

GAHC010256262023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 4170/2023

Ashok Kumar, aged about 74 years,
Son of Ram Nath,
Resident of Sakti Colony, Jandli,
Model Town, Umbala, P.S.-Umbala,
District- Umbala, State-Haryana,
PIN-134003.

.....Accused/Petitioner

-Versus-

The State of Assam,
Represented by the Public Prosecutor of Assam

.....Respondent.

Advocate for the Petitioner : Ms A Medhi

Advocate for the respondent : Mr B B Gogoi, APP, Assam.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 01.02.2024

ORDER

Heard Ms A Medhi, learned counsel for the petitioner, Ashok Kumar.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 27.10.2022, in connection with NDPS Case No. 18/2023, arising out of Basistha PS Case No. 941/2022, under Sections 20(b)(ii)(C)/25/29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS, for short).

3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioner that the petitioner is 74 years old. He is a resident of Haryana and he has been languishing in the jail for 496 days. Not a single witness has been examined so far. The petitioner's personal liberty has been curtailed due to his prolonged incarceration. Due to the procrastination of the proceeding, the rigour of Section 37 of the NDPS

Act pales into insignificance as the prolonged incarceration militates against the embargo under Section 37 of the NDPS Act.

5. The learned Additional Public Prosecutor has raised objection stating that the seizure list clearly reveals that the petitioner is 64 years old and the petitioner was found in conscious possession of 2104.800 kgs of ganja.

6. The FIR unfolds that a reliable information was received by the investigating team on 26.10.2022. At about 07:00 am, a truck bearing Registration No. HR-38-T-2913 was intercepted at the naka-checking point at Jorabat Tiniali and the petitioner was apprehended along with the co-accused, Jitender Singh. The valid challan was relating to ginger, but in the garb of carrying ginger, the petitioner and the co-accused were carrying 2104.800 kgs of ganja.

7. It is admitted that charge sheet has been laid against the petitioner, but not a single witness has been examined.

8. I have perused the scanned copies of the LCR.

9. The charge sheet was laid against the petitioner on 19.01.2023 and this case was transferred to the Court of the learned Additional Sessions No. 2,

Kamrup (Metro), for disposal. Thereafter, charge was framed on 19.04.2023.

At present, not a single witness has been examined.

10. It is submitted on behalf of the petitioner that the petitioner is 74 years old and he is suffering from various ailments, including cataract. The Health Status Report dated 02.01.2024 forwarded by the Jail Authority of Central Jail, Guwahati, reveals that the petitioner is suffering from decreased vision of both eyes with burning sensation. He is also suffering from decreased hearing. He was suffering from Urinary Tract Infection (UTI), but after medicine the infection has been resolved. He is suffering from major cataract of left eye with immature cataract of right eye.

11. The petitioner has submitted his Driving License, which reflects that his date of birth is 13.04.1949. The Driving License is marked as Annexure-5 of the petition.

12. I have also considered the submission that not a single witness has been examined at this stage.

13. I have considered the age of the petitioner. The petitioner is also suffering from health issues.

14. Considering the peculiar facts and circumstances of this case, I deem it proper to grant bail to the petitioner. The petitioner is, therefore, enlarged on bail of Rs. 1,00,000/-, with two local sureties of the like amount to the satisfaction of the learned trial Court, under the conditions that-

i) the petitioner shall appear before the learned trial Court regularly and face the trial,

ii) the petitioner shall not jump the bail,

iii) the petitioner shall refrain from such activities with which he is alleged, and

iv) the petitioner shall not influence the witnesses or tamper with the evidence.

On breach of any bail conditions, bail order shall stand cancelled.

15. Bail Application stands disposed of.

JUDGE

Comparing Assistant