

GAHC010074412024



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

Case No. : Bail Appln./1161/2024

ABUL KHAYER MD. SIDDIQUE
S/O ABDUL MALIK
R/O VILL- FATEHPUR
P.O. CHATAL, P.S. KARIMGANJ
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M AHMED, MD I H LASKAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 13.08.2024

Heard Mr. I.H. Laskar, learned counsel for the accused. Also heard Mr. P.S. Lahkar, learned Addl. Public Prosecutor for the State respondent.

2. This petition, under Section 439 Cr.P.C. is preferred by the accused, namely, Abul Khayer Md. Siddique, who has been languishing in jail hazot in

connection with Special (NDPS) Case No. 43/2023, arising out of Karimganj P.S. Case No. 334/2023, under Sections 21(c)/25/29 of the NDPS Act, 1985, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by S.I. Badru Zaman Ahmed of Karimganj P.S. on 05.05.2023. The essence of allegations, made in the said FIR, is that acting on a tip off, on 05.05.2023, at 5-20 am, the informant and his staff intercepted one Maruti Alto vehicle, bearing Registration No. AS-10-F-4531, driven by one Abul Khayer Md. Siddique and during search they have recovered 48 soap cases, containing 567 grams of suspected Heroin. And during interrogation, the driver disclosed that one Abdullah Choudhury @ Bablu was the receiver of the same and he is also involved in the consignment and there was a plan to deposit the same with him.

4. Mr. Laskar, learned counsel for the accused submits that the accused was arrested on 05.05.2023, and since then he has been languishing in jail hazot for last 460 days. Mr. Laskar also submits that the investigation has already been completed and charge-sheet has been submitted before the learned trial Court and the learned trial Court had framed charge against the accused on 16.12.2023, but till date, no witnesses could be examined in the learned trial Court by the prosecution side. Further, Mr. Laskar submits that the trial is getting delayed and in spite of getting sufficient opportunities, the prosecution side has failed to produce the witnesses and thereby, right to speedy trial of the accused has been violated here in this case and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Lahkar, learned Addl. Public Prosecutor has vehemently opposed the petition on the ground that the contraband substances

were recovered from the possession of the accused, who was the driver of vehicle, bearing Registration No. AS-10-F-4531, and the quantity of the contraband substances, so recovered from the possession of the accused is 567 grams of Heroin and the same is of commercial quantity, and unless and until the requirement of Section 37 of the NDPS Act is satisfied, the accused cannot be enlarged on bail and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record, as well as the status report, received from the learned trial Court.

7. It appears from the report of the learned trial Court that the case is pending for evidence and that the charge-sheet was submitted on 12.09.2023 and charge was framed against the accused, under Sections 21(c)/25/29 of the NDPS Act, vide order dated 16.12.2023. It also appears that since then, more than six months elapsed and till date, no witnesses could be examined by the prosecution side. No doubt, there is some delay on the part of the prosecution side in producing the witnesses before the learned trial Court, but, the same at best, would be termed as systemic delay and as such, it cannot be said that the right to speedy trial of the accused, under Article 21 of the Constitution of India, is impaired here in this case.

8. The offences, as it appears from the record of the learned trial Court, are serious in nature and the quantity of contraband substance i.e. Heroin, recovered from the possession of the accused is of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act. But, from the submission of the learned counsel for the accused and also from the materials on record, this Court is unable to derive satisfaction that the

accused is not guilty of the offence and that he will not commit any offence while on bail.

9. In the case of Union of India vs. Ajay Kumar Singh @ Pappu, in Criminal Appeal No. 952 of 2023 [arising out of SLP (CRL.) No. 2351 of 2023], Hon'ble Supreme Court has held as under:

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

10. Under the abovementioned facts and circumstances, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused at this stage and accordingly, this petition stands dismissed.

11. However, this Court is of the opinion that a sincere effort is required to be made by the prosecution side and also by the learned trial Court to secure the attendance of the witnesses, so that the ordeal being faced by the accused, comes to a logical end, if necessary, coercive measure has to be taken against the prosecution witnesses. It has to be borne in mind that right to speedy trial is a part of right to fair trial guaranteed under Article 21 of the Constitution of India.

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

JUDGE

Comparing Assistant