

GAHC010259252023



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

Case No. : Bail Appln./4205/2023

R YARUIBO
S/O- APAM R., R/O- SIMAKHUTHU, P.S. PARONPAL, DIST.- EAST IMPHAL,
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR

Advocate for the Petitioner : MOTIUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 25.06.2024

- 1.** Heard Mr. M. Rahman, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mr. R Yaruibo who has been detained behind the bars since 17.12.2022 (for the last 1 year 6 months 17 days) in connection with Special (NDPS) Case No.42/2023, pending before the

learned Special Judge, Hojai, Assam, arising out of Lumding P.S. Case No.201/2022 under Section 20(b)(ii)(C)/29 NDPS Act, 1985.

3. The gist of the accusation in this case is that on 16.12.2022, one Jagadish Rabha, S.I. of Police had lodged a FIR before the Officer-in-Charge of Lumding Police Station, *inter-alia*, alleging that on receipt of an information through reliable sources that some huge quantity of drugs were being carried out in two vehicles from Dima Hasao towards Lumding and a naka checking was conducted at National Highway 27, near 2nd APTF. During naka checking, two vehicles were intercepted, namely, HR 38 A 2522 (Tata 4X4 Truck) and Hyundai vehicle car bearing Registration No. AS11R4404 and during search of the said vehicle 1150 kg of suspected ganja was recovered therefrom, and the driver and passengers of the said vehicle were apprehended.

4. On receipt of the said FIR, Lumding P.S. Case No.201/2022 was registered and investigation was initiated. Ultimately, on completion of investigation, charge sheet was laid on 29.04.2023 against the present petitioner and other co-accused persons.

5. Learned counsel for the petitioner has submitted that the petitioner was driving the Hyundai car which was seized in this case and is no way involved in the offence alleged in the FIR.

6. It is also submitted by the learned counsel for the petitioner that the seizure list prepared by the Seizing Officer does not specify as to from which vehicle quantity of ganja was recovered.

7. Learned counsel for the petitioner has also submitted that though, the charge sheet against the present petitioner and the other co-accused was laid

on 29.09.2023, however, till date, out of six prosecution witnesses listed in the charge sheet, only two have been examined and even after prolonged incarceration of 1 year 6 months 17 days undergone by the present petitioner, the trial has not been progressed and there is no hope of culmination of the trial at the earliest.

8. The learned counsel for the petitioner has submitted that the petitioner has no criminal antecedents and he has been falsely implicated in this case.

9. He has cited a ruling of Apex Court in the case of ***Raju Ram Vs. State of Bihar*** reported in ***2023 0 Supreme (SC) 80***, wherein the petitioner was given benefit of having no criminal antecedent and was allowed to go on bail in a case involving commercial quantity of contraband.

10. The learned counsel for the petitioner has submitted that though, in the present case there is seizure of commercial quantity of ganja, however, as the detention of the present petitioner is long enough, and as the trial has not fairly progressed, he is entitled to get bail on the ground of prolonged incarceration only.

11. Therefore, the learned counsel for the petitioner has also submitted that as there is an inordinate delay in culmination of trial, the embargo of Section 37 of the NDPS Act, 1985 gives weigh to the fundamental right to the petitioner is mandatory in nature, however, in view of the observations made by the Supreme Court in a number of cases, in case of inordinate delay in trial, the embargo is lifted and it gives weigh to the petitioner of the fundamental right guaranteed under Article 21 of the Constitution.

12. The learned Additional Public Prosecutor has opposed the grant of bail to

the present petitioner on the ground that the commercial quantity of contraband has been seized in this case and therefore, the embargo of Section 37 of the NDPS Act, 1985 is applicable in the instant case, and therefore, he may not be allowed to go on bail.

13. I have considered the submissions made by learned counsel for both sides and have perused the materials on record, including the scanned copy of the case record of Special (NDPS) Case No.42/2023, which was called for in this case.

14. It appears from the record that since the date of arrest, i.e. 17.12.2022, the petitioner has been detained behind the bars and though the charges were framed on 29.09.2023, however, till now, only 2 prosecution witnesses have been examined and the trial has not yet been completed in spite of the fact that the petitioner has been detained behind the bars for the last 1 years 6 months and 17 days.

15. 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".

16. The Hon'ble Apex Court in "***Rabi Prakesh Vs. State of Orissa***" reported in **2023 live law (SC) 533**, wherein it has been observed by the 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."

17. 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.

18. 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.

19. In “*Nitesh Adhikari Vs. State of West Bengal*” (Order dated 04.05.2022 passed in SLP Criminal No. 5769/2022), the 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.

20. 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.

21. In the instant case also, the present petitioner has been detained behind the bars for last 1 years 6 months and 17 days and the trial is yet to culminate

and in view of the facts and circumstances of this case as well as considering the observations made by the Apex Court in the rulings cited hereinabove, wherein, it has dealt with the question of long incarceration of similarly situated petitioners who were before the Apex Court, this Court is of the considered opinion that in the instant case also, the facts and circumstances are such that the long incarceration of the present petitioner outweighs the embargo of Section 37 of the NDPS, Act 1985 and the petitioner is therefore, entitled to get bail on the ground of prolonged incarceration only.

22. In view of the above, the petitioner, namely, Mr. R. Yaruibo is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand 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 Special Judge, Hojai with the following conditions:

- i.** That the petitioner shall cooperate in the trial of Special (NDPS) Case No.42/2023, which is pending in the Court of learned Special Judge, Hojai;
- 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, and mobile number as well as 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.

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

24. Let a copy of this order be furnished by the Registry of this Court.

JUDGE

Comparing Assistant