

GAHC010159812023



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

Case No. : Bail Appln./2538/2023

MD. ASLAM KHAN
S/O MD. RAHIMUDDIN, RESIDENT OF LILONIG TUREL AHANBI, PO AND
PS LILONG DIST THONBAL, MANIPUR.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : M K BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

15.03.2024

Heard Mr. M.K. Borah, learned counsel for the accused and also heard Mr. R.J. Barua, learned standing counsel, appearing for the State respondent.

2. This application, under Section 439 Cr.P.C., is preferred by accused, namely, Md. Aslam Khan, who has been languishing in jail hazot since 11.07.2021, in connection with Dillai P.S. Case No.33/2021, under section 21(c) of the NDPS Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Utpal Sarma, Circle Inspector Borpathar, Karbi Anglong, on

10.07.2021. The essence of allegation made in the aforesaid FIR is that acting on a tip off, on 10.07.2021, at about 7:10 p.m., he has intercepted one night super bus, bearing Registration No.AS-01EC-7664, which was coming from Manipur, at Naka point of Lahorijan P.P. And during search 3.980 kg identical opium found in a red coloured bag from the possession of Md. Aslam Khan of Lilong Turel Ahanbi of Thoubal district, Manipur and accordingly, seized the same, in presence of the witnesses.

4. Mr. Borah, learned counsel for the accused submits that this is the second bail application preferred by the accused and the first one was dismissed by this Court vide order dated 27.04.2023 in Bail Appln. No.292/2023. Mr. Borah further submits that while disposing of the said bail application, this Court was pleased to direct the learned Court below to made an endeavour to dispose of the case expeditiously in accordance with law, but the learned Court below has failed to carry out the aforesaid direction. Further, Mr. Borah submits that charge was framed against the accused on 29.09.2021 and till 21.03.2024, only four witnesses, out of ten witnesses, cited in the charge-sheet, have been examined and that there is considerable delay in trial and that the accused is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

5. On the other hand, Mr. R.J. Barua, learned Additional Public Prosecutor, Assam, submits that out of ten cited witnesses, four have already been examined and they have implicated the accused with the offence alleged in the FIR and that the offences are serious in nature and the contraband substances recovered from the possession of the accused is of commercial quantity and as such, the accused has to satisfy the requirements of Section 37 of the NDPS Act. But, the accused has failed to satisfy those requirements and therefore, Mr. Barua contended to dismiss the petition.

6. In reply, Mr. Borah, learned counsel for the accused submits that he is not on merit of the case, but on the ground of delay in completion of trial, on account of which, the invaluable right of the accused i.e. right to speedy trial stands violated and therefore, Mr. Borah has contended to allow this petition. Mr. Borah has also referred to a decision of

this Court in Bail Appln. No.1458/2023, dated 15.05.2023, wherein relying on a decision of the Hon'ble Supreme Court in the case of **Mohd. Muslim v. State (NCT of Delhi)**, reported in **MANU/SC/0320/2023**, this Court was pleased to grant bail to the accused of that case and therefore, Mr. Borah contended to allow this petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case record from the learned Court below.

8. It appears that the accused was arrested on 11.07.2021 and since then he has been languishing in jail hazot. Further, it appears that investigation of the case has already been completed and charge-sheet has been submitted before the learned Court below and also charge has already been framed on 29.09.2021 and thereafter, the Court below had examined four witnesses, out of ten witnesses cited in the charge-sheet till 21.03.2024.

9. Though Mr. Borah has contended that there is considerable delay in trial of the case yet, having gone through the record of the learned Court below, I find that there is no considerable delay in examination of the witnesses. It appears that the learned Court below has ordered for issuing summons to the witnesses and the prosecution side has also taken steps for summoning the witnesses. In that view of the matter, the delay in disposal of the case cannot be attributed to any of the stakeholders i.e. the Court and to the prosecution side. Already four witnesses have been examined and there remains to examine six witnesses. I have gone through the Bail Appln. No.1458/2023, dated 15.05.2023, wherein relying on a decision of the Hon'ble Supreme Court in the case of **Mohd. Muslim** (supra), this Court was pleased to grant bail to the accused of that case. But, I find the ratio laid down in the case of **Mohd. Muslim** (supra) is not applicable in force to the facts and circumstances here in this case.

10. Further, it appears that the contraband substances recovered from the possession of the accused is of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act and that the accused is not guilty of the

offence and that he will not commit any offence while on bail, but from the materials placed on record and also from the submission of the learned Advocates of both sides, this Court is unable to derive its satisfaction that the accused has been able to satisfy the aforesaid two requirements.

11. It is also to be mentioned here that in the case of **Union of India v. Ajay Kumar Singh @ Pappu**, Criminal Appeal No.952 of 2023 [Arising out of SLP (Crl.) No.2351 of 2023], decided on 28th March, 2023, Hon'ble Supreme Court while setting aside the order of granting bail by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

"In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail."

12. Same principle is echoed by Hon'ble Supreme Court in the case of **NCB v. Mohit Agarwal** [Criminal Appeal Nos.1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Crl.) No.6128-29 of 2021], decided on 19th July, 2022.

13. In view of aforesaid facts and circumstances, this Court is of the view that this is not a fit case for granting bail to the accused and accordingly, the same stands dismissed. However, the learned Court below is directed to conduct day to day trial and to complete the trial as early as practicable, without being influenced by any of the observations made herein above.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant