

GAHC010214252024



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

Case No. : Bail Appln./3253/2024

PIKLU MAJUMDAR
S/O LT. MINAL MAJUMDAR
R/O VILL- NEAR CIVIL HOSPITAL, WARD NO. 3, P.O. LUMDING,
P.S.LUMDING, DIST. HOJAI, ASSAM
PIN-782447

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. S CHOWDHURY, MR. K KALITA, MS G SWAMI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.12.2024

Heard Mr. S. Chowdhury, learned counsel for the accused-petitioner
as well as Mr. D.P. Goswami, learned Additional Public Prosecutor for the

State.

2. By this petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Piklu Mazumdar**, has prayed for granting bail in connection with **Spl. (NDPS) Case No. 48/2024 (arising out of Lumding P.S. Case No. 190/2023)** registered under Section **22(c)/29 of NDPS Act**, pending in the court of learned District and Sessions Judge, Hojai, Assam.

3 . It is submitted by the learned counsel for the petitioner that the petitioner has been detained in custody for more than one year since his arrest on 09.10.2023. Two persons were arrested in connection with this case. It is also submitted that on the date of the incident, while the present petitioner coming back from his in-law's house, he took lift from co-accused in his scooty. He had no idea about the items which were kept inside the vehicle. The petitioner is completely innocent and he has been made a scapegoat in the instant case. The petitioner is no way involved in the alleged offence.

4. It is further submitted by the learned counsel for the petitioner that though it was alleged that commercial quantity of contraband was recovered from the possession of the petitioner, however, rigors of Section 37 of NDPS Act, 1985 cannot abridge the right to life and personal liberty to which the petitioner is entitled to under Article 21 of Constitution of India. It is also submitted that the petitioner was arrested in another case at Arunachal Pradesh regarding NDPS matter and in that case, the trial is complete and the petitioner had been acquitted from all charges. It is also

contended that in this case, trial is at the evidence stage and out of six witnesses, only two witnesses were examined till date. Hence, considering the length of detention and background of the case, the petitioner may be enlarged on bail.

5. On the other hand, Mr. Goswami, learned Additional Public Prosecutor for the State has submitted that out of six witnesses, two witnesses have already been examined. There is no delay in proceeding of the case. Moreover, commercial quantity of narcotic drugs were recovered from the possession of the petitioner along with another co-accused. Considering the fact as well as the nature of the offence, bail may not be granted to the petitioner at this stage of trial.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of trial court record including the evidence of the witnesses recorded so far.

7. It appears that the accused person was arrested on 09.10.2023. It also appears that more than 1000 gm narcotic drugs (Codeine Phosphate) was recovered from the possession of the petitioner along with another co-accused which is a commercial quantity. Subsequently, charge-sheet has been submitted on 29.02.2024. Accordingly, charge was framed on 11.06.2024. Out of 6(six) witnesses, 2(two) witnesses have already been examined. Apparently, there is no delay in proceeding of the case. Situated thus, interference by this Court is not permissible at this stage.

8. The NDPS Act is a special Act with an inbuilt mechanism in the form

of Section 37 relating to bail. The commercial quantity of Codeine Phosphate was recovered from the possession of the petitioner.

9. The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

10. On consideration of the matter in its entirety, this Court is not inclined to grant bail to the accused/petitioner, at this stage. Therefore, prayer for bail is rejected. However, trial court is directed to expedite the

trial of the case.

11. The bail application stands disposed of.

JUDGE

Comparing Assistant