

GAHC010209042023



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

Case No. : Bail Appln./3288/2023

OINAM SINGHACHANDRA SINGH
S/O- SHRI O. SUBHASCHANDRA SINGH, URIPOK KHOISNAM LEIKAI,
LAMPHELPAT, IMPHAL (W), MANIPUR

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, DRI

Advocate for the Petitioner : MR. D SARMAH

Advocate for the Respondent : SC, DRI

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

22.02.2024

- 1.** Heard Mr. D. Sarmah, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel for DRI.
- 2.** The petitioner namely, Oinam Singhachandra Singh has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 26.10.2017 in connection with NDPS Case No. 41/2018 arising out of DRI Case No. 17/CL/NARC/HEROIN/DRI/GAU/2017-18 dated 26.10.2017 registered u/s 21(c) of the NDPS Act, 1985.

3. The case was initiated by the DRI with allegations that the petitioner and the other accused were carrying banned contraband. During investigation 330 grams of heroin was found with the petitioner. Charge-sheet has been laid against the petitioner but the trial has come to a grinding halt as the other accused are absconding. On 18.03.2019 as per direction of this Court the learned trial Court, the Court of the Additional Sessions Judge No. 1 at Kamrup (M) has split up the case and charges were framed against the petitioner. 9 witnesses are enlisted in the charge-sheet but only one witness has been examined so far. The cross-examination of PW-2 was reserved way back on 29.05.2019 and since then no witness has turned up before the trial Court. The petitioner has been languishing in the jail since 26.10.2017. It is unlikely that the trial would be concluded soon in the near future and the petitioner has prayed for bail also on the ground of parity as a similarly circumstanced accused Jamal Khan was granted bail by this Court in Bail Application No. 4210/2023 dated 30.01.2024.

4. On the contrary the learned Addl. PP has raised serious objection stating that in case of serious offences the length of pendency of the trial is not relevant. It has been held by Hon'ble the Supreme Court in ***Gurwinder Singh v. State of Punjab & Another in Criminal Appeal No. 704 of 2024 @ Special Leave Petition (Criminal) No. 10047 of 2023*** that:-

“32. The Appellant’s counsel has relied upon the case of *KA Najeeb (supra)* to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In *KA Najeeb’s* case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court’s decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in *KA Najeeb’s* case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of

unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on behalf the appellant cannot be accepted.”

5. I have considered the submissions at the Bar with circumspection. It is true that *Gurwinder Singh (supra)* was in the jail since 16.04.2019 and considering the gravity of the offence bail was rejected but the present petitioner has been languishing in the jail since 26.10.2017. It is true that serious allegation has been levelled against the petitioner but the scanned copies of the LCR reveals that trial was procrastinated by the Court as well as by the prosecution. No endeavour was made to split up the case and proceed against this petitioner. Earlier, with direction of this Court the case was split up against the present petitioner but even then till the time the bail application was filed, only 3 witnesses have been examined and the cross-examinations of PW-2 and PW-3 have been deferred vide order dated 25.09.2019 and 27.01.2020 respectively and thereafter not a single witness has been examined. The petitioner is behind bars for more than 6 years only because of the procrastination of the trial. I have also considered the submission that the petitioner is willing to abide by any stringent conditions, if imposed upon him.

6. Considering all aspects, I am inclined to grant bail to the petitioner. The petitioner is enlarged on bail of Rs. 1,00,000/- (Rupees One lac) with 2 local sureties of like amount to the satisfaction of the learned trial Court by the conditions that:-

- i. The petitioner shall appear before the learned trial Court and co-operate with the trial;
- ii. the petitioner shall refrain from such activities with which he is alleged; and

iii. the petitioner shall not jump the bail.

On breach of any of the bail conditions, bail order shall stand cancelled.

JUDGE

Comparing Assistant