

GAHC010131822023



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

Case No. : Bail Appln./2113/2023

SOHAN SINGH DHILLON
S/O SHRI JASWANT SINGH DHILLON
PERMANENT RESIDENT OF H/NO. 2,
NAMGHAR PATH, BIJAYPUR
BASISTHA MANDIR, P.O. AND P.S. BASISTHA, GUWAHATI-781029, KAMRUP
(METRO), ASSAM

VERSUS

THE UNION OF INDIA
REP. BY THE STANDING COUNSEL, DIRECTORATE OF REVENUE
INTELLIGENCE

Advocate for the Petitioner : MR D CHUTIA

Advocate for the Respondent : MS. M DEKA(SC, DRI)

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

20.02.2024

Heard Mr D Chutia, learned counsel for the petitioner, Shri Sohan Singh Dhillon,
and Ms M Deka, learned counsel appearing on behalf of learned Standing Counsel, Mr S
C Keyal, for DRI.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 21.08.2020, in connection with NDPS Case No. 9/2021, arising out of DRI Case No. 03/CL/NDPS/GANJA/DRI/ GZU/2020-21, registered under Sections 20(b) (ii) (c), 23, 27(A) & 29 of the NDPS Act, 1985.

3. It is submitted on behalf of the petitioner that he is behind bars since 21.08.2020. On 19.09.2023, this case was split up against the co-accused and charges were framed against him. As this case was pending for a prolonged period, this case was split up and trial commenced against the present petitioner. 202.750 kgs of ganja was recovered from the truck in which the petitioner was travelling. The petitioner was not driving the vehicle and he was not aware about the ganja. The driver was sitting on the wheel when the truck was intercepted and searched. The two co-accused have been granted anticipatory bail. The ganja was not seized from the possession of the petitioner. The petitioner is an Insurance Agent and he is behind bars for 3 ½ years. The petitioner's personal liberty has been curtailed. Not a single witness has been examined so far. One co-accused, namely, Nazrul has passed away and another co-accused is still absconding. This is the reason why the case was split up and separated. The petitioner has prayed for bail and it is submitted that the petitioner is from Guwahati and he will cooperate with the trial. His family also resides in Guwahati.

4. The learned counsel for the respondent-DRI has raised objection stating that due to the conduct of the co-accused, this case has been pending. Reliance was placed on the

order dated 29.01.2024, passed in Bail Application No. 7/2024, wherein, the bail application filed by the petitioner, who was behind bars for 664 days was rejected, after observing that-

“32) Thus, in para 19 of the case of Tarun Kumar -Vs- Assistant Director, Directorate of Enforcement; reported in (2023) 4 Crimes (SC) 442, the Supreme Court of India has held that “Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision”.

33) Thus, the Court is of the considered opinion that although the petitioner has spent about 664 days in custody, but as per the ratio of the case of Satender Kumar Antil (supra), the petitioner has not become entitled to bail.”

5. I have considered the submissions at the Bar with circumspection.
6. The petitioner has been behind bars since 21.08.2020, i.e., he is behind bars for more than 3 years. Not a single witness has been examined so far.
7. I have perused the scanned copies of the LCR.
8. It is true that the conduct of the co-accused also resulted in the delay of trial. This case was pending for a prolonged period without trial.

9. I have relied on the decision of Hon'ble the Supreme Court in ***Rabi Prakash -Vs- The State of Odisha***, reported in **2023 Live Law (SC)**, wherein, it has been 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.”

10. Considering the submission that the petitioner has pledged to cooperate with the investigation and considering the peculiar facts and circumstances of this case, I deem it proper to grant bail to the petitioner. The petitioner is enlarged on bail of Rs. 1,00,000/- (Rupees One Lac) Only with two local sureties of the like amount to the satisfaction of the learned trial Court, under the conditions that:-

- i) the petitioner shall appear before the Court regularly,
- ii) the petitioner shall not leave the jurisdiction of the Court without prior permission, till completion of trial,
- iii) the petitioner shall refrain from such activities with which he is alleged,

On breach of any of the bail conditions, bail order shall stand cancelled.

The learned trial Court shall expedite the trial for speedy disposal of the case.

11. Bail Application stands disposed of.

JUDGE

Comparing Assistant