

GAHC010090332024



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

Case No. : Bail Appln./1326/2024

TULEN HAZARIKA
S/O TANGKESHWAR HAZARIKA, R/O AMGURI GAON NO. 1, P.O.
BORDIRAK, P.S. KAKOPOTHAR, DIST. TINSUKIA, ASSAM- 786152

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

24.06.2024

Heard Mr. N.J. Gogoi, learned counsel for the accused person and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Tulen Hazarika, who has been languishing in jail hazot in connection with the NDPS Case No.18[T]/2023, under Sections 21[c]/29 of the NDPS Act, pending before the learned Special Judge, Tinsukia, for granting bail.

3. It is to be noted here that aforementioned case has been registered on the basis of an FIR lodged by S.I. Bongshi Timung, on 30.11.2022. The essence of allegations, as reflected in the said FIR is that on 30.11.2022, at about 6:45 pm, they have apprehended three women namely, Smti Salma Begum, Smti Danmaya Chetry and Smti Kumari Chetri, from parking area of Tinsukia Railway Junction, Hijuguri and recovered 312.69 grms of suspected Heroin from them and during interrogation they reveals that the said consignment of contraband substance was supposed to be delivered to one Sri Tulen Hazarika @ Babu and Sri Turanjit Sonowal and on being led and shown by Salma Begum, they have found Sri Tulen Hazarika @ Babu and Sri Turanjit Sonowal in a KIA Seltos vehicle.

4. Mr. Gogoi, learned counsel for the accused submits that this is second bail application and the first one being, Bail Appln. No.77/2024 was dismissed by this Court, vide order dated 22.01.2024. Mr. Gogoi also submits that the accused was arrested on 30.11.2022, and since then he has been languishing in jail hazot for last 568 days. Mr. Gogoi also submits that while dismissing the first application, this court was pleased to direct the learned trial court to make an endeavor to dispose of the case as expeditiously as possible and if necessary to take recourse to the provision of Section 309(1) Cr.P.C. But, inspite of such direction the learned trial court had failed to complete the trial. Mr. Gogoi further submits that the ground for filing this second application is that the prosecution side has examined as many as 7 witnesses, out of 11 witnesses, cited in the charge sheet, but none of them have implicated the present accused. Additionally, Mr. Gogoi submits that no contraband substances were recovered from his possession and he was arrested only on the basis of statement of the co- accused persons and also on the basis of statement made by the accused under Section 67 of the NDPS Act which are not legally admissible now. It is the further submission of Mr. Gogoi that the accused is ready to face trial and will appear before the learned court below regularly and therefore, Mr. Gogoi has contended to allow this petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam submits that out of seven witnesses examined so far P.W.6 has implicated the present

accused and four other witnesses are yet to be examined and as such it would be premature to conclude at this stage that there is no material against the accused. Mr. Lahkar further submits that the quantity of contraband substances, allegedly recovered from the possession of the co-accused, are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will come into play and that the accused has failed to satisfy the twin requirements of Section 37 of the NDPS Act, and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record of learned trial court, with the assistance of Mr. Lahkar, learned Additional P.P.

7. It appears from the submission of Mr. Gogoi that there is change of circumstances in favour of the accused and as such there appears to be ground for filing the second application. Further, it appears from the scanned copy of the record of the learned trial court that out of eleven witnesses cited in the charge sheet, seven witnesses have already been examined by the prosecution side. Having gone through the evidence of the seven witnesses, it cannot be said that the present accused is not implicated by the witnesses. Moreover, four more witnesses are yet to be examined. As such, it would be premature to arrive at a conclusion that there is no material against the present accused. The learned Additional P.P. has rightly pointed this out at the time of hearing and I find substance in the same.

8. Besides, the quantity of contraband substances, so recovered from the possession of the co-accused are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will definitely come into play. It is however a fact that the contraband substances were not recovered from the possession of present accused persons. Notwithstanding, this court is not absolved from the level of scrutiny that requires to undertake, under Section 37(1)(b)(ii) of NDPS Act, as held by Hon'ble Supreme Court in **Union of India through NCB, Lucknow vs. Nawaz Khan**, reported in **(2021) 10**

SCC 100.

9. Admittedly, no attempt here in this case was made by the accused to satisfy the twin requirement Section 37(1)(b)(ii) of NDPS Act. Moreover, from the submission of learned counsel for the accused and also from the record of the learned trial court, this Court is unable to derive its satisfaction that the accused Tulen Hazarika is not guilty of the offence and that he will not commit similar offence while on bail.

10. It also appears that the offences are serious in nature and trial is at the last stage. The prosecution side had already examined 7 witnesses, out of 11 cited witnesses in the charge sheet.

11. Under the aforementioned facts and circumstances, and also considering the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused Tulen Hazarika at this stage.

12. Accordingly, the petition stands dismissed. It is not permissible for the Constitutional Courts, without any exceptional circumstances, to issue direction for the time-bound disposal of cases in view of the decision of Hon'ble Supreme Court in the case of **High Court Bar Association, Allahabad v. State of U.P. & Ors.**, reported in **(2024) SCC OnLine SC 207**. However, we hope and trust that the learned trial court will make an endeavour to complete the trial as soon as practicable, without being influenced by any of the observation made herein above as the same are made to dispose of this bail application, not on merit of the case.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant