GAHC010104442024

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

Case No. : Bail Appln./1527/2024

UBAIDUR RAHMAN
S/O MD. ABDUL NOOR,
R/O VILL- MAZARGRAM ERALIGOOL PART-I, P.S. PATHARKANDI
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. K BORUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

25.06.2024

Heard Mr. M. Alam, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Addl. P.P., Assam appearing for the State.

2. This application for bail has been submitted under Section 439 Cr.P.C. by the petitioner, namely Ubaidur Rahman, in connection with NDPS Case No.60/2023 corresponding to Guwahati GRPS Case No.163/2022, which is pending before the Court of learned Sessions Judge, Kamrup(M) under Section 21(C)/29 of the NDPS Act, 1985.

3. It is the case of the petitioner that he has been detained behind bars since 21.11.2022. The case of the petitioner is that the petitioner namely Ubaidur Rahman, Adud Ahmed and Majibur Rahman had been arrested by police on recovery of 500 grams of heroin, from the possession of Ubaidur Rahman and Adud Ahmed, which they were concealing on their body. Majibur Rahman was granted bail by this Court vide order dated 05.01.2014 passed in Bail Appln. No.2479/2023, on the ground that the only material available against Majibur Rahman was the statements of Ubaidur Rahman and Adud Ahmed, who were both co-accused and as such, the statement of a co-accused recorded under Section 67 of the NDPS Act were inadmissible as evidence against other co-accused. Further nothing had been recovered from Majibur Rahman.

4. The petitioner's counsel submits that in the case of ***Rabi Prakash Vs. The State of Odisha,*** reported in ***2023 0 Supreme(SC) 707,*** the Supreme Court has held 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. He has also relied upon the judgments of the Supreme Court in the case of ***Shariful Islam @Sarif Vs. The State of West Bengal,*** reported in ***2022 0 Supreme (SC) 1925*** and ***Mohd Muslim @Hussain Vs. State (NCT of Delhi),*** reported in ***2023 0 Supreme(SC) 289*** in support of his submission 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. He accordingly prays that bail be granted to the petitioner.

5. Mr. K.K. Parasar, learned Addl. P.P. submits that though charge-sheet has been filed, charges have not been framed, inasmuch as one absconder (co-accused), who was not arrested in connection with the present case, had not been appearing in the Trial Court. As such, charges could not be framed. He submits that due to the non appearance of the absconder Md. Hussain Ahmed, the Trial Court has not proceeded

with the case. He submits that NBWA has been issued by the Trial Court. He also submits that as the petitioner has concealed 500 grams out of the 1 kg of heroin seized, the bail petition should be dismissed. Further, there is nothing to show that the petitioner is innocent from the charge u/s 21(c)/29 NDPS Act.

6. I have heard the learned counsels for the parties.

7. It is surprising that the trial proceedings has not started only because one absconder has not been caught and not appearing in the Court. This Court is of the view that if an absconder cannot be found after a reasonable period of time, the trial against the other co-accuseds should start, even in the absence of the absconder. It is accordingly hoped that the Trial Court will initiate the trial proceedings after charges are framed at the earliest.

8. This bail application has been filed without invoking Section 37 of the NDPS Act. Though the judgments referred to by the counsels for the petitioner provides that prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution, in this case, the petitioner was apparently caught red handed with the seized heroin. In that view of the matter, this Court is not inclined to grant bail to the petitioner at this stage, as his case is different from the case of Majibur Rahman.

9. The bail application is accordingly dismissed. It is hoped that the Trial Court will initiate trial proceedings at the earliest against the petitioner and other co-accuseds.

JUDGE

Comparing Assistant