

GAHC010126682023



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

Case No. : Bail Appln./2093/2023

KIRTBOKLANG @ KITBOK LANG MARWEIN
S/O- LATE DARWIN DIENGDOH, R/O- HOUSE NO. 76, MAWLAI
UMTHLONG, P.S. MAWLAI, DIST. EAST KHASI HILLS, MEGHALAYA.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 21.03.2024

Heard Mr. N.J. Dutta, learned counsel for the accused-petitioner as well as Mr. M.P. Goswami, learned Special Standing counsel, Wildlife.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Kirtboklang @ Kitbok Lang Marwein,**

in connection with **NDPS Case No.235/2022 (arising out of Basistha PS Case no. 721/2022, registered u/s 20 (b)(ii)(c)/25/29 of NDPS Act, 1985**, pending in the court of Additional Sessions Judge (FTC) No 3, Kmarup(M), Guwahati.

3. Learned counsel for the petitioner has submitted that the petitioner has been languishing in jail for more than one year since 01/08/2022. On the date of occurrence, the co-accused had taken his car on rent with a proposal to drop him at Khanapara, Guwahati and accordingly the petitioner also agreed to provide his service. The petitioner was the driver of the car bearing Regd. No. ML-10-C-9707 which has been taken on rent by the co-accused and the petitioner was totally unaware of about the contrabands being carried by the co-accused. According to learned counsel for the petitioner, the petitioner is innocent and no away connected to the alleged offence. As nothing was recovered from the possession of the petitioner, his further detention is not required in the present case and he may be enlarged on bail.

4. Learned counsel for the petitioner has also raised the point that though charge-sheet was filed in the case long back in the year 2022 and accordingly charge was framed on 21/03/2023 but the prosecution has failed to complete the trial within such period of one year. Out of seven witnesses, only one witness was examined till today. Due to such prolonged incarceration, the personal liberty of the petitioner has been curtailed by violating the provision of Article 21 of the Constitution.

In support of his submissions, the learned counsel has placed reliance on the following case laws –

a. 2023 liveLaw (SC) 533 (Rabi Prakash vs State of Odisha)

- b. Bail application 3047/2023 (Raju Das and another vs. NCB)
- c. Bail application no 1317/2023 (Md. Taslim Ahmed vs. Union of India)
- d. Bail application no 2698/2023 (Majibur Rahman vs. State of Assam)

5. In response, learned Additional Public Prosecutor for the State has vehemently opposed in granting bail to the petitioner by stating that the accused/petitioner was arrested on 02/08/2022. Charge-sheet has been submitted on 30/09/2022. Thereafter, charge has been framed on 21/03/2023. Then summons were issued to the witnesses and out of ten witnesses, only one witness has been examined.

6. Learned Addl.P.P. has also pointed out that the trial was delayed not for the cause of prosecution but for the several factors i.e., consideration of Zimma petition by the trial court and also learned counsel for the accused has refused to cross-examine the complainant when he has appeared before the trial court etc.

7. It is further submitted by learned Addl.P.P. that commercial quantity of ganja was recovered from the possession of the accused petitioner as such, bail may not be granted to the petitioner at this stage.

8. I have perused the trial court record. It is true that only one witness has been examined by the prosecution till today. However, on 06/02/2024, the informant cum I/O was present. But he was not examined as the learned defence counsel submitted before the trial court that the evidence of the I/O should be recoded after completion of evidence of the independent witnesses, since there may be some contradiction in their evidence. It also appears from the order sheet that several petitions have been filed before

the trial court for considering the Zimma of the seized vehicle and other articles. In view of the above, it cannot be said that there has been an inordinate delay in the trial of the case.

9. In the case in hand, the petitioner is the driver of the vehicle from which commercial quantity of ganja was recovered. Therefore, this Court is unable to hold that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail by overriding the embargo u/s 37 of NDPS Act, 1985.

10. In the case of **Satender Kumar Antil vs. CBI** reported in **AIR 2022 (SC) 3386**, it was held by the Hon'ble Supreme Court that-

“Where under trial accused is charge with an offence under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rs. 1 lakh, such an under trial prisoner shall be released on bail if he has been on jail for not less than five years, provided he furnishes bail in the sum of Rs. 1 lakh with two sureties for like amount.”

11. In the case in hand, it reveals that the charge against the accused/petitioner was framed u/s 20 (b) (ii) (c)/29 of NDPS Act. Under the said provision, the punishment prescribed is not less than 10(ten) years but which may extend to 20(twenty) years and shall also be liable to fine, which shall not be less than Rs. 1 lakh but which may extend to Rs. 2 lakh. Therefore, following the ratio laid down in the case of Satyender Kumar Antil (Supra) as well as the provision of section 436A Cr.P.C., the petitioner having been incarcerated for a period of one and half years has not become entitled to be released on bail.

12. In view of the above discussion, the prayer for bail is rejected. However, the learned trial court is directed to take initiative to dispose of the matter early, if possible by fixing day to day hearing.

13. It is made clear that the observation made by this Court is confined to this bail application only.

14. The bail application is disposed of accordingly.

JUDGE

Comparing Assistant