

GAHC010214812024



2024:GAU-AS:13080

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

Case No. : Bail Appln./3137/2024

MD ALTAF HUSSAIN @ ALTAF HUSSAIN AND 3 ORS.
S/O LATE MEHAMUD KHAN, R/O VILL- LILONG HAOREI MAKHA LEIKAI,
P.S.-LILONG, DIST-THOUBAL, MANIPUR

2: ABDUL MATALIB
S/O MD. SOUKAT ALI
R/O VILL- KEIBUNG MAKHA LEIKAI
P.S.-LILONG
DIST- THOUBAL
MANIPUR

3: ZIOUR RAHMAN
S/O ABDUR RAHMAN
R/O VILL- KEIBUNG MAKHA LEIKAI
P.S.-LILONG
DIST- THOUBAL
MANIPUR

4: HAFIJAR RAHMAN
S/O MANCHHAR ALI
R/O VILL- SHUKARUR KUTHI
P.S.-DINHATA
DIST- COOCH BIHAR
WEST BENGAL

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M KHAN, MS J AKTAR

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

20.12.2024

1. Heard Mr. M. Khan, learned counsel for the petitioners namely, (i) Md. Altaf Hussain @Altaf Husain, (ii) Abdul Matalib, (iii) Ziour Rahman, and (iv) Hafijar Rahman who have filed this application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for bail as he is behind bars since 17.08.2023, in connection with Special(Nar) Case No. 153(M)/2023 arising out of Manikpur Police Station Case No. 151/2023 under Sections 22(C)/25/29 of the NDPS Act with added Sections of 23(C)/27(A) of the NDPS Act.
2. Heard learned Additional Public Prosecutor, Mr. B. Sharma, Assam for the respondent State.
3. It is submitted on behalf of the petitioners that the petitioners have been languishing in the jail for 485 days. 3 out of 9 witnesses have been examined. PW-1, PW-2 and PW-3 are seizure witnesses and they were not at all aware of the seized contraband. The PW-1's evidence reveals that investigation was conducted violating Section 42(2) and Section 50(5)(6) of the NDPS Act. No senior official was informed within 72 hours.
4. The petitioner has also relied on the decision of the Hon'ble Supreme Court in Toofan Singh Vs. The State of Tami Nadu reported in (2021) 4 SCC, wherein it has been held that:

“The proposition of law in Directorate of Revenue v. Mohd. Nisar Holia cited by Mr Jain is well settled. There is no doubt that the NDPS Act contains severe penal provisions. There can also be no dispute with the proposition that when harsh provisions, lead to a severe sentence, a balance has to be struck between the need of the law and enforcement thereof on the one hand and the protection of a citizen from oppression and injustice. The requirements of Sections 42 and 43 have to be complied with strictly and in letter and spirit.”

It is further submitted that PW-2 and PW-3 are seizure witnesses and they did not even know where from the seized articles were recovered.

5. The Trial Court was directed to expedite the trial but the Trial Court has ignored the direction of this Court. The evidence was last recorded on 23.09.2024, and thereafter, evidence has not been recorded. This reflects the apathy of the prosecution.

6. Learned Additional Public Prosecutor has raised serious objection stating that the case record clearly reveals that PW-1 informed the Superior Officer over phone on the same day relating to the offence and thus it has been wrongly submitted that Section 42(2) of the Act has not been complied with. Section 50(5)(6) of the Act cannot be complied with as the contraband was recovered from the oil tanker. PW-3 has categorically stated that the oil tanker had to be cut to recover 10 packets of tablet inside the tanker. The contraband weighed 4.292 kgs, and this is wrong argument that PW-3 did not know where from the tablets were seized.

7. I have considered the submissions at the Bar with circumspection. 3 out of 9 witnesses have already been examined. The petitioners have been forwarded to custody on 17.08.2023.

8. It cannot be considered to be a case where trial has been protracted or procrastinated. The rigors of Section 37 of the NDPS Act comes into play.

9. At this juncture, the petitioners are not entitled to bail. However, the petitioners can apply for bail subsequently if trial is protracted any further. Trial is proceeding at a regular pace.

At this stage, petition stands rejected.

JUDGE

Comparing Assistant