

GAHC010190522024



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

Case No. : Bail Appln./2802/2024

AHMEDUR RAHMAN BARBHUIYA
S/O MOINUDDIN BARBHIYA
R/O VILL- LALA BAZAR,
BISHNUPUR, P.S. LALA
DIST. HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR SISHIR DUTTA, MR. S DUTTA, MS K BORAH, MS S
MOCHAHARI, MR S DUTTA

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

17.09.2024

Heard Mr. Sishir Dutta, learned Senior Counsel assisted by Mr. S. Dutta, learned counsel for the petitioner. Also heard Mr. K. Bhaishya, learned Additional Public Prosecutor for the State respondent.

2. This application, filed under Section 439 of the Code of Criminal Procedure, 1973 corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for grant of bail to the accused/petitioner, who has been languishing in jail hazot since 02.09.2022 in connection with Badarpur P.S Case No. 195/2022 registered under Sections 21(b), 22(C), 25, 29 of the NDPS Act, 1985 and corresponding Special (NDPS) Case No.130/2022, which is pending before the Court of Special Judge, Karimganj.

3. The learned Senior counsel for the petitioner, Mr. Dutta, submits that the petitioner is innocent, despite being charge-sheeted in the present case with allegations of possessing a commercial quantity of contraband. He further submits that the petitioner's earlier bail application was rejected by this Court vide order dated 21.06.2024, in Bail Application No. 473/2024. The rejection was based on issues related to non-compliance with Section 42/52 of the NDPS Act, which was discussed in detail in the Court's order.

4. Mr. Dutta, learned Senior counsel for the petitioner has submitted that the he is not insisting on issues of compliance/non-compliance with Section 42/52 of the NDPS Act but is seeking bail solely on the grounds of prolonged incarceration. He submits that the petitioner has been in custody for last 2 years and 14 days, during this period, the prosecution has examined only three out of ten witnesses. The last witness was examined on 05.12.2023, and since then, no further witnesses have been

examined. From the certified copy of the order, it is seen that on 31.05.2024, a witness was present but could not be examined due to the Court's busy schedule. Additionally, on 4 or 5 occasions, the case was fixed for the evidence of witnesses, but the prosecution was unable to secure their attendance. Consequently, only three witnesses have been examined to date, despite the petitioner being in custody for more than two years.

5. Moreover, the petitioner is in custody for the last 2 years 14 days and accordingly, considering the length of detention undergone by the accused/petitioner, he may be enlarged on bail. He also submitted that the petitioner is the permanent resident of the addressed locality and thus, there is no chance of absconding, rather, he is ready and willing to appear before the Court on each and every date fixed and is also willing to abide by all bail conditions that may be imposed upon him.

6. In support of his submission, he relies on the decision rendered by this Court in the case of ***Gapendra Das @ Dipak vs. The State of Assam*** in Bail Application No. 850/2024 decided on 29.07.2024, wherein, the Court granted bail to the petitioner based on prolonged detention period and with the views expressed by the Hon'ble Supreme Court.

7. On the other hand, Mr. Bhaishya, the learned Additional Public Prosecutor, has submitted that the petitioner's earlier bail applications was rejected by this Court vide order dated 21.06.2024. Since that date, only two adjournments were there due to the absence of the prosecution witnesses, with the next date for evidence is fixed on 29.10.2024. He further stated that the trial is progressing, three witnesses already examined, and there is a likelihood of the trial being completed in the near future. Therefore, he raised objections to granting bail, submitting that securing the petitioner's attendance might be challenging if he is released on bail, especially given that the petitioner is involved in a case concerning commercial quantity of contraband.

8. Considering the submissions of learned counsels for both sides, as well as the

case record and the earlier bail rejection order dated 21.06.2024, it is noted that in the previous rejection order extensively discussed the compliance and non-compliance with Sections 42 and 52 of the NDPS Act. The present petition is filed solely on the ground of prolonged incarceration by the accused/petitioner. It is a fact that, to date, the prosecution has examined three witnesses out of ten. The last witness was examined on 05.12.2023. On one occasion, two witnesses were present, but they could not be examined due to the Court's busy schedule. After rejection order, on two dates, the prosecution witnesses remained absent specifically on 24.07.2024 and 03.09.2024, despite summons being issued and accordingly the next date fixed on 29.10.2024

9. The Hon'ble Supreme Court has passed the following Judgments & Orders based on the period of incarceration, which are as follows:-

(i) Rabi Prakash Vs. State of Odisha [2023 LiveLaw (SC) 533]

(ii) Chitta Biswas @ Subash Vs. the State of West Bengal [Criminal Appeal No (s) 245 of 2020 (Decided on 07.02.2022)]

(iii) Nitish Adhikary @ Bapan Vs. The State of West Bengal [SLP (CRI) 5769/2022 (Decided on 01.08.2022)]

(iv) Shariful Islam @ Sharif Vs. The State of West Bengal [SLP(CrI) 4173/2022 (Decided on 04.08.2022)]

(v) Mohammed Salman Hanif Shaikh Vs. The State of Gujrat [SLP(CrI) No. 5530/2022 (Decided on 22.08.2022)] (vi) Karnail Singh Vs. The State of Odisha [Criminal Appeal No. 2027/2022, arising out of SLP(CrI) No. 9067/2022 (Decided on 22.11.2022)]

(vii) Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh [SLP(CrI) No. 6690/2022 (Decided on 25.01.2023)]

(viii) Tapas Mandal Vs. The State of West Bengal [SLP(CRL) No. 8464/2023]

(Decided on 14.09. 2023)]

**(ix) Man Mandal Vs. The State of West Bengal [SLP (CRL) No. 8656/2023
(Decided on 14.09.2023)]**

**(x) Anjan Nath Vs. the State of Assam [SLP (CRL) No. 9860/2023 (Decided
on 17.10.2023)]**

10. In the instant case, it is observed from the order passed by the learned Trial Court that, apart from issuing summons, no other efforts have been made to secure the attendance of the prosecution witnesses, who remained absent for a considerable period.

11. Considering the entire facts and circumstances of the case, including the length of detention already undergone by the petitioner (2 years 14 days), and in light of the views expressed by the Hon'ble Supreme Court regarding the period of incarceration, this Court is of the opinion that long period of incarceration may be one of the ground for considering the bail prayer of the petitioner. More so, there is no probability of completion of trial within short period as the case is not yet committed.

12. Further, in the case of **Rabi Prakash** (Supra), the Supreme Court has observed that "*the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.*"

13. Accordingly, it is provided that on furnishing a bond of Rs. 1,00,000/- (Rupees one lakh) only with two sureties of like amount to the satisfaction of the learned Chief Judicial Magistrate, Karimganj, the accused/petitioner, namely, **Ahmedur Rahman Barbhuiya**, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so

as to dissuade him from disclosing such facts to the Court or to any police officer; and

- (ii) that the petitioner shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Karimganj, without prior permission.
- (iii) that the petitioner shall deposit copy (s) of PAN Card, Aadhaar Card and Voter Identity Card at the time of furnishing his bail bond.

14. In terms of above, this bail application stands disposed of.

15. Return the Case Diary.

JUDGE

Comparing Assistant