

GAHC010068662024



2024:GAU-AS:11970

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

Case No. : Bail Appln./966/2024

MANISH KUMAR
S/O DINESH RAY
R/O TARA DHAMAUN
P.S. PATORY
DIST. SAMSTIPUR, BIHAR

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, MR A AHMED, U U KHAN, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 29.11.2024

Heard Mr. M. A. Choudhury, learned counsel for the petitioner. Also heard Mr. D. P. Goswami, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of bail to the accused/petitioner, who has been arrested in connection with Special (NDPS) Case No. 134 /2022, pending before the Court of learned Session Judge, Karimganj, Assam, arising out of Bazarichera P.S. Case No. 168/2022, under Sections 20(b)(ii)(c)/ 25/29 of NDPS Act, 1985.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Choudhury, learned counsel for the petitioner, that the present accused/petitioner is innocent and he is not involved in the alleged offence. He is the driver of the vehicle (truck) and has no knowledge about the contraband alleged to have been recovered from the secret chamber of the truck drove by him. He further submitted that the accused got arrested in connection with this case on 09.09.2022 and since 10.09.2022, he is in judicial custody. The Charge-Sheet of the case was filed on 30.11.2022 and the charge was accordingly framed on 23.05.2023, however the prosecution could not examine any witnesses in connection with this case. Thereafter the Supplementary Charge-Sheet was also filed on 04.07.2023 against the co-accused- Rajpal Singh showing him as an absconder and till date, the Trial Court could not able to procure his attendance. More so, till 01.04.2024, i.e. filing of the present petition, none of the witnesses, out of 9 witnesses, have been examined by the learned Court below and the case is still at the stage of appearance. The accused is behind the bar for last 2 (two) years 2 (two) months & 9 (nine) days, but till date, the prosecution could not examine any

witnesses out of total 9 (nine) numbers of witnesses. Further, the next date is fixed on 15.02.2025. Mr. Choudhury, accordingly, submitted that there is no probability of completion of trial within near future as lots of witnesses are yet to be examined by the prosecution and therefore he submitted that considering the period of long incarceration, the petitioner may be enlarged on bail. n.

5. In support of his submission, Mr. Choudhury, learned counsel for the petitioner, further relied on the following decisions:

- (i) Rabi Prakash Vs. State of Odissa [2023 LiveLaw (SC) 533**
- (ii) Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh [SLP(CrI) No. 6690/2022 (Decided on 25.01.2023]**
- (iii) Bijon Sk @ Golam Murselim Vs. The State of West Bengal [SLP (CrI) No. 6046/2024, decided on 08.07.2024]**
- (iv) Jahid Hasan Munna Vs. The State of West Bengal [SLP (CrI) No. 3643/2024, decided on 17.05.2024]**
- (v) Anjan Nath Vs. the State of Assam [SLP (CRL) No. 9860/2023 (Decided on 17.10.2023)]**
- (vi) Zakirul Islam @ MD Zakirul Islam @ Zakir Vs. The State of Assam [SLP (CrI) 3632/2024 (Decided on 15.07.2024)]**

(vii) **Dhirendra Kumar Choudhury Vs. The State of Assam [SLP (Crl) No. 5068/2024 (Decided on 14.08.2024)]**

(viii) **Gapendra Das @ Dipak Vs. The State of Assam [Bail Appln. No. 850/2024 (Decided on 29.07.2024)]**

(ix) **Pankaj Kumar Vs. The State of Assam [Bail Appln. No. 2472/2024 (Decided on 28.10.2024)]**

6. Mr. Goswami, learned Additional Public Prosecutor, submitted in this regard that the contraband was recovered from the conscious possession of the present accused/petitioner and there are sufficient incriminating materials in the Case Diary against the present accused/petitioner showing his direct involvement in the alleged offence. He further submitted that as the case is of commercial quantity, rigor of Section 37 of NDPS Act will follow. He further submitted that in the case of **Narcotics Control Bureau Vs. Mohit Agarwal [Criminal Appeal Nos. 1001-1002 of 2022, arising out of SLP (Crl.) No. 6128 of 2021]**, the Hon'ble Apex Court has held that long incarceration or delay in disposal only cannot be the sole ground for entertaining the bail application. Accordingly, he submitted that this is a case of commercial in nature wherein huge quantity of contraband is alleged to have been recovered from the possession of the present accused/ petitioner and hence, his prayer may not be considered only on the ground of period of incarceration.

7. After hearing the submissions made by the learned counsels for both sides, I have perused the scanned copy of the case record and the annexures

filed along with the petition.

8. As per the allegation, it is seen that on 09.09.2022, while the informant along with his staff was conducting Naka Checking at Churaibari W.P. on NH-8, they intercepted a ten wheeler container truck coming from Tripura side. During search, they found 111 numbers of packets suspected to be ganja weighing about 1108 Kgs from the secret chamber of the truck and accordingly, observing all formalities, those were seized in presence of the witnesses. However, it is the case of the petitioner that he is innocent and he had no knowledge about the seized contrabands which was kept inside the secret chamber of the truck. He is only the driver of the vehicle and is also not associated with the other accused absconding person.

9. It is a fact that the present accused/petitioner was arrested in connection with this case on 09.09.2022 with the allegation of recovery of commercial quantity of contraband from his possession and since 10.09.2022, the accused/petitioner is in judicial custody. After his arrest and on completion of investigation, police find *prima facie* materials against him and accordingly filed the Charge-Sheet against him and the charges were also framed against him. However, while the case was at the evidence stage, a supplementary charge-sheet was also filed against one co-accused, Rajpal Singh, who has been marked as an absconder. But, the learned Trial Court has been unable to procure his attendance and as a result, the case is still pending at the stage of appearance. Consequently, none of the prosecution witnesses have been examined by the Trial Court.

10. More so, it is seen that the case is of commercial quantity and hence, the rigor of Section 37 NDPS Act will follow.

11. For ready reference, Section 37 NDPS Act is extracted hereinbelow:

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(b) No person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

12. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is no reasonable ground for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials available in the case record, there cannot be any reasons to believe that the accused/petitioner is not guilty of such offence or he is not likely to commit any offence while on bail.

13. But, in the same time, it cannot be denied that the accused/petitioner is behind the bar for last last 2 (two) years 2 (two) months & 9 (nine) days from the date of his arrest and till then, the prosecution could examine any witnesses and the case is at the stage of appearance. It also cannot be denied that to examine all the witnesses, the prosecution may take a considerable period for completion of the trial.

14. In the case of **Rabi Prakash (supra)**, as relied by the learned counsel for the petitioner, the Apex Court has granted bail to the accused with a view 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)9ii) of the NDPS Act.”*

15. Further, in the case of **Shariful Islam @ Sharif Vs. The State of West Bengal [SLP(CrI) 4173/2022 (Decided on 04.08.2022)]**also, the Apex Court had considered the period of incarceration, i.e. 1 year 6 months, and the bail was granted.

16. The Apex Court in the case of **Mohammed Salman Hanif Shaikh Vs. The State of Gujrat [SLP(CrI) No. 5530/2022 (Decided on 22.08.2022)]**also granted bail to the accused without expressing any views on the merits of the case and only taking into consideration the period of custody.

17. In the case of **Karnail Singh Vs. The State of Odisha [Criminal Appeal No. 2027/2022, arising out of SLP(CrI) No. 9067/2022 (Decided on 22.11.2022)]**as well as in **Dheeraj Kumar Shukla (supra)** also, the Apex Court also expressed the same view and granted bail to the accused considering the period of incarceration.

18. Same view has been expressed by the Apex Court in the case of **Anjan Nath (supra)**, as relied by the learned counsel for the petitioner.

19. In the instant case, it is seen that the matter remains at the stage of appearance of the co-accused, who is still absconding. Although the charges have been framed against the accused/petitioner, the examination of witnesses has not occurred due to the absence of the co-accused, who is shown as an absconder in the supplementary charge-sheet. Consequently, the trial is yet to be commenced. Situated thus, it is unlikely that the case will be resolved in the near future. More so, the accused is behind the bar for last 2 (two) years 2 (two) months & 9 (nine) days.

20. So, considering all above aspects of the case and also considering the observation made by the Apex Court in the various judgments, as discussed above, and further considering the other facts and circumstances of this case, this Court is of the opinion that the period of long incarceration undergone by the accused/petitioner for more than 2 (two) years 2 (two) months & 9 (nine) days may be considered as a ground for bail with the conditional liberty considering the fundamental right guaranteed under Article 21 of the Constitution and, therefore, without going into the merit of the case, I am inclined to grant bail to the present accused/petitioner.

21. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees twenty thousand) only with 2 (two) sureties of like amount, provided that one surety has to be a government servant, to the satisfaction of the learned Sessions Judge, Karimganj, the accused/petitioner, namely, Manish Kumar, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall appear before the Court of learned Sessions Judge, Karimganj, 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;
- (iii) That the petitioner shall submit his Aadhar Card and PAN Card before the learned Sessions Judge, Karimganj; and
- (iv) that the petitioner shall not leave the jurisdiction of the learned Sessions Judge, Karimganj, without prior permission.

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

JUDGE

Comparing Assistant