

GAHC010112402024



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

Case No. : Bail Appln./1833/2024

MD. HUSSAIN AHMED
S/O LATE ISQUE ALI
VILL- ALAKULIPUR
P.O. BADARPUR GHAR-788803
P.S. BADARPUR
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : G UDDIN, P ADHIKARI,MR. I HUSSAIN,MR A K AZAD

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

31.07.2024

Heard Mr. G. Uddin, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973, *read with* Section 36-A of the NDPS Act, praying for grant of bail to the accused/petitioner, who has been arrested on 12.10.2022 in connection with Special (NDPS) Case No.148/2022 arising out of Badarpur P.S. Case No. 239/2022, registered under Sections 22C/25/29 of NDPS Act.

3. Scanned copy of the case record has been received and I have perused the same.

4. Mr. Uddin, learned Counsel for the petitioner, has submitted that the accused/petitioner is innocent and he is no way involved in the alleged offence. However, he was arrested on 12.10.2022 and has been behind bars for the last 658 days, which is more than 1 year and 9 months. He further submitted that, by order dated 06.03.2024, the petitioner's application for bail was rejected by this Court, considering that the prosecution had examined 2 (two) witnesses and also considering the nature of the offence. However, to date, the prosecution has examined only 3(three) witnesses out of the 11 (eleven) witnesses. Therefore, the probability of completion of the trial within a short period is not possible. Accordingly, he submits that, considering the long incarceration period of the petitioner, he may be released on bail. He also submitted that the petitioner, being a permanent resident of the addressed

locality, is ready to appear before the trial court on each and every date fixed. Thus, he prays for the release of the petitioner on bail.

5. On the other hand, Mr. Sharma, learned Additional Public Prosecutor, has submitted that case record reveals that the case is of commercial quantity of contraband, and the I.O. has collected sufficient incriminating materials against the accused/petitioner. Further, as the case is of a commercial quantity, the rigor of Section 37 of the NDPS Act will follow and there is no reason to believe that the accused/petitioner is not guilty of the offence or that he will not commit a similar kind of offence while on bail. Thus, the conditions for granting bail under Section 37 of the NDPS Act are not fulfilled.

6. For ready reference, Section 37 NDPS Act is extracted hereinbelow:

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(b) No person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

7. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is no reasonable ground for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials available in the case record as well as the evidences of the witnesses, there cannot be any reasons to believe that the accused/petitioner is not guilty of such offence or he is not likely to commit any offence while on bail as per Section 37 (1) (b) of NDPS Act.

8. Mr. Sharma, learned Additional Public Prosecutor has submitted that, considering the nature and gravity of the offence, it is not appropriate to grant bail to the accused/petitioner at this stage, as there is a probability of disposal of the matter within a short period. Further, the records reveals that the prosecution has examined 3(three) witnesses out of the 11(eleven) witnesses. Though, the matter was fixed on consecutive dates for hearing, but due to personal inconvenience of the Court and adjournments sought for by the defence side, the proceeding was delayed. He further submitted that the case is progressing fairly, and there is a likelihood of its disposal within a short period. Therefore, he objected to the bail prayer, submitting that it is not appropriate to grant bail solely based on the period of incarceration, when there is involvement of commercial quantity.

9. After hearing the submissions made by the learned counsels for both sides, I have perused the case record, relevant annexures, and other documents attached to the petition. It is observed that the charge was framed against the accused/petitioner on 03.06.2023, and to date, only 3 (three) prosecution witnesses have been examined by the learned Sessions Judge, Karimganj. These 3 witnesses appear to be seizure witnesses, including 1 official witness. Other vital witnesses are yet to be examined by the prosecution, and despite

the lapse of more than 1 year and 9 months, the prosecution has examined only 3 out of the 11 listed witnesses, though, the learned trial court has made several efforts to procure the attendance of the witnesses. It is not a case where the trial has not yet begun, as 3 witnesses have already been examined. So, it is not a case to grant bail to the present accused/petitioner only considering the period of incarceration as there is no such inordinate delay in the trial.

10. The Supreme Court in the case of **Kalayan Chandra Satkar Vs. Rajesh Ranjan Alias Pappu Yadav & Anr. [(2005) 2 SCC 42]** has expressed the view that the accused cannot be granted with bail solely on the ground of period of incarceration undergone by the accused. It was further held that the sole ground of delay in conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of *prima facie* case, gravity of the offence and the allegation of tampering with the witnesses by threat and inducement when on bail.

11. In the case of **Rajesh Ranjan [(2004) 7 SCC 528]**, the Supreme Court has held that mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to be enlarged on bail nor the fact that the trial is not likely to be concluded in the near future, either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail. It is also held that while considering the bail application, the Court must consider the nature of acquisition, the severity of the punishment in case of conviction, the nature of supporting evidence, reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant and *prima facie* satisfaction of the court in support of the charge.

12. Further, in the case of **Pramod Kumar Saxena vs. Union of India & Anr.**, the Supreme Court has held that mere long period of incarceration in jail would not be *per se* illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an under trial prisoner would not be violative of Article 21 of the Constitution. In the case of **Prahlad Singh Bhati Vs. NCT, Delhi reported in (2001) 4 SCC 280**, the Supreme Court has culled out the principles, which the courts has to consider at the time of granting or refusing bail as under:-

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted , at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

13. In view of the discussions made above and also considering the entire facts and circumstances of the case, nature and gravity of the offence and further considering the view expressed by the Apex Court in the case laws referred to hereinabove, this Court is of the opinion that there is a *prima facie* case against the accused/petitioner and thus, at this stage, I am of the view that it is not a fit case to enlarge the accused/petitioner on bail only considering the period of incarceration and hence, the same stands dismissed. However, the learned Trial Court is hereby directed to expedite the trial and complete the same preferably within 6(six) months.

14. The bail application stands disposed of in terms above.

JUDGE

Comparing Assistant