

GAHC010247972023



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

Case No. : Bail Appln./3972/2023

MIZAN HUSSAIN @ MIRJAN HOSSEN
S/O CHADEK MIAH, VILL- RABINDRA NAGAR, 6/20, WARD NO. 06, P.S.-
SONAMURA, DIST-SIPAHIJALA, WEST TRIPURA, TRIPURA, INDIA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A AHMED, MR. I U CHOWDHURY, MR J M SULAIMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 27-08-2024

Heard Mr. H.R.A. Choudhury, learned Senior Counsel for the petitioner Mizan Hussain @ Mirjan Hossen, who has filed this application under Section 439 of the Code of Criminal Procedure, 1973 (the CrPC for short) with prayer for bail as he is behind bars since 27.03.2022 in connection with Karimganj Special (NDPS) Case No. 48/2022 arising out of Badarpur GRPS Case No. 25/2022

under Sections 20(b)(ii)(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act for short).

2. Heard Mr. M.P. Goswami, learned Additional Public Prosecutor, Assam for the respondent State. It is submitted that the petitioner is behind bars for more than 2 (Two) years 5 (Five) months. His right to personal liberty has been infringed. Charge sheet was submitted on 01.06.2022. It is further submitted that the petitioner is only 23 (Twenty Three) years and at the prime of his youth, he was arrested and forwarded to custody. Out of 9 (Nine) witnesses, 3 (Three) witnesses have already been examined. 6 (Six) Witnesses are yet to be examined. The last witness was examined on 09.11.2023. This reflects that the petitioner will have to be behind bars if he is not granted bail till the conclusion of trial.

3. The petitioner has relied on decision of the Hon'ble Supreme Court in *Ankur Chaudhary vs. State of Madhya Pradesh* wherein vide order dated 28.05.2024 in connection with Special Leave to Appeal (Crl.) No. 4648/2024, the appellant was granted bail. It was observed by the Hon'ble Supreme Court that:

“Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

In view of the above, we are inclined to allow this petition and direct to enlarge the petitioner on bail on furnishing the suitable bail bonds and sureties and on such other terms and conditions as may be deemed fit by the trial Court.”

4. It is further submitted that the appellant Ankur Chaudhary was behind bars for more than 2 (Two) years and 4 (Four) witnesses have been examined but they have not supported the case of the prosecution. It is further submitted that the petitioner is similarly circumstanced as in this case too, 3 (Three) witnesses have been examined.

5. On the contrary, learned Additional Public Prosecutor has raised objection stating that the instant case is not similar to Ankur Chaudhary's case as in this instant case, the evidence directly incriminates the petitioner and the embargo under Section 37 of the NDPS Act comes into play.

6. Learned Additional Public Prosecutor has relied on the decision of the Hon'ble Supreme Court in *Narcotics Control Bureau vs. Mohit Aggarwal* wherein vide order dated 19.07.2022 in Criminal Appeal No. 1001-1002 of 2022 [Special Leave to Appeal (Crl.) No. 6128-29 of 2021], the Hon'ble Supreme Court has set aside the judgment and order of the High Court of Judicature at Delhi, granting bail to the respondent Mohit Aggarwal. It was held by the Hon'ble Supreme Court in Mohit Aggarwal's case (*supra*) that:

"18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

19. As a result of the aforesaid discussion, the present appeals are allowed and the impugned order releasing the respondent on post-arrest bail, is quashed and set aside. The bail bonds of the respondent are cancelled and he is directed to be taken into custody forthwith."

7. I have considered the submissions at the bar with circumspection.

8. The trial Court records reveals that charges have been framed against the petitioner under Section 20(b)(ii)(C)/29 of the NDPS Act. The evidence is not

appreciated at this juncture as this is a petition with prayer for bail. Charge sheet was laid against the petitioner and the co-accused as on 26.03.2022 the petitioner was found in possession of cannabis of 3 (Three) kgs inside a backpack. Another trolley bag containing 4 (Four) packets of cannabis weighing around 12 (Twelve) kgs was also found. Further, on investigation, the investigating team found a luggage bag containing cannabis, weighing 5 (Five) kgs 900 grams.

9. The brief facts of this case was that on 26.03.2022, a secret information was received and the GRP team who was on checking duty in a running train i.e. train No. 13174 UP (Sealdah Kanchanjunga Express) from Karimganj to Badarpur Railway Station, recovered 2 (Two) packets of suspected cannabis carried in a bag and also detained 2 (Two) persons in the coach. On further investigation, another team joined them and found 2 (Two) packets of ganja recovered from the possession of 2 (Two) minors, who are juveniles in conflict with law and they had admitted that they were carrying the ganja along with them from Agartala. The juveniles were led by the present petitioner who was then apprehended and found carrying the aforementioned quantity of ganja as described above.

10. It is submitted that the present petitioner is innocent. He was proceeding towards Guwahati as he was not well. While he was sleeping, the miscreants who had been carrying the ganja fled as soon as they saw the police. The bags which were found near the petitioner, were left by the miscreants and the police who suspected that the petitioner was carrying the contraband, arrested him and since then, he has been languishing in the jail.

11. It is true that the petitioner has been behind bars for more than 2 (Two) years 5 (Five) months. 6 (Six) witnesses are yet to be examined.

12. I have considered the peculiar facts and circumstances of this case. I have also considered the submission that no formal criminal antecedents could be produced by the prosecution to resist the bail prayer of the petitioner. I have also considered the age and the antecedent of the petitioner. Indeed the length of detention militates against the precious fundamental right to liberty. It appears that a balance has to be struck while considering his bail petition. The facts and circumstances of Mohit Aggarwal's case are not similar to the instant case. I have considered the submission of the petitioner that he is willing to cooperate with the trial and to abide by any stringent bail conditions if imposed upon him.

13. In view of my foregoing discussions, petition is allowed. The petitioner is enlarged on bail on furnishing a bail bond of Rs.1,00,000/- (Rupees One Lac) with two local sureties of like amount to the satisfaction of the learned trial Court under the conditions that:

- (i) The petitioner shall cooperate with the trial.
- (ii) The petitioner shall not jump the bail
- (iii) The learned trial Court may impose additional conditions of bail to secure the attendance of the petitioner. The learned trial Court is at liberty to cancel the bail if the petitioner fails to abide by any of the bail conditions.

14. In terms of the above observations, this Bail Application stands

15. Send back the Trial Court Records.

JUDGE

Comparing Assistant