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

Case No. : Bail Appln./2119/2024

MD HABIBAR RAHMAN @ MD. HABIBUR RAHMAN
S/O LT. NAKIBUDDIN AHMED, R/O VILL- MOLLAPARA, P.S.-MANGALDAI,
DIST- DARRANG (ASSAM)

2: MD. JEHERUL HAQUE
S/O MD. HAMID ALI
R/O VILL- LOHAKHATA
P.S.-MUKALMUWA
DIST-NALBARI (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR M AHMED, MR A. ALI, A. K. KANU

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 06.12.2024

Heard Mr. M. Ahmed, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 483 of BNSS, 2023 praying for grant of bail to the accused/petitioner, who has been arrested in connection with Special (NDPS) Case No. 12/2024, arising out of Dillai P.S. Case No. 63/2023, under Sections 21(c)/29 of NDPS Act, pending before the Court of learned Special Judge, NDPS, Karbianglong, Dhipu.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Ahmed, learned counsel for the petitioner, that the present accused/petitioner was arrested in connection with this case on 15.11.2023 and since 16.11.2023, he is in judicial custody. The Charge-Sheet of the case was filed on 06.02.2024 and the charge was accordingly framed on 01.04.2024 and since then, the case is fixed for evidence. However, out of 8 (eight) numbers of listed witnesses, the prosecution could not examine a single witness till date, though most of the witnesses are government officials. He, accordingly, submitted that there is no probability of completion of trial within near future as lots of witnesses are yet to be examined by the prosecution and therefore he submitted that considering the period of long incarceration, the petitioner may be enlarged on bail.

5. In support of his submission, Mr. Ahmed, learned counsel for the petitioner, further relied on the following decisions:

(i) **Rabi Prakash Vs. State of Odisha [2023 0 Supreme(SC) 707]**

- (ii) **Mohd Muslim @ Hussain Vs. State (NCT of Delhi) [2023 0 Supreme(SC) 289]**
- (iii) **Vinod Bijarnia Vs. The Union of India [Criminal Appeal No. 3991/2024]**
- (iv) **Hafijul Mandal & Anr. Vs. Narcotics Control Bureau [Bail Appln. No. 364/2024, decided on 20.04.2024]**

6. Citing the above referred decisions, it is submitted by Mr. Barman, learned counsel for the petitioner, that the petitioner may be granted with the privilege of bail considering his long period of incarceration. Further he submitted that the present accused/petitioner is a permanent resident of his addressed locality and there is no chance of absconding and he will produce the genuine bailor and will appear before the learned Trial Court below on each and every date to be fixed by the Court.

7. Mr. Das, learned Additional Public Prosecutor, raised objection in enlarging the accused/petitioner on bail at this stage and accordingly, he submitted that the Investigating Officer has collected sufficient incriminating materials against the present accused/petitioner showing his direct involvement in the alleged offence. More so, the report of the I.O. reveals the detail about the involvement of the present petitioner in the alleged offence and the seized contraband was seized from the conscious possession of the present accused/petitioner. Charge was framed in the case on 01.04.2024 and it is admitted fact that till date, no witness could be examined by the prosecution. However, the learned Special

Judge has made every endeavor to procure the attendance of the witness.

8. Mr. Das further submitted that the case being the commercial in nature, rigor of Section 37 of NDPS Act will also follow wherein the twin condition has to be satisfied that the accused is not guilty of the offence and there has to be a belief that the accused will not repeat or commit the same offence while on bail. But from the materials collected by the I.O. during investigation, there cannot be any reason to believe that the present accused/petitioner is not guilty of the alleged offence nor there can be any reasonable believe that she will not repeat similar kind of offence while on bail. More so, he submitted that this kind of offences are very grave in nature as it mainly affects the young people in the society. Thus, he raised serious objection and submitted that it is not at all a fit case to grant bail to the present accused/petitioner at this stage.

9. After hearing the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the case record along with the Case Diary.

10. As per the allegation, huge quantity of contraband, weighing 334.83 grams, suspected to be heroine was seized from the conscious possession of the present accused/petitioner along with other accused persons. The accused/petitioner was arrested in connection with this case on 15.11.2023 and the Charge-Sheet of the case was filed on 06.02.2024. It is an admitted fact that the charge was framed on 01.04.2024 and till date, the prosecution could not examine any witnesses, out of 8 (eight) numbers of listed witnesses. However, from the record it is seen that the I.O. has collected sufficient

incriminating materials against the present accused/petitioner in the Case Diary. More so, after framing of charge, the learned Special Judge has made every endeavor to procure the attendance of the witnesses. It is also an admitted fact that the case is of commercial in nature and hence, rigor of Section 37 NDPS Act will follow.

11. 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."

12. 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, 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.

13. In this regard, a judgment of the Hon'ble Apex Court can be relied on which was reported in **2024 0 Supreme (SC) 130 (State by the Inspector of Police Vs. B. Ramu)**, wherein in paragraph Nos. 9, 10, 11 & 12 of the

judgment, it has been held that in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act. Court would have to record satisfaction that there are grounds for believing that accused is not guilty of offence alleged and that he is not likely to commit any offence while on bail. Further it has been held that the Courts should be slow in granting even regular bail to the accused persons who has the criminal antecedents.

14. From the record, though it is seen that after framing of charge, the case is fixed for evidence and till date the prosecution could not examine any witnesses, but the learned Special Judge has made every endeavour to procure the attendance of the witnesses. So, considering the entire materials of the case, it also cannot be said that there was an inordinate delay.

15. In **The State of Meghalaya Vs. Lalrintluanga Sailo [Special Leave to Appeal (Crl.) No(s). 16021/2023]**, wherein, in paragraph No. 8 of the judgment, it has been held that *"thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications."*

16. More so, in the case of **Rabi Prakash** (supra) and **Vinod Bijarnia** (supra), as relied by the learned counsel for the petitioner, it is seen that the Hon'ble Apex Court has granted bail to the accused considering the ground of long incarceration wherein the accused were behind the bar for almost 3 (three) or more than 3 (three) years in custody.

17. In the light of discussion made above and also considering the seriousness of the offence and also considering the fact that there is a *prima facie* case against the present accused/ petitioner and further considering the view expressed by the Apex Court in the case laws referred to hereinabove, this Court is of the view that it is not a fit case to enlarge the accused/ petitioner on bail at this stage. More so, the delay also cannot be considered as inordinate delay and in the same time, it is also seen that the learned Court below took all endeavor for procuring the attendance of the co-accused. Hence, the present bail application stands rejected.

18. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant