

GAHC010188842024



undefined

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

Case No. : Bail Appln./2791/2024

MISTAL HOQUE AND 2 ORS
S/O ABDUL AZIZ
VILL- KUCHNIMARA
P.S. MANKACHAR
DIST. SOUTH SALMARA, ASSAM
PIN-783135

2: ABDUL WADUT
S/O ASAD ALI
VILL- JHAWDANGA PT.III
P.S. MANKACHAR
DIST. SOUTH SALMARA
ASSAM
PIN-783135

3: EBAT HUSSAIN @ MD IBAT HUSSAIN
S/O ABDUL HOSEN
VILL- JHAWDANGA PT.III (KESHARVITA)
P.S. MANKACHAR
DIST. SOUTH SALMARA
ASSAM
PIN-78313

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A Z AHMED, MR. A KHALEK

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

10.12.2024

Heard Mr. A. Z. Ahmed, learned counsel for the petitioners. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State.

2. By this second bail application u/s 483 of BNSS, 2023 the petitioners, namely, **(i) Mistal Hoque (ii) Abdul Wadut and (iii) Ebat Hussain @ MD. Ibat Hussain** have prayed for granting regular bail in connection with **NDPS Case No. 161/2023** arising out of **Jalukbari PS Case No. 269/2023 u/s 21(C)/29 of NDPS Act.**

3. The factual matrix leading to this bail application is that an FIR has been lodged on 06.05.2023 before the O/C, Jalukbari PS stating inter alia that on 05.05.2023 at about 7.20 pm on the basis of source information that one drug peddler Motibar Bhuyan was carrying narcotic drugs through a public transport bus bearing No. AS 01 QC 2372. Accordingly, the informant along with his staff rushed to the spot and conducted Naka checking in front of DCPW Office, Jalukbari and the said bus was intercepted. The police searched the bus and recovered a black colour bag having psychotropic substances and a small cartoon inside the bag. Around 9200 numbers of Yaba tablets were found which were duly seized and the accused Motibar Bhuyan was arrested. On being asked, the arrested accused informed that three of his associates were in hotel New Castle at Bharalumukh and rest three were boarded at Sheikh lodge at Gorchuk. Thereafter, two teams were sent in both the locations and they

apprehended the six accused persons including the present petitioners. Accordingly, a case was registered vide Jalukbari PS Case No. 269/23 under Section 21(C)/29 of NDPS Act.

4. It is submitted by learned counsel for the petitioners that no any contraband item was recovered from the possession of the petitioners and they have been arrested on a confessional statement of co-accused which is not admissible in trial. Hence, the petitioners may be enlarged on bail.

5. It is further submitted that the petitioners are no way involved in the instant case and they have been falsely implicated by the co-accused. Petitioner No.1 is a driver by profession and petitioner Nos. 2 and 3 are cultivators and one Abdul Latif is the owner of the alleged vehicle bearing No. AS-19A-5020 (Honda Zen). On the day of incident, the petitioner Nos. 2 and 3 hired the vehicle of petitioner No.1 and came to Guwahti to purchase some parts of a tractor and booked S.K. Hotel at Gorchuk for taking rest and after sometime police came to the hotel and arrested the petitioners purely on suspicion.

6. Learned counsel for the petitioners has further contended that as nothing has been recovered from the possession of the petitioners, charge has been framed against the petitioners under Section 29 of NDPS Act, hence, considering the length of detention, the petitioners may be enlarged on bail.

7. Learned counsel for the petitioners has pointed out that there is undue delay in trial of the case as because the charge sheet has been laid on 25.10.2023 and charge was framed on 14.03.2024 and till date, the prosecution side fails to examine any witness. As such, the petitioner's fundamental right for

fair and steady trial guaranteed under Article 21 of the Constitution of India are violated and therefore, they are entitled to be released on bail.

In support of his submission learned counsel has relied on the following case laws:

- (1) BA 610/2024 (Abdul Mannan Ali vs State of Assam).
- (2) BA 1074/2024 (Amit Kumar vs Union of India).
- (3) BA 6405/2023 (Krishna Biswas vs Union of India).
- (4) BA 3706/2023 (Ajay Kumar Singh vs Union of India).
- (5) BA 2090/2022 (Binsiannem @ Pricilla vs State of Assam).
- (6) BA 850/2024 (Bhupendra Das @ Dipak vs State of Assam).

8. Per contra, learned Additional Public Prosecutor has submitted that after rejection of the first bail application, no change of circumstance has taken place to maintain this second bail application. It is further submitted that the quantity of contraband allegedly recovered here in this case is a commercial quantity and as such the embargo under Section 37 of the NDPS Act will come into play and there is nothing on the record to show how the accused petitioners will satisfy the aforesaid requirement.

Learned Additional PP also relied on the following case laws:

- (i) CrI. A. No. 1841-1842/2022 (Union of India (NCB) vs Khalil Uddin etc.)
- (ii) BA 2438/2024 (Daniel Kitharee vs state of Assam).

9. Having heard the learned counsel for the parties and on perusal of the trial court record, the admitted fact is that this is the second bail application and the first bail application was rejected on merit of the case after discussing Section 29 of NDPS Act.

10. In the case of State of ***T.N. vs S. A. Raja reported in (2005) 8 SCC 380***, it was observed by the Hon'ble Supreme Court that subsequent bail application is maintainable only when there is change of circumstance in favour of the accused. In the instant case in hand, admittedly except the length of detention no change of circumstance has taken place in favour of the accused.

11. In the case of ***NCB vs Mohit Agarwal reported in (2022) O Supreme SC 619***, it was held that the length of detention of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not consideration that can be treated as persuasive ground for granting relief to the accused under Section 37 of the NDPS Act.

12. That being so, the length of detention, to the considered opinion of this Court, can neither be a change of circumstance in favour of the accused nor be it a ground of releasing the accused petitioners on bail. Admittedly, the quantity of contraband substance recovered in connection with this case are of commercial quantity and as such the embargo under Section 37 of the NDPS Act will definitely come into play here in this case. Moreover, from the materials placed on record as well as the submission of the learned counsel for the parties, this Court is unable to derive its satisfaction that the accused petitioners are not guilty of the offence and they will not commit any such similar offence while on bail.

13. It is pertinent to mention here as pointed out by learned Additional Public Prosecutor, the order of the Hon'ble Supreme Court in connection with a bail application filed by the co-accused Hamidulla @ Md. Hamidul on medical ground in connection with Special Leave to Appeal (Crl.) No. 12643/2024 dated 20.09.2024 wherein it was observed as follows:

“Having heard the learned counsel for the petitioner at length and after carefully perusing the material placed on record, we are not inclined to interfere with the impugned order passed by the High Court at this stage. The Special Leave Petition is accordingly dismissed. However, the trial court is directed to expedite the trial and complete the same within nine months from the date of receipt of a copy of this order”

14. In view of the above, as no changed circumstance has been disclosed in granting bail to the petitioners, the second bail application is dismissed.

15. However, the trial court is directed to dispose of the matter within the stipulated period i.e. nine months as directed by the Hon'ble Supreme Court.

16. Accordingly, the bail application stands disposed of.

JUDGE

Comparing Assistant