

GAHC010234772024



undefined

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

Case No. : Bail Appln./3497/2024

RAJU AHMED
S/O AHID MIAH
R/O VILL- THAKUR MURA (KHEDABARI), P.S. SONAMURA
DIST. SEPAHIJALA, TRIPURA, PIN-799102

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR SISHIR DUTTA, MR P BORA, MS K BORAH, MS S MOCHAHARI, MR. S DUTTA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

05.12.2024

Heard Mr. S Dutta, learned senior counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam for the respondent State.

2. By this second bail application under Section 439 Cr.P.C. the petitioner, namely, **Raju Ahmed**, has prayed for bail who was arrested on 17.11.2022 in connection with **Special (NDPS) Case No.163/2022 arising out of**

Bazaricherra Police Station Case No.198/2022 under Section **21(C), 25, 29 of the NDPS Act** pending before the Court of the learned Additional Sessions Judge, Karimganj.

3. The case of the prosecution is that on 16.11.2022 at about 9.A.M, Officer-in Charge of Bazaricherra Police Station has received an information from I/C Rangamati AD Camp that during naka checking they apprehended one suspected person i.e. the petitioner who was the driver of a Bolero vehicle bearing registration No.TR01 J 3471 which was supposed to carry huge quantity of drugs, concealed in a secret chamber of the vehicle from Mizoram and transported to Agartala, in the State of Tripura through Assam. Accordingly, a G.D. Entry was recorded vide Bazaricherra P.S GDE No.267 dated 16.11.2022 and instructed one SI of police to make an enquiry in the matter and also sent a team to the spot. The search and seizure was accordingly made in the presence of the witnesses and on being searched, a total of 99 numbers of soap cases containing heroin packed with plastic packets were found inside the secret chamber of the said vehicle. Subsequently, the petitioner was arrested.

4. The learned counsel for the petitioner has submitted that the prosecution has failed to prove their case against the present petitioner and regarding the non-compliance of Section 42 of the NDPS Act, this Court was of the finding that it cannot be said at this stage as to whether there was any violation under Section 42(1) and (2) of the NDPS Act as the prosecution did not get the opportunity to produce and exhibit any document.

5. It is also the submission of the learned counsel for the petitioner that out of 10 witnesses, only three witnesses have been examined and there is a bleak chance of completion of the trial in the near future. The accused petitioner has

been detained in custody for last 759 days and during the period of two years, the trial court has failed to complete the trial.

6. It is further submitted that as there is violation of Section 42 of the NDPS Act, the accused petitioner cannot be convicted for the alleged offence carrying commercial quantity of heroin. The violation of Section 42 of the NDPS Act should be taken into consideration while considering bail application. Learned counsel for the petitioner further submitted that the petitioner is an innocent person and never involved in the business of smuggling of drugs. He was totally unaware of any secret chamber in the vehicle.

7. In support of his submissions, the learned senior counsel for the petitioner has placed reliance upon the following decisions: (i) (2023) 0 SC 707 (Ravi Prakash vs State of Odisha). (ii) Special Leave to Appeal (Crl.) No. 3632/2024 (Zakirul Islam @ Md. Zakiraul Islam @ Zakir vs State of Assam). (iii) BA No. 2917/2023.

8. On the other hand, the learned Additional Public Prosecutor submits that charge sheet was submitted on 29.03.2023 and charge was framed on 06.10.2023. He further submitted that out of ten witnesses five witnesses have already been examined. On 22.11.2024, PW-5 was examined but cross examination of PW-5 was reserved on the prayer of the learned defence counsel. So, it transpires that delay was caused not only by the prosecution or the trial court but due to adjournments sought by the defence counsel also.

9. Having heard the learned counsel for the parties and on perusal of the trial court record, it is true that the petitioner has been languishing in judicial custody for last two years and out of ten witnesses, five witnesses have been

examined before the trial court. It is also not in dispute that commercial quantity of heroin was recovered from the Bolero vehicle which was driven by the accused petitioner at the relevant time of detection. There is no explanation from the side of the accused petitioner why such large quantity of heroin was carried in the Bolero vehicle. As it appears that five witnesses have already been examined, as such at this stage, it cannot be said that the trial is not progressing.

10. It the case of Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav and another reported in (2005) O Supreme SC 104, it was held by the Hon'ble Supreme Court that:

".....it is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so...."

11. As it appears that commercial quantity of heroin was recovered from the

conscious possession of the petitioner, the twin conditions referred in Section 37 of the NDPS Act cannot be satisfied on the ground of prolonged incarceration.

12. Hence, prayer for bail is rejected.

13. It appears from the record that the petitioner has moved one bail application before the Hon'ble Supreme Court vide Special Leave to Appeal (Criminal) No. 6092/2024. Though the bail application was dismissed as not pressed, however, the Hon'ble Supreme Court has observed as follows:

“.....taking into consideration the fact that the petitioner is in custody past one and half years, we request the trial court to take all possible endeavors to complete the trial within a period of six months from today.....”

14. It appears from the order that the Hon'ble Supreme Court passed the order on 03.05.2024 and the trial court was directed to complete the trial within six months i.e. within 03.11.2024. But it reveals that the trial has not yet been completed. The trial court has not given any explanation why there was such delay in completion of the trial. However, the trial court is directed to expedite the trial of the case and dispose of the matter as early as possible in view of the observation of the Hon'ble Supreme Court.

15. Accordingly, the bail application is disposed of.

JUDGE

Comparing Assistant