

GAHC010212672024



2024:GAU-AS:12413

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

Case No. : Bail Appln./3119/2024

MD. MUSARAF
S/O LATE AZID KHAN, R/O VILL- GOMTHOU, P.S.-LILONG, DIST- THOUBAL
(MANIPUR)

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. S K NARGIS, MS N SULTANA, MS S BEGUM, MR F H
LASKAR (2)

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

09.12.2024

1. Heard Ms. S. K. Nargis, learned counsel for the petitioner Md. Musaraf and Mr. R. Kaushik, learned Additional Public Prosecutor, Assam for the respondent State.
2. The petitioner has filed this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for bail as he is behind bars since 21.06.2022 in connection with NDPS Case

No. 203/2022 arising out of Panbazar P.S. Case No. 163/2022 under Sections 21(C) of the NDPS Act.

3. It is submitted on behalf of the petitioner that the petitioner has been behind bars since 2 years 5 months. Charge-sheet has been laid against the petitioner on 09.09.2022, and charge was framed on 15.12.2022. It is submitted that 13 witnesses have been enlisted in this case, and only 1 witness has been examined so far. The witness was last examined on 17.05.2023, and it has been more than 1^{1/2} years, that not a single witness has been examined. The possibility of conclusion of trial appears to be remote. The petitioner has been wrongly incarcerated and his right to personal liberty has been infringed. It is further submitted that investigation was conducted in a perfunctory manner. Only 3 samples out of 133 pouches have been extracted. The learned Trial Court has procrastinated the trial. The learned Trial Court ought to have resorted to Section 309 of the Cr.PC vis-a-vis Section 346 of the BNSS.

4. It is further submitted that the prosecution and the Court could not provide any explanation as why only 1 witness has been examined so far.

5. Learned Additional Public Prosecutor has raised serious objection stating that this is a serious offence. The petitioner was in conscious possession of 26,600 yaba tablets. Delay in a case relating to serious offences cannot be a just cause to grant bail.

6. I have considered the submissions at the Bar with circumspection. I have also scrutinized the Trial Court Records. Charge-sheet has been laid against the petitioner on finding a prima facie case. The merits of this case are not brought to the fore. So far only 1 witness has been examined. 13 witnesses are enlisted in the Charge-sheet as cited witnesses.

7. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Ravi Prakash Vs. The State of Orissa***, reported in ***2023 0 Supreme(SC) 707***, wherein vide order dated 13.07.2023 in ***SLP Criminal No. 4169/2023***, it was observed that:

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent State has been duly heard. Thus, the 1 condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has

already spent more than three and a half years in custody. 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.”



In the instant case too, it cannot be denied that trial has been procrastinated. 1 out of 13 witnesses has been examined. The petitioner is behind bars for 2 years 5 months.

8. In the light of the decision of the Hon'ble Supreme Court in ***Ravi Prakash Vs. The State of Orissa***, I deem it appropriate to grant bail to the petitioner.

9. The petitioner is enlarged on bail on furnishing a bail bond of Rs.1,00,000/- (Rupees One lac) with a suitable surety of like amount to the satisfaction of the Learned Trial Court under the conditions that :

- (i) the petitioner shall cooperate with the trial, and
- (ii) (iv) the petitioner shall not leave the jurisdiction of the Court without prior permission till completion of trial.

10. On breach of any of the bail conditions, the learned Trial Court is at liberty to immediately cancel the bail granted to the petitioner.

11. The learned Trial Court may impose additional conditions to secure the attendance of the petitioner.

12. In terms of above observation, this Bail Application stands disposed of.

JUDGE

Comparing Assistant