

GAHC010179272024



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

Case No. : Bail Appln./2641/2024

SUKH DEV AND ANR
S/O LATE KARAM CHAND, R/O VILL- USMANPUR, P.S.-NURPUR, DIST-
RUPNAGAR, PUNJAB, PIN-140001

2: HAPPY SINGH
S/O LATE BALBINDAR SINGH
R/O VILL- BODHONI
P.S.-PHOWA
DIST- KURUKSHETRA
HARYANA
PIN-13612

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A PAUL,

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER**

Date : 26.09.2024

- 1)** Heard Mr. A. Paul, learned counsel for the petitioners. Also heard Ms. N. Das, learned Additional Public Prosecutor for the State of Assam.
- 2)** This application under Section 483 of the BNSS, 2023 has been filed by the petitioners, namely, (1). Sukh Dev and (2). Happy Singh, who are detained behind the bars since 25.06.2023 (for last 1 year 3 months) in connection with NDPS Case No.42/2023 corresponding to R. P.S. Case No.361/2023 pending before the Court of learned Special Judge, Kamrup, Rangia.
- 3)** The gist of accusation in this case is that on 25.06.2023 an FIR was lodged before the Rangia Police Station, wherein it was alleged that 5.016 Kgs of opium was recovered from the truck bearing registration No.PB-65-BC-5967 and the above named petitioners were found in the said truck and were arrested. After receipt of the said FIR, Rangia P.S. Case No.361/2023 was registered and investigation was initiated on completion of the investigation Charge-sheet was laid against both the above named accused petitioners under Sections 17(c)/29 of the NDPS Act, 1985.
- 4)** The learned counsel for the petitioners has submitted that the petitioners are innocent and the contraband was not seized from their possession.
- 5)** Learned counsel for the petitioners has also submitted that the petitioners are languishing behind the bars for last 1 year and 3 months and considering the prolonged incarceration of the petitioners they may be allowed to go on bail.
- 6)** The learned counsel for the petitioner has referred to a judgment

passed by this Court in the Case of ***Javaid Iqbal @ Javid Iqbal Vs. The Union of India*** (order dated 17/05/2024 in Bail Appln. No.538/2024), wherein several rulings of the Apex Court has been considered and bail was granted to the petitioners of that case on the ground of prolonged incarceration.

7) On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the petitioners on the ground that there are sufficient incriminating materials against the petitioners on record and as commercial quantity of opium is involved in this case, the embargo of Section 37 of the NDPS Act would not be applicable.

8) The learned counsel for the petitioners also submits that the period of 1year and 3 months may not be considered as long incarceration so as to entitle the petitioners bail on that ground only.

9) I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record including the scanned copy of the Special NDPS Case No.42/2023.

10) It appears from record that the petitioners were apprehended from the truck from which the contraband was recovered. It is also revealed in the investigation that the petitioner No.1, i.e., Sukh Dev is the owner of the truck, whereas the petitioner No.2, i.e., Happy Singh was the driver of the truck.

11) There are incriminating materials available against both the petitioners on record and as such this Court may not arrive at a *prima facie* opinion that there are reasonable ground for believing that they are not guilty of the offence against which they have been charged for.

12) As regards as prolonged incarceration is concerned, though the Apex Court has observed in several of its rulings that prolonged incarceration generally militates against the most precious Fundamental Right guaranteed

under Article 21 of the Constitution of India and in such a situation the conditional liberty must override the statutory embargo created under Section 37 of the NDPS Act. However to give the benefit of prolonged incarceration the Court has to come to a finding that incarceration of the petitioners is long enough so that it can be held that under such circumstances, the Fundamental Right guaranteed under Article 21 of the Constitution of India outweigh the fetters imposed by Section 37 of the NDPS Act, 1985.

13) In this case, the petitioners are behind the bars for only 1 year and 3 months and in none of the rulings cited by the learned counsel for the petitioners the benefit of bail was given to any of the accused person on the ground of prolong incarceration for such period of incarceration. It also appears that the minimum period for which the Apex Court has granted bail to the accused charged with possessing commercial quantity on the ground of prolong incarceration is 1 year 6 months.

14) This Court is therefore of the considered the opinion that the incarceration undergone by the present petitioners in the instant case is not long enough so as to get the benefit of bail ignoring the embargo to Section 37 of the NDPS Act, 1985.

15) In view of the above, the application for bail of the present petitioners is rejected at this stage.

16) The Trial court is directed to take early steps to expedite the Trial in the Special NDPS Case No.42/2023.

JUDGE