

GAHC010045972024



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

Case No. : Bail Appln./652/2024

MD. IQBAL
S/O- ABDUL SAMAD, R/O- LILONG USOIPOKPI MAKHA, P.S. LILONG, DIST.-
THOUBAL, MANIPUR, PIN- 795130

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P., ASSAM

Advocate for the Petitioner : MR U S BORGOHAIN, M G SINGH, MS DIPSY RAJA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 31.07.2024

Heard Mr. U.S. Borgohain, learned counsel for the accused-petitioner as well as Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. By this petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Md. Iqbal** has prayed for granting bail in connection with **NDPS Case No. 33/2023 (arising out of Khatkhati P.S. Case No. 15/2023)** registered under Section **22(c)/29 of NDPS Act**, pending in the court of learned Special Judge, NDPS, Karbi Anglong.

3 . It is submitted by the learned counsel for the petitioner that the petitioner has been detained in custody for more than one year since his arrest on 20.02.2023. Three persons were arrested in connection with this case. The petitioner is the driver of the vehicle from which the contraband was recovered from the secret chamber of the said truck. The petitioner has no knowledge regarding the said contraband. It is also submitted that though charge-sheet was laid against the owner of the said truck but he was discharged by the learned trial court. Considering the length of detention and background of the case, the petitioner may be enlarged on bail.

4. On the other hand, Mr. Baruah, learned Additional Public Prosecutor for the State has submitted that out of nine witnesses, two witnesses have already been examined and they have implicated the present petitioner. As the commercial quantity of heroine was recovered from a truck in which the petitioner was the driver as such, Section 37 is attracted herein this case. Considering the gravity of the offence, bail may not be considered 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/petitioner was arrested on 20.02.2023 and he is the driver of the said truck from which 4.109 kg of heroine was recovered which is a commercial quantity. Subsequently, charge was framed on 16.09.2023. Out of nine witnesses, two witnesses were examined. Apparently, there is no procedural delay on the part of the trial court.

7. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. The commercial quantity of heroine was kept secretly in a vehicle in which the petitioner was the driver.

8. The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions

can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

9. On consideration of the matter in its entirety, this Court is not inclined to grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**. However, trial court is directed to expedite the trial.

10. The bail application stands disposed of.

JUDGE

Comparing Assistant