

GAHC010067472024



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

Case No. : Bail Appln./955/2024

ABDUL HASIM
S/O LATE ABDUL MANNAN
R/O VILL- SINGARIA, P.O. SINGARIA BAZAR,
P.S. NILAMBAZAR, DIST. KARIMGANJ, ASSAM, PIN-788719

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : A RAHMAN, MR. S. SUR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

28.10.2024

1. Heard learned counsel Mr. S. Sur for the petitioner Abdul Hasim and learned Additional Public Prosecutor, Mr. K. K. Das for the respondent State.
2. This application has been filed by the petitioner under Section 439 of the Cr.PC as he is behind bars since 07.06.2023 in connection with Special NDPS

Case No. 59/2023 arising out of Nilambazar P. S. Case No. 111/2023 under Sections 21(C)/25/29 of the NDPS Act corresponding to GR Case No. 1253/2023.

3. The FIR unfolds that a secret information was received by the investigating team on 07.06.2023, that a white coloured S-Presso Car bearing registration No. AS-10-F2966, carrying a huge quantity of contraband was proceeding from Lalpul towards Nilambazar via NH-08. A Naka checking was set up and around 10 a.m., the aforementioned car was detained in front of Nilambazar P. S., and four occupants including the petitioner were confronted. The driver of the vehicle, Abdul Hamid admitted that there was contraband inside the vehicle. During the search operation, a white coloured gunny bag containing 2 black polythene packets were recovered from the back seat of the car. Suspected heroin was found inside the packets. Petitioner was thus forwarded to custody.

4. It is submitted on behalf of the petitioner that all the accused arrested in connection with this case have shifted the blame on one another. The petitioner is innocent and he has been incarcerated for a prolonged period only on the statement of the accused and thus the petitioner deserves bail. Charges were framed on 19.12.2023, and not a single witness has been examined so far. It is submitted that investigation was conducted in a haphazard manner and within 60 days, charge-sheet was submitted against the petitioner. Due to the haste in submitting the charge-sheet, the investigating agency has ignored that the petitioner is innocent. The forwarding report marked as Annexure-3 clearly reveals that the driver is the main accused. The contraband allegedly purchased by the petitioner and the other accused were purchased from Mizo Kappu. It is submitted that the investigating agency did not arraign Mizo Kappu as an accused or as a witness.

5. The petitioner's right to personal liberty has been curtailed as the petitioner has been behind bars for 1 year 4 months 21 days. It is submitted that there is no confessional statement of the petitioner under Section 67 of the NDPS Act and the statement of the petitioner reveals that the petitioner boarded a vehicle at Suprakandi and he was travelling with Zabel Hussain (accused) and he had no knowledge about the contraband in the vehicle but, surprisingly charge-sheet was laid against the petitioner.

6. It is further submitted that this case was fixed for evidence on:-

- (i) 21.03.2024,
- (ii) 04.04.2024,
- (iii) 05.06.2024,
- (iv) 31.07.2024, and
- (v) 27.09.2024.

7. Two independent witnesses were present on 31.07.2024, but their evidences were not recorded and no reason was ascribed as to why their evidences were not recorded, and they were allowed to go on PR bond. On the next day, witnesses were absent and bailable warrants were issued against them as they were on PR bond.

8. The petitioner has relied on the decision of this Court in ***Hussain Ahmed Vs The State of Assam in Bail. Appln. No. 2979/2023*** dated 11.12.2023, wherein it has been observed by this Court that not a single witness has been examined despite the fact that the petitioner was behind bars for 409 days. This Court relied on the decision of the Hon'ble Supreme Court in the case of ***Rabi Prakesh Vs The State of Orissa reported in 2023 SCC Online SC 1109*** and granted bail to the petitioner (Hussain Ahmed). The petitioner has also relied on the decision of this Court in ***Ahmed Hussain @ Ahmod Hussain where in Bail. Appln. No.***

44/2024. Vide order dated 21.06.2024, this Court granted bail to the petitioner Ahmed Hussain @ Ahmod Hussain. This Court has relied on the decision of the Hon'ble Supreme Court in the case of ***Mohd Muslim Vs The State of (NCT of Delhi) reported in 2023 SCC Online SC 352***, and the decision of the Hon'ble Supreme Court in the case of ***Ravi Prakash Vs The State of Orissa (Supra)*** and granted bail to the petitioner Ahmed Hussain @ Ahmod Hussain.

9. I have considered the submissions at the Bar with circumspection.

10. It is submitted by the learned Additional Public Prosecutor that the petitioner is not entitled to bail as the twin conditions of Section 37 of the NDPS Act restricts the petitioner's prayer for bail. The petitioner is a history sheeter and charge-sheet has been laid against the petitioner. At this stage, the merits of the case cannot be considered. The petitioner was sitting over his rights when charges were framed against him and no submission relating to his right to personal liberty has been made before the learned Trial Court and charges were framed against him.

11. I have considered the submissions at the Bar. The facts and circumstances of this case is not similar to the cases referred to by the petitioner in ***Hussain Ahmed (Supra)*** and ***Ahmed Hussain @ Ahmod Hussain (Supra)***.

12. It is true that the petitioner's mother is suffering immensely as the petitioner is the sole bread winner of his family. But, at this juncture, it cannot be conclusively decided that the petitioner's right to personal liberty has been curtailed due to procrastination of the trial. Trial has just commenced. Evidences are yet to be recorded.

13. The merits of this case are not brought to the fore as this case is pending for trial. Indeed, the embargo under Section 37 of the NDPS Act fetters the bail prayer of the petitioner.

14. At this stage, the petition with prayer for bail stands rejected. However, the petitioner is at liberty to file a subsequent bail petition, if trial is procrastinated any further by the conduct of the Court or by the prosecution.

15. The learned Trial Court is directed to expedite the trial for speedy disposal of this case.

16. Bail petition stands rejected at this stage.

JUDGE

Comparing Assistant