

GAHC010166172024



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

Case No. : Bail Appln./2472/2024

PANKAJ KUMAR
S/O- LADDU RAY, R/O- VILL.- KALYANPUR, P.S. ATHMALGOLA, PATNA-
803211, DIST. PATNA, BIHAR.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. A BHATTACHARYA, MS. K MALAKAR, MR. A
BHATTACHARJEE, MR S PAUL

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

28.10.2024

Heard Mr. A. Bhattacharya, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent.

2. This application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for grant of bail to the accused/petitioner, namely, Pankaj Kumar, who has been arrested on 12.09.2022 in connection with Special Case No. 138/2022 arising out of Bazarichera P. S. Case No. 170/2022, registered under Sections 20(b) (ii) (c)/25/29 of the NDPS Act.

3. The Status Report of the case has already been received, and I have perused the same.

4. Mr. Bhattacharya, learned counsel for the petitioner, has submitted that the present petitioner is innocent and he is no way involved in the alleged offence. It is contended that the petitioner was arrested on 12.09.2022 and has been in custody for more than two years based on the allegation that he was driving a six-wheeler red brick-colored truck bearing Registration No. NL01AA4976. This truck was stopped for naka checking on National Highway No. 8, during which 30 packets of suspected ganja were allegedly recovered from a secret chamber inside the cabin. Since then, the petitioner has been in custody for over two years; however, the prosecution has not yet examine any witnesses in connection with this case, even though the charge sheet was filed on 30.11.2022 under Sections 20(b)(ii)(C)/25/29 of the NDPS Act. Subsequently, a supplementary charge sheet dated 28.02.2023 was filed against a co-accused, Ranjit Singh, who was indicated as an absconder and till date, the learned Trial Court has not been able to procure his attendance. Further, the Trial Court

framed charges against the present petitioner on 20.05.2023, wherein, the petitioner pleaded not guilty and claim to be tried. Two prosecution witnesses were summoned but could not be examined. By order dated 15.07.2023, those two witnesses were allowed to leave with a direction to appear upon receipt of fresh summons. However, as the attendance of co-accused Ranjit Singh could not be procured, the case remains at the stage of appearance, and no witnesses have been examined by the prosecution, despite the lapse of more than two years, during which the petitioner has been languishing in jail.

5. He further submitted that, by order dated 24.07.2024, this Court had already granted bail to another co-accused, Manish Kumar, considering the period of incarceration and the fact that the trial could not commence due to the absconding of the co-accused. Accordingly, he submitted that the petitioner may be granted bail, considering the prolonged period of incarceration and the principle of parity, as one of the co-accused has already been granted bail by this Court.

6. In support of his submission, the learned counsel for the petitioner further relied on a decision of the Supreme Court in the case of ***Rabi Prakash vs. the State of Odisha*** reported in ***2023 Live Law (SC) 533***, 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”.

7. He also relied on a decision of a Co-ordinate Bench of this Court passed in **B.A. No. 190/2023, dated 26.06.2023**, wherein, this Court considering the view of the Apex Court in the case of **Mohd Muslim @ Hussain Vs. State (NCT of Delhi)** reported in **2023 SCC Online SC 352; Nitesh Adhikari Vs. State of West Bengal** (Order dated 04.05.2022 passed in SLP Criminal No. 5769/2022) and **Chitta Biswas Alias Subha Vs. The State Of West Bengal** (Order dated 07.02.2020 passed in SLP

Criminal No. 8823/2019), bail was granted considering the long incarceration of the petitioner.

8. The learned counsel for the petitioner, Mr. Bhattacharya, further submits that the petitioner is a permanent resident of the addressed locality and there is no chance of absconding, rather, he will appear before the learned Trial Court on each and every date fixed, if he is granted the bail.

9. On the other hand, Mr. Sarma, the learned Additional Public Prosecutor, has submitted that this case involves a commercial quantity of contraband against the accused/petitioner, which was allegedly recovered from his possession. He further submits that, based on the *prima facie* evidence, the charge-sheet was filed against the accused/petitioner along with other co-accused person. As the case is of commercial quantity, the rigor of Section 37 will apply, and therefore, considering the nature of the allegations, he raises objections to the bail request of the present accused/petitioner.

10. Section 37 of the NDPS Act read as follows:

"37. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(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. (2) The

limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

11. He further submitted that the delay in the case was caused by the non-appearance of the co-accused, who is shown as absconding in the supplementary charge-sheet. He further submitted that if the accused is allowed to go on bail only considering the length of detention or period of incarceration, the probability of absconding of the accused cannot be denied and in which event, there will be delay in disposal of the case.

12. Accordingly, Mr. Sarma, the learned Additional Public Prosecutor, submitted that the accused/petitioner is not entitled to bail solely based on the period of incarceration and raised objections to granting bail to the accused/petitioner.

13. After hearing the submissions made by the learned counsels for both sides, I have perused the status report and the relevant documents annexed with the petition. It is a fact that the accused/petitioner has been in custody for more than 2 (two) years. The charge-sheet has been filed and charges have been framed against the accused/petitioner. However, while the case was at the evidence stage, a supplementary charge-sheet was filed against a co-accused, Ranjit Singh, who has been marked as an absconder. But, the learned Trial Court has been unable to procure his attendance, and as a result, the case is still pending at the stage of appearance. Consequently, none of the prosecution witnesses have been examined by the Trial Court..

14. In case of **Rabi Prakash (Supra)**, the Hon'ble Supreme Court has held as under:

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent- State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd conditions re: formation of opinion as to whether

there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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."

15. Accordingly, the Hon'ble Apex Court held that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution. Similar view has been expressed by the Hon'ble Apex Court in case of **Sariful Islam @ Sarif Vs. The State of West Bengal, dated 04.08.2022**, wherein also, considering the length of detention and also considering the aspect that there is no likelihood of completion of trial in near future, the bail was granted to the petitioner.

16. The same view is also expressed in another recent judgment of Division Bench of Hon'ble Apex Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi)**, reported in **2023 LiveLaw (SC) 260**, wherein, in paragraph No. 23 of the said judgment, it has been held as under:

"23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects – where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

17. In the instant case, it is seen that the matter remains at the stage of the co-accused's appearance, who is still absconding. Although charges have been framed against the accused/petitioner, the examination of witnesses has not occurred due to the absence of the co-accused, who is shown as an absconder in the supplementary charge-sheet. Consequently, the trial has yet to be commenced. Given this situation, it

is unlikely that the case will be resolved in the near future.

18. So, considering all these aspects of the case and the view of the Apex Court passed in recent cases, without going into the merit of the case, I find it a fit case to allow the accused/petitioner to go on bail.

19. Accordingly, it is provided that on furnishing a bond of Rs. 100,000/- (Rupees one lakh) only with two sureties of like amount, provided that one surety has to be a government servant, to the satisfaction of the learned Sessions Judge, Karimganj, the accused/petitioner, namely, Pankaj Kumar, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall appear before the Court of learned Sessions Judge, Karimganj, on each and every date to be fixed by the Court;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioner shall submit his Aadhaar Card and PAN Card before the learned Sessions Judge, Karimganj.
- (iv) that the petitioner shall not leave the jurisdiction of the learned Sessions Judge, Karimganj, without prior permission.

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

JUDGE

Comparing Assistant