

GAHC010081312024



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

Case No. : Bail Appln./1218/2024

IKTAR ALI @ IKTTARUL HAQUE @ EKTAR ALI
S/O EUSUF ALI
PERMANENT RESIDENT OF BORKUR PATHAR 1 NO. BORKUR PS.
BHURAGAON, MORIGAON, ASSAM- PIN-782121
R/O LALMATI, EAR SHEGUNBARI PAHAR, P.O. LALMATI, P.S. LALMATI
IDST. KAMRUP (M), GUWAHATI.

VERSUS

THE UNION OF INDIA,
REPRESENTED BY STANDING COUNSEL, NARCOTICS CONTROL BUREAU.

Advocate for the Petitioner : MR. S RAHMAN, MRS S GOSWAMI

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

05.09.2024

1. Heard Mrs. S. Goswami, learned counsel for the petitioner Iktar Ali @ Ikttarul Haque @ Ektar Ali.

2. The petitioner has filed this application under Section 439 of the Cr.PC read with Section 37 of the NDPS Act with prayer for bail as he is behind bars since 30.12.2021 in connection with NDPS Act Case No. 148/2022 arising out of NCB Guwahati Crime No. 31/2021 under Sections 22(C)/8(C) of the NDPS Act pending in the Court of Additional Sessions Judge No. 3 of Kamrup, (M).
3. Heard Mr. S. C. Keyal, learned Standing Counsel, NCB for the respondent State.
4. It is submitted on behalf of the petitioner that the petitioner is behind bars for more than 2.5 years, and only 2 out of 9 witnesses have been examined so far. The way that this case is dragging indicates that the completion of the examination of the remaining 7 witnesses will take a long time and this will infringe the petitioner's right to personal liberty. Moreover, it is submitted that there is every possibility that the petitioner will be acquitted in connection with this case and his incarceration will be violation of human rights. The samples which have been seized and described in the Seizure list are not similar to the samples according to the Forensic report. Their colours do not match. The samples were not drawn as per Section 52A of the NDPS Act, and the samples were drawn after 3 days. The prosecution has been delaying this case to the detriment of the petitioner's fundamental rights.
5. Learned Standing Counsel has raised serious objection against the bail petition. It is submitted that the petitioner is involved in transporting 967 grams of Methamphetamine tablets. The order dated 02.01.2022 passed by the learned Trial Court reveals that Section 52A was meticulously followed. Moreover, no questions were asked to the prosecution witnesses relating to the dissimilarity of the samples and this cannot be a ground for acquittal.

6. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain Vs State (NCT of Delhi), 2023 0 (Supreme) SC 289***, which is not relevant to this case. The learned Standing Counsel has relied on the decision of the Hon'ble Supreme Court in ***High Court Bar Association, Allahabad Vs State of U.P. and Ors, 2024 0 Supreme(SC) 169***, wherein it has been held and observed that :-

“31. The situation in Trial and district Courts is even worse. In 2002, in the case of All India Judges Association & Ors. v. Union of India & Ors., (2002) 4 SCC 247 this Court passed an order directing that the judge-to-population ratio within twenty years should be 50 per million. Even as of today, we are not able to reach the ratio of even 25 per million. The directions issued in the case of Imtiyaz Ahmed v. State of Uttar Pradesh & Ors., (2017) 3 SCC 658 have not been complied with by the States by increasing the Judge strength of the Trial and District Courts. The figures of pendency of cases in our trial Courts are staggering. There are different categories of cases which, by their very nature, are required to be given utmost priority, such as the cases of the accused in jail and the cases of senior citizens. For example, there are many legislations like the Hindu Marriage Act, 1955, the Protection of Women from Domestic Violence Act, 2005, the Negotiable Instruments Act, 1881 etc which prescribe specific time limits for the disposal of cases. However, due to the huge filing and pendency, our Courts cannot conclude the trials within the time provided by the statutes. There is a provision in the Code of Criminal Procedure, 1973, in the form of Section 309, which requires criminal cases to be heard on a day-to-day basis once the recording of evidence commences. The same Section provides that in case of certain serious offences against women, the cases must be decided within two months of filing the charge sheet. Unfortunately, our Criminal Courts are not in a position to implement the said provision Apart from dealing with huge arrears, our Trial Courts face the challenge of dealing with a large number of cases made time-bound by our constitutional Courts. Therefore, in the ordinary course, the constitutional Courts should not exercise the power to direct the disposal of a case before any District or Trial Court within a time span. In many cases, while rejecting a bail petition, a time limit is fixed for disposal of trial on the ground that the petitioner has undergone incarceration

for a long time without realizing that the concerned trial Court may have many pending cases where the accused are in jail for a longer period. The same logic will apply to the cases pending before the High Courts. When we exercise such power of directing High Courts to decide cases in a time-bound manner, we are not aware of the exact position of pendency of old cases in the said Courts, which require priority to be given. Bail petitions remain pending for a long time. There are appeals against conviction pending where the appellants have been denied bail.

32. Therefore, constitutional Courts should not normally fix a time-bound schedule for disposal of cases pending in any Court. The pattern of pendency of various categories of cases pending in every Court, including High Courts, is different. The situation at the grassroots level is better known to the judges of the concerned Courts. Therefore, the issue of giving out-of-turn priority to certain cases should be best left to the concerned Courts. The orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations.”

7. I have scrutinized the Trial Court Records. The Trial Court Records reveals that 9 witnesses were enlisted on the Charge-sheet and only 2 witnesses have been examined so far. The petitioner has been behind bars for more than 2.5 years. He is the sole bread winner of his family and his minor daughters are under the care of his octogenarian mother who is seriously ailing, and the petitioner's estranged wife does not reside with him.

8. I have considered the peculiar facts and circumstances of this case. I have considered the submission of the petitioner that he is willing to abide by any stringent bail conditions, if imposed upon him. No previous criminal antecedent has been brought up by the prosecution. Indeed, the precious right to personal liberty militates against the double pronged conditions of Section 37 of the NDPS Act.

9. Considering the peculiar facts and circumstances of this case, I deem it fit

to grant bail to the petitioner. The petitioner shall be enlarged on bail on furnishing a bail bond of Rs. 1,00,000/- (Rupees One Lac) with two local sureties of like amount to the satisfaction of the learned Trial Court under the conditions that:

- (i) The petitioner shall refrain from such activities with which he is alleged,
- (ii) The petitioner shall not jump the bail, and
- (iii) The petitioner shall co-operate with the remaining part of investigation
- (iv) The petitioner shall co-operate with the trial and appear regularly before the Trial Court, and
- (v) The petitioner shall not leave the jurisdiction of the Trial Court without prior permission till completion of Trial.

10. On breach of any of the bail conditions, the Trial Court is at liberty to immediately cancel the bail granted to the petitioner.

11. In terms of the above observation, bail application stands disposed of.

JUDGE

Comparing Assistant