

GAHC010258992024



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

Case No. : Bail Appln./3720/2024

JUBAIR AHMED
S/O ABDUL KUDDUS
R/O VILL- FATEHPUR
P.S. KARIMGANJ,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTORS, ASSAM

Advocate for the Petitioner : MR. M AHMED, MD I H LASKAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.12.2024

- 1.** Heard Mr. M. Ahmed, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor appearing for the State of Assam.
- 2.** This bail application under Section 483 of BNSS, 2023 has been filed by the petitioner, namely, *Jubair Ahmed*, who has been detained behind the bars

since 20.12.2022 in connection with Special (NDPS) Case No. 170/2022 arising out of Ramkrishna Nagar P.S. Case No. 165/2022 under Section 21(c)/25/29 of the NDPS Act, 1985.

3. The gist of accusation in this case is that on 19.12.2022 about 739 grams of heroin was seized from the possession of 4 (four) accused persons including the present petitioner and on 19.12.2022, one Nilov Jyoti Nath, S.I. of Police had lodged an FIR to that affect before the Officer-In-Charge of Ramkrishna Nagar Police Station. On receipt of the said FIR, Ramkrishna Nagar P.S. Case No. 165/2022 was registered under Section 21(c)/25/29 of the NDPS Act, 1985, and investigation was initiated. Ultimately, on completion of the investigation, charge-sheet was laid against four numbers of accused persons, including the present petitioner on 30.04.2023 under Sections 21(c)/25/29 of the NDPS Act, 1985.

4. Learned counsel for the petitioner has submitted that on an earlier occasion, this petitioner had approached this Court by filing the Bail Application No. 138/2024. However, by order dated 05.04.2024, the prayer for bail was rejected on that occasion.

5. It is submitted by the learned counsel for the petitioner that now the petitioner has been detained behind the bars for more than two years. However, in spite of such a prolonged incarceration the trial has not progressed and not even a single prosecution witness has been examined till date. He also submits that under such circumstances the petitioner is entitled to get bail on the ground of prolonged incarceration only, as his fundamental rights guaranteed under Article 21 of the Constitution of India overrides the embargo of Section 37 of the NDPS Act, 1985.

6. Learned counsel for the petitioner has cited a ruling of the Apex Court in "**Rabi Prakash Vs. State of Orissa**" reported in "**2023 live law (SC) 533**", wherein it has been observed by the Hon'ble Apex Court that "*The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.*"

7. The learned counsel for the petitioner has also cited the rulings of the Apex Court in (i) "**Shariful Islam @ Sarif Vs. State of West Bengal**" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), (ii) "**Dheeraj Kumar Shukla Vs. State of Uttar Pradesh**" [order dated 25.10.2023 passed in Special Leave to Appeal (Criminal) No. 6690/2022], (iii) "**Anjan Nath Vs. The State Of Assam**" [Order dated 17.10.2023 passed in Special Leave to Appeal (Criminal) No. 9860/2023], (iv) "**Nitesh Adhikari Vs. State of West Bengal**" (Order dated 04.05.2022 passed in SLP Criminal No. 5769/2022) and (v) "**Md. Salman Hanif Shaikh Vs. State of Gujarat**" (Order dated 22.08.2022 passed in SLA Criminal No. 5530/2022), wherein the petitioners (who were facing trial for possessing a commercial quantity of contraband) were granted bail by the Apex Court. However, due to the prolonged incarceration in all the above mentioned cases, the petitioners were allowed to go on bail. Therefore, on the same principle, the learned counsel for the petitioner has also submitted that in the instant case also the petitioner, who has been languishing behind the bars for more than 1 year 10 months may be allowed to go on bail.

8. Learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the grounds that the petitioner was found in the vehicle from which the contraband was seized and the said vehicle was a

private vehicle and therefore, he was found in conscious possession of the recovered contraband.

9. Learned Additional Public Prosecutor also submits that as the quantity of contraband seized in this case is of commercial quantity, the embargo of Section 37 of the NDPS Act, 1985 is applicable to this case. He also submits that the benefit of bail on the ground of prolonged incarceration may not be granted to the petitioner as the charges were framed in this case only on 30.07.2024 and there are only 8 witnesses who can be examined immediately. He also submits that the delay in proceeding with the trial occurred not due to any fault on the side of the prosecution but because one of the co-accused was absconding and the case of the present petitioner have to be split up from the case of the absconding accused and same was done on 30.04.2024.

10. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record including the scanned copy of the Special (NDPS) Case No. 170/2022, which was requisitioned from the Trial Court.

11. Hon'ble Supreme Court of India in "***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***" reported in 2023 SCC Online SC 352 has observed that "grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985"

12. It appears on perusal of the rulings cited by learned counsel for the petitioner that in all the cases cited by the petitioner, though commercial quantity of contraband was involved and apparently the embargo of Section 37 would have been applicable in those cases, however, only because of the fact of the prolonged incarceration of the petitioners, the Apex Court allowed the

petitioners to go on bail.

13. In view of the observation made by the Apex Court, this Court is of the considered opinion that if, under the facts and circumstances of a case, this Court comes to the finding that there is an undue delay in the completion of the trial, and that the incarceration of the petitioner is long enough, he would be entitled to get bail on the ground of such prolonged incarceration, as in such a case of prolonged incarceration, the right to life and personal liberty guaranteed to the petitioner under Section Article 21 of the Constitution of India would outweigh the fetter imposed under Section 37 of the NDPS Act, 1985.

14. It is also pertinent to mention herein that the Hon'ble Supreme Court of India had granted bail to an accused facing charges for possession of a commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (Order dated 04.08.2022 passed in SLP Criminal No. 4173/2022), wherein the accused was detained behind bars for one year and six months.

15. In "***Nitesh Adhikari Vs. State of West Bengal***" (Order dated 04.05.2022 passed in SLP Criminal No. 5769/2022), Hon'ble Apex Court granted bail to the accused facing accusation under Section 21(c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

16. Similarly in "***Md. Salman Hanif Shaikh Vs. State of Gujarat***" (Order dated 22.08.2022 passed in SLA Criminal No. 5530/2022), the petitioner was granted bail by the Apex Court on the ground of prolonged incarceration of two years.

17. In "***Chitta Biswas Alias Subha Vs. The State Of West Bengal***" (Order dated 07.02.2020 passed in SLP Criminal No. 8823/2019), the Apex Court granted bail to the petitioner, who was facing a trial for possessing a commercial quantity of

contraband on the ground of prolonged incarceration of 1 year 6 month.

18. In the instant case also, the present petitioner has been detained behind the bars for more than two years and till date even a single witness has not been examined by the prosecution side.

19. It also appears from the record that the next date before the Trial Court is fixed on 28.01.2025. Under such circumstances, it is unlikely that the trial would culminate at the earliest and this Court is of considered opinion that the incarceration undergone by the present petitioner in the present case would be regarded as long enough to override the embargo of Section 37 of the NDPS Act, 1985. Therefore, this Court is of considered opinion that the petitioner is entitled to get bail on the grounds of prolonged incarceration.

20. In view of the above, the petitioner, namely, *Jubair Ahmed* is allowed to go on bail of Rs.1,00,000/- (Rupees One Lakh only) with two sureties of like amount (one of whom should be a government servant and residing within the State of Assam) subject to the satisfaction of the learned Sessions Judge, Karimganj with the following conditions:

- i. That the petitioner shall cooperate in the trial of Special (NDPS) Case No. 170/2022, which is pending in the Court of learned Sessions Judge, Karimganj;
- ii. That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;
- iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present petitioner;

iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card, mobile number and other contact details before the Trial Court;

v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the Trial Court; and

vi. That the petitioner shall not commit any similar offence while on bail.

21. With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant