

GAHC010113672024



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

Case No. : Bail Appln./1643/2024

MD. SAFIQUE
S/O LATE ANJOB
VILLAGE GOMTHOU, PS LILONG, DIST THOUBAL, MANIPUR

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. N SHARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 25-06-2024

Heard Mr. N. Sharma, learned counsel for the petitioner, Md. Safique, who has filed this application under Section 439 of Code of Criminal Procedure, 1973 (CrPC for short) with prayer for bail as he is behind bars since 21.06.2022 in connection with Panbazar Police Station Case No. 163/2022 under Section 21(c)

of the Narcotic Drug and Psychotropic Substances Act, 1985 (NDPS Act for short).

2. Heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the State of Assam.

3. It is submitted on behalf of the petitioner that the petitioner has been behind bars for more than 2 (Two) years. Out of 13 (Thirteen) witnesses, only 1 (One) witness has been examined so far. The petitioner has relied on the decision of the Hon'ble Apex Court in the case of *Shariful Islam @ Sarif Vs. The State of West Bengal* reported in *2020 0 Supreme (SC) 1925* wherein vide order dated 04.08.2022 it has been observed that :

“2. Taking into consideration the fact that the petitioner is reported to be in custody since 27-1-2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.”

4. The petitioner has also relied on the decision of the Hon'ble Supreme Court in *Ankur Chaudhary Vs. State of Madhya Pradesh in connection with SLP (Crl.) No. 4648/2024* wherein vide order dated 28.05.2024 it has been observed that:

“Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

In view of the above, we are inclined to allow this petition and direct to enlarge the petitioner on bail on furnishing the suitable bail bonds and sureties and on such other terms and conditions as may be deemed fit by the trial Court.”

5. The learned Additional Public Prosecutor has stated that the instant case is not similar to the cases referred to by the petitioner. In Ankur Chaudhary's case (supra), earlier the appellant's prayer for bail was rejected as panch witnesses were not examined and thereafter, subsequently when the panch witnesses were examined, the appellant again prayed for bail which was rejected by the trial Court, and the High Court, and this impelled the appellant to move the Hon'ble Supreme Court and thereafter, the appellant Ankur Chaudhary's prayer for bail was allowed. It is further submitted that the facts of the cases relied upon by the petitioner is not before this Court.

6. I have considered the submissions at the bar with circumspection. The facts and circumstances of Ankur Chaudhary's case as well as Shariful Islam @ Sharif's case are not before this Court. In the instant case, the petitioner Md. Safique is booked under a serious offence. Charge sheet has been laid against the petitioner on the allegation that on 21.06.2022 at about 6.30 PM, on a tip off, the Investigating Team intercepted 2 (Two) vehicles. One vehicle was a black coloured Scorpio bearing registration No. AS01DV1033 and the other vehicle was a black coloured Tata Harrier without any registration number.

7. During search operations, 14 (Fourteen) packets each wrapped with yellow tape containing total 133 blue small packets, each containing 200 tablets, were recovered from the Tata Harrier vehicle. The total number of tablets marked as WY were found to be 26,600 (Twenty Six Thousand Six Hundred), which were concealed in the artificial deck below the mat of the dickey of the vehicle. The driver of the vehicle is the present petitioner Md. Safique and the occupants were Md. Irfan Khan and Md. Musharraf.

8. The learned counsel for the petitioner has prayed for bail in respect of Md. Safique on the ground of parity as the co-accused Irfan Khan has already been

enlarged on bail.

9. It is true that the scanned copies of the Trial Court Record reveal that only one witness has been examined so far. The petitioner has been behind bars since 21.06.2022. It is apt to mention at this juncture that the co-accused was enlarged on bail as he was seriously ailing. The co-accused was suffering from Tuberculosis with blood in sputum and induced hepatitis. The present petitioner is also suffering from Tuberculosis according to the report from the Jail Superintendent and he is under treatment but he has no serious symptoms which were detected during the medical examination of the co-accused.

10. The learned Additional Public Prosecutor has raised serious objection which cannot be ignored. Charges against the petitioner are that he was found in conscious possession of 26,600 (Twenty Six Thousand Six Hundred) yaba tablets. One of the twin conditions under Section 37 of the NDPS Act is that the learned Additional Public Prosecutor has raised serious objection against the bail petition.

11. At this juncture, it cannot be conclusively ascertained that there is no possibility of conviction of the petitioner. The Scientific Officer was examined as PW.1. His evidence reveals that the samples of the contraband seized in connection with this case were samples of methamphetamine. At this juncture, this cannot be considered to be a case where the personal liberty of the petitioner has been curtailed due to prolonged incarceration. This case has not been procrastinated by the Court or by the prosecution. The protraction of the case was due to the conduct of the co-accused of the present petitioner. At the same time the delay in the trial can be attributed partly to the prosecution and to the Court as well. However, I am not inclined to grant bail to the petitioner at this juncture.

12. I have considered the gravity of the offence and the embargo under Section 37 of the NDPS Act. Considering all aspects, petition with prayer for bail is rejected at this juncture. However, the petitioner is at liberty to apply for bail at a later stage, if trial may be procrastinated any further by the Court as well as by the prosecution. The Trial Court is directed to make every endeavor to expedite the trial for speedy disposal of this case.

13. With the above observations, this Bail Application stands disposed of.

JUDGE

Comparing Assistant