

GAHC010242152023



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

Case No. : Bail Appln./3868/2023

NAYAN CHANDRA KURI AND ANR.
S/O KANU BHUSAN KURI
R/O BIPIN PAUL ROAD,
CHORAKURI
WARD NO. 7,
KARIMGANJ TOWN,
P.O. AND P.S. KARIMGANJ
DIST. KARIMGANJ, ASSAM
PIN- 788710

2: BIDHAN KURI
S/O LATE MUKUL KURI
R/O BIPIN PAUL ROAD

CHORAKURI
WARD NO. 7

KARIMGANJ TOWN

P.O. AND P.S. KARIMGANJ
DIST. KARIMGANJ
ASSAM
PIN- 78871

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

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. S.C. Biswas, learned counsel for the petitioners. Also heard Mr. B.B. Gogoi, learned Addl. PP, Assam.

2. The petitioners namely [1] Nayan Chandra Kuri and [2] Bidhan Kuri have filed this application under Section 439 Cr.PC with prayer for bail as they are behind bars since 27.06.2022 in connection with Special (NDPS) Case No.99/2022 pending before the Court of Additional Sessions Judge, Karimganj arising out of Karimganj PS Case No. 406/2022 registered u/s 21(c)/22(b)/29 of the NDPS Act.

3. It is submitted on behalf of the petitioners that they were arrested way back on 27.06.2022 and they are languishing in jail for 585 days. Charge-sheet was submitted against them on 13.10.2022. The petitioners were allegedly caught with 122 gms of heroin. 5 witnesses have been examined but the witnesses are not cross-examined. It is unlikely that trial will conclude soon. The petitioner's personal liberty have been curtailed due to the procrastination of the trial. The petitioners have relied on the decision of this Court in:-

- i. Bail Application No. 1195 of 2023 in the case of Ashab Uddin vs. State of Assam;
- ii. Bail Application No. 2475 of 2023 in the case of Haris Mia @ Harij Mia vs. State of Assam;
- iii. Bail Application No. 2316 of 2023 in the case of Ratfur Rahman @ Tipu vs. State of Assam;
- iv. Bail Application No. 2661 of 2023 in the case of Nasir Uddin vs. State of Assam;

and

v. Bail Application No. 2925 of 2023 in the case of Mohbubur Rahman v. State of Assam.

4. It is submitted that in the afore-mentioned cases this Court was pleased to grant bail to the petitioners due to the procrastination of trial as witnesses were not examined and the petitioners were behind bars for prolonged period. It is submitted that the petitioners are similarly circumstanced petitioners and they to deserve bail due to procrastination of trial.

5. The learned Addl. PP has raised serious objection stating that this case falls within the rigour of Section 37 of the NDPS Act. The twin conditions that the prosecution has to be heard and no objection has to be placed by the prosecution and that there is no likelihood of any further offence being committed by the petitioners and no likelihood of conviction, cannot be said to be fulfilled at this stage. The scanned copies of the LCR reveal that 5 witnesses have been examined out of the 7 enlisted witnesses.

6. I have considered the submissions at the Bar with circumspection. I have also perused the decision of the co-ordinate Bench of this Court in B.A. No. 1995 of 2023, B.A. No. 2475 of 2023, B.A. No. 2316 of 2023, B.A. No. 2661 of 2023 and B.A. No. 2925 of 2023. In B.A. No. 2925 of 2023, the petitioners were behind bars for 682 days and 6 out of 11 witnesses have been examined. In B.A. No. 2661 of 2023 the petitioner was behind bars for 881 days. In connection with B.A. No. 2316 of 2023 the search operation was conducted between sunset and sunrise. In connection with B.A. No. 2475 of 2023 charges were framed on 28.01.2022 and not a single witness was examined till 30.08.2023. In connection with B.A. No. 1995 of 2023, out of 8 prosecution witnesses 7 have become hostile and hence not supported the prosecution case whereas petitioner was behind bars for 720 days.

7. Thus it is apparent that the ratio of the decisions referred to by the petitioner is

not applicable to this case. In this case the petitioners were behind bars for 585 days and 5 witnesses have already been examined and cross-examined. It is true that one witness has been declared as hostile witness, but at this juncture it cannot be conjectured that the evidence of the hostile witness causes a dent in the evidence. Moreover this case is at the fag end of trial.

8. I am not inclined to grant bail to the petitioners at this stage. Under the facts and circumstances of the case as discussed above, petition with prayer for bail stands rejected at this stage.

9. Bail application is disposed of.

JUDGE

Comparing Assistant