

GAHC010076702024



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

Case No. : Bail Appln./1107/2024

MD. ASLAM KHAN
S/O MD. RAHIMUDDIN
R/O LILONIG TUREL AHANBI
P.O. AND P.S. LILONG, DIST. THOUBAL, MANIPUR, PIN-795130

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : M K BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

30.05.2024

Heard Mr. M.K. Borah, learned counsel for the accused and also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Md. Aslam Khan, who has been languishing in jail hazot since 11.07.2021, in connection with Dillai P.S. Case No.33/2021 under Section 21(c) of the NDPS, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by Inspector Utpal Sarma of Borpathar P.S., Karbi Anglong, on 10.07.2021. The essence of allegation made in the aforesaid FIR is that on 10.07.2021, at about 7:45 p.m., he had intercepted night-super bus, bearing Registration No.AS-01EC-7664 during Naka checking on NH-36 near Lahorijan P.P. Then conducting search in the bus he has recovered 3.980 kg identical opium found in a red colour bag which was found packed in silver colour milk polythenes when the same were being transported by passenger Md. Aslam Khan of Lilong Turel Abanbi of Thoubal District, Manipur and seized the same in presence of witnesses.

4. Mr. Borah, learned counsel for the accused, submits that the accused was arrested on 11.07.2021 and since he has been languishing in jail hazot and this is the 3rd bail application preferred by the accused and the 1st one being Bail Appln. No.292/2023 was dismissed by this Court on 27.04.2023 and the 2nd one being Bail Appln. No.2538/2023 was dismissed by this Court on 15.03.2024. Mr. Borah further submits that the ground for filing this 3rd bail application is that while disposing of the 2nd bail application vide order dated 15.03.2024, this Court was pleased to direct the learned Trial Court to conduct day to day trial and to complete the same as early as practicable, but the learned Trial Court could not complete the same and that out of 10 cited witnesses 6 witnesses have already been examined till date and rest 4 witnesses are yet to be examined and there is also no certainty when the trial will come to an end and as such, Mr. Borah submits that right to speedy trial of the accused is violated and therefore, it is contended to allow the petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, submits that out of 10 cited witnesses 6 have already been examined and the witnesses examined so far have implicated the present accused. Further, Mr. Lahkar submits that the ground assigned for filing this 3rd bail application is not at all maintainable and the trial is at the last stage and therefore, Mr. Lahkar has opposed the petition.

6. Having heard the submissions 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 case record received the learned Court below.

7. It appears that the accused was arrested on 11.07.2021 and since then he has been languishing in jail hazot. Having gone through the record of the learned Trial Court as well as the status report, this Court is of the view that the delay that has allegedly occurred in the present case, appears to be systemic delay, and as such, no prejudice is caused to the accused. Moreover, the ground assigned for filing this 3rd bail application is found to be not at all satisfactory. The 2nd bail application was dismissed only on 15.03.2024 and only 2 months elapsed till date.

8. Indisputably, the quantity of contraband substances 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. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Union of India v. Ajay Kumar Singh @ Pappu**, Criminal Appeal No.952 of 2023 [Arising out of SLP (Crl.) No.2351 of 2023, decided on 28th March, 2023]. But, this Court is unable to derive satisfaction from the materials placed on record and also from the submission of learned counsel for the accused that the accused is not guilty of the offence and that he will not commit any offence while on bail.

9. Mr. Lahkar, learned Additional P.P., referring to a recent decision of Hon'ble Supreme Court in the case of **High Court Bar Association Allahabad v. State of U.P.**, reported in **2024 SCC OnLine SC 207**, submits that unless there is compelling circumstances, no time can be framed for disposal of a particular case. Therefore, this Court is not inclined to make any observation in respect of day to day trial and to complete the same within a definite time.

10. In the result, I find that the present petition devoid of merit and accordingly, the same stands dismissed.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant