

GAHC010159482024



2024:GAU-AS:9918

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

Case No. : Bail Appln./2378/2024

ABDUL KADIR LASKAR
S/O LATE MUSSABIR ALI LASKAR, VILL-HAWAITHANG, P.O.-
HAWAITHANG, P.S.-DHOLAI, DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, MR A AHMED, U U KHAN, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

01.10.2024

Heard Mr A Choudhury, learned counsel for the petitioner, Abdul Kadir Laskar. Also heard Ms N Das, learned Additional Public Prosecutor for the State of Assam.

2. This application has been filed by the petitioner under Section 483 of the BNSS, 2023 with prayer for bail as he is behind bars since 28.03.2024 in connection with Special (NDPS) Case No. 08/2023, arising out of Karimganj PS Case No. 50/2023,

registered under Sections 22(c)/25/29 of the NDPS Act, 1985, pending in the Court of learned Special Judge, Karimganj.

3. It is submitted on behalf of the petitioner that the petitioner is behind bars for 1 year 6 months and 11 days and till date, not a single witness has been examined. 18 witnesses are enlisted as cited witnesses in the charge sheet and possibility that the trial will be completed in the near future, appears to be remote and bleak.

4. The petitioner has relied on the decision of Hon'ble the Supreme Court in *State – Pallulabid Ahmad Arimutta and Others*; reported in *Manu/SC/0053/2022*, wherein it has been held and observed that-

“10. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu; reported in (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking

cancellation of bail granted to the respective respondents, are dismissed as meritless.”

5. It is submitted that the petitioner has been arrested in connection with this case based on the statement of co-accused, who have already been enlarged on bail by the learned trial Court.

6. It is submitted that based on the statement of the accused Salimuddin, Habib Ahmed was arrested and both the accused Habib Ahmed and Salimuddin have already been granted bail by the learned trial Court.

7. The learned Additional Public Prosecutor has raised serious objection stating that charges are yet to be framed.

8. I have scrutinized the Case Diary.

9. I have considered the submissions at the Bar with circumspection.

10. It is further submitted by the learned counsel for the petitioner that the CDR records cannot establish the link between the prime accused and the petitioner. The present petitioner has been apprehended on the basis of CDR records between the prime accused, who have been arrested in connection with this case and the petitioner. The heroin recovered from the possession of the prime accused is of intermediate quantity. I have also considered the submission in this aspect.

11. It is true that the petitioner has been behind bars for more than 1 year 6 months, but charges have not yet been framed. At this juncture, I am not inclined to grant bail to the

petitioner as Section 37 of the NDPS Act acts as an embargo. At this juncture, it cannot be concluded that possibility of completion of trial appears to be remote and bleak. At this stage, the merits are not brought to the fore. Charge sheet has been laid against the petitioner on finding materials against him. It cannot be concluded that only on the sole statement of co-accused, petitioner is facing trial.

12. It appears that trial will be adversely affected if the petitioner is admitted to bail, at this stage. At this stage, it cannot be considered that the petitioner's right to personal liberty has been curtailed.

13. Considering all aspects, petition with prayer for bail stands rejected at this stage, with a liberty to the petitioner to file a fresh petition if trial is procrastinated any further. The learned trial Court is directed to expedite the trial for a speedy disposal of the case.

14. Bail Application stands disposed of.

15. Send back the Case Diary.

JUDGE

Comparing Assistant