

GAHC010101722024



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

Case No. : Bail Appln./1474/2024

ABDUL GAFFAR @ ASHOBA
S/O LATE ABDUL LATIF, VILL.- KOPTA, P.O. AND P.S.- MOIRANG, DIST.-
BISHNUPUR, MANIPUR.

VERSUS

THE STATE OF ASSAM
REP. BY THE PUBLIC PROSECUTOR.

Advocate for the Petitioner : MOTIUR RAHMAN, MR. NOOR KUTUB ALAM, MR. A S
TAPADER

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

25.09.2024

Heard Mr. M. Rahman, learned counsel for the accused and Mr. K.K. Das, 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, **Abdul Gaffar @ Ashoba**, who has been languishing in jail hazot in connection with the **NDPS Case No. 134/2022**, under Sections 21(c)/22(c)/29 of the NDPS Act, pending before the learned Additional

Sessions Judge No. 3 (FTC), Kamrup (M) at Guwahati, arising out of Basistha P.S. Case No. 212/2022, for granting bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Jisu Janakya Gogoi of Jorabat Outpost, on 14.02.2022. The essence of allegations made in the said FIR is that acting on a tip off on 14.02.2022, at about 04.00 pm, he along with other staff, have intercepted one Truck, bearing registration No. AS-01-EC-7829, in front of Jorabat Outpost and on checking the said Truck he had recovered 475.1 grams of Heroin, in 38 soap boxes, and also recovered 30,000 YABA Tablets, which were being concealed in a blue coloured plastic tarpal in the body of the Truck and seized the same in presence of witnesses by preparing seizure list and also apprehended driver of the vehicle, namely, Abdul Goffar @ Asoba and handyman Remas Khan.

4. Mr. Rahman, learned counsel for the accused submits that the accused was arrested on 15.02.2022, and since then he has been languishing in jail hazot for more than 948 days. Mr. Rahman further submits that the I.O. has not complied with the provision of Section 52A of the NDPS Act and also there is violation of NDPS Rules, as the articles recovered were weighed with the contained box. Mr. Rahman also submits that the charge was framed against the accused on 06.02.2023, and since then, out of five witnesses cited in the charge sheet, only two witnesses have been examined and the independent witness examined so far had not implicated the accused with the offence alleged. Mr. Rahman also submits that there is no immediate prospect of disposal of the case by the learned trial court and as such, the right of the accused of speedy trial is violated here in this case. Mr. Rahman also submits that the accused is ready to face the trial and will appear before the learned trial court on each and every date and therefore, it is contended to allow the petition.

4.1. Mr. Rahman, learned counsel for the accused has referred the following case laws in support of his submission :-

- (i) **Bail Application No. 66/2024** of Kerala High Court;
- (ii) **Mohammed Khalid and Another vs. The State of Telangana**, reported in **(2024) 0 SCC 177**; and
- (iii) **Nijam Sheikh @ Md. Nijam Sk. @ Md. Nizam Sk. vs. The State of West Bengal**, in **SLP (CRL) No. 1127/2024**;

5. On the other hand Mr. Das, learned Additional Public Prosecutor has vehemently opposed the petition and submits that altogether five witnesses have been cited in the charge sheet and out of five witnesses, two witnesses have already been examined. Referring to the materials available on the record of the learned trial court, Mr. Das submits that the I.O. has duly complied with the provision of Section 52A of the NDPS Act. Mr. Das further submits that the quantity of contraband substances, recovered from the possession of the accused are of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act. But, referring to the statement of the accused available on the record of the learned trial court, Mr. Das submits that the accused has failed to satisfy the requirement of Section 37 of the NDPS Act and therefore, it is contended to dismiss the petition.

6. Having heard the submissions 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 along with the status report received from the learned trial court.

7. It is not in dispute that the accused was arrested on 15.02.2022, and since then he has been languishing in jail hazot for more than 948 days. It appears

from the record that the charge was framed against the accused on 06.02.2023, and since then, out of five witnesses cited in the charge sheet, only two witnesses have been examined. It is also not in dispute that the quantity of contraband substances, recovered from the possession of the accused is of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act.

8. The requirement of Section 37 of the NDPS Act has been well settled by Hon'ble Supreme Court in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, in Criminal Appeal No. 952 of 2023 [Arising out of SLP (CRL.) No.2351 of 2023] and also in the case of **NCB vs. Mohit Agarwal**, in Criminal Appeal Nos. 1001-1002 of 2022, [arising out of petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021].

9. It is to be noted here that in the case of **Ajay Kumar Singh @ Pappu** (supra), Hon'ble Supreme Court has 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.”

10. No doubt, there appears to be some delay in the trial of the case and since the date of framing of charge against the accused on 06.02.2023, till date only two witnesses had been examined. But, the delay, that happened here in this case, to the considered opinion of this court, cannot be counted as inordinate delay so as to impair the right of the accused to speedy trial. At best, the same can be

termed as systemic delay, as held by Hon'ble Supreme Court in the case of **A.R. Antulay and Others vs. R.S. Nayak and Another**, reported in **(1992) 1 SCC 225**.

11. I have carefully gone through the decisions referred by Mr. Rahman, learned counsel for the accused. There is no quarrel at the bar about the proposition of law laid down in the said cases. But, in view of the given facts and circumstances of the case in hand, this court is of the view that the ratio laid down in the said cases cannot be applied to the facts here in this case.

12. It is also to be noted here that the learned Additional Public Prosecutor has assured this court that since two witnesses had already been examined, examination of rest of the three witnesses will be completed within a shortest possible time.

13. Under the aforementioned facts and circumstances, this court is of the view that this is not a fit case where the privilege of bail can be granted to the accused.

14. Accordingly, the petition stands **dismissed**.

JUDGE

Comparing Assistant