

GAHC010073112024



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

Case No. : Crl.Pet./425/2024

IFTIKAR HUSSAIN
S/O LATE IMRAN HUSSAIN, R/O FAUZDARIPATTY, P.S.- NAGAON SADAR,
DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M K SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 10.04.2024

Heard Mr. M.K. Sarma, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 482 Cr.P.C. for quashing of an order dated 28.03.2024 passed in Special NDPS Case No.139/2023 under Section 22(C)/29 of the NDPS Act by the learned Additional Sessions Judge No.2, Nagaon. The accused/petitioner was arrested in connection with the above referred case on 10.02.2023 and charge-sheet was submitted on 21.06.2023. Thereafter, on the

ground of illness of the daughter of the accused/petitioner, he approached the learned Special Judge, Nagaon with an application for bail and considering his prayer, he was allowed to go on interim bail vide order dated 19.06.2023 till 18.07.2023 directing the accused to personally appear before the learned Court below. But subsequently, on the prayer of the present petitioner, the interim bail was extended till 31.07.2023 and again on considering the prayer made by the petitioner his interim bail was extended vide order dated 31.07.2023, 03.08.2023 and 30.08.2023 till 07.09.2023. Thereafter, the present petitioner again approached for further extension of time due to illness of his daughter. But on 07.09.2023, the learned Sessions Judge No.2, Nagaon had rejected his bail application and also rejected his prayer for extension of his interim bail and issued NBWA against him.

On being highly aggrieved and dissatisfied with the said order of rejection, the petitioner approached this Court vide Crl.Pet No.1054/2023 and this Court had extended a period of 20 days for his appearance before the learned trial Court. But even after expiry of 20 days, he could not appear before the learned Additional Sessions Judge No.2 and again approached this Court with another application for further extension of time for his appearance and accordingly, vide order dated 21.12.2023 in Crl.Pet.1050/2023, this Court extended the time for his appearance and fixed on 15.01.2024 with a direction to appear before the trial Court below. But he could not appear before the learned trial Court below as per direction of this Court within the stipulated time due to treatment of his disable daughter and hence he approached the learned trial Court below again on 19.01.2024 showing his cause of delay for his appearance but the learned Sessions Judge, Nagon had rejected his prayer and fixed on 15.03.2024 for his appearance and also rejected the prayer for recalling of the NBWA issued by the Court.

Learned counsel for the petitioner has further submitted that he is the only bread earner of the family and his minor daughter is suffering from 90 percent locomotor disability and only for her treatment he could not appear before the learned Court below in time.

On being aggrieved and dissatisfied with the order dated 02.02.2024 and 15.03.2024 passed by the learned Additional Sessions Judge No.2 he again approached this Court vide Crl.Pet. 333/2024 and this Court vide order dated 22.03.2024 had directed the present petitioner to appear before the trial Court below on 10.04.2024 and till then the NBWA issued against him was suspended.

On the basis of the said direction, the accused/petitioner appeared before the learned Court below on 28.03.2024 with a prayer for bail vide Application No.973/24, but the learned Additional Sessions Judge had rejected his prayer for bail and send him to judicial custody.

Learned counsel further submitted that the petitioner is ready to face the trial but he prayed for bail only for the treatment of his daughter and there is none to look after his family. But the learned trial Court below did not consider all this facts of the case and rejected his bail prayer vide order dated 28.03.2024 and sent him to judicial custody and hence, this present petition has been filed for setting aside and quashed of the order dated 28.03.2024 passed by the learned trial Court below with a direction to allow the present petitioner to go on bail and also pray for staying of the NDPS Case No.139/2023 under Section 22(C)/29 of the NDPS Act pending before the learned Additional Sessions Judge No.1, Nagaon.

Learned counsel for the petitioner has further submitted that he could not appear before the learned Court below within time fixed by this Court only for the treatment of his daughter who is physically disable. However, he is ready to face the trial and also willing to appear each and every date fixed by the learned trial Court below if he is granted bail by setting aside and quashing the order dated 28.03.2024.

In this context, Mr. D. Das, learned Additional Public Prosecutor has submitted that the learned trial Court rightly passed the order by rejecting the prayer for bail of the present petitioner who was granted with the interim bail and the same was extended time to time by the learned Court below and took liberal approach only for the treatment of the daughter fo the accused. But inspite of the specific direction passed by the learned trial Court this Court, he did not appear within the time and thus it is seen that he is not complied with the order of this Court. More so, it is seen that the case is registered under Section 22(C)/29 of the NDPS Act which is a case of commercial quantity and hence the probability of absconding of the accused petitioner also cannot be denied and hence the learned Court below has not committed any illegality or irregularity by rejecting the prayer for bail filed by the petitioner vide order dated 28.03.2024.

Accordingly, learned Additional Public Prosecutor has submitted that it is not a fit case to entertain an application under Section 482 Cr.P.C. and is liable to be dismissed out rightly.

After considering the submissions made by the learned counsel for both sides and also perusal of the case record, it is seen that the accused was allowed to go on interim bail by the learned trial Court vide order dated 19.06.2023 and till 07.09.2023 it was extended time to time and that apart this Court also granted/extended time for his appearance in two/three occasions but inspite of the direction of this Court as well as from the learned Court below the accused petitioner did not appear before the learned trial Court below and approached for extension of time and finally when he was asked by this Court to

appear on or before 10.04.2024, he appeared before the learned Court below with a prayer for bail which was rejected by the learned trial Court and as the case is of commercial quantity, he could not be granted bail unless there is satisfaction of this Court as required under Section 37 of NDPS Act. More so, it is seen that the learned Court below has considered the case of the petitioner liberally and granted him interim bail which was also extended time to time. Thus I do not find any reason to interfere with the order passed by the learned Additional Sessions Judge No.2, Nagaon in Special NDPS Case No.139/2023 and it is not at all a case to quash the order dated 28.03.2024 by exercising the power under Section 482 Cr.P.C.

With the above observation and direction, the criminal petition stands dismissed.

JUDGE

Comparing Assistant