

GAHC010209812023



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

Case No. : Bail Appln./3313/2023

MD SHAHID AHMED
S/O MONTAJ ALI
VILL- NIZ HAFANIA , P.O. PATHARKANDI, P.S. PATHARKANDI, DIST.
KARIMGANJ, ASSAM, PIN-788724

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 18-01-2024

- 1.** Heard Mr. A.K. Talukdar, learned counsel for the petitioner.
- 2.** The petitioner, namely, Md. Shahid Ahmed has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 10.11.2021 in connection with special NDPS Case No. 96/2021 arising out of Patharkandi P.S. Case No. 450/2021,

pending in the Court of learned Addl. District and Sessions Judge (FTC), Karimganj and registered u/s 22(c) of the Narcotic Drugs Psychotropic Substances Act (NDPS Act for short).

3. The FIR unfolds that on a tip off, on 06.08.2021 a search operation was held and at about 3:30 PM the house of Md. Shahid Ahmed was searched as per proper procedure of law and 14 plastic bags containing yaba tablets numbering 8000 tablets were recovered in connection with this case. The total quantity was found to be 845.6 gms. The petitioner allegedly escaped and fled from the place of occurrence. He was later apprehended on 10.11.2021 and since then the petitioner is behind bars.

4. It is submitted on behalf of the petitioner that a co-villager Abbas Uddin had provided the secret information to the Investigating Agency. A long dispute and bad blood prevails between the petitioner and Abbas Uddin. Abbas Uddin planted the contraband.

5. It is submitted by the learned counsel for the petitioner that it could be deciphered from the conduct of Abbas Uddin that he had planted the contraband in the petitioner's house. Initially Abbas Uddin tried to entangle the petitioner in a POCSO case which was registered as POCSO Case No. 58/2021 arising out of Patherkandi P.S. Case No. 558/2021. The evidence of PWs-1 to 5 in connection with the POCSO case pending in the Court of the Special Judge, POCSO, Karimganj marked as Annexure-G series of the petition clearly reveals that apart from the allegations of the family members of Abbas Uddin there are no incriminating materials against the petitioner in the POCSO case. Time and again the petitioner has been harassed by Abbas Uddin in a similar manner. As this is a false case, there is every possibility that the petitioner will be acquitted from this case. It is alleged that the search was also conducted after sunset. The petitioner has prayed for bail on humanitarian grounds as cases after cases have been slammed against the present petitioner.

6. Heard Mr. M.P. Goswami, learned Addl. PP, Assam.

7. The learned Addl. PP has raised serious objection stating that there are other relief and reprieve for false cases if any such case has been foisted against the present petitioner. The petitioner can claim for damages if he is acquitted in connection with the POCSO case. There are stringent punishment for offences of false implication and forgery. Yaba tablets were recovered by the Investigating Agency. It could not be deciphered in what manner a person with animosity and bad blood could enter into his rival's residence and plant contrabands. On the contrary the conduct of the petitioner reveals that he is history-sheeter. There is a case u/s POCSO Act against him and another serious case with grave allegation of possession of 8000 yaba tablets. Considering the antecedent and the embargo u/s 37 of the NDPS Act the petitioner is not entitled to be admitted to bail. The learned Addl. PP has prayed to dismiss the petition.

8. I have given my thoughtful consideration to the submissions at the Bar. I have also scrutinised the LCR. When this case was pending for consideration of charge, a Legal Aid Counsel was appointed as the petitioner was not represented. Thereafter this case was fixed for consideration of charge. But then the petitioner filed an application with prayer for bail. Finally charge was framed on 23.06.2022. Prior to framing of charge due to the second wave of the pandemic the proceeding was conducted through video conferencing. After framing of charge, this case was fixed for case management hearing and for evidence on 04.08.2022. Thereafter this case was fixed for evidence on 18.08.2022, 01.09.2022, 16.09.2022 and vide order dated 22.09.2022, the petitioner was forwarded for medical treatment. Thereafter this case was fixed for evidence on 29.09.2022, 11.10.2022, 19.10.2022, 28.10.2022, 11.11.2022, 25.11.2022, 21.12.2022, 04.01.2023, 18.01.2023, 01.02.2023 and 01.03.2023.

8. On 01.03.2023 the petitioner expressed dissatisfaction with the services of the legal Aid Counsel and the learned trial Court had appointed another Legal Aid Counsel on the request of the petitioner and thereafter this case was fixed for evidence on

24.03.2023, 06.04.2023, 02.05.2023, 29.05.2023, 25.06.2023. On 07.07.2023, a petition with prayer for bail was filed and hearing was kept pending. Finally on 14.07.2023 the bail petition was rejected and this case was fixed for evidence on 21.07.2023, 17.08.2023, 13.09.2023, 04.10.2023. The petitioner then preferred this bail petition on 15.09.2023 and since then this case has been pending for hearing.

9. In the wake of my foregoing discussions, it is apparent that the prosecution and the trial Court cannot be held responsible for procrastination of trial to admit the petitioner to bail. Initially the petitioner was not represented. Then a Legal Aid Counsel was appointed. The petitioner then expressed his dissatisfaction with the earlier Legal Aid Counsel and another Legal Aid Counsel was appointed. The petitioner was also forwarded for medical treatment and again the petitioner filed an application for bail. The petitioner's conduct also reveals that trial has been protracted by the petitioner as well. The petitioner is behind bars since 10.11.2021. 4 witnesses have already been examined in connection with this case upto 13.09.2023. The petitioner filed this bail petition on 14.09.2023. The status report relating to the pendency of this case dated 04.01.2024 reveals that 6 witnesses are enlisted. It is apparent that this case is at the fag end of the trial. I have perused the scanned copies of the depositions of the witnesses. The merits of this case are not brought to the fore. This case cannot be considered to be a case where the right to liberty has been curtailed due to the incarceration of the petitioner. The defence has not brought to the fore, during cross-examination of the witnesses, or through any other measures, about the bad blood between the petitioner and Abbas Uddin. It cannot be conjectured at this juncture that Abbas Uddin planted the 8000 yaba tablets and then release the petitioner on bail. The embargo u/s 37 of the NDPS Act cannot be said to be mitigated due to the conduct of Abbas Uddin. The merits of the case under the POCSO act is also not brought to the fore.

10. The petitioner has relied on the decision of ***Bhura Singh v. State of Punjab***, reported in ***1996 SCC OnLine P&H 769*** wherein the appellant was acquitted from

charges u/s 15 of the NDPS Act as the Investigation Agency had failed to procure independent witnesses. The ratio of the decision of the High Court of judicature at Punjab and Haryana in Bhura Singh's case is not applicable to this case. The ratio of the decision of this Court in ***Saulat Rasool v. State of Assam and Another***, reported in **2022 OnLine GAU 1329** is also not applicable to this case. The appellant was acquitted because presence of independent witnesses was not secured by the prosecution. In this case independent witnesses have been examined by the prosecution. The submission of the learned trial Court that the independent witnesses have not supported the prosecution case and the petitioner is entitled to bail as the trial will entail conviction, cannot be considered at this juncture.

11. Considering all aspects and in view of my foregoing discussions, petition is rejected at this stage.

JUDGE

Comparing Assistant