

GAHC010030012024



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

Case No. : Bail Appln./468/2024

IKRAM HUSSAIN
S/O ABDUL SALAM
R/O VILL- PURAN CHANDPUR
P.S. PATHERKANDI
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

03.04.2024

- 1.** Heard Mr. M.A. Choudhury, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Ikram Hussain, who has been detained behind the bars since 11.08.2022 (for last 1 year 7 months and 23 days) in connection with Special (NDPS) Case No. 117/2022, corresponding to Patherkandi P.S. Case No. 203/2022 pending in the court of learned Sessions Judge, Karimganj.

3. The gist of accusation in this case is that on 10.08.2022, one Longsing Kro, SI of Police had lodged an FIR(First Information Report) before the Officer-In-Charge of Patherkandi Police Station, *inter-alia*, alleging that on receipt of an information through reliable source that some narcotics drug would be transported to some unknown location through Lakhipur via Patherkandi road, a Naka Checking was arranged and when the Naka Checking party reached near Arman Servicing Center located at Chengjur roadside, one unknown person (the present petitioner) was found sitting at passenger seat of an auto bearing Registration No. AS10AC0950, which was parked near the Arman Servicing Center. When the said vehicle was searched, it was found that on the back side of the passenger seat one polythene bag was hidden and YABA tablets weighing about 1Kg 152 grams was recovered from the said packet.

4. On receipt of the said FIR, Patherkandi P.S. Case No. 203/2022 was registered and investigation was initiated. On completion of the investigation, charge sheet was laid against three numbers of accused persons, namely, the present petitioner and other two persons, namely, Tajul Ahmed Barbhuya and Ashique Uddin.

5. Learned counsel for the petitioner has submitted that the petitioner was only a passenger of the vehicle in which the seized contraband was found concealed behind the passenger seat.

6. It is also submitted by the learned counsel for the petitioner that the

present petitioner was not in conscious possession of the contraband which was recovered from the seized vehicle.

7. Learned counsel for the petitioner has also submitted that during the investigation neither the driver of the said vehicle was made as an accused nor a witness and though the vehicle was given in custody of the owner of the said vehicle, however, the owner had also not been made a witness in this case.

8. Learned counsel for the petitioner has also submitted that though 11 numbers of witnesses have been cited in this case and even after charges were framed on 09.10.2023, however, till today not even a single witness has been examined.

9. On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner on the ground that the seizure list shows that the recovery of contraband was made from the possession of the present petitioner.

10. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record carefully.

11. On perusal of the FIR in this case as well as on perusal of the seizure list, it is apparent that the seized contraband in this case was found in a polythene bag which was hidden at the backside of the passenger seat. There is no evidence to show that the present petitioner is the owner of the auto bearing Registration No. AS10AC0950, rather the owner is a different person to whom the custody of the vehicle has been granted, however, he has not been examined as a witness in this case.

12. It also appears from record that the other two accused persons, named in the charge sheet namely, Tajul Ahmed Barbhuya and Ashique Uddin, were already allowed to go on bail by the trial court.

13. Moreover, it also appears that though the petitioner Ikram Hussain has been detained behind the bars for last 1 year 7 months 23 days and 11 witnesses have been listed in the charge sheet, not even a single witness has been examined till date by the prosecution side.

14. The Apex Court of India in "Mohd Muslim @ Hussain Vs. State" (NCT of Delhi)" reported in "2023 SCC Online SC 352" has observed that "Grant of bail on ground of undue delay in trial, cannot be said to be fettered by [Section 37](#) of the NDPS Act, 1985.

15. Similarly, the Apex Court of India has also observed in "***Rabi Prakash Vs. The State of Odisha***" reported in "***2023 Live Law SC 533***" wherein, it observed that "prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985."

16. This court is also of the considered opinion that if while considering an application for bail involving commercial quantity of contraband, the court comes to a finding that there has been undue delay in completion of the trial and that there has been prolonged incarceration of the petitioner during this time. He would be entitled to get bail in such case of prolonged incarceration as the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.

17. It is also pertinent to mention herein that the Hon'ble Supreme Court of India had granted bail to the accused facing charges for possession of commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (order

dated 04.08.2022 in SLP Criminal No. 4173/2022), wherein the accused was detained behind bars for one year and six months.

18. In "**Nitesh Adhikari Vs. State of West Bengal** "(Order dated **04.05.2022 in SLP Criminal No. 5769/2022),** Hon'ble Apex Court granted bail to the accused facing accusation under Section 21(c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

19. Similarly in "**Md. Salman Hanif Shaikh Vs. State of Gujarat**" (Order dated **22.08.2022 in SLA Criminal No. 5530/2022),** the petitioner was granted bail, by the Apex Court, on the ground of prolonged incarceration of two years.

20. In "**Tapas Mandal Vs. State of West Bengal,**" (order dated **14.09.2023) in Spl. Leave to Appeal (Crl. No. 8464/2023)** as well as in "**Man Mandal and Another Vs. State of West Bengal,**" (order dated **14.09.2023) passed in Spl. Leave to Appeal (Crl. No. 8656/2023),** the Apex Court granted bail to the petitioners before it taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future.

21. In the instant case, the petitioner has been detained behind the bars for last 1 years 7 months and 23 days and the trial has not at all progress as not even a single witness has been examined.

22. Under the facts and circumstances of this case, considering the prolonged incarceration of the petitioner as well as slow progress of the trial, this court is of the considered opinion the petitioner is entitled to get bail in this case.

23. In view of above, the above named petitioner is hereby directed to be

released on bail on furnishing a bond of Rs. 50,000/- (Rupees Fifty Thousand) with a suitable surety, one of whom should be a government employee and should be resident of the State of Assam, of like amount to the satisfaction of the learned Trial Court with conditions:-

- i. That the petitioner shall cooperate in the trial of NDPS Case No. 117/2022, which is pending in the Court of learned Sessions Judge, Karimganj;
- ii. That the petitioner shall regularly appear before the trial court as and when so required by the trial court;
- iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the trial court in the trial pending against the present petitioner;
- iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card, Driving License, PAN card, mobile number, and other contact details before the Court of the learned Sessions, Karimganj;
- v. That the petitioner shall not leave the jurisdiction of the learned Trial Court without prior permission of the trial court and when such leave is granted by the trial court, the petitioner shall submit his leave address and contact details during such leave before the trial court.

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

JUDGE

Comparing Assistant