

GAHC010221822023



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

Case No. : Bail Appln./3562/2023

ZAKIRUL ISLAM @ MD ZAKIRUL ISLAM @ ZAKIR
S/O LATE ABDUL KARIM
C/O RASHIDA KHATUN
VILL- JHOWDANGA PART-III
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 18-01-2024

1. Heard Mr. HRA Choudhury, learned Senior Counsel for the petitioner assisted by learned counsel Mr. A.T. Sarkar.

2. The petitioner, namely, Zakirul Islam @ Md. Zakirul Islam @ Zakir has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 04.10.2022 in connection with NDPS Case No. 320/2022 arising out of Bharalumukh P.S. Case No. 277/2022 registered u/s 22(c) of the NDPS Act and pending in the Court of learned Additional Sessions Judge No. 3 cum Special Judge (NDPS Act) Kamrup (M) at Guwahati.

3. The FIR unfolds that a tip off was received by the informant that the present petitioner, C/O Rashida Khatun of Jhowdanga Part-III has concealed some contraband in his car bearing Registration No. AS-01-FE-7223 (Nissan Car). The investigating team conducted a search operation and found the car near Apollo Hotel and recovered a brown coloured bag beside the driving seat of the vehicle containing 10000 yaba tablets. Cash amounting to Rs. 1 lac was also recovered. The petitioner was then arrested and the articles were seized. On completion of investigation charge-sheet was laid against the petitioner on 07.12.2022. Charges were framed on 02.03.2023. Two witnesses were examined on 29.03.2023.

4. It is submitted by the learned Senior Counsel on behalf of the petitioner that 17 dates have passed and since 29.03.2023, not a single witness has been examined. The petitioner's fundamental right to personal liberty has been curtailed as trial has been procrastinated. The petitioner deserves bail and there is no prima facie case to reject the bail petition. The petitioner has relied on the decision of Hon'ble the Supreme Court in **Satender Kumar Antil v. CBI and Another**, reported in **(2022) 10 SCC 51** wherein it has been observed that:-

“.....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.”

5. Relying on the decision it is submitted by the learned counsel for the petitioner that the petitioner has been behind bars for no fault of his. The petitioner has thus prayed for bail.

6. Heard Mr. M.P. Goswami, learned Addl. PP, Assam.

7. The learned Addl. PP has raised serious objection stating that the petitioner was caught with 10000 yaba tablets. Only five witnesses are enlisted in the charge-sheet and two witnesses have already been examined. This cannot be considered to be a case of procrastination of trial as the petitioner was forwarded to custody on 04.10.2022. Charges were framed on 07.12.2022.

8. I have considered the submissions at the Bar with circumspection. I have also perused the scanned copies of the LCR. The scanned copies of the LCR reveals that charge-sheet was laid against the petitioner on 16.12.2022 and thereafter this case was fixed for consideration of charge. After charges were framed on 02.03.2023 this case was fixed for evidence on 16.03.2023, 29.03.2023, 25.04.2023, 19.05.2023, 02.06.2023, 30.06.2023, 14.07.2023, 27.07.2023. Meanwhile vide Misc. Transfer Case No. 5/2023 this case was transferred from Additional Sessions Judge No. 5 to the Court of the learned Additional Sessions Judge No. 3 and then this case was fixed for appearance and when this case was taken-up by Additional Sessions Judge No. 3 this case was then fixed for evidence on 10.08.2023. Vide order dated 04.08.2023 the petitioner had to be forwarded to South Salmara, Mankachar in connection with Mankachar P.S. Case No. 269/2023 and thereafter orders were passed for production of the petitioner before the trial Court in connection with NDPS Case No. 320/2022 from Mankachar. Finally, after his production, this case was fixed for appearance on 05.10.2023, 17.10.2023, 31.10.2023 and 11.01.2024.

9. Thus it is apparent that as the petitioner had to be shifted from Guwahati to Mankachar, there was a delay in the proceeding during the interval when the petitioner was shifted to Mankachar and again brought back from Mankachar to Guwahati. It is apparent that there was no delay of 17 dates and trial was not procrastinated by the trial Court, as well as by the prosecution. A transfer petition was also disposed after charge was framed and when the case was pending for evidence. If a balance has to be struck between the rigours of Section 37 of the NDPS Act and the personal liberty of the petitioner, at this juncture it cannot be said that the personal liberty of the petitioner has been curtailed due to the procrastination of the trial. Two witnesses have already been examined. The charge-sheet reveals that five witnesses have been enlisted as prosecution witness in the charge-sheet. Only 3 witnesses are yet to be examined out of the total enlisted 5 witnesses. The import of the section under which the petitioner is facing trial does not entitle him to bail at this juncture. The ratio of this case is not similar to the decision referred to by the learned counsel for the petitioner in ***Shariful Islam @ Sarif v. the State of West Bengal*** wherein vide order dated 04.08.2022 in Criminal Appeal No. 4173/2022 the Hon'ble Supreme Court granted bail to the accused since he was behind bars for 1 year 6 months. In *Shariful Islam's* case (*supra*) the accused was granted bail because it was unlikely that trial would be concluded in the near future. However, in this case it is not unlikely that trial would not be concluded in the near future. Only 3 witnesses are to be examined.

10. In view of my foregoing discussions, petition is rejected at this stage with a direction to the trial Court to expedite the trial for speedy disposal of the case.

JUDGE

Comparing Assistant