

GAHC010101632024



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

Case No. : Bail Appln./1475/2024

SAIP UDDIN
VILL.- NORTH SAKAIBARI, BARUAKANDI, CHANDRAPUR, P.S.-
DHARMANAGAR, DIST.- WEST TRIPURA.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

28.06.2024

Heard Mr. L.R. Mazumder, 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 Cr.P.C. is preferred by accused, namely, Saip Uddin, who has been languishing in jail hazoot since 07.03.2022, in connection with Patharkandi P.S. Case No.69/2022, under Section 21(c)/25/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Rajpratap Singha, S.I. of Patharkandi P.S. on 06.03.2022. The essence of allegation made in the said FIR, dated 06.03.2022, is that on 06.03.2022, at about 11:00 a.m., at NH-08 Bypass, under Patharkandi P.S. the informant had intercepted one vehicle, bearing Registration No.TR-05D-0625, and found two persons, namely, Saip Uddin and Taj Uddin and recovered 297 gm of heroin from their possession.

4. Mr. Mazumder, learned counsel for the accused submits that this is the 2nd bail application preferred by the accused on the ground of delay in trial and the first application, being Bail Appln. No.2114/2023 was dismissed by this Court, vide order dated 09.10.2023. Mr. Mazumder also pointed out that while dismissing the earlier bail application, this Court was pleased to direct the learned Trial Court to expedite the trial and if necessary, to take recourse of Section 309(1) of the Cr.P.C. and to conclude the same within a period of 6(six) months from the date of dismissal of the bail application i.e. 09.10.2023. But in spite of elapse of six months, the learned Trial Court had failed to conclude the trial and the accused is under prolong detention. Mr. Mazumder further submits that the accused was arrested on 06.03.2022, and since then he has been languishing in jail hazot. Further, Mr. Mazumder submits that the charge was framed against the accused on 28.09.2022 and thereafter, only one witness has been examined out of 9 witnesses cited in the charge-sheet and for the last 6 months not a single witness has turned up and as such, Mr. Mazumder submits that there is no immediate chance of conclusion of trial and therefore, it is contended to allow the petition by imposing any condition, which may deem fit and proper by this Court.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, submits that after framing of charge one witness has been examined by the prosecution side and the said witness has implicated the accused with the offence alleged in the FIR. Mr. Lahkar further submits that the contraband substances recovered from the possession is of commercial quantity and without satisfying the twin requirement of Section 37 of the NDPS Act, the accused person cannot be allowed to go on bail and as the accused has failed to satisfy the twin requirement of Section 37 of the NDPS Act, Mr. Lahkar contended

to dismiss 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 status report received from the learned Trial Court and the scanned copy of the record of the learned Trial Court.

7. It appears that after completion of investigation, charge-sheet was submitted against the present accused on 31.07.2022, being Charge-sheet No.197/2022, under Section 21(c)/25/29 of the NDPS Act and now the case is pending for appearance of one of the accused, namely, Fajlu Mia, against whom non-bailable warrant of arrest was issued. It also appears that the learned Court below had already examined one witness and the said witness had implicated the present accused.

8. Admittedly, the quantity of contraband substances allegedly recovered from the possession of the present accused are of commercial quantity and as such, the accused has to satisfy the twin requirement of Section 37 of the NDPS Act and if the accused failed to satisfy the aforesaid twin requirement, the accused cannot be enlarged on bail as held by Hon'ble Supreme Court in the case of in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No.952 of 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, where it has been held as under:-

"In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail."

9. Here in this case, from the submission of Mr. Mazumder, learned counsel for the accused and also from the materials placed on record, this Court is unable to derive satisfaction that the accused is not guilty of the offence and that he will not commit any offence while on bail. Therefore, in view of the decision of Hon'ble Supreme Court in the case of **Ajay Kumar Singh @ Pappu** (supra), the accused cannot be enlarged on bail.

10. It appears that while charge was framed against the accused on 28.09.2022, only one witness has been examined till date. But it appears that the delay is on account of non-appearance of one of the accused against whom non-bailable warrant of arrest was issued. No doubt there is some delay, but the same appears to be systemic delay and it cannot be said that any prejudice is caused to the accused.

11. Mr. Mazumder, learned counsel for the accused has referred two case laws, namely, (i) **Shariful Islam @ Sarif v. State of West Bengal**, [Special Leave to Appeal (Crl.) No.4173/2022, decided on 04.08.2022] and (ii) **Nitish Adhikary @ Bapan v. State of West Bengal**, [Special Leave to Appeal (Crl.) No.5769/2022, decided on 01.08.2022], wherein Hon'ble Supreme Court has granted bail to the accused, who were in custody for 1 year 6 months and 1 year 7 months, respectively. Mr. Mazumder also referred another case law in **Mohammad Salman Hanif Shaikh v. State of Gujarat** [Special Leave to Appeal (Crl.) No.5530/2022, decided on 22.08.2022], wherein the accused was behind the bar for 2 years, and he was granted bail. But, I afraid the aforesaid decisions can be read as a precedent as no law has been laid down in the same.

12. Under the aforementioned facts and circumstances and also having regards to the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused and accordingly, the petition stands dismissed.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant