard Mr. S. Sarma, learned counsel for the accused-petitioner as well as Mr. M.P. Goswami, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Mohubar Rahman**, in connection with **NDPS Case No. 355/2022**, registered under Section **22(C) of NDPS Act**, pending in the court of learned Special Judge, South Salmara, Mankachar.

3. The learned counsel for the petitioner has submitted that the petitioner has been languishing in jail hazot since 26.11.2022. The witnesses examined in the instant case by the prosecution did not support the case. It is further submitted that the allegation levelled against the petitioner which is totally false and concocted. Considering the period of detention, the petitioner may be enlarged on bail.

4. Learned Additional Public Prosecutor submits that out of 11 witnesses, 7 witnesses have already been examined by the prosecution who identified the accused person to be involved in the instant case by stating that a large quantity of narcotic substance was recovered from the possession of the accused/petitioner. Therefore, he has prayed not to release the accused/petitioner on bail at this stage.

5. I have considered the submissions made by the learned counsel for the parties. I have also perused the trial court record.

6. It appears that the accused was arrested on 26.11.2022. After completion of investigation, charge-sheet was submitted on 31.03.2023. Thereafter, charge was framed on 21.06.2023. The prosecution examined seven witnesses out of eleven witnesses. The last date was fixed on 05.03.2024. As such, it cannot be said that there was delay in proceeding of trial.

7. In the case of Gurwindar Singh v. State of Punjab, reported in 2024

0 Superem(SC) 104, it was held that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail.

8. Section 37 of NDPS Act, reads as follows –

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

9. On a bare look at the provision, it reveals that in the event the public prosecutor opposes the prayer for bail, the court would have to record

a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. In the case in hand, it appears that large quantity of narcotic substance were recovered from the possession of the accused/petitioner. The witnesses also examined in the case have identified the present petitioner to be involved in the alleged offence. As such, it cannot be said at this stage that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any such offence while on bail.

11. Under the facts and circumstances of the case, the bail application is rejected. However, the learned trial court is directed to expedite the matter if possible by fixing day to day hearing.

12. The bail application is disposed of accordingly.

JUDGE

Comparing Assistant