

GAHC010097122024



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

Case No. : Bail Appln./1409/2024

RAMJAN HUSSAIN
S/O CHIRAG MIYA, R/O VILL- CHIKANCHARA, P.S.-BISHRAMGANJ, DIST-
SEPAHIJALA, TRIPURA, PIN-799103

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY, MR. D BORA,
MR. N MAHAJAN, MR. P K DAS

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

09.08.2024

Heard Mr N Mahajan, learned counsel for the petitioner, Ramjan Hussain, who has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 29.10.2022, in connection with Special (NDPS) Case No. 153/2022, corresponding to GR Case No. 1929/2022, arising out of Bazaricherra PS Case No. 187/2022.

3. Heard Mr D Das, learned Additional Public Prosecutor for the State of

Assam/respondent.

4. It is submitted on behalf of the petitioner that his co-accused has already been enlarged on bail. The petitioner is behind bars for 1 year 9 months and 12 days. On 05.01.2024, the petitioner's prayer for bail was rejected in connection with Bail Application No. 1619/2023, with a direction to the learned trial Court to expedite the trial for speedy disposal of the case, but the learned trial Court has not made any endeavour to dispose of this case as per direction of this Court. The order was passed on 05.01.2024, but till date, only one witness has been examined by the learned trial Court. There are 8 (eight) witnesses enlisted in the charge sheet and out of 8 (eight) witnesses, only one witness has been examined by the learned trial Court, whereas the petitioner is behind bars for 1 year 9 months and 12 days. His Right to Personal Liberty has thus been curtailed.

5. It is further submitted on behalf of the petitioner that if we go by merits, there is no case against the petitioner. The petitioner was not present at the place of occurrence at the time of the incident. There are no phone records linking the petitioner to the co-accused, who have been allegedly found complicit in connection with this case.

6. It is also submitted that the petitioner is willing to abide by any stringent conditions, if bail is granted to the petitioner.

7. The petitioner has relied on the decision of Hon'ble the Supreme Court in ***Javed Gulam Nabi Shaikh –Vs- State of Maharashtra;*** reported in **2024 SCC OnLine SC**

1693, wherein it has been observed that-

“17. In the recent decision, Satender Kumar Antil v. Central Bureau of Investigation reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective

of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

8. The petitioner has also prayed for bail on the ground of parity as vide order of this Court dated 21.12.2023, in Bail Application No. 3410 of 2023, the petitioner Iquebal Hussain @ Ikbai Hussain was granted bail. It is submitted that Iquebal Hussain was behind bars for 1 year 2 months and his bail application was considered.

9. The petitioner has also relied on the decision of a coordinate Bench of this Court in ***Lal Badsha Bania @ Lalu @ Ladu –Vs- State of Assam***, wherein vide order dated 15.05.2023 in Bail Application No. 1458 of 2023, the petitioner was granted bail as he was behind bars for 1 year 10 months, wherein it has been observed that-

06. 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 status report and scanned copy of the record received from the learned court below.

07. It is not in dispute that no contraband substance was recovered and seized from the possession of the present accused. It is also not in dispute that the contraband substance was recovered and seized from the possession of co-accused Mandeep Sing and Narinder Pal Singh, vide seizure list, dated 05.09.2021, and the same is of commercial quantity. Therefore, the accused has to satisfy from the materials on the record that he is not guilty of the offence and that he will not commit such offence while on bail.

10. Here in this case, the status report, which has been received from the learned court below, reveals that out of 13 cited witnesses in the charge sheet, 16 witnesses have been examined so far. Still, 7 more witnesses are remained to be examined and from the pace of the trial, this court failed to derive any satisfaction that there is immediate prospect of conclusion of trial. It is to be noted here that the accused has been languishing in jail hazoot since 05.09.2021.”

10. The petitioner has also relied on the decision of a coordinate Bench in *Khangembam Mangi Singh & Anr. –Vs- The State of Assam*, wherein vide order dated 10.01.2024, the petitioner was granted bail in connection with Bail Application No. 3332/2023, after considering the period of incarceration of the petitioner, who was behind bars for 1 year 9 months.

11. The FIR unfolds that during routine naka checking, at 03:40 pm, on 17.10.2022, a red coloured 12-wheeler goods carrier truck bearing Registration No. NL-01Q-5050, loaded with gunny bags was approaching from Tripura side and was signaled to stop. On suspicion, some gunny bags were unloaded and ganja was found under the gunny bags. 93 packets were weighed and a total of 3240 kgs of ganja was found in the truck which was thereafter seized. Proper procedure was followed. The articles were seized and the driver, Manik Singha was taken into custody.

12. It is submitted that the present petitioner was not arrested at the time of naka checking held on 17.10.2022. The petitioner was arrested on 29.10.2022 in connection with this case.

13. The learned Additional Public Prosecutor submitted that only one witness has been examined so far. 8 (eight) witnesses are yet to be examined.

14. The learned Additional Public Prosecutor has raised objection stating that the rigour of Section 37 of the NDPS Act restricts the bail application. The ratio of the decision of Hon'ble the Supreme Court in *Javed Gulam Nabi Shaikh (supra)*, is not applicable in this case. It has been held in *Javed Gulam Nabi Shaikh (supra)* that-

“17. In the recent decision, Satender Kumar Antil v. Central Bureau of Investigation reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter

compliance of Section 309 of the Code.”

15. In the instant case, it is true that trial has been procrastinated by the Court, but at the same time, it cannot be ignored that the defence has also taken adjournment when one witness was present. It is not a case where the petitioner is behind bars covering more than half of the sentence to be granted bail as per Section 436-A CrPC, but at the same time, it cannot be ignored that the petitioner has been behind bars since 1 year 9 months and 12 days. Had the defence examined the witness present, then 2 out of 8 witnesses would have been examined by the Court. But on 29.05.2024, the defence sought adjournment when the prosecution witness was present.

16. It is true that in the case of ***Lal Badsha Bania (supra)*** and ***Khangembam Mangi Singh (supra)***, bail was granted to the petitioners who were behind bars for 1 year 10 months and for 1 year 9 months, however, the facts and circumstances of this case is not similar to the facts and circumstances of the aforementioned cases.

17. The merits of this case are not brought to the fore.

18. I have considered the staggering magnitude of the offence. The petitioner refrained from placing similar submissions when the charge was framed against him and he opted to face the trial. At this juncture, it cannot be held that the petitioner's Right to Personal Liberty has been curtailed. The facts and circumstances and the length of detention of the petitioner in the instant case does not militate against the rigour of Section 37 of the NDPS Act. In serious offences, the ground of parity and the length of detention has to be

considered depending upon the facts and circumstances of each case.

19. In view of my foregoing discussions, at this juncture, I am constrained to reject the bail petition with a direction to the trial Court to expedite the trial and dispose of the case as per Section 309 of the CrPC. The petitioner is given a liberty to apply for bail if trial is procrastinated any further.

20. Petition with prayer for bail is rejected.

JUDGE

Comparing Assistant