

GAHC010040962024



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

Case No. : Bail Appln./641/2024

NIRMAL DAS
SON OF RANJIT DAS, RESIDENT OF VILL- SESA KUMARPARA, P.S. HAJO,
DISTRICT- KAMRUP

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

27.03.2024

Heard Ms. T. Som, learned counsel for the petitioner, namely, **Nirmal Das**, who has filed this bail application under Section 439 of the Cr.P.C. praying for bail in connection with **STF PS Case No. 04/2021** under **Section 20(c)** of NDPS Act, (NDPS 135/2021). The petitioner was arrested on 17.06.2021.

2. At the outset, this Court has been apprised that the earlier bail application

of the petitioner being Bail Appln./316/2022 was rejected by this Court vide order dated 06.04.2022.

3. In terms of the order passed earlier, the scanned copy of the case records has been transmitted to this Court and the same have been examined.

4. Ms. Som, learned counsel for the petitioner has submitted that from the date of his arrest, the petitioner is in continuous custody for 649 days and the trial is still pending. It is submitted that prolonged incarceration as an undertrial is violative of the rights under Article 21 of the Constitution of India. She further submits that though Section 37 of the NDPS Act lays down a special provision regarding consideration of a prayer for bail, long period of detention may require relaxation of the said provision of law.

5. By referring to the scanned copies of the case records, the learned counsel for the petitioner has submitted that the alleged contraband was recovered from the out-house of the petitioner and by this time, out of four PWs who have been examined, PW1 appears to be hearsay witness and both PW2 and PW3, who are allegedly seizure witness, have deposed that they were not aware of the seizure. PW4 is a Police Officer.

6. Ms. A. Begum, learned Additional Public Prosecutor, Assam submits that the quantity involved of the contraband, namely, ganja, is a commercial quantity of 47 KGs. Further, the trial is proceeding and 4 nos. of PWs have already been examined and therefore, there may not arise any occasion to grant bail to the petitioner.

7. The rival submissions have been duly considered and the materials placed on record including the scanned copies of the LCR have been carefully examined.

8. There is no dispute to the fact that NDPS Act itself contains a provision for consideration of bail application in the form of Section 37. The said provision lays down that before granting a bail, the relevant factors are that the Court should come to a satisfaction that *prima facie* the petitioner is not guilty of the offence and also the petitioner has to satisfy the Court that in case bail is granted, he is not likely to commit further offence. Taking into consideration the aforesaid provision of law, this Court had earlier rejected the prayer for bail of the petitioner vide order dated 06.04.2022.

9. However, there has been certain change in the circumstances during the period from the last order of rejection till now. Though much emphasis have been laid on the period of detention already undergone by the petitioner which is 649 days, this Court has already laid down that long detention *per se* may not be the only ground for consideration of grant of bail. However, from the scanned copies of the records, the evidence recorded of the witnesses more specifically PW1 (Pramod Das), PW2 (Golak Kalita) and PW3 (Bhabesh Deka) may not, *ex facie* construe to be conclusive evidence. However, since the trial is pending and other witnesses are also to be examined, this Court would not like to make any further discussion on the evidence as the appreciation of the evidence is within the domain of the learned Trial Court. This Court reiterates that the aforesaid observation is an *ex facie* one and tentative and shall not influence the learned Trial Court in deciding the case by consideration of all materials on record and also by taking into the objective of the Act which is to eradicate the menace of drugs and psychotropic substance which has the propensity to destroy the entire society.

10. In view of the above discussion, this Court is of the considered opinion that a case for grant of bail is made out which however has to be understood

strictly in the context of the facts and circumstances of the present case.

11. It is accordingly directed that the petitioner be released on bail on furnishing a bail bond of Rs.50,000/- (Rupees fifty thousand) with two sureties of like amount subject to the satisfaction of the learned Trial Judge, namely, the Additional District & Sessions Judge No. 5, Kamrup (M) at Guwahati. The petitioner is also required to appear before the learned Trial Court on each date of hearing and such further dates as the learned Trial Court may direct him to appear. The petitioner is also directed to render full cooperation in the trial.

12. The bail application is accordingly disposed of.

JUDGE

Comparing Assistant