

GAHC010191842024



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

Case No. : Bail Appln./2828/2024

SUJAN MIAH
S/O MANTAJ MIAH
R/O HOSPITAL ROAD,
SONAMURA URBAN
P.S. SUNAMURA
DIST. SEPAHIJALA, TRIPURA.

VERSUS

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

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

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 04.10.2024

1. Heard M.A. Choudhury, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor.
2. This application under Section 483 of BNSS, 2023 has been filed by the

petitioner namely Sujan Miah, who has been detained behind the bars since 12.11.2022 (for last more than 1 year 10 months) in connection with Special (NDPS) Case No. 160/2022 pending before the Court of learned Special Judge, Karimganj arising out of Bazaricherra P.S. Case No. 196/2022 registered under Section 20(b)(ii)(C)/25/29 of the NDPS Act, 1985.

3. The gist of accusation in this case is that on 11.11.2022 one Niranjan Das, S.I. of Police lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, inter-alia, alleging that during routine Naka checking duty at Churaibari Watch Post at National Highway No. 8, one six wheeler goods carrier truck bearing registration number TR 01 B 1747 was intercepted and during the search of the said truck, 69 packets containing suspected Ganja (Cannabis) was recovered. The total weight of the recovered Ganga was 404 kgs. The driver and the helper of *the* said truck namely, SujanMiah and AmdajulHaque were apprehended as they could not give any satisfactory explanation regarding the possession of the recovered contraband.

4. On receipt of the said FIR, Bazaricherra P. S. Case No. 196/2022 under Section 20(b)(ii)(C)/25/29 of the NDPS Act, 1985 was registered and investigation was initiated.

5. On 28.02.2023, a part charge sheet was laid against two accused persons

including the present petitioner under Section 20(b)(ii)(C)/25/29 of the NDPS Act, 1985 and thereafter on 13.05.2023 a supplementary charge sheet was laid against the co-accused Abul Kashem.

6. Mr. M.A. Choudhury, learned counsel for the petitioner has submitted that the petitioner has been detained behind the bars for last more than 1 year 10 months.

7. It is also submitted by learned counsel for the petitioner that the charges against the present petitioner were framed on 09.06.2023, and till date only 3 out of total 10 prosecution witnesses have been examined.

8. The learned counsel for the petitioner has also submitted that though the commercial quantity of contraband is involved in this case and apparently the embargo of Section 37 appears to be applicable in this case, however he submits that due to prolonged incarceration, the petitioner is entitled to get bail.

9. In view of the observations made by the Apex Court in a catena of judgments to the effect that in case of prolonged incarceration and inordinate delay in trial, the embargo of Section 37 of NDPS Act, 1985 is lifted and it gives way to the right to the accused guaranteed under Article 21 of the Constitution of India.

10. The learned counsel for the petitioner has cited a ruling of the Apex Court in the case of "***Rabi Prakash Vs. State of Orissa***" reported in **2023 SCC**

Online SC 1109, wherein it has been observed by the Apex Court 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, 1986.

11. The learned counsel for the petitioner has submitted that in the meanwhile one of the co-accused namely AbulKashem has already been granted bail by this Court in Bail Application No. 3578/2023 on 29.01.2024.

12. On the other hand the learned Additional Public Prosecutor has vehemently opposed the grant of bail to the petitioner on the ground that the quantity of contraband seized in this case is of commercial quantity and therefore the embargo of Section 37 of the NDPS Act is applicable to this case and the petitioner is not entitled to get bail on that ground.

13. I have considered the submissions made by the learned counsel for both the sides and have perused the scanned copy of the Special NDPS Case No. 160/2022 which was requisitioned in connection with this case

14. In the case of **Hussainara Khatoon &Or svs Home Secretary, State Of Bihar, Patna 1980 (1) SCC 98** the Apex Court has observed that the procedure prescribed by law for depriving a person of his personal liberty cannot be regarded as reasonable, fair or just unless that procedure ensures a speedy

trial for determination of guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21 of the Constitution of India.

15. Though, Section 37 of the NDPS Act, 1985 provides for stringent provision for grant of bail, however, Section 36 (1) of the NDPS Act, 1985 also mandates the Government to constitute as many special courts as necessary for the purpose of providing speedy trial of offences under the NDPS Act, 1985. If speedy trial is not provided to an incarcerated accused, it will certainly have a negative impact on the rigours of Section 37 of the NDPS Act, 1985.

16. The Hon'ble Supreme Court of India in "***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***" reported in **2023 SCC Online SC 352** has observed that "grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985".

17. The Apex Court in "***Rabi Prakash Vs. State of Orissa***" reported in **2023 SCC online SC 1109**, wherein it has been observed by the Apex Court 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, 1985.

18. It appears from the record that since from the date of his arrest,i.e. 12.11.2022, the petitioner has been detained behind the bars and though he has completed more than 1 year 10 months of incarceration, only 3 out of 10 prosecution witnesses have been examined till date.

19. This Court is of the considered opinion that for whatsoever reasons, if any inordinate delay has been caused and if it is not due to any fault of the petitioner, then to keep him under incarceration for a long period on one hand, and to continue to cause delay in culmination of the trial on the other hand would certainly be infringing his fundamental rights guaranteed under Article 21 of the Constitution of India and under such circumstances, the petitioner would be entitled to get bail.

20. In this regard the observations made by the Apex Court in the case of *Satender Kumar Antilvs Central Bureau Of Investigation* reported in (2022) SCC 51 are relevant, same is quoted here in below:

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary

adjournments resulting in the witnesses being won over. However, the noncompliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own."

21. In view of the observation made by the Apex Court, this Court is of the considered opinion that if, under the facts and circumstances of a case, this

Court comes to the finding that there is an undue delay in the completion of the trial, and that the incarceration of the petitioner is long enough, he would be entitled to get bail on the ground of such prolonged incarceration, as in such a case of prolonged incarceration, the right to life and personal liberty guaranteed to the petitioner under Article 21 of the Constitution of India would outweigh the fetter imposed under Section 37 of the NDPS Act, 1985.

22. It is also pertinent to mention herein that the Hon'ble Supreme Court of India had granted bail to an accused facing charges for possession of commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (Order dated 04.08.2022 passed in SLP Criminal No. 4173/2022), wherein the accused was detained behind bars for one year and six months.

23. In "***Nitesh Adhikari Vs. State of West Bengal***" (Order dated 04.05.2022 passed in SLP Criminal No. 5769/2022), the Apex Court granted bail to the accused facing accusation under Section 21(c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

24. Similarly in "***Md. Salman Hanif Shaikh Vs. State of Gujarat***" (Order dated 22.08.2022 passed in SLA Criminal No. 5530/2022), the petitioner was granted bail by the Apex Court on the ground of prolonged incarceration of two years.

25. In "***Chitta Biswas Alias Subha Vs. The State Of West Bengal***" (Order dated 07.02.2020 passed in SLP Criminal No. 8823/2019), the Apex Court granted bail to the petitioner, who was facing a trial for possessing a commercial quantity of contraband on the ground of prolonged incarceration of

1 year 6 months.

26. It appears on perusal of the rulings cited by learned counsel for the petitioner that in all the cases cited by the petitioner, though commercial quantity of contraband was involved and apparently the embargo of Section 37 of the NDPS Act, 1985 would have been applicable in those cases, however, only because of the fact of the prolonged incarceration of the petitioners, the Apex Court allowed the petitioners to go on bail.

27. In the instant case also the present petitioner has been detained behind the bars for last more than 1 month 10 months and the trial is yet to culminate, there is unlikelihood of early culmination of the trial and in view of the facts and circumstances of this case as well as considering the observations made by the Apex Court in the ruling cited herein above.

28. This Court is therefore of the considered opinion that prolonged incarceration of the present petitioner outweighs the embargo of Section 37 of the NDPS Act 1985. Hence the petitioner is entitled to get bail on the ground of prolonged incarceration.

29. In view of the above, the petitioner, namely, SujanMiah is allowed to go on bail of Rs. 1,00,000/- (Rupees One Lakh only) with two sureties of like amount (one of whom should be a government servant and residing within the State of Assam) subject to the satisfaction of the Special Judge, Karimganj with

the following conditions:

- i. That the petitioner shall cooperate in the trial of NDPS Case No. 160/2022, which is pending in the Court of Special Judge, Karimganj;
- ii. That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;
- iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present petitioner;
- iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or, Driving License or, PAN card, mobile number, and also other contact details before the Trial Court;
- v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the Trial Court; and
- vi. That the petitioner shall not commit any similar offence while on bail."

30. With the above observation, this bail application is accordingly, disposed of."

JUDGE

Comparing Assistant