

GAHC010070062024



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

Case No. : Bail Appln./980/2024

FAYSOL AHMED @ RUBEL
S/O LATE BOSIR UDDIN
VILL- BAGARSANGON
P.S. RATABARI,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 13.05.2024

1. Heard Mr. H. R. A. Choudhury, learned senior counsel assisted by Mr. H. R. Choudhury, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State.

2. This application under Section 439 of the Court of Criminal Procedure, 1973, has been filed by the petitioner, *Faysol Ahmed @ Rubel*, who

has been detained behind the bars since 27.02.2023 (for more than one year, two months) in connection with Special NDPS Case No. 19/2023 corresponding to Karimganj P.S. Case No. 166/2023 pending in the Court of learned Special Judge, Karimganj.

3. The gist of accusation in this case is that on 27.02.2023, one Suraj Dutta, SI of Police of Karimganj Police Station had lodged an FIR before the officer-in-charge of Karimganj Police Station, *inter alia*, alleging that on receipt of an information through reliable sources that large quantity of narcotic drugs are being concealed inside the house of one Azad Uddin by one drug peddler, namely, Faysol Ahmed (the present petitioner) at village, Bagarsangon, a search operation was conducted in the residence of Azad Uddin. During such operation, the petitioner was found inside the house of Azad Uddin and 161 grams of Yaba tablets containing methamphetamine were recovered from there.

4. On receipt of the said FIR, Karimganj Police Station No. 166/2023 was registered and investigation was initiated. It is also to be noted that the petitioner was apprehended from the house where the search was conducted. Ultimately on completion of the investigation, charge-sheet was laid against the present petitioner under Section 21(c)/25/27(A) of the NDPS Act, 1985. The charge was framed against the present petitioner on 04.12.2023.

5. Learned senior counsel for the petitioner has submitted that in this case, the petitioner has been detained behind the bars for more than one year, two months and thirteen days and the trail has not yet progressed. It is submitted by the learned senior counsel that though the charges were framed against the present petitioner on 04.12.2023, however, till now, not even a single prosecution witness has been examined by the prosecution side. It is also submitted by the learned senior counsel for the petitioner that only six

prosecution witnesses have been listed in the charge-sheet. However, the prosecution side has failed to examine any one of them till now, and hence, it is submitted that the fundamental right to get speedy trial, of the petitioner has been violated and he is entitled to get bail only on the ground of prolonged incarceration.

6. Learned senior counsel for the petitioner has also submitted that though the seized contraband was recovered from the residence of Azad Uddin, however, the said Azad Uddin has not been made an accused in this case, and only the present Petitioner has been charged sheeted in this case.

7. To substantiate his submissions, learned senior counsel for the petitioner has cited the ruling of the Apex Court in the case of "**Rabi Prakash, -Vs- State of Odisha**" reported in "**2023 SCC Online SC 1109**". Learned senior counsel for the petitioner has also cited the ruling of a coordinate Bench of this Court in the case of "**Hussain Ahmed Vs. State of Assam**" (Bail Application No. 2979/2023 order dated 11.12.2023), wherein the petitioner was granted bail on the ground of prolonged incarceration only. In the said case, the petitioner was detained behind the bars for 409 days (1 year, 1 month, 12 days only). The petitioner has also cited a ruling of another coordinate bench of this court in the case of "**Abu Sufian -Vs- State of Assam**" (order dated 11.05.2023 in Bail Application No. 1128/2023), wherein the petitioner was detained behind the bars for more than 1 year 11 months and he was granted bail on the ground of prolonged incarceration only.

8. On the other hand, Mr. K. Baishya, learned Additional Public Prosecutor has submitted that there are sufficient incriminating materials against the present Petitioner in this case and as the quantity of contraband recovered in this case is of commercial quantity, and therefore, the embargo of

Section 37 of the NDPS Act, 1985, is applicable to this case and on that ground he has vehemently opposed the grant of bail to the present petitioner.

9. It is also submitted by the learned Additional Public Prosecutor that though the charges were framed against the present petitioner on 04.12.2023, however, only three dates have been fixed since then for evidence and the evidence of prosecution witnesses could not be recorded due to situations which were beyond the control of the trial court.

10. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record including the scanned copy of the case record of Special NDPS Case No. 19/2023 as well as the case diary of Karimganj P.S. Case No. 166/2023.

11. There is no dispute at the bar that the quantity of contraband seized in this case is of commercial quantity and therefore, apparently the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case. Though it is true that if the court comes to a conclusion that there has been an inordinate delay in trial and the petitioner has undergone prolonged incarceration, he may be entitled to get bail. The Supreme Court of India in the case of "**Rabi Prakash – Vs- State of Odisha**" (Supra) has observed that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985.

12. Before granting the benefit of bail in a case of prolonged incarceration, the court must arrive at a decision as to the fact that the petitioner has undergone prolonged incarceration, and the trial is not

progressing. In this regard, it is observed by this Court that the Apex Court has, in such cases granted benefit of prolonged incarceration only to those accused persons who have undergone a minimum period of detention of one year and six month. Though no hard and fast rule may be prescribed in this regard as to what would be the measure of prolonged incarceration and each case is to be considered on the basis of facts and circumstances specific to that particular case. However, a clue in this regard may be taken from the Apex Court as the Apex Court has given the benefit of bail to those accused persons who have been detained for a minimum period of one year and six months only. In this case, the petitioner has undergone a period of detention of only 1 year, 2 months, and 13 days and though the learned senior counsel has cited the ruling of the Court of coordinate Bench of this Court in "**Hussain Ahmed –Vs- State of Assam**" (supra), wherein the petitioner of that case was granted bail on the ground of prolonged incarceration of one year, one month and twelve days, however, under the facts and circumstances of this case, this court is not convinced that the petitioner is entitled to get bail only on the ground of prolonged incarceration as this court is of considered opinion that under the facts and circumstances of this case, the detention of the petitioner is not long enough so as to entitle him to get bail only on that ground, more so, when the embargo of Section 37 of the NDPS Act is applicable in this case.

13. As the embargo of Section 37 of the NDPS Act, 1985 is applicable to this case, the prayer for bail is rejected at this stage.

14. However, the fact that out of only six listed witnesses not even a single witness has yet been examined, is a matter of concern. The trial court is therefore directed to examine all the listed witnesses within a period of three months from the date of this order and expeditiously dispose of the Special

NDPS Case No. 19/2023, which is pending before it.

15. With above observation, this bail application is hereby dismissed.

16. Let a copy of this order be furnished to the court of learned Special Judge, Karimganj immediately by the Registry of this Court.

JUDGE

Comparing Assistant