

GAHC010033512024



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

Case No. : Bail Appln./580/2024

SAMIR KHAN
S/O MD. ABDUS SAMAD
R/O LILONG KHUNOU, ARAPTI
MANIANG TARIAL MAUHANG
P.S. LILONG, DIST. THOUBAL, MANIPUR.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MS. A. MEDHI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

23.07.2024

Heard Ms. A. Medhi, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure praying for grant of bail to the accused/ petitioner, namely, Samir Khan, who has been arrested on 15.06.2021 in connection with NDPS Case No. 136/2021 arising out of the GRPS Case No.49/2021, registered under Section 21(C) of NDPS Act, which is pending before the Court of learned Additional District & Sessions Judge No.3, Kamrup (M), Guwahati.

3. The scanned copy of the case record has already been received and I have perused the same.

4. It is submitted by the learned counsel for the petitioner, Ms. Medhi, that the petitioner is innocent and has no connection with the alleged offence. She pointed out that the petitioner was arrested on 15.06.2021, and the charge sheet was filed on 10.09.2021, with charges framed on 11.11.2021. However, to date, out of 7 witnesses, only 2 have been examined by the prosecution, indicating a prolonged trial process. She further submitted that the petitioner is behind the bar for more than 3 years and thus, considering his length of incarceration, he may be allowed to go on bail. She also submits that the petitioner will appear regularly before the learned Trial Court and will face the trial, if he is enlarged on bail and there is no chance of absconding or jumping over any of the bail conditions, if the same is allowed.

5. In support of her case, the learned counsel for the petitioner further relied on a decision of the Supreme Court in the case of ***Rabi Prakash vs. the State of Odisha*** reported in ***2023 Live Law (SC) 533***, wherein, it has been held that “the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act”.

6. She also relied on another decision of the Supreme Court in the case of ***Raghubir Singh vs. State of Bihar, 1986-4 SCC-481***, wherein, the Apex Court expressed the view that a speedy trial is also one of the dimensions of the fundamental right to life under Article 21 of the Constitution of India. In addition to her submission, she further relied on a decision of a Co-ordinate Bench of this Court passed in **B.A. No. 3193/2023, dated 01.12.2023**.

7. In this context, the learned Additional Public Prosecutor, Mr. Sharma, submitted that according to the records, 2 witnesses out of 7 witnesses have been examined so far, and the IO has been served with a show cause notice to ensure their attendance. Referring to the case of ***Rabi Prakash (Supra)***, where the Apex Court considered a period of incarceration of three and a half years, he requested the Court to direct the Trial Court to expedite the trial, examine the witnesses promptly, and secure their attendance. He further submitted that there is sufficient incriminating material collected by the IO against the accused/petitioner. Therefore, he submits that granting bail based solely on the length of detention could increase the risk of the accused absconding, leading to further delays in case disposal. He further stated that there is no evidence suggesting the accused is not guilty of the offence or unlikely to commit it while

on bail. Thus, he raised objections to granting bail to the accused/petitioner, stating the commercial quantity involved in the case.

8. I have given careful consideration to the submissions advanced by the learned counsels for both sides. I have perused the case record and the relevant documents annexed with the petition. It is a fact that the accused/petitioner has been in custody for more than 3 years, and to date, the prosecution has examined only 2 out of the 7 witnesses. While, the Trial Court has made efforts to secure the attendance of the witnesses. It is apparent that the trial cannot be completed expeditiously as vital witnesses are yet to be examined by the prosecution."

9. In case of **Rabi Prakash (Supra)**, the Hon'ble Supreme Court has held as under:

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent- State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd conditions re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

10. Accordingly, the Hon'ble Apex Court held that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution. Similar view has been expressed by the Hon'ble Apex Court in case of **Sariful Islam @ Sarif Vs. The State of West**

Bengal, dated 04.08.2022, wherein also, considering the length of detention and also considering the aspect that there is no likelihood of completion of trial in near future, the bail was granted to the petitioner.

11. The same view is also expressed in another recent judgment of Division Bench of Hon'ble Apex Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi)**, reported in **2023 LiveLaw (SC) 260**, wherein, in paragraph No. 23 of the said judgment, it has been held as under:

"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" (also see Donald Clemmer's 'The Prison Community' published in 1940). 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. In the instant case as well, it is noted that to date, the prosecution has examined only 2 witnesses out of the 7, despite the accused/petitioner being incarcerated for more than 3 years.

13. So, considering all these aspects of the case and the view of the Apex Court passed in recent cases, without going into the merit of the case, I find it a fit case to allow the accused to go on bail.

14. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only with two sureties of like amount, provided that one

surety has to be a government servant, to the satisfaction of the learned Additional Sessions Judge No.3, Kamrup (M), the accused/petitioner, namely, Samir Khan, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall appear before the Court of learned Additional Sessions Judge No.3, Kamrup (M), on each and every date to be fixed by the Court;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioner shall submit his Aadhaar Card and PAN Card before the learned Additional Sessions Judge No.3, Kamrup (M).
- (iv) that the petitioner shall not leave the jurisdiction of the learned Additional Sessions Judge No.3, Kamrup (M), without prior permission.

15. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant