

GAHC010211032023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 3342/2023

Waseem,
Age 20 years,
Son of Liyakot Ali,
Village-Chadanki,
P.S.-Punhana,
District-Nuh Mewat, Haryana.
PIN-122508

.....Petitioner

-Versus-

The State of Assam,
Represented by the Public Prosecutor of Assam

.....Respondent.

Advocate for the Petitioner : Mr S C Biswas.

Advocate for the respondent: Mr M P Goswami, APP, Assam.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 06.02.2024

ORDER

Heard Mr S C Biswas, learned counsel for the petitioner, Waseem.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 18.05.2022, in connection with Special Case No. 78/2022, arising out of Bazaricherra PS Case No. 93/2022, registered under Sections 20(b)(ii)(C)/25/29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS, for short).

3. Heard Mr M P Goswami, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioner that he is behind bars for more than 622 days, as he was arrested on 18.05.2022. 4 out of 11 witnesses have been examined. 7 witnesses are yet to be examined. His co-accused is already on bail. The truck which was seized in connection with this case, carrying 1183 kgs of ganja was already given in zimma to the owner.

The petitioner is prejudiced as he deserves bail on the ground of parity. Moreover, the evidence of the witnesses are contradictory. The time given as 3:00 pm has been contradicted, as earlier, the time was mentioned as 03:00 am. There is every possibility that due to the lacunae in the investigation, the petitioner would be acquitted in connection with this case. His prolonged incarceration will thus, be an infringement of his precious fundamental right, guaranteed by Article 21 of the Constitution of India, in the event of his acquittal. The petitioner is willing to abide by any stringent conditions, to be imposed upon him, if he is enlarged on bail.

5. The learned Additional Public Prosecutor has raised objection stating that Hon'ble the Supreme Court has held in ***Tarun Kumar -Vs- Assistant Director, Directorate of Enforcement;*** reported in **(2023) 4 Crimes (SC) 442**, that if an accused has been erroneously granted bail, such erroneous order is not to be followed. The length of detention, at times may exceed to more than half of the maximum punishment prescribed and this may not amount to infringement of personal liberty, considering the nature and gravity of the offence.

6. It is submitted by the learned Additional Public Prosecutor that this

petition is devoid of merits. The rigoursof Section 37 of the NDPS Act acts as an embargo.This is not a case where trial has been procrastinated by the prosecution or the Court.

7. I have given my thoughtful consideration to the submissions at the Bar.

8. The learned counsel for the petitioner has relied on the decision of the High Court of Judicature at Delhi, in ***Mohit Agarwal –Vs- Narcotics Control Bureau***, reported in **AIRONLINE 2021 DEL 331**, wherein it has been observed that-

“30.

"308. A confession made by an accused person is irrelevant in a criminal proceeding, if it appears to the Court that the confessions may have been elicited by any inducement, threat or promise from a person in authority and sufficient, in the opinion of the Court, to give the accused person reasonable grounds, for supposing that by making the confession, he would gain any advantage or avoid any disadvantage in respect of proceedings against him."

7.1. The accused, Mohit Agarwal was granted bail, which was challenged before the Hon'ble Supreme Court, by the NCB, in ***NCB –vs- Mohit Agarwal***, in connection with Criminal Appeal No. 1001-1002/2022, arising

out of Special Leave to Appeal(Crl.) No. 6128-29/21, wherein vide order dated 19.07.2022, the post-arrest bail granted to Mohit Agarwal was cancelled. It was held by Hon'ble the Supreme Court that-

“17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the chargesheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

8. In the light of the decision of Hon'ble the Supreme Court in the case of

Tarun Kumar (supra) and in the case of ***NCB-Vs- Mohit Agarwal (supra)***, it is thereby held that the present petitioner is not entitled to bail, at this juncture.

9. The petitioner was arrested on 18.05.2022 and 4 out of 11 witnesses have already been examined. Relying on the decision of ***Tarun Kumar's case (supra)***, the ground of parity is not taken into consideration, at this juncture. Relying on the decision of ***NCB-Vs- Mohit Agarwal (supra)***, the length of detention is also not taken into consideration. The embargo under Section 37 of the NDPS Act, comes into play. This case cannot be considered to be a case where trial has been procrastinated to the extent of causing an infringement to the right of personal liberty of the petitioner. The petitioner is alleged of an offence relating to transporting of 1183 kgs of ganja in a truck. At this juncture, it is not safe to conclude that the petitioner has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him.

10. Petition with prayer for bail is rejected at this juncture. However, the learned trial Court is directed to expedite the trial for speedy disposal of the case. In the event of further procrastination of this case by the prosecution or

by the learned trial Court, the petitioner is at liberty to apply for bail subsequently.

11. Bail Application stands disposed of.

JUDGE

Comparing Assistant