

GAHC010236512024



2024:GAU-AS:12387

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

Case No. : Bail Appln./3474/2024

BHADRA DOHUTIA
S/O AKHESWAR DOHUTIA
R/O VILL- 1 NO. SORU MECHAI
P.S. KAKOPATHER,
DIST.TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR SARFRAZ NAWAZ, SAMIM RAHMAN, MR S A
BARBHUYAN, MS SURAYA RAHMAN, MR A W AMAN, MR. SURAJIT DAS

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

06.12.2024

1. Heard Mr. S. Nawaz, learned counsel for the petitioner Bhadra Dohutia.
2. The petitioner has filed this application under Section 483 of the Bharatiya

Nagarik Suraksha Sanhita, 2023 with prayer for bail as he is behind bars since 16.03.2023 in connection with Special NDPS Case No. 35/2023 arising out of Khatkati P.S. Case No. 26/2023 under Sections 21(C)/29 of the NDPS Act.

3. Heard Mr. B. Sarma learned Additional Public Prosecutor, Assam for the respondent State.

4. It is submitted that earlier the petitioner preferred a bail petition which was rejected by this Court vide order dated 05.02.2024, in connection with B.A. No. 4703/2024. It is further submitted that the learned Trial Court has procrastinated the trial and has not complied with the order of this Court, wherein the Trial Court was directed to expedite the trial for speedy disposal of the case by resorting to Section 309 of the Cr.PC and fixing block dates for examination of the witnesses. It is submitted that on this ground alone, the petitioner is entitled to bail as the dates for evidence were fixed after long gaps without resorting to Section 309 of the Cr.PC. It is submitted that the petitioner's right to personal liberty has been curtailed as only 1 witness has been examined so far and the Trial Court has procrastinated the trial by fixing the dates of evidence after intervals of more than a month.

5. Learned Additional Public Prosecutor has submitted that the petitioner is not entitled to bail. Only 1 witness has been examined so far. The petitioner was caught in conscious possession of more than 0.5 Kgs of heroin i.e. 625.74 gms, and thus the petitioner has committed a grave offence and his bail is barred by Section 37 of the NDPS Act.

6. I have considered the submissions at the Bar with circumspection. The twin condition under Section 37 of the NDPS comes into play. Only 1 witness has been examined so far. At this juncture, it cannot be considered that the

petitioner's right to liberty has been curtailed. The merits of this case are not brought to the fore.

7. I have scrutinized the scanned copies of the Trial Court Records. Indeed trial has been procrastinated but at this juncture, due to the procrastination of the trial, the petitioner is not entitled to bail.

8. The learned counsel for the petitioner has relied on the decision of ***Hussainara Khatoon and Ors Vs. Home Secretary, The State of Bihar*** reported in (1980) 1 SCC 81, wherein it has been observed that:

“5. There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases. It is a sad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even delay of one year in the commencement of the trial is bad enough: how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

So also Article 3 of the European Convention on Human Rights provides that :

Every one arrested or detained shall be entitled to trial within a reasonable time or to release pending trial.

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi v. Union of India. We have held in that case that Article 21 confers a fundamental right on every person

not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of This fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21. That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date. But one thing is certain and we cannot impress it too strongly on the State Government that it is high time that the State Government realised its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases. We may point out that it would not be enough merely to establish more courts but the State Government would also have to man them by competent judges and whatever is necessary for the purpose of recruiting competent judges, such as improving their conditions of service, would have to be done by the State Government, if they want to improve the system of administration of justice and make it an effective instrument for reaching justice to the large masses of people for whom justice is today a meaningless and empty word. "

The ratio of ***Hussainara Khatoon's case*** is not applicable in this case, as ***Hussainara Khatoon's case (Supra)*** is relating to a petition for a writ of Habeas Corpus due to the shocking State of Affairs in regard to administration of justice in the State of Bihar. The aggrieved were lodged in the jail for years together, whereas in this present case, the petitioner has been behind bars since 16.03.2023.

9. It cannot be denied that trial has been procrastinated. However, at this juncture, I am inclined to reject the bail petition.

10. Petition with prayer for bail is rejected at this stage.

11. The learned Trial Court is further directed to expedite the trial for speedy disposal of this case. The petitioner is at liberty to apply for bail subsequently, if trial is procrastinated any further by the Trial Court or by the prosecution.

JUDGE

Comparing Assistant