

GAHC010179292024



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

Case No. : Bail Appln./2642/2024

BABUL HUSSAIN
S/O MD. MALEK MIAH, R/O VILL- NABINAGAR, P.S.-BISHALGARH, PIN-
799102, DIST- SIPAHIJELA, TRIPURA

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 MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

30.09.2024

1. Heard Mr. A. Paul, learned counsel for the petitioner Babul Hussain.
2. The petitioner has filed this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for bail as he is behind bars since

11.11.2022 in connection with NDPS Case No. 11/2023 arising out of Rangiya G.R.P.S. Case No. 43/2022 registered under Section 20(b)(ii)(C) of the NDPS Act.

3. Heard Ms. N. Das, learned Additional Public Prosecutor, Assam for the respondent State.

4. It is submitted by the petitioner that for the 3rd time, the petitioner has approached this Court for bail. It is submitted on behalf of the petitioner that the petitioner's special Right to Personal Liberty has been curtailed, as he has been behind bars since 11.11.2022 and only seven witnesses have been examined in connection with this case. The learned counsel for the petitioner has taken this Court through the cross-examination of the witnesses, PWs-1 to 5, which clearly reveals that photographs of the place of occurrence were not taken. The petitioner's signatures on the seized article or sample were not taken. There was no Magistrate during the seizure. The railway ticket was not examined to ascertain as to whether the petitioner was a passenger. It is also submitted that the witness, PW-1 has admitted in his cross-examination that at the time of seizure of ganja, neither the informant nor the Investigating Officer took photographs of the place of occurrence. PW-3 has admitted in his cross-examination that the picture of the accused sitting at the place of occurrence

was not captured. SI Puheswar Das did not obtain the signature of the accused on the recovered bag. No photograph was captured at the time of weighing the recovered ganja.

5. It is also submitted that the PW-4 has admitted in his cross-examination that no notice was issued to the petitioner at the time of body search. It is also submitted on behalf of the petitioner that PW-5 has admitted in his cross-examination that the bags were found near the accused, who was sitting on the bench. The bags were not found with the accused. The bags may have been left by some other commuters. It is submitted that the possibility of conviction appears to be remote and bleak, as the procedure has not been scrupulously followed by the Investigating Agency.

6. It is submitted that vide order dated 04.06.2024, in Bail.Appln. No. 1176/2024, the Trial Court was directed to expedite the trial for speedy disposal of this case, but since the month of June, not a single witness has been examined. The Petitioner's right to precious liberty has been infringed due to the procrastination of the trial.

7. Learned Additional Public Prosecutor has submitted that this case cannot be considered to be a case where the trial has been procrastinated. 10 witnesses have been enlisted in the charge-sheet and so far 7 witnesses have been

examined by the Court. Now, only 3 witnesses are to be examined. This case is at the fag end of the trial and trial may be adversely affected if the petitioner is admitted to bail. There is every possibility that the petitioner may flee from justice. The petitioner was caught with 51.662 Kgs of Ganja under suspicious circumstance, when he tried to flee on being confronted by the police personnel.

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

9. Learned counsel for the petitioner has submitted that the petitioner cannot be put behind bars in a punitive manner only on the basis of suspicion, whereas on the contrary the learned Additional Public Prosecutor has submitted that the nitty-gritties of the evidence cannot be considered at the fag end of the trial to extend the privilege of bail to the petitioner.

10. I have also scrutinized the Trial Court Records. Indeed this case is at the fag end of the trial. Only 3 witnesses are to be examined. The rigours of Section 37 of the NDPS Act acts as an embargo and restricts bail to the petitioner. At this stage of trial, no substantiated change of circumstance has been projected by the petitioner to be admitted to bail.

11. Considering all aspects, petition is rejected at this stage.

JUDGE

Comparing Assistant