

GAHC010218082024



2024:GAU-AS:12842

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

Case No. : Bail Appln./3210/2024

RUYEL UDDIN @ JAKIR UDDIN @ JAHIR UDDIN
S/O- ABDUL KHALIK, R/O- KACHUBARI, P.S. PATHARKANDI, DIST.
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A AHMED, U U KHAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

17.12.2024

- 1.** Heard Mr. A. Ahmed, counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Additional Public Prosecutor appearing for the State of Assam.
- 2.** This bail application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed by the petitioner, namely, Ruyel Uddin@Jakir Uddin@Jahir Uddin, praying for his bail in connection with Special

(NDPS) Case No. 35/2023.

3. The petitioner has been detained behind the bars since 13.04.2023 (for more than 1 year 07 months).

4. It is pertinent to mention herein that on an earlier occasion, the petitioner had approached this Court by filing a bail application under Section 439 of the Code of Criminal Procedure, 1973 and at that time, the prayer for bail was rejected by this Court, by order dated 02.04.2024 passed in BA No. 4335/23

5. This time the petitioner has again approached this Court seeking bail on the ground of prolonged incarceration and delay in culmination of the trial.

6. The gist of accusation in this case is that on 12.04.2023, one Asish Mahanta, Sub-Inspector of Police of Kathaltali Watch Post had lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, *inter alia*, alleging that on receipt of an information through reliable sources, a *naka checking* was conducted near Kurti bridge on National Highway No. 208 A and during the *naka checking* one Bajaj auto rickshaw bearing Registration No. AS-10-AC-8213 was intercepted and during search of the said vehicle 41 numbers of packets of suspected ganja wrapped in plastic papers were recovered. On weighing the recovered ganja, the weight of the same was found to be 191.005 kgs.

7. The learned counsel for the petitioner has submitted that the petitioner is the driver of the auto rickshaw from which the contraband was seized and he was hired by one Ali Afzal to transport some goods from Kurti to Chandkhira and he was not aware that the goods which were transported in his auto rickshaw were ganja.

8. The learned counsel for the petitioner has submitted that though the above ground was taken by the petitioner in his earlier bail application also,

however, in addition to that the fact that even after prolonged incarceration of more than 1 year 07 months of the petitioner, the charges are yet to be framed and the next date of the Special (NDPS) Case No. 35/2023 is fixed on 15.02.2025 for furnishing copies of documents under Section 230 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to the petitioner. Hence, it is submitted by the learned counsel for the petitioner that the petitioner has a case for bail on the ground of prolonged incarceration this time.

9. The learned counsel for the petitioner has submitted that though the contraband seized in this case was of commercial quantity and though apparently, it appears that the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would come into play, however, he submits that as the detention of the petitioner in this case is more than 1 year 07 months, his fundamental rights guaranteed under Article 21 of the Constitution of India, in view of his prolonged incarceration in this case, would override the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

10. The learned counsel for the petitioner has cited a ruling of the Apex Court in the case of "**Rabi Prakash Vs. State of Orissa**" reported in "**2023 SCC Online SC 1109**," wherein it has been observed by the Apex Court that "*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.*"

11. The learned counsel for the petitioner has also relied on ruling of the Apex Court in the case of "**Zakirul Islam @Md. Zakirul Islam @ Zakir Vs. State of Assam**" Special Leave to Appeal (Crl.) No. 3632/2024 dated

15.07.2024 and in the case of "**Ankur Chaudhary Vs. State of Madhya Pradesh**" Special Leave to Appeal (Crl.) No. 4648/2024 dated 28.05.2024, wherein the Apex Court granted bail to the petitioner in offence concerning commercial quantity of Narcotic Drugs and Psychotropic Substances on the ground of prolonged incarceration for more than 1 year 06 months.

12. On the other hand, Mr. M.P. Goswami, learned Additional Public Prosecutor has opposed the prayer for grant of bail to the petitioner on the ground that there are sufficient incriminating materials on record regarding his involvement in the alleged offence and hence, the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would be applicable in the instant case.

13. The learned Additional Public Prosecutor has also submitted that in the earlier bail application the plea taken by the petitioner that he was only a driver of the seized vehicle from which the contraband was recovered and was not having the conscious possession of the seized contraband as he was unaware of what has been carried in the vehicle driven by him has already been considered and rejected by this Court in his earlier bail application.

14. The learned Additional Public Prosecutor has also submitted that the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are very stringent and before granting bail to a person accused of an offence involving commercial quantity of contraband, the two conditions mentioned in Section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 have to be fulfilled, i.e., the Court shall have to be satisfied that there are reasonable grounds for believing that the petitioner is not guilty of offence mentioned in Section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and as well as Court must also arrived at a

satisfaction that the petitioner is not likely to commit any offence while on bail. He also submits that the length of the period of custody of the accused or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not consideration that can be treated as persuasive ground for granting relief to respondent under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

15. In support of his submissions, the learned Additional Public Prosecutor has cited following rulings:-

- i. **"Narcotics Control Bureau Vs. Mohit Agarwal"** reported in **"(2022) 18 SCC 374;"**
- ii. **"Mohammad Raqibuddin Vs. The Union of India"** [order dated 29.01.2024] in Bail Application No. 7/2024.
- iii. **"Daniel Kitharee Vs. The State of Assam"** [order dated 28.11.2024] in Bail Application No. 2438/2024.
- iv. **"Sujeet Kumar @Sujit Kumar Vs. Union of India"** [order dated 29.11.2024] in Bail Application No. 2969/2024.

16. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the scanned copy of the case record of Special (NDPS) Case No. 35/2023 very carefully.

17. I have also gone through the rulings cited by the learned counsel for both the sides in support of the submissions made by them.

18. The Supreme Court of India in **"Mohd Muslim @ Hussain Vs. State**

(NCT of Delhi)” reported in “**2023 SCC Online SC 352**” has observed that “*grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985*”.

19. The Apex Court in “**Rabi Prakash Vs. State of Orissa**” reported in “**2023 SCC Online SC 1109**,” has observed that “*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.*”

20. In the case of “**Ankur Chaudhary Vs. State of Madhya Pradesh**” (supra), the Supreme Court of India has observed as follows: -

“.....it is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.”

21. In this regard the observations made by the Apex Court in the case of **Satender Kumar Antil** reported in **AIR 2022 SC 3386** are relevant, same is quoted here in below:

“49. Sub-section (1) mandates courts to

continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the noncompliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to

complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own."

22. I have gone through the judgment of the Supreme Court in the case of ***Narcotics Control Bureau Vs. Mohit Agarwal*** (supra). In that case the petitioner was granted bail by the High Court after one year three months of detention, however, the Apex Court cancelled the bail on the ground of the embargo of Section 37 of the NDPS Act, 1985. Though, in paragraph No. 19 of the said judgment, there is an observation made by the Apex Court that the length of the period of custody of the accused or the fact that the charge-sheet has been filed and that the trial has been commenced are by themselves not consideration that can be treated as persuasive ground for granting bail to the accused under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, however, in the said case, the Supreme Court of India has not dealt with the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 vis-a-vis the constitutional right of an accused under Article 21 of the Constitution of India, whereas, in the case of ***Mohd Muslim @ Hussain Vs. State*** (supra), ***Rabi Prakash Vs. State of Orissa*** (supra), ***Ankur Chaudhary Vs. State of Madhya Pradesh*** (supra), the Apex Court has dealt with the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 vis-a-vis the constitutional right of the accused under Article 21 of the Constitution of India and has observed that 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 Narcotic Drugs and Psychotropic Substances Act, 1985.

23. In the rulings of the Coordinate Bench of this court, cited by the learned Additional Public Prosecutor, the prayer for bail were rejected considering the facts and circumstances of each case. In those cases, the court did not consider the prolonged incarceration as a factor weighing in favour of the petitioners. Every bail application has to be considered on the basis of facts involved in that case.

24. However, in view of the observations made by the Apex Court in the cases cited hereinabove, this Court is of considered opinion that for whatsoever reasons, if inordinate delay has been caused and if without any fault on the part of the petitioner he is kept under detention for a long period, it would certainly infringe his fundamental right guaranteed under Article 21 of the Constitution of India.

25. Under such circumstances, his constitutional rights guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37(1) (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and he would be entitled to get bail on the ground of prolonged incarceration only.

26. In the instant case, the present petitioner has been detained behind the bars for more than last 1 year 07 months and even the copies of documents referred to in Section 230 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are yet to be furnished to him.

27. Thus, in view of the facts and circumstances of this case and in view of

the observations made by the Apex Court in rulings cited hereinabove, this Court is of considered opinion that in the instant case also, the facts and circumstances are such that the long incarceration of the petitioner has outweighed the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and thus, he is entitled to get bail on the ground of infringement of his fundamental right under Article 21 of the Constitution of India.

28. In view of the above, the petitioner, namely, Ruyel Uddin@Jakir Uddin@Jahir Uddin, is allowed to go on bail of Rs. 1,00,000/- (Rupees One Lakh only) with two sureties of like amount (one of whom should be a government servant and residing within the State of Assam) subject to the satisfaction of the learned Session Judge, Karimganj, Assam with the following conditions:

- i.** That the petitioner shall cooperate in the trial of NDPS Case No. 35/2023, which is pending in the Court of learned Session Judge, Karimganj, Assam;
- ii.** That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;
- iii.** That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present petitioner;
- iv.** That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card, mobile number, and other contact details before the Trial Court;
- v.** That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during

such leave before the Trial Court; and

vi. That the petitioner shall not commit any offence while on bail.

29. With the above observation, this bail application is accordingly, disposed of.

JUDGE

Comparing Assistant