

GAHC010221032023



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

Case No. : Bail Appln./3555/2023

ABDUL KADIR
S/O LATE MANJIR ALI
R/O VILL- DASGRAM (KANDIGRAM), P.S. NILAMBAZAR, DIST.
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

01.05.2024

Heard Mr M Ahmed, learned counsel for the petitioner, Abdul Kadir.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars for 397 days, since 31.03.2023, in connection with Special (NDPS) Case No. 24/2023, arising out of Ratabari PS Case No. 92/2023, registered under Sections 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, for short).

3. It is submitted on behalf of the petitioner that the petitioner is entitled to bail as he has been languishing in the jail for 397 days and trial has not yet commenced. Cognizance was taken on 19.09.2023, after charge sheet was submitted on 20.07.2023. Although the FIR was registered on 20.03.2023, the petitioner was arrested after 10 days as he was not found in possession of the contraband seized in connection with this case.
4. It is submitted on behalf of the petitioner that he is the owner of the vehicle which was intercepted by the investigating team and in this vehicle, the contraband was seized, but the petitioner is not responsible for transportation of drugs through his vehicle.
5. Heard Mr K Baishya, learned Additional Public Prosecutor for the State of Assam.
6. The learned Additional Public Prosecutor has raised serious objection stating that there are sufficient materials against the petitioner and this is the reason why charge sheet was laid against the petitioner. He was the owner of the vehicle seized in connection with transportation of contraband and his brother was in the vehicle transporting the contraband.
7. It is submitted that more than 1 ½ kgs of heroin was seized from the possession of the petitioner's brother.
8. I have considered the submissions at the Bar with circumspection.
9. The FIR unfolds that a tip off was received by the investigating team and a naka checking was conducted near the Veterabond Police Check Post on the PWD Road. The vehicle bearing Registration No. AS 11EC/2082, a Tata Intra vehicle, which was

travelling from the direction of Katlicherra towards Ratabari via Veterabond-Durlavcherra PWD road. The driver of the vehicle along with another person were found inside the goods carrier vehicle carrying scraps and waste tyres materials on the rear side of the vehicle. Proper procedure of investigation was followed. The driver identified himself as Md Shaju Mohammad and the other person identified himself as Md Abdul Kalam. Both the occupants admitted that they have drugs concealed in an iron drum kept on the rear side of the vehicle. The vehicle was allowed to be searched and after a thorough search, several articles were recovered along with 1.562 kgs of heroin.

10. These articles were seized in connection with this case and both the occupants of the truck were arrested and forwarded to custody. During investigation, the petitioner was arrested.

11. It is submitted on behalf of the petitioner that the forwarding report reflects the CDR analysis of co-accused reveals that Md Abdul Kalam, Md Shaju Mohammad, Abdul Hasib Khan and the present petitioner had continuously been in contact over phone, as per the CDR record.

12. It is also submitted that the statement of the accused persons under Section 161 CrPC, does not at all implicate that the petitioner is complicit.

13. The learned Additional Public Prosecutor has raised objection on the ground that this is not a case where trial has been procrastinated by the prosecution or by the Court. The conduct of the co-accused who is absconding is relevant. The co-accused, Md

Atiqur Rahman Tapadar, has not appeared before the learned trial Court and this is the reason of delay in the trial.

14. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in *State By (NCB) Bengaluru –Vs- Pallulabid Ahmad Arimutta & Another* and other petitioners, including Union of India, NCB and others as well as other respondents, in connection with Special Leave to Appeal (Crl.) Nos. 242/2022, 1569 of 2021, 1454 of 2021 and others. It has been observed by Hon'ble the Supreme Court that:-

“9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

11.

However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding

recovery of substantial commercial quantities of drugs from a rented accommodation occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A-4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB succeeds in SLP (Crl.) No. 1569/2021. The bail granted to the respondent-Mohammed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody.

15. In this instant case too, the contraband was allegedly found in the vehicle of the petitioner. The charge sheet has been laid against the petitioner. The petitioner is the owner of the vehicle and one co-accused is his brother. Moreover, trial has not commenced in this instant case as one co-accused is evading arrest.

16. The case number, being AB No. 4325/2023 (*Md Atiqur Rahman Tapadar –Vs- State of Assam*), relied upon by the petitioner, reveals that the absconding accused had prayed for anticipatory bail and vide order dated 15.02.2024, a coordinate Bench of this Court had passed an order calling for a report from the Officer-In-Charge of Ratabari Police Station to ascertain as to whether the absconding co-accused person is the same

person, who is the petitioner of AB No. 4325/2023 and a direction was given to the OC not to take coercive action against the allegedly absconding accused.

17. It has also been observed by Hon'ble the Supreme Court in *Pallulabid Ahmad Arimutta's case (supra)*, while cancelling the bail granted to Mohammed Afzal that as the contraband was found in his rented accommodation, he was in conscious possession of commercial quantity of psychotropic substances and, thus, his bail order was cancelled. Similarly, in this case, this Court refrains from granting bail to the petitioner, as charge sheet has been laid against the petitioner after a thorough investigation, as the contraband was found in his vehicle and his brother was an occupant of his vehicle, which was transporting more than 1 ½ kgs of heroin. The double pronged embargo under Section 37 of the NDPS Act, is a fetter to the bail application at this stage.

18. Petition with prayer for bail is rejected at this juncture.

19. However, the petitioner is at liberty to apply for bail later, if trial is procrastinated further. The learned trial Court is directed to expedite the trial and if required to split up the case against the absconding accused for speedy disposal of the case against the accused who are behind bars.

20. Bail Application stands disposed of.

JUDGE

Comparing Assistant