

GAHC010220222023



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

Case No. : Bail Appln./3528/2023

SANJAY KUMAR CHOUDHURY AND ANR
S/O RAM SARAN CHOUDHURY
R/O VILL- JATAHI, P.S. BAHUBBADI
DIST. MADHUBANI, BIHAR.

2: ARJUN KUMAR SAHNI
S/O RAJ KUMAR SAHNI
R/O VILL- JATAHI
P.S. BAHUBBADI
DIST. MADHUBANI
BIHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R MAJUMDAR

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

06.02.2024

1. Heard Mr. R. Majumdar, learned counsel for the petitioners. Also heard Mr. M.P. Goswami, learned Addl. PP, Assam.

2. The petitioners namely [1] Sanjay Kumar Choudhury and [2] Arjun Kumar Sahni have filed this application under Section 439 Cr.PC with prayer for bail as they are behind bars since 15.02.2022 in connection with Special (NDPS) Case No.27/2022 pending before the Court of Additional Sessions Judge, Karimganj arising out of Bazaricherra PS Case No. 42/2022 registered u/s 22(c)/25/29 of the NDPS Act.

3. It is submitted on behalf of the petitioners that they were arrested on 15.02.2022 and charge-sheet was laid against them on 30.04.2022. They have preferred a Bail Application No. 1766 of 2022 which was rejected vide order dated 01.09.2022. It is submitted that the petitioners are suffering immensely as they are behind bars for almost 2 years and only 3 witnesses out of 11 enlisted witnesses have been examined. The petitioners are employees of Swastik Roadways Private Limited. They are the driver and helper of the Company and they were not at all aware that contraband was being transported through the truck. It is very unlikely that the petitioners would be convicted and thus one condition of Section 37 of the NDPS Act goes in favour of the petitioners. It is apparent from the list of witnesses and the evidence that the place of occurrence was a busy area and there were many shops around the place of occurrence but not a single shopkeeper was made witness in this case. The independent witnesses are two labourers.

4. Per contra the learned Additional PP has raised serious objection stating that the case has been delayed not by the prosecution or by the Court, but by the defence. On 21.10.2022 and 23.05.2023 the petitioners had taken time to cross-examine the prosecution witnesses. The evidence of the witnesses does not at all exonerate the petitioners, rather one seizure witness has specifically stated that his signature was obtained at the place of occurrence. There is every likelihood that the proceeding will entail conviction. The bail petition ought to be rejected outright.

5. I have considered the submissions at the Bar with circumspection.

6. The learned counsel for the petitioners has relied with the decision of Hon'ble the

Supreme Court in the case of ***Rabi Prakash v. State of Orissa*** wherein vide order dated 13.07.2023 the Hon'ble the Supreme Court has observed in Special Leave to Appeal (Criminal) No. 4169 of 2023 that:-

“..... Prolonged incarceration, generally militates against the most specious fundamental right guaranteed under Article 21 of the Constitution in such situation, the conditional liberty must override the statutory embargo created u/s 37(1)(b)(ii) of the NDPS Act, 1985.”

7. The ratio of the decision of Hon'ble the Supreme Court in *Rabi Prakash's* case (*supra*) is not applicable to this case. Rabi Prakash was behind bars for more than 3½ years and only 1 out of 19 witnesses have been examined. In the instant case the petitioners are behind bars since 15.02.2022 and 3 out of 11 witnesses have already been examined. It cannot be conjectured at this juncture that trial is unlikely to conclude soon and the petitioners are unlikely to be convicted. It is true that trial has been delayed to a certain extent, but this is not because of the fault of the Court or the prosecution. The petitioners have themselves prayed for adjournments on two occasions.

8. Considering all aspects, I am not inclined to grant bail to the petitioners at this stage. Petition is rejected at this stage.

9. However, the petitioners can later file a fresh application for bail, if trial is procrastinated any further by the prosecution or by the Court, which will be considered as per merits of the case.

10. The trial Court is directed to expedite the trial for speedy disposal of this case.

11. Bail application is disposed of.

JUDGE

Comparing Assistant