

GAHC010133212024



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

Case No. : Bail Appln./1950/2024

MUJIBUR RAHMAN
S/O ABDUL HAMID
R/O VILL- BRAHMAN SASHON
P.S. NILAMBAZAR,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. R SARMA, A H CHOUDHURY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 27-08-2024

Heard Mr. R. Sarma, learned counsel for the petitioner Mujibur Rahman, who has filed this application under Section 439 of the Code of Criminal Procedure, 1973 (the CrPC for short) with prayer for bail as he is behind bars since 08.06.2023 in connection with Special (NDPS) Case No. 59/2023 arising

out of Nilambazar Police Station Case No. 111/2023 under Sections 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act for short).

2. It is submitted on behalf of the petitioner that not a single witness has been examined after framing of charges. Petitioner's right to personal liberty has been curtailed as trial has been procrastinated. There is no possibility that the trial Court would be able to complete the trial expeditiously as witnesses are yet to be examined.

3. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in Mohd Muslim @ Hussain vs. State of (NCT of Delhi) wherein vide order dated 28.03.2023 the appellant Mohd Muslim @ Hussain was granted bail in connection with Special Leave Petition (Crl.) No. 915/2023 due to the length of incarceration of the appellant.

4. Learned Additional Public Prosecutor has submitted that charge was framed on 19.12.2023. It is true that there has been a delay in producing the witnesses but it cannot be considered at this initial stage that trial has been procrastinated. The allegation against the petitioner is of grave nature.

5. I have considered the submissions at the bar with circumspection.

6. The FIR unfolds that on 08.06.2023 at about 8.10 AM, on receipt of a secret information about contraband being transported in a white coloured S-presso car bearing registration No. AS 10F 2966, the investigating team held a naka checking. At around 10.00 AM, the car as described through the secret information was spotted and detained. 4 (Four) occupants were found inside the car. The petitioner was one of the occupants. 22 (Twenty Two) soap cases were recovered. Suspected heroin was found in these cases. The contraband weighed

around 300 grams. Cash of Rs.49,000/- (Rupees Forty Nine Thousand) was also recovered.

7. Charge sheet has been laid against the petitioner along with the co-accused.

8. At this juncture it cannot be held that trial has been procrastinated. The case of Mohd Muslim @ Hussain (supra) is not similar to the facts and circumstances of this case. The appellant Mohd Muslim @ Hussain was behind bars for more than 7 (Seven) years. The appellant has been prejudiced because 34 (Thirty Four) witnesses were to be examined.

9. This instant case is not similar as charge sheet reveals names of 8 (Eight) enlisted witnesses. Charge was framed last year in the month of December. At this stage, the embargo under Section 37 of the NDPS Act comes into play. Hence, I am not inclined to grant bail at this stage. Petition with prayer for bail is rejected at this stage.

10. In terms of the above observation, this Bail Application stands disposed of.

JUDGE

Comparing Assistant