

GAHC010091432024



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

Case No. : Bail Appln./1395/2024

MD. JUBER AHMED
S/O MD. MOINUL HOQUE
R/O DABOKA TOWN PURON BAZAR,
P.S. DABOKA, DIST. HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

28.06.2024

- 1.** Heard Mr. G. Uddin, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor.
- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, Md. Juber Ahmed, who has been detained

behind the bars since 24-12-2020 (for more than 3 years, 6 months) in connection with Special (NDPS) Case No. 24/2021 under section 22(C) pending before the Court of learned Sessions Judge, Hojai.

3. The gist of accusation in this case is that on 23-12-2020, one Sri Ranjit Singh, ASI of Police of Daboka P.S. had lodged an FIR before the Officer-In-Charge of Daboka Police Station, *inter alia*, stating that on the same day, 12 numbers of 100 ml of cough syrup containing codeine phosphate and 1400 numbers of Sampex Plus capsule containing Tramadol was seized near hospital road at the pharmacy of the above-named petitioner.

4. Accordingly, on receipt of this said FIR, Daboka P.S. Case No. 448/2020 was registered and investigation was initiated. Ultimately, on completion of the investigation, charge-sheet was laid bearing charge-sheet No. 83 dated 30-04-2021 and the trial was commenced. During trial, total 5 numbers of prosecution witnesses were examined and even the accused persons were examined under section 313 of the Code of Criminal Procedure, 1973. However, thereafter, on the application of the prosecution side, the Trial Court allowed PW-5 to be recalled under section 311 of the Code of Criminal Procedure, 1973. The co-accused Longsong Ronghang, who is also facing trial along with the above-named petitioner and who has already been granted bail, had challenged the order of the Trial Court, by which the Trial Court allowed the petition filed by the prosecution for recalling the PW-5 under section 311 of the Code of Criminal Procedure, 1973. The said Criminal Revision has been registered as Criminal Revision Petition No. 484/ 2023, wherein, by order dated 15-11-2023, the trial of Special (NDPS) Case No. 24/21 was kept in abeyance till disposal of the Criminal Revision Petition 484/2023.

5. Learned counsel for the petitioner has submitted that the petitioner

has been detained behind the bars for more than 3 years, 6 months and the trial has not yet culminated. He has also submitted that the Criminal Revision, in which the trial of Special (NDPS) Case No. 24/21 was stayed, was also not preferred by the above-named petitioner. Hence, he submits that for no fault of him, the petitioner is languishing behind the bars for last more than 3 years 6 months and there is no hope of an early decision in the pending trial.

6. Learned counsel for the petitioner submits that as the co-accused is already on bail and it is also submitted that the co-accused was granted bail mainly on the ground of long detention of the said co-accused. Hence, under the facts and circumstances of this case, it is submitted that the present petitioner is also entitled to get bail on the ground of long incarceration only.

7. Learned counsel for the petitioner has also submitted that though the instant case involves commercial quantity of contraband, however, as the petitioner has been detained behind the bars for more than 3 years 6 months, his continued detention without any certainty of culmination of pending trial has created a circumstance, where the Fundamental Right guaranteed under Article 21 of the Constitution of India to the above-named petitioner would override the embargo of Section 37 of the NDPS Act, 1985.

8. Learned counsel for the petitioners has cited a ruling of the Apex Court in "**Rabi Prakesh Vs. State of Orissa**" reported in **2023 live law (SC) 533**, wherein it has been observed by the Apex Court that "The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

9. The learned counsel for the petitioners has also cited the rulings of

the Apex Court in (i) "**Shariful Islam @ Sarif Vs. State of West Bengal**" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), (ii) "**Dheeraj Kumar Shukla Vs. State of Uttar Pradesh**" [order dated 25.10.2023 passed in Special Leave to Appeal (Criminal) No. 6690/2022], (iii) "**Anjan Nath V. The State Of Assam**" [Order dated 17.10.2023 passed in Special Leave to Appeal (Criminal) No. 9860/2023], (iv) "**Nitesh Adhikari Vs. State of West Bengal**" (Order dated 04.05.2022 passed in SLP Criminal No. 5769/2022) and (v) "**Md. Salman Hanif Shaikh Vs. State of Gujarat**" (Order dated 22.08.2022 passed in SLA Criminal No. 5530/2022), wherein the petitioners (who were facing trial for possessing a commercial quantity of contraband) were granted bail by the Apex Court. However, due to the prolonged incarceration in all the above mentioned cases, the petitioners were allowed to go on bail. Therefore, on the same principle, the learned counsel for the petitioners has also submitted that in the instant case also the petitioners, who have been languishing behind the bars for more than 3 years, 6 months, may be allowed to go on bail.

10. On the other hand, learned Additional Public Prosecutor has submitted that the instant case involves commercial quantity of contraband. Hence, the embargo of section 37 of the NDPS Act would be applicable and the petitioner may not be allowed to go on bail.

11. He has also submitted that the recording of evidence has already completed and the trial is halted only because of the stay granted by this Court in Criminal Revision Petition No. 484/2023 and the prosecution is not at fault. Hence, no benefit of the said circumstances may be given to the present above-named petitioner.

12. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the

scanned copy of the case record of Special (NDPS) Case No. 24/2021, which was called for in connection with this case. It appears from record that the petitioner has been languishing behind the bar since the date of his arrest and has already been incarcerated for more than 3 years, 6 months, whereas, the co-accused who had preferred the Criminal Revision No. 484/2023, where the stay was granted, has already been released on bail.

13. The Supreme Court of India in "***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***" reported in "**2023 SCC Online SC 352**" has observed that "grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985".

14. The Apex Court in "***Rabi Prakesh Vs. State of Orissa***" (supra), wherein it has been observed by the Apex Court that "The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

15. It appears on perusal of the rulings cited by learned counsel for the petitioners that in all the cases cited by the petitioners, though commercial quantity of contraband was involved and apparently the embargo of Section 37 would have been applicable in those cases, however, only because of the fact of the prolonged incarceration of the petitioners, the Apex Court allowed the petitioners to go on bail.

16. In the instant case also, the above-named petitioner who has been detained behind the bars for more than 3 years, 6 months, is uncertain about

the culmination of trial because of no fault of his.

17. Under such facts and circumstances of this case, as well as in the light of the observations made by the Apex Court in rulings cited herein above, this Court is of considered opinion that the long incarceration of the above-named petitioner outweighs the embargo of section 37 of the NDPS Act, 1985 and the above-named petitioner is therefore entitled to get bail on the ground of prolonged incarceration only.

18. In view of the above, the above-named petitioner shall be allowed to go on bail of Rs. 50,000/- with two sureties of like amount (one of whom should be a resident within the State of Assam) subject to the satisfaction of the learned Sessions Judge, Hojai, with the following conditions:

i. That the petitioner shall cooperate in the trial of Special (NDPS) Case No. 24/2021, which is pending in the Court of learned Sessions Judge, Hojai;

ii. That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;

iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present petitioner;

iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card and

mobile number, and other contact details before the Trial Court;

v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the Trial Court; and

vi. That the petitioner shall not commit any similar offence while on bail.

19. With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant