

GAHC010249702023



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

Case No. : Bail Appln./4149/2023

DHIRENDRA KR CHOUDHURY
S/O- RAM KR CHOUDHURY, RESIDENT OF VILL- RAILWAY STATION, NEW
BONGAIGAON, POLICE STATION AND DISTRICT- BONGAIGAON, ASSAM,
PIN- 783380

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. J KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 15-02-2024

- 1.** Heard Mr. J. Kalita, learned counsel for the petitioner.
- 2.** The petitioner, namely, Dhirendra Kr Choudhury has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since

24.06.2023 in connection with Karimganj Special Case No. 17/2023 arising out of Karimganj P.S. Case No. 160/2023 registered u/s 20(b)(ii)(C)/29 of the NDPS Act, 1985.

3. Heard Mr. B.B. Gogoi, learned Addl. PP, Assam.

4. It is submitted on behalf of the petitioner that only 7 kgs of ganja was seized allegedly from the possession of the petitioner but he has been booked u/s 20(b)(ii)(C)/25 of the NDPS Act unfortunately. The petitioner has been clubbed with other accused as a total of 38 kgs of ganja has been seized in connection with this case. The 2 independent witnesses are the Manager of the hotel and the employee of the hotel from the premises of which hotel the 'ganja' was seized in connection with this case. Thus the independent witnesses cannot be considered to be independent witnesses at all. The petitioner has been languishing in the jail for almost 1 year and not a single witness has been examined. Charge was framed sometime in the month of October, 2023 and not a single witness has been examined. The FIR is contradictory to the charge-sheet. It has been alleged in the FIR that 38 kgs of ganja has been seized in connection with this case whereas charge-sheet has been laid in connection with seizure of 33.033 kgs of ganja. It is unlikely that this trial would entail conviction. There are other contradictions as well. The date and time of arrest memo is shown as 24.06.2022 at 12 noon whereas the date and time shown in the FIR is 23.02.2022. It is apparent that the investigation was conducted in a lackadaisical manner. Very small quantity of 'codeine' was seized in connection with this case. These articles can be said to have been seized from the independent witnesses also as the articles were seized from the premises of their hotel.

5. The learned Addl. PP has raised serious objection stating that when charge-

sheet has been submitted, it is for the trial Court to consider the intricacies and merits of the evidence. Charge has already been framed and without examination of the witnesses the petitioner cannot be enlarged on bail. The ganja seized in connection with this case is the total quantity seized and the quantity seized from each individual cannot be separated for the convenience of bail.

6. I have considered the submission at the Bar with circumspection.

7. The petitioner has relied on the decision of Hon'ble the Supreme Court in ***Mohd Muslim @ Hussain v. State (NCT of Delhi)*** wherein it has been observed that:-

“20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in **Union of India v. Rattan Malik**). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by **Section 37** of the Act, given the imperative of **Section 436A** which is applicable to offences under the **NDPS Act** too (ref. **Satender Kumar Antil** supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

8. I have scrutinised the scanned copies of the LCR. It is true that there was also delay in framing charge. Charge was framed on 13.10.2023. Not a single witness has been examined so far. The essence of the FIR is that a tip off was received by the OC of Karimganj P.S. at about 1:40 PM on 23.02.2023 that a large quantity of narcotics are being concealed inside the Gouri Hotel, Karimganj by two drug peddlers. A search operation was conducted in the hotel room and the present petitioner was apprehended. Two packets of ganja were seized from the present petitioner weighing 6.118 kgs + 1.067 kgs. During the same search operation 7 packets of ganja were seized from another accused Rituraj Kumar.

Other articles were also seized in connection with this case.

9. It is true that the forwarding report reveals that when the search was conducted in Gouri hotel, a total of 38.033 kgs of ganja was recovered and finally charge-sheet was laid showing that both the accused Dhirendra Kr Choudhury and Rituraj Kumar were apprehended with ganja and cannabis and codeine cough syrup from Gouri Hotel Room No. 7A of Karimganj Town. Charges have been recently framed against the present petitioner. It is true that the weight of ganja showed in the charge-sheet was 33.033 kgs but at this juncture this Court abstains from dealing with the intricacies and technicalities of the weight of the ganja. The rigour of Section 37 of the NDPS Act comes into play at this juncture. Due to the contradictions highlighted by the petitioner, it cannot be held by this Court, dealing with a bail application, that the trial will not entail conviction. Witnesses are yet to be examined. It cannot be ignored that there was a delay in the commencement of trial, but the delay cannot be considered to be to the extent that the personal liberty to the petitioner has been curtailed. The case of Mohd Muslim @ Hussain is not applicable. The case is not similar in this case. Mohd Muslim @ Hussain was behind bars for more than 7 years and it was held that he was not found in possession of contraband.

10. Considering all aspects and in view of my foregoing discussions petition is rejected at this stage. On further procrastination of this case the petitioner is at liberty to apply for regular bail and the Court may consider the bail petition as per merits of the case. The trial Court is also directed to expedite the trial for speedy disposal of this case.

JUDGE

Comparing Assistant