

GAHC010190182024



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

Case No. : Bail Appln./2825/2024

LITON MIA
S/O ABUL HUSSAIN
R/O VILL- BOKSHANAGAR (MIDDLE)
P.O. BOKSHANAGAR, P.S. KALAMCHERA
DIST. SEPAHIJELA
STATE- TRIPURA.

VERSUS

THE STATE OF ASSAM
TO BE REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, MR A AHMED, U U KHAN, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06.12.2024

Heard Mr. M.A. Choudhury, learned counsel for the accused and Ms. N. Das, learned Additional Public Prosecutor.

2. This application, under Section 483 of the B.N.S.S., is preferred by accused, namely, **Liton Mia**, who has been languishing in jail since 19.03.2023, in connection with

Special N.D.P.S. Case No. 47/2022, arising out of Karimganj P.S. Case No. 190/2022, under Sections 22(C)/25/29 of the N.D.P.S. Act, pending before the learned Special Judge, Karimganj, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an F.I.R. lodged by one W.S.I. Marchilla D. Changma of Karimganj P.S. on 19.03.2022.

4. The essence of allegations made in the said complaint is that acting on tip off on 19.03.2022, at about 10:50 p.m. she along with other staff have intercepted one white coloured Baleno car having temporary registration number TR-01-BF(TC)-1042 and apprehended three persons namely, (i) Sajan Ahmed Barbhuyan (ii) Rubel Ahmed Barbhuyan and (iii) Liton Mia and Liton Mia was driving the said car. During the search they have recovered 50 blue coloured packets containing 10,000 YABA Tablets, which were being concealed under the driver's seat and seized the same in presence of witnesses, preparing seizure list.

5. Mr. Choudhury, learned counsel for the accused submits that the accused was arrested on 19.03.2022, and since then he has been languishing in jail hazot. Mr. Choudhury further submits that the charge was framed against him on 26.08.2022, and altogether 11 witnesses have been cited in the charge sheet and out of the said 11 witnesses only 3 witnesses have been examined till date. Mr. Choudhury further submits that this is the third bail application and while dismissing the second bail application, vide order dated 22.02.2024, a direction was issued to the learned trial court to recourse the provision of Section 309(1) of the Cr.P.C. and to conclude the trial as soon as practicable. But, the same could not be completed by the learned trial court. Mr. Choudhury further

submits that 7 witnesses are yet to be examined and there is no immediate prospect of conclusion of trial and as such, the right to speedy trial of the accused, as guaranteed by Article 21 of the Constitution of India is violated here in this case. Mr. Choudhury also submits that the accused is ready to face the trial and will appear before the learned trial court on each and every date and therefore, it is contended to allow the petition.

5.1. Mr. Choudhury, in respect of compliance of Section 37 of the N.D.P.S. Act, relying upon a decision of Hon'ble Supreme Court in the case of **Hasanuj Jaman and Others vs. The State of West Bengal**, in **Special Leave to Appeal (Crl.) No. 3221/2023**, submits that the petitioners do not have any criminal antecedents and as such, there is substantial compliance of Section 37 of the N.D.P.S. Act.

6. On the other hand, Ms. Das, learned Additional Public Prosecutor has vehemently opposed the petition and submits that the offences are serious in nature. Ms. Das further submits that the trial is going on and till date as many as 3 witnesses have been examined out of 11 cited witnesses and the said 3 witnesses have implicated the present accused. Ms. Das also submits that the quantity of contraband substances recovered from the possession of the accused is of commercial quantity and as such, the accused has to satisfy the twin requirements of Section 37 of the N.D.P.S. Act that he is not guilty of the offence and that he will not commit any offence while on bail and unless the said requirements are satisfied with, the accused cannot be granted bail and the present accused could not satisfy the same and therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned counsel for both the parties, I

have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned trial court and also gone through the decision referred by Mr. Choudhury, learned counsel for the accused.

8. It appears from the scanned copy record, received from the learned trial court that though the accused was arrested on 19.03.2022, the charge was framed against him on 26.08.2022, and since then, out of 11 cited witnesses, 3 witnesses have been examined so far by the prosecution side. Further, the record indicates that on some dates the prosecution witnesses remained absent and B.W.A. was issued against them by the learned trial court to procure their attendance.

9. The record also indicates that there is some delay in trial, but the same appears to be systemic delay and it cannot be termed as inordinate delay so as to violate the right of the accused to speedy trial, as held by Hon'ble Supreme Court in the case of **A.R. Antulay and Others vs. R.S. Nayak and Another**, reported in **(1992) 1 SCC 225**.

10. It also appears that the contraband substances recovered from the possession of the accused is of commercial quantity and as such, the accused has to satisfy the twin requirements of Section 37 of the N.D.P.S. Act, that he is not guilty of the offence and that he will not commit any offence while on bail, as held by Hon'ble Supreme Court in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, in Criminal Appeal No. 952 of 2023 [Arising out of S.L.P. (CRL.) No. 2351 of 2023].

11. But, from the materials on the record and the evidence of the 3 prosecution witnesses so recorded by the learned trial court and also from the

submission of learned counsel for the accused, this court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit any offence while on bail.

12. I have taken note of the decision referred by Mr. Choudhury, learned counsel for the accused. But, it appears that in the aforesaid case Hon'ble Supreme Court has not laid any law so as to read the same as binding precedent. Moreover, the present case is clearly distinguishable from the facts of the above noted case. Therefore, the same would not come into the aid of his argument.

13. In the result, I find that this application is devoid of merit and this is not a fit case where the privilege of bail can be granted to the accused. Accordingly, the petition stands **dismissed**.

14. However, in view of the settled proposition of law that right to speedy trial being the fundamental right, the learned trial court is requested to make an endeavor to complete the trial as soon as practicable.

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JUDGE

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Comparing Assistant