

GAHC010181762024



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

Case No. : Bail Appln./2669/2024

JONASING KRO
S/O BURSING KRO, R/O VILL- MATIKHULA, NINGKRENG TISSO,
DENGAON, P.S.-DOKMOKA, P.O.-DUARBAMUNI, DIST- KARBI ANGLONG,
PIN-782441, ASSAM

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE, MS L
RONGPIPI, MR JITENDRA DAS, MR. SAILENDRA DEKA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

23.09.2024

1. Heard learned Senior Counsel Mr. Bhaskar Dutta for the petitioner Jonasing Kro.

2. The petitioner has filed this application under Section 483 of the BNSS, 2023 with prayer for bail as he is behind bars since 11.04.2023 in connection with Hawraghat P.S. Case No. 17/2023 corresponding to NDPS Case No. 47/2023 under Sections 22(c)/29 of the NDPS Act.
3. Heard Mr. R. R. Kaushik, learned Additional Public Prosecutor, Assam for the respondent State.
4. It is submitted on behalf of the petitioner that the petitioner has been behind bars for more than 1 year 4 months. It is impossible that the prosecution will be able to produce the witnesses as the witnesses are all laborers. The address as reflected in the charge-sheet is not complete. The witnesses must have left the place of occurrence by now. The case is in a standstill. Since May, not a single witness has been examined. 11 witnesses were enlisted in the charge-sheet, and only 2 out of 11 witnesses have been examined. 9 witnesses are yet to be examined. The first witness was examined on 10.01.2024, whereas the second witness was examined on 16.05.2024. It appears that there is no possibility that the trial will be completed within a reasonable period of time. It has been reiterated by the Hon'ble Supreme Court, that if there is no possibility that trial will be completed within a reasonable period of time, then bail is to be granted even if the offence is heinous in nature.

It is submitted on behalf of the petitioner that the petitioner is a 22 year old

boy. He was the co-passenger and he was not found in conscious possession of the contraband. He took a lift from the driver of the car. The driver of the car is the son of the owner of the car and he is addicted to drugs, and he has admitted in his statement under Section 161 of the Cr. PC, that he was carrying the contraband, and not the petitioner. It has been emphasized by the learned counsel for the petitioner that the statement of the accused Sarlong Tisso clearly exonerates the present petitioner as he has admitted that he consumes tablets for body ache and the present petitioner was not aware that he was carrying contraband with him.

5. Annexure-12 is the statement of the prime-accused which extricates the present petitioner. Annexures-8 is the I-card of Jonasing Kro of Thong Nokbe College. The petitioner, who was waiting for a bus, took a lift in the car in which the prime-accused was carrying the contraband. The petitioner is not a flight risk. As he is a very young boy, there is no risk of tampering with the evidence or influencing the witnesses.

6. On the contrary, the learned Additional Public Prosecutor has raised serious objection stating that there is no precedent set by the Hon'ble Supreme Court formulating certain criteria for prolonged incarceration. There is no straitjacket formula that if prolonged incarceration is for 1 year 6 months, bail has to be granted to the accused even if the offence is of serious nature. In the instant

case, this is not the correct time to consider the bail petition on the issue of prolonged incarceration. This case rests squarely on conscious position as the contraband was recovered from a private vehicle and not from a public vehicle. At this stage, there cannot be any assumption or presumption as this is not the proper time to grant bail to the petitioner on the ground of prolonged incarceration. In reply to the submission of the learned Additional Public Prosecutor, the learned Senior Counsel for the petitioner has submitted that right to liberty of the student is infringed as he has been wrongfully incarcerated in a case in which he has not at all involved.

7. The learned Senior Counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Prem Prakash Vs Union of India through the Directorate of Enforcement reported in 2024 SCC Online SC 2270***, wherein it is observed that :

12. Independently and as has been emphatically reiterated in *Manish Sisodia (II) (supra) relying on Ramkripal Meena v. Directorate of Enforcement (SLP (Crl.) No. 3205 of 2024 dated 30.07.2024) and Javed Gulam Nabi Shaikh v. State of Maharashtra, 2024 SCC OnLine SC 1693*, where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty. Further, *Manish Sisodia (II) (supra)* reiterated the holding in *Javed Gulam Nabi Sheikh (Supra)*, that keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons

under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial.

8. Reverting back to this case, the FIR unfolds that a secret information was received by the investigating team relating to contraband to be transported in a vehicle and a Maruti Alto bearing registration No. AS-08-4773 was detained. Then, the investigating team along with 2 local people who were laborers constructing bridges were requested to be witnesses during the search operation. A black coloured polythene bag was found inside the car and they noticed that the expression of the inmates of the car immediately changed. During search operation, 371 nitrosum tablets, 108 nitrozempan tablets, 403 sampex tablets and 10 syringes were found. Shri Sarlong Tisso and the petitioner were apprehended in connection with this case, and after all the formalities, they were forwarded to custody.

9. I have scrutinized the scanned copies of the Case Diary and the statements of the witnesses under Section 161 of the Cr. PC as well as the evidence of PW-1 and PW-2. The copies of evidence of the PW-2 has been submitted by the learned counsel for the petitioner alongwith of the certified copy of the order dated 02.09.2024, passed by the Court. This certified copy will form a part of this record.

10. It is true that at this stage, it cannot be considered that the petitioner's right to liberty has been infringed, but at the same time, I have considered the peculiar facts and circumstances of this case.

11. This case is not similar to the facts and circumstances of the other cases. The merits of this case and the intricacies of the evidence are not brought to the fore but at this juncture, I deem it appropriate to grant bail to the petitioner under stringent conditions.

12. Considering the peculiar circumstances of this case and considering all aspects, the petitioner is enlarged on bail of Rs. 1 lac with two local sureties of like amount, one being a government surety, to the satisfaction of the learned Trial Court under the conditions that :

- (i) the petitioner shall not jump the bail,
- (ii) the petitioner shall not exercise threats or tamper with the evidence,
- (iii) the petitioner shall not leave the jurisdiction of the Court without prior written permission till completion of trial,
- (iv) the petitioner shall refrain from such activities with which he is alleged, and
- (v) the petitioner shall appear regularly

before the Court and co-operate with the trial.

13. In addition to the above conditions, the learned Trial Court may also impose certain conditions to secure the attendance of the petitioner.

JUDGE

Comparing Assistant